
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2351 Session of
2020

INTRODUCED BY THOMAS, GROVE, KAUFER, GAYDOS, OWLETT, SANKEY,
JONES, MILLARD, BERNSTINE, RYAN, WHEELAND, SAYLOR, COX, MOUL,
KEEFER, KLUNK, DUSH, B. MILLER, RADER AND ROWE, APRIL 3, 2020

REFERRED TO COMMITTEE ON HUMAN SERVICES, APRIL 3, 2020

AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An
2 act to consolidate, editorially revise, and codify the public
3 welfare laws of the Commonwealth," in fraud and abuse
4 control, further providing for definitions and for provider
5 prohibited acts, criminal penalties and civil remedies.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Section 1401 of the act of June 13, 1967 (P.L.31,
9 No.21), known as the Human Services Code, is amended by adding a
10 definition to read:

11 Section 1401. Definitions.--The following words and phrases
12 when used in this article shall have, unless the context clearly
13 indicates otherwise, the meanings given to them in this section:

14 * * *

15 "Statement or representation" means a communication that is
16 used to identify goods or services for which reimbursement is
17 sought under the medical assistance program or that is or may be
18 used to determine a rate of reimbursement under the medical
19 assistance program.

1 Section 2. Section 1407 of the act is amended to read:

2 Section 1407. Provider Prohibited Acts, Criminal Penalties
3 and Civil Remedies.--(a) It shall be unlawful for any person to
4 knowingly or intentionally:

5 (1) [Knowingly or intentionally present for allowance or
6 payment any false or fraudulent claim or cost report for
7 furnishing services or merchandise under medical assistance, or
8 to knowingly present for allowance or payment any claim or cost
9 report for medically unnecessary services or merchandise under
10 medical assistance, or to knowingly submit false information,
11 for the purpose of obtaining greater compensation than that to
12 which he is legally entitled for furnishing services or
13 merchandise under medical assistance, or to knowingly submit
14 false information for the purpose of obtaining authorization for
15 furnishing services or merchandise under medical assistance.]

16 Make or cause to be made a materially false, fraudulent or
17 misleading statement, claim or representation in any record used
18 by any person in connection with providing goods or services to
19 any recipient under the medical assistance program.

20 (1.1) Submit or cause to be submitted false information for
21 the purpose of obtaining greater compensation than that to which
22 the person is legally entitled for furnishing goods or services
23 under the medical assistance program.

24 (1.2) Submit or cause to be submitted a claim for medically
25 unnecessary or inadequate services or merchandise provided to a
26 recipient under the medical assistance program.

27 (2) Solicit or receive or to offer or pay any remuneration,
28 including any kickback, bribe or rebate, directly or indirectly,
29 in cash or in kind from or to any person in connection with the
30 furnishing of services or merchandise for which payment may be

1 in whole or in part under the medical assistance program or in
2 connection with referring an individual to a person for the
3 furnishing or arranging for the furnishing of any services or
4 merchandise for which payment may be made in whole or in part
5 under the medical assistance program.

6 (3) Submit or cause to be submitted a duplicate claim for
7 services, supplies or equipment for which the provider has
8 already received or claimed reimbursement from any source.

9 (4) Submit or cause to be submitted a claim for services,
10 supplies or equipment which were not rendered to a recipient.

11 (5) Submit or cause to be submitted a claim for services,
12 supplies or equipment which includes costs or charges not
13 related to such services, supplies or equipment rendered to the
14 recipient.

15 (6) Submit or cause to be submitted a claim or refer a
16 recipient to another provider by referral, order or
17 prescription, for services, supplies or equipment which are not
18 documented in the record in the prescribed manner and are of
19 little or no benefit to the recipient, are below the accepted
20 medical treatment standards, or are unneeded by the recipient.

21 (7) Submit or cause to be submitted a claim which
22 misrepresents the description of services, supplies or equipment
23 dispensed or provided; the dates of services; the identity of
24 the recipient; the identity of the attending, prescribing or
25 referring practitioner; or the identity of the actual provider.

26 (8) Submit or cause to be submitted a claim for
27 reimbursement for a service, charge or item at a fee or charge
28 which is higher than the provider's usual and customary charge
29 to the general public for the same service or item.

30 (9) Submit or cause to be submitted a claim for a service or

1 item which was not rendered by the provider.

2 (10) Dispense, render or provide a service or item without a
3 practitioner's written order and the consent of the recipient,
4 except in emergency situations, or submit a claim for a service
5 or item which was dispensed, or provided without the consent of
6 the recipient, except in emergency situations.

7 (11) Except in emergency situations, dispense, render or
8 provide a service or item to a patient claiming to be a
9 recipient without making a reasonable effort to ascertain by
10 verification through a current medical assistance identification
11 card, that the person or patient is, in fact, a recipient who is
12 eligible on the date of service and without another available
13 medical resource.

14 (12) Enter into an agreement, combination or conspiracy to
15 obtain or aid another to obtain reimbursement or payments for
16 which there is not entitlement.

17 (13) Make a false statement in the application for
18 enrollment as a provider.

19 (14) Commit any of the prohibited acts described in section
20 1403(d) (1), (2), (4) and (5).

21 (15) Submit or cause to be submitted any record for the
22 purposes of obtaining reimbursement from the medical assistance
23 program during any time period when the person is excluded or
24 precluded from participation in the medical assistance program
25 or when the person is on the Federal List of Excluded
26 Individuals/Entities.

27 (b) (1) [A person who violates any provision of subsection
28 (a), excepting subsection (a)(11), is guilty of a felony of the
29 third degree for each such violation with a maximum penalty of
30 fifteen thousand dollars (\$15,000) and seven years imprisonment.]

1 A violation of subsection (a) shall be deemed to continue so
2 long as the course of conduct or the defendant's complicity
3 therein continues; the offense is committed when the course of
4 conduct or complicity of the defendant therein is terminated in
5 accordance with the provisions of 42 Pa.C.S. § 5552(d) (relating
6 to other offenses). Whenever any person has been previously
7 convicted in any state or Federal court of conduct that would
8 constitute a violation of subsection (a), a subsequent
9 allegation, indictment or information under subsection (a) shall
10 be classified as a felony of the second degree with a maximum
11 penalty of twenty-five thousand dollars (\$25,000) and ten years
12 imprisonment.

13 (2)] A person who violates subsection (a), excluding the
14 provisions of subsection (a)(15), commits:

15 (i) A felony of the second degree if the amount of excess
16 payments, whether claimed or actually paid, is over one hundred
17 thousand dollars (\$100,000) or if the person has a prior
18 conviction in any state or Federal court for conduct that would
19 constitute a violation of subsection (a).

20 (ii) A felony of the third degree if the amount of excess
21 payments, whether claimed or actually paid, is over two thousand
22 dollars (\$2,000) but less than one hundred thousand dollars
23 (\$100,000).

24 (iii) A misdemeanor of the first degree if the amount of
25 excess payments, whether claimed or actually paid, is less than
26 two thousand dollars (\$2,000).

27 (2) A person who violates subsection (a)(15) commits a
28 felony of the second degree.

29 (b.1) (1) In addition to the penalties provided under
30 subsection (b), the trial court shall order any person convicted

1 under subsection (a):

2 (i) to repay the amount of the excess benefits or payments
3 plus interest on that amount at the maximum legal rate from the
4 date payment was made by the Commonwealth to the date repayment
5 is made to the Commonwealth;

6 (ii) to pay an amount not to exceed threefold the amount of
7 excess benefits or payments.

8 (2) (Reserved).

9 (3) Any person convicted under subsection (a) shall be
10 ineligible to participate in the medical assistance program for
11 a period of five years from the date of conviction. The
12 department shall notify any provider so convicted that the
13 provider agreement is terminated for five years, and the
14 provider is entitled to a hearing on the sole issue of identity.
15 If the conviction is set aside on appeal, the termination shall
16 be lifted.

17 (4) The Attorney General and the district attorneys of the
18 several counties shall have concurrent authority to institute
19 criminal proceedings under the provisions of this section.

20 (5) As used in this section the following words and phrases
21 shall have the following meanings:

22 "Conviction" means a verdict of guilty, a guilty plea, or a
23 plea of nolo contendere in the trial court.

24 "Medically unnecessary or inadequate services or merchandise"
25 means services or merchandise which are unnecessary or
26 inadequate as determined by medical professionals engaged by the
27 department who are competent in the same or similar field within
28 the practice of medicine.

29 (b.2) A violation of subsection (a) shall be deemed to
30 continue so long as the course of conduct or the person's

1 complicity in the course of conduct continues. An offense is
2 committed when the course of conduct or complicity of the person
3 in the course of conduct is terminated as provided under 42
4 Pa.C.S. § 5552(d) (relating to other offenses).

5 (c) (1) If the department determines that a provider has
6 committed any prohibited act or has failed to satisfy any
7 requirement under [section 1407(a)] subsection (a), it shall
8 have the authority to immediately terminate, upon notice to the
9 provider, the provider agreement and to institute a civil suit
10 against such provider in the court of common pleas for twice the
11 amount of excess benefits or payments plus legal interest from
12 the date the violation or violations occurred. The department
13 shall have the authority to use statistical sampling methods to
14 determine the appropriate amount of restitution due from the
15 provider.

16 (2) Providers who are terminated from participation in the
17 medical assistance program for any reason shall be prohibited
18 from owning, arranging for, rendering or ordering any service
19 for medical assistance recipients during the period of
20 termination. In addition, such provider may not receive, during
21 the period of termination, reimbursement in the form of direct
22 payments from the department or indirect payments of medical
23 assistance funds in the form of salary, shared fees, contracts,
24 kickbacks or rebates from or through any participating provider.

25 (3) [Notice of any action taken by the department against a
26 provider pursuant to clauses (1) and (2) will be forwarded by
27 the department to the Medicaid Fraud Control Unit of the
28 Department of Justice and to the appropriate licensing board of
29 the Department of State for appropriate action, if any. In
30 addition, the department will forward to the Medicaid Fraud

1 Control Unit of the Department of Justice and the appropriate
2 Pennsylvania licensing board of the Department of State any
3 cases of suspected provider fraud.] The department shall forward
4 notice of any action taken by the department against a provider
5 under this section to the Medicaid Fraud Control Unit of the
6 Office of Attorney General and to the appropriate licensing
7 board of the Department of State for appropriate action. The
8 department shall forward to the Medicaid Fraud Control Unit of
9 the Office of Attorney General and the appropriate licensing
10 board of the Department of State any cases of suspected provider
11 fraud.

12 (d) It shall be considered an affirmative defense to
13 prosecution of an offense under this section if a person was a
14 recipient of goods or services through the medical assistance
15 program and did not knowingly or intentionally commit a
16 prohibited act under this section.

17 Section 3. This act shall take effect in 60 days.