

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 109 Session of 2021

INTRODUCED BY THOMAS, GAYDOS, OWLETT, SANKEY, IRVIN, GROVE,  
 RYAN, KAUFFMAN, SAYLOR, BERNSTINE AND WEBSTER,  
 JANUARY 11, 2021

REFERRED TO COMMITTEE ON HUMAN SERVICES, JANUARY 11, 2021

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 "Person." The term does not include a recipient receiving  
30 public support services unless the recipient knowingly or

1 intentionally commits a prohibited act under subsection (a) and  
2 benefits financially from the violation.

3 (b.2) A violation of subsection (a) shall be deemed to  
4 continue so long as the course of conduct or the person's  
5 complicity in the course of conduct continues. An offense is  
6 committed when the course of conduct or complicity of the person  
7 in the course of conduct is terminated as provided under 42  
8 Pa.C.S. § 5552(d) (relating to other offenses).

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

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

29 (3) [Notice of any action taken by the department against a  
30 provider pursuant to clauses (1) and (2) will be forwarded by

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

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

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