

ENROLLED ACT NO. 46, SENATE

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

AN ACT relating to medical assistance; establishing the Medicaid fraud control unit within the office of the attorney general; specifying duties; requiring access to Medicaid records; creating criminal penalties relating to Medicaid; authorizing the aggregation of claims under certain circumstances; authorizing exclusion or suspension of Medicaid providers; making conforming amendments; authorizing the promulgation of rules; repealing provisions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 42-4-401 through 42-4-412 are created to read:

ARTICLE 4
MEDICAID FRAUD CONTROL

42-4-401. Short title.

This act may be cited as the "Wyoming Medicaid Fraud Control Act".

42-4-402. Definitions.

(a) As used in this act:

(i) "Claim" means as defined in W.S. 42-4-302(a)(i);

(ii) "Provider" means a person who furnishes services or supplies for which payment is claimed under Medicaid;

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(iii) "Record" means information in physical or electronic form relating to:

(A) The treatment or care of any patient;

(B) A service or supply provided to a Medicaid recipient;

(C) Rates paid for a service or supply;

(D) Any other information required to be kept by rule of the Medicaid program.

(iv) "Unit" means the Medicaid fraud control unit created by this act to investigate and prosecute fraud, waste, abuse, bribery, kickback and related cases under Medicaid;

(v) "This act" means W.S. 42-4-401 through 42-4-412.

42-4-403. Medicaid fraud control unit created; duties.

(a) The Medicaid fraud control unit is recognized and continued in existence within the office of the attorney general. The unit shall conduct a statewide program for investigating and prosecuting violations of all applicable state laws pertaining to fraud in the administration of the Medicaid program and the provision of services or supplies, or the activities of providers of services or supplies, under the state Medicaid plan. The unit may also conduct criminal investigations and prosecutions relating to patient abuse, neglect, exploitation and other violations of law, if the violation is primarily connected to Medicaid.

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(b) The office of the attorney general shall employ attorneys, auditors, agents and other personnel which are necessary to carry out the duties specified in this act in an effective and efficient manner. Agents employed under this subsection shall have the qualifications and powers of an agent under W.S. 9-1-611(b)(i).

(c) The unit may file criminal charges without consultation with another person or entity outside the office of the attorney general. Before the filing of criminal charges under this act, the unit may consult with the district attorney of the judicial district in which the prosecution would take place. If the district attorney, after consultation, concurs with the decision to file criminal charges, the unit may refer the case to the district attorney. A district attorney may request that the unit assign an attorney to assist with prosecution under this act.

42-4-404. Access to records.

(a) Notwithstanding any other provision of law, the unit shall have full access to all records held by a provider or by another person or entity acting on the provider's behalf, if the unit determines that such information is material to its duties under this act. A provider, or another person or entity acting on the provider's behalf, shall promptly comply with a request from the unit for access to records.

(b) The unit shall avoid disclosure of personally identifiable information concerning any patient received in the course of an investigation, except as authorized by this section. The unit may transmit personally identifiable information to authorized persons, consistent with federal law, including governmental entities responsible for

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oversight of the health care system, benefit programs or the regulation of health care facilities or health care providers. The unit may also disclose information under this section as otherwise permitted or required by law.

(c) No provider or other person or entity holding records required to be made available to the unit under this section may refuse to provide access on the basis that release would violate any right of privacy, privilege against disclosure or use or any other grounds for nondisclosure.

(d) Nothing in this section shall be interpreted to limit the authority of the unit to use other legal processes to conduct investigations and prosecutions authorized by this act or other provisions of law.

42-4-405. Reporting to unit.

The department of health, department of family services, health care licensing boards, state agencies and the agents, contractors and subcontractors of these entities shall refer to the unit all cases where reasonable cause likely exists that fraud, waste, abuse, bribery or kickbacks relating to Medicaid has occurred, is occurring or will occur, as well as suspected cases of patient abuse, neglect or exploitation under Medicaid.

42-4-406. Fraud and false statements; criminal penalty.

(a) In relation to the delivery of or payment for services or supplies under Medicaid, a person shall not knowingly, in whole or in part:

(i) Make or cause to be made a false or fraudulent claim;

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(ii) Deliberately conceal a material fact;

(iii) Make or cause to be made a false statement or misrepresentation which will be used by another person;

(iv) Execute a scheme or artifice to commit fraud.

(b) A person who violates subsection (a) of this section is guilty of:

(i) A misdemeanor punishable by imprisonment of not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both, if the amount of the claims for services or supplies under Medicaid is less than one thousand dollars (\$1,000.00); or

(ii) A felony punishable by imprisonment for not more than ten (10) years, a fine of not more than ten thousand dollars (\$10,000.00), or both, if the amount of the claims for services or supplies under Medicaid is one thousand dollars (\$1,000.00) or more.

(c) The department of health shall ensure that the following documents contain a statement, under penalty of perjury and signed by the responsible provider, that all matters stated therein are true and accurate:

(i) An application to become a Medicaid provider;

(ii) All reports stating income or expenses upon which rates of payment by the department of health may be based; and

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(iii) Each invoice for payment of a service or supply provided to a person eligible for Medicaid.

(d) A person commits perjury if the person signs or submits, or causes to be signed or submitted a statement under subsection (c) of this section, knowing that the application, report or invoice contains information that is false, in whole or in part. Perjury under this subsection shall be punished as specified in W.S. 6-5-301(b).

42-4-407. Kickbacks, bribes, undisclosed payments, referral fees and illegal copayments; criminal penalty; exception.

(a) A person shall not knowingly, in whole or in part:

(i) Act on behalf of a provider to purchase or lease a service or supply for which payment may be made, in whole or in part, under Medicaid and then solicit or accept anything of additional value in connection with the purchase or lease;

(ii) Sell or lease to a provider a service or supply for which payment may be made, in whole or in part, under Medicaid, and offer, transfer or pay anything of additional value in connection with the sale or lease;

(iii) Refer an individual to a provider for the provision of a service or supply for which payment may be made, in whole or in part, under Medicaid, and solicit or accept anything of value in connection with the referral;

(iv) Act on behalf of a provider to charge, solicit, accept or receive anything of value in addition to the amount payable for a service or supply under Medicaid.

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(b) A violation of subsection (a) of this section is a felony punishable by imprisonment of not more than five (5) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

(c) A person does not commit a violation of paragraph (a)(i) or (ii) of this section in cases where the additional value transferred is a refund or discount made in the ordinary course of business and is reflected by the records of the person within a reasonable period of time after the transfer of value.

42-4-408. Failure to maintain records; destruction of records; penalty.

(a) A person, after submitting a claim or receiving a payment for a service or supply under Medicaid, shall not knowingly fail to maintain records required under Medicaid, including records that fully disclose the nature of the services or supplies provided to a recipient.

(b) A person who violates subsection (a) of this section is guilty of:

(i) A misdemeanor punishable by imprisonment for not more than thirty (30) days, a fine of not more than seven hundred fifty dollars (\$750.00), or both, if:

(A) The claims for which records were not maintained are less than twenty-five percent (25%) of the Medicaid claims submitted by the provider in any consecutive three (3) month period; and

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(B) The amount of the claims for which records were not maintained is five thousand dollars (\$5,000.00) or more.

(ii) A misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than one thousand dollars (\$1,000.00), or both, if:

(A) The claims for which records were not maintained are twenty-five percent (25%) or more of the Medicaid claims submitted by the provider in any consecutive three (3) month period; and

(B) The amount of the claims for which records were not maintained is five thousand dollars (\$5,000.00) or more.

(iii) A felony punishable by imprisonment for not more than five (5) years, a fine of not more than ten thousand dollars (\$10,000.00), or both, if:

(A) The person intended to defraud Medicaid and the claims for which records were not maintained are twenty-five percent (25%) or more of the Medicaid claims submitted by the provider in any consecutive three (3) month period; and

(B) The amount of the claims for which records were not maintained is five thousand dollars (\$5,000.00) or more.

42-4-409. Aggregation of claims in certain cases.

The amount of claims relating to violations of this act through a common scheme, or based on the same transaction or

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occurrence, may be aggregated to determine the level of penalty under this act, whether or not the claims were made as part of the same claim under Medicaid.

42-4-410. Suspension or exclusion as provider.

(a) The department of health or the department of family services may suspend or exclude a provider from providing services and supplies under Medicaid if:

(i) The department determines that the provider has committed an offense under this act or the Wyoming Medicaid False Claims Act, whether or not a criminal prosecution is brought under this act or any civil action is brought under the Wyoming Medicaid False Claims Act; or

(ii) A provider fails to provide the unit with access to records pursuant to W.S. 42-4-404(a).

(b) Any term of suspension or exclusion under this section, which may be permanent, shall be determined by the department of health or the department of family services.

(c) The department of health and the department of family services may adopt rules necessary to implement this section.

42-4-411. Provisions of act not exclusive remedies.

The provisions of this act shall not be exclusive and do not preclude the use of any other criminal or civil remedy as authorized by law.

42-4-412. Rules.

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The attorney general, in consultation with the department of health, may adopt rules to implement W.S. 42-4-401 through 42-4-409 and 42-4-411.

Section 2. W.S. 9-1-603(a) by creating a new paragraph (x) and 42-4-304(a) are amended to read:

9-1-603. Duties generally; retention of qualified practicing attorneys; matters in which county or state is party or has interest; assistance to county and district attorneys in felony trials; coordination of county and school safety activities.

(a) The attorney general shall:

(x) Supervise the Medicaid fraud control unit created by W.S. 42-4-401 et seq.

42-4-304. Investigations and prosecutions; powers of prosecuting authority; remedies for retaliation; venue; no private right of action.

(a) The ~~attorney general~~ Medicaid fraud control unit created by W.S. 42-4-403 or a district attorney may investigate alleged violations of W.S. 42-4-303(a) and (c). If the ~~attorney general~~ Medicaid fraud control unit or district attorney finds that a person has violated or is violating W.S. 42-4-303(a) or (c), the ~~attorney general~~ unit or district attorney may bring a civil action under this section against that person.

Section 3. W.S. 42-4-111(a), (b), (d) and (e) is repealed.

ORIGINAL SENATE
FILE NO. SF0085

ENGROSSED

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Section 4. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk