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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1355 Session of  
2023

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INTRODUCED BY KUTZ, ECKER, GROVE AND KAUFFMAN, JUNE 9, 2023

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REFERRED TO COMMITTEE ON JUDICIARY, JUNE 9, 2023

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

20 \* \* \*

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  
4 to:

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 a document or  
18 record in any format, including written or electronic, used by  
19 any person in connection with providing goods or services to any  
20 recipient under the medical assistance program.

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

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

28 (2) Solicit or receive or to offer or pay any remuneration,  
29 including any kickback, bribe or rebate, directly or indirectly,  
30 in cash or in kind from or to any person in connection with the

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

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

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

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

17 (6) Submit or cause to be submitted a claim or refer a  
18 recipient to another provider by referral, order or  
19 prescription, for services, supplies or equipment which:

20 (i) are not documented in the record in the prescribed  
21 manner and are of little or no benefit to the recipient[ , ];

22 (ii) are below the accepted medical treatment standards[ ,  
23 or]; or

24 (iii) are unneeded by the recipient.

25 (7) Submit or cause to be submitted a claim which  
26 misrepresents the description of services, supplies or equipment  
27 dispensed or provided; the dates of services; the identity of  
28 the recipient; the identity of the attending, prescribing or  
29 referring practitioner; or the identity of the actual [provider]  
30 person dispensing or providing services, supplies or equipment.

1 (8) Submit or cause to be submitted a claim for  
2 reimbursement for a service, charge or item at a fee or charge  
3 which is higher than the [provider's] person's usual and  
4 customary charge to the general public for the same service or  
5 item.

6 (9) Submit or cause to be submitted a claim for a service or  
7 item which was not rendered by the [provider] person.

8 (10) Dispense, render or provide a service or item without a  
9 practitioner's written order and the consent of the recipient,  
10 except in emergency situations, or submit a claim for a service  
11 or item which was dispensed, or provided without the consent of  
12 the recipient, except in emergency situations.

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

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

23 (13) Make a false statement in the application for  
24 enrollment as a provider.

25 (14) Commit any of the prohibited acts described in section  
26 1403(d) (1), (2), (4) and (5).

27 (15) Submit or cause to be submitted a claim or any document  
28 or record in any format, including written or electronic, for  
29 the purposes of obtaining reimbursement from the medical  
30 assistance program during any time period when the person is

1 excluded or precluded from participation in the medical  
2 assistance program or when the person is on the Federal List of  
3 Excluded Individuals/Entities.

4 (b) (1) [A person who violates any provision of subsection  
5 (a), excepting subsection (a)(11), is guilty of a felony of the  
6 third degree for each such violation with a maximum penalty of  
7 fifteen thousand dollars (\$15,000) and seven years imprisonment.  
8 A violation of subsection (a) shall be deemed to continue so  
9 long as the course of conduct or the defendant's complicity  
10 therein continues; the offense is committed when the course of  
11 conduct or complicity of the defendant therein is terminated in  
12 accordance with the provisions of 42 Pa.C.S. § 5552(d) (relating  
13 to other offenses). Whenever any person has been previously  
14 convicted in any state or Federal court of conduct that would  
15 constitute a violation of subsection (a), a subsequent  
16 allegation, indictment or information under subsection (a) shall  
17 be classified as a felony of the second degree with a maximum  
18 penalty of twenty-five thousand dollars (\$25,000) and ten years  
19 imprisonment.

20 (2)] A person who knowingly or intentionally violates  
21 subsection (a), excluding the provisions of subsection (a)(15),  
22 commits:

23 (i) A felony of the second degree if the amount of excess  
24 payments, whether claimed or actually paid, is more than one  
25 hundred thousand dollars (\$100,000) or if the person has a prior  
26 conviction in any Federal or state court for conduct that would  
27 constitute a violation of subsection (a).

28 (ii) A felony of the third degree if the amount of excess  
29 payments, whether claimed or actually paid, is more than two  
30 thousand dollars (\$2,000) but less than one hundred thousand

1 dollars (\$100,000).

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

5 (2) A person who knowingly or intentionally violates  
6 subsection (a)(15) commits a felony of the second degree.

7 (b.1) (1) In addition to the penalties provided under  
8 subsection (b), the trial court shall order any person convicted  
9 under subsection (a):

10 (i) to repay the amount of the excess benefits or payments  
11 plus interest on that amount at the maximum legal rate from the  
12 date payment was made by the Commonwealth to the date repayment  
13 is made to the Commonwealth;

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

16 (2) (Reserved).

17 (3) Any person convicted under subsection (a) shall be  
18 ineligible to participate in the medical assistance program for  
19 a period of five years from the date of conviction. The  
20 department shall notify any [provider so convicted that the  
21 provider agreement is terminated for five years, and the  
22 provider] person so convicted of the termination of any provider  
23 agreement and of the five-year period of ineligibility to  
24 participate in the medical assistance program. The person is  
25 entitled to a hearing on the sole issue of identity. If the  
26 conviction is set aside on appeal, the termination shall be  
27 lifted.

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

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

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

5 "Medically unnecessary or inadequate services or merchandise"  
6 means services or merchandise which are unnecessary or  
7 inadequate as determined by medical professionals engaged by the  
8 department who are competent in the same or similar field within  
9 the practice of medicine.

10 (b.2) A violation of subsection (a) shall be deemed to  
11 continue so long as the course of conduct or the person's  
12 complicity in the course of conduct continues. An offense is  
13 committed when the course of conduct or complicity of the person  
14 in the course of conduct is terminated as provided under 42  
15 Pa.C.S. § 5552(d) (relating to other offenses).

16 (c) (1) If the department determines that a [provider]  
17 person providing or dispensing services, supplies or equipment  
18 has committed any prohibited act or has failed to satisfy any  
19 requirement under [section 1407(a)] subsection (a), it shall  
20 have the authority to immediately terminate, upon notice to the  
21 [provider, the] person, any provider agreement and to institute  
22 a civil suit against such [provider] person in the court of  
23 common pleas for twice the amount of excess benefits or payments  
24 plus legal interest from the date the violation or violations  
25 occurred. The department shall have the authority to use  
26 statistical sampling methods to determine the appropriate amount  
27 of restitution due from the [provider] person.

28 (2) [Providers who are] A person who is terminated from  
29 participation in the medical assistance program for any reason  
30 shall be prohibited from owning, arranging for, rendering or

1 ordering any service for medical assistance recipients during  
2 the period of [termination] ineligibility to participate in the  
3 medical assistance program. In addition, such [provider] person  
4 may not receive, during the period of [termination]  
5 ineligibility to participate in the medical assistance program,  
6 reimbursement in the form of direct payments from the department  
7 or indirect payments of medical assistance funds in the form of  
8 salary, shared fees, contracts, kickbacks or rebates from or  
9 through any participating provider.

10 (3) [Notice of any action taken by the department against a  
11 provider pursuant to clauses (1) and (2) will be forwarded by  
12 the department to the Medicaid Fraud Control Unit of the  
13 Department of Justice and to the appropriate licensing board of  
14 the Department of State for appropriate action, if any. In  
15 addition, the department will forward to the Medicaid Fraud  
16 Control Unit of the Department of Justice and the appropriate  
17 Pennsylvania licensing board of the Department of State any  
18 cases of suspected provider fraud.] The department shall forward  
19 notice of any action taken by the department against a person  
20 under this section to the Medicaid Fraud Control Unit of the  
21 Office of Attorney General and to the appropriate licensing  
22 board of the Department of State for appropriate action. The  
23 department shall forward to the Medicaid Fraud Control Unit of  
24 the Office of Attorney General and the appropriate licensing  
25 board of the Department of State any cases of suspected fraud by  
26 a person except for reports required under section 1417.

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