

ASSEMBLY, No. 2511

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MARCH 16, 2010

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

SYNOPSIS

Establishes waiver, rebate or payment of insured's deductible, copayment, or coinsurance by health care practitioner as a form of insurance fraud subject to criminal and civil penalties.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning insurance fraud related to health care claims
2 and amending various parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 3 of P.L.1997, c.353 (C.2C:21-4.3) is amended to
8 read as follows:

9 3. a. A practitioner is guilty of a crime of the second degree if
10 that person knowingly commits health care claims fraud in the
11 course of providing professional services. In addition to all other
12 criminal penalties allowed by law, a person convicted under this
13 subsection may be subject to a fine of up to five times the pecuniary
14 benefit obtained or sought to be obtained.

15 b. A practitioner is guilty of a crime of the third degree if that
16 person recklessly commits health care claims fraud in the course of
17 providing professional services. In addition to all other criminal
18 penalties allowed by law, a person convicted under this subsection
19 may be subject to a fine of up to five times the pecuniary benefit
20 obtained or sought to be obtained.

21 c. A person, who is not a practitioner subject to the provisions
22 of subsection a. or b. of this section, is guilty of a crime of the third
23 degree if that person knowingly commits health care claims fraud.
24 A person, who is not a practitioner subject to the provisions of
25 subsection a. or b. of this section, is guilty of a crime of the second
26 degree if that person knowingly commits five or more acts of health
27 care claims fraud and the aggregate pecuniary benefit obtained or
28 sought to be obtained is at least \$1,000. In addition to all other
29 criminal penalties allowed by law, a person convicted under this
30 subsection may be subject to a fine of up to five times the pecuniary
31 benefit obtained or sought to be obtained.

32 d. (1) A person, who is not a practitioner subject to the
33 provisions of subsection a. or b. of this section, is guilty of a crime
34 of the fourth degree if that person recklessly commits health care
35 claims fraud.

36 (2) A practitioner is guilty of a crime of the fourth degree
37 involving health care claims fraud if that practitioner, directly or
38 indirectly related to a claim, knowingly waives, rebates, gives, pays,
39 or offers to waive, rebate, give or pay all or part of the deductible,
40 copayment, or coinsurance owed by a covered person pursuant to
41 the terms of an insurance policy between the covered person and
42 that person's insurance company as defined by section 72 of
43 P.L.2003, c.89 (C.2C:21-4.5).

44 In addition to all other criminal penalties allowed by law, a
45 person convicted under this subsection may be subject to a fine of

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 up to five times the pecuniary benefit obtained or sought to be
2 obtained.

3 e. Each act of health care claims fraud shall constitute an
4 additional, separate and distinct offense, except that five or more
5 separate acts may be aggregated for the purpose of establishing
6 liability pursuant to subsection c. of this section. Multiple acts of
7 health care claims fraud which are contained in a single record, bill,
8 claim, application, payment, affidavit, certification or other
9 document shall each constitute an additional, separate and distinct
10 offense for purposes of this section.

11 f. (1) The falsity, fictitiousness, fraudulence or misleading
12 nature of a statement may be inferred by the trier of fact in the case
13 of a practitioner who attempts to submit, submits, causes to be
14 submitted, or attempts to cause to be submitted, any record, bill,
15 claim or other document for treatment or procedure without the
16 practitioner, or an associate of the practitioner, having performed an
17 assessment of the physical or mental condition of the patient or
18 client necessary to determine the appropriate course of treatment.

19 (2) The falsity, fictitiousness, fraudulence or misleading nature
20 of a statement may be inferred by the trier of fact in the case of a
21 person who attempts to submit, submits, causes to be submitted, or
22 attempts to cause to be submitted any record, bill, claim or other
23 document for more treatments or procedures than can be performed
24 during the time in which the treatments or procedures were
25 represented to have been performed.

26 (3) Proof that a practitioner has signed or initialed a record, bill,
27 claim or other document gives rise to an inference that the
28 practitioner has read and reviewed that record, bill, claim or other
29 document.

30 g. In order to promote the uniform enforcement of this act, the
31 Attorney General shall develop health care claims fraud prosecution
32 guidelines and disseminate them to the county prosecutors within
33 120 days of the effective date of this act.

34 h. For the purposes of this section, a person acts recklessly
35 with respect to a material element of an offense when he
36 consciously disregards a substantial and unjustifiable risk that the
37 material element exists or will result from his conduct. The risk
38 must be of such a nature and degree that, considering the nature and
39 purpose of the actor's conduct and the circumstances known to him,
40 its disregard involves a gross deviation from the standard of
41 conduct that a reasonable person would observe in the actor's
42 situation.

43 i. (1) Nothing in this act shall preclude an indictment and
44 conviction for any other offense defined by the laws of this State.

45 (2) Nothing in this act shall preclude an assignment judge from
46 dismissing a prosecution of health care claims fraud if the
47 assignment judge determines, pursuant to N.J.S.2C:2-11, the

A2511 SCHAER, GREENWALD

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1 conduct charged to be a de minimis infraction.

2 (cf: P.L.2003, c.89, s.75)

3

4 2. Section 73 of P.L.2003, c.89 (C.2C:21-4.6) is amended to
5 read as follows:

6 73. a. A person is guilty of the crime of insurance fraud if that
7 person knowingly makes, or causes to be made, a false, fictitious,
8 fraudulent, or misleading statement of material fact in, or omits a
9 material fact from, or causes a material fact to be omitted from, any
10 record, bill, claim or other document, in writing, electronically,
11 orally or in any other form, that a person attempts to submit,
12 submits, causes to be submitted, or attempts to cause to be
13 submitted as part of, in support of or opposition to or in connection
14 with: (1) a claim for payment, reimbursement or other benefit
15 pursuant to an insurance policy, or from an insurance company or
16 the "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174
17 (C.39:6-61 et seq.); (2) an application to obtain or renew an
18 insurance policy; (3) any payment made or to be made in
19 accordance with the terms of an insurance policy or premium
20 finance transaction; or (4) an affidavit, certification, record or other
21 document used in any insurance or premium finance transaction.

22 b. Insurance fraud constitutes a crime of the second degree if
23 the person knowingly commits five or more acts of insurance fraud,
24 including acts of health care claims fraud pursuant to section 2 of
25 P.L.1997, c.353 (C.2C:21-4.2) and if the aggregate value of
26 property, services or other benefit wrongfully obtained or sought to
27 be obtained is at least \$1,000. Otherwise, insurance fraud is a crime
28 of the third degree, unless this fraud involves an act of health care
29 claims fraud pursuant to subsection d. of section 3 of P.L.1997,
30 c.353 (C.2C:21-4.3), in which case it is a crime of the fourth
31 degree. Each act of insurance fraud shall constitute an additional,
32 separate and distinct offense, except that five or more separate acts
33 may be aggregated for the purpose of establishing liability pursuant
34 to this subsection. Multiple acts of insurance fraud which are
35 contained in a single record, bill, claim, application, payment,
36 affidavit, certification or other document shall each constitute an
37 additional, separate and distinct offense for purposes of this
38 subsection.

39 c. Proof that a person has signed or initialed an application,
40 bill, claim, affidavit, certification, record or other document may
41 give rise to an inference that the person has read and reviewed the
42 application, bill, claim, affidavit, certification, record or other
43 document.

44 d. In order to promote the uniform enforcement of this act, the
45 Attorney General shall develop insurance fraud prosecution
46 guidelines and disseminate them to county prosecutors within 180
47 days of the effective date of this act.

1 e. Nothing in this act shall preclude an indictment and
2 conviction for any other offense defined by the laws of this State.

3 f. Nothing in this act shall preclude an assignment judge from
4 dismissing a prosecution of insurance fraud if the assignment judge
5 determines, pursuant to N.J.S.2C:2-11, the conduct charged to be a
6 de minimis infraction.
7 (cf: P.L.2003, c.89, s.73)

8
9 3. Section 4 of P.L.1997, c.353 (C.2C:51-5) is amended to read
10 as follows:

11 4. a. (1) A practitioner convicted of health care claims fraud
12 pursuant to subsection a. of section 3 of P.L.1997, c.353 (C.2C:21-
13 4.3) or a substantially similar crime under the laws of another state
14 or the United States shall forfeit his license and be forever barred
15 from the practice of the profession unless the court finds that such
16 license forfeiture would be a serious injustice which overrides the
17 need to deter such conduct by others and in such case the court shall
18 determine an appropriate period of license suspension which shall
19 be for a period of not less than one year. If the court does not
20 permanently forfeit such license pursuant to this paragraph, the
21 sentence shall not become final for 10 days in order to permit the
22 appeal of such sentence by the prosecution.

23 (2) Upon a first conviction of health care claims fraud pursuant
24 to subsection b. of section 3 of P.L.1997, c.353 (C.2C:21-4.3) or a
25 substantially similar crime under the laws of another state or the
26 United States, a practitioner shall have his license suspended and be
27 barred from the practice of the profession for a period of at least
28 one year.

29 (3) Upon a second conviction of health care claims fraud
30 pursuant to subsection b. of section 3 of P.L.1997, c.353 (C.2C:21-
31 4.3) or a substantially similar crime under the laws of another state
32 or the United States, a practitioner shall forfeit his license and be
33 forever barred from the practice of the profession.

34 (4) A person convicted of second degree insurance fraud
35 pursuant to section 73 of P.L.2003, c.89 (C.2C:21-4.6) or a
36 substantially similar crime under the laws of another state or the
37 United States who holds a license or certificate of authority or
38 qualification to engage in the practice of a profession, occupation,
39 trade, or vocation or business, including but not limited to a
40 practitioner as defined in section 2 of P.L.1997, c.353 (C.2C:21-
41 4.2), shall forfeit that license or certificate and be forever barred
42 from the practice of that profession, occupation, trade, vocation or
43 business if the act or acts of insurance fraud were related to or
44 performed while engaged in the practice of that profession,
45 occupation, trade, vocation or business, unless the court finds that
46 such license or certificate forfeiture would be a serious injustice
47 which overrides the need to deter such conduct by others and in that
48 case the court shall determine an appropriate period of license or

1 certificate suspension which shall be for a period of not less than
2 one year. If the court does not permanently forfeit such license or
3 certificate pursuant to this paragraph, the sentence shall not become
4 final for 10 days in order to permit the appeal of that sentence by
5 the prosecution.

6 (5) A person convicted of third degree insurance fraud pursuant
7 to section 73 of P.L.2003, c.89 (C.2C:21-4.6) or a substantially
8 similar crime under the laws of another state or the United States
9 who holds a license or certificate of authority or qualification to
10 engage in the practice of a profession, occupation, trade, vocation
11 or business, including but not limited to a practitioner as defined in
12 section 2 of P.L.1997, c.353 (C.2C:21-4.2), shall have his license or
13 certificate suspended and be barred from the practice of that
14 profession, occupation, trade, vocation or business for a period of at
15 least one year if the act or acts of insurance fraud were related to or
16 performed while engaged in the practice of that profession,
17 occupation, trade, vocation or business.

18 (6) Upon a second conviction of third degree insurance fraud
19 pursuant to section 73 of P.L.2003, c.89 (C.2C:21-4.6) or a
20 substantially similar crime under the laws of another state or the
21 United States which meets the criteria of paragraph (2) of this
22 subsection, a person shall forfeit his license or certificate and be
23 forever barred from the practice of that profession, occupation,
24 trade, vocation or business.

25 (7) Upon application of the county prosecutor or the Attorney
26 General, a person convicted of any crime of the second degree or
27 above enumerated in chapter 20 or 21 of Title 2C of the New Jersey
28 Statutes or a substantially similar crime under the laws of another
29 state or the United States who holds a license or certificate or
30 authority or qualification to engage in the practice of a profession,
31 occupation, trade, vocation or business, including a practitioner as
32 defined in section 2 of P.L.1997, c.353 (C.2C:21-4.2), shall forfeit
33 such license or certificate and be forever barred from the practice of
34 that profession, occupation, trade, vocation or business if the act or
35 acts underlying the conviction involved or were related to an
36 insurance transaction as defined in section 72 of P.L.2003, c.89
37 (C.2C:21-4.5) and touched upon or were performed while engaged
38 in the practice of that profession, occupation, trade, vocation or
39 business, unless the court finds that the license or certificate
40 forfeiture would be a serious injustice which overrides the need to
41 deter such conduct by others and in that case the court shall
42 determine an appropriate period of license or certificate suspension
43 which shall be for a period of not less than one year. If the court
44 does not permanently forfeit that license or certificate pursuant to
45 this paragraph, the sentence shall not become final for 10 days in
46 order to permit the appeal of that sentence by the prosecution.

47 (8) Upon application of the county prosecutor or the Attorney
48 General, a person convicted of any crime of the third degree

1 enumerated in chapter 20 or 21 of Title 2C of the New Jersey
2 Statutes or a substantially similar crime under the laws of another
3 state or the United States who holds a license or certificate of
4 authority or qualification to engage in the practice of a profession,
5 occupation, trade, vocation or business, including but not limited to
6 a practitioner as defined in section 2 of P.L.1997, c.353 (C.2C:21-
7 4.2), shall have his license or certificate suspended and be barred
8 from the practice of that profession, occupation, trade, vocation or
9 business for a period of at least one year if the act or acts
10 underlying the conviction involved or were related to an insurance
11 transaction as defined in section 72 of P.L.2003, c.89 (C.2C:21-4.5)
12 and touched upon or were performed while engaged in the practice
13 of that profession, occupation, trade, vocation or business.

14 (9) A practitioner convicted of health care claims fraud pursuant
15 to subsection d. of section 3 of P.L.1997, c.353 (C.2C:21-4.3) or a
16 substantially similar crime under the laws of another state or the
17 United States may have his license or certificate suspended and be
18 barred from the practice of the profession for a period of not more
19 than one year.

20 b. A court of this State shall enter an order of license or
21 certificate forfeiture or suspension pursuant to subsection a. of this
22 section:

23 (1) Immediately upon a finding of guilt by the trier of fact or a
24 plea of guilty entered in any court of this State; or

25 (2) Upon application of the county prosecutor or the Attorney
26 General, when the license or certificate forfeiture or suspension is
27 made pursuant to paragraph (4) of subsection a. of this section or is
28 based upon a conviction of an offense under the laws of another
29 state or of the United States. An order of license or certificate
30 forfeiture or suspension pursuant to this paragraph shall be effective
31 as of the date the person is found guilty by the trier of fact or pleads
32 guilty to the offense.

33 This application may also be made in the alternative by the
34 Attorney General to the appropriate licensing agency.

35 The court shall provide notice of the forfeiture or suspension to
36 the appropriate licensing agency within 10 days of the date an order
37 of forfeiture or suspension is entered.

38 c. No court shall grant a stay of an order of license or
39 certificate forfeiture or suspension pending appeal of a conviction
40 or forfeiture or suspension order unless the court is clearly
41 convinced that there is a substantial likelihood of success on the
42 merits. If the conviction is reversed or the order of license or
43 certificate forfeiture or suspension is overturned, the court shall
44 provide notice of reinstatement to the appropriate licensing agency
45 within 10 days of the date of the order of reinstatement. The license
46 or certificate shall be restored, in accordance with applicable
47 procedures, unless the appropriate licensing agency determines to
48 suspend or revoke the license or certificate.

1 d. In any case in which the issue of license or certificate
2 forfeiture or suspension is not raised in a court of this State at the
3 time of a finding of guilt, entry of a guilty plea or sentencing, a
4 license or certificate forfeiture or suspension required by this
5 section may be ordered by a court or by the appropriate licensing
6 agency of this State upon application of the county prosecutor or
7 the Attorney General or upon application of the appropriate
8 licensing agency having authority to revoke or suspend the
9 professional's license or certificate. The fact that a court has
10 declined to order license or certificate forfeiture or suspension shall
11 not preclude the appropriate licensing agency having authority to
12 revoke or suspend the professional's license or certificate from
13 seeking to do so on the ground that the conduct giving rise to the
14 conviction demonstrates that the person is unfit to hold the license
15 or certificate or is otherwise liable for an offense as specified in
16 section 8 of P.L.1978, c.73 (C.45:1-21).

17 e. If the Supreme Court of the State of New Jersey issues Rules
18 of Court pursuant to this act, the Supreme Court may revoke the
19 license to practice law of any attorney who has been convicted,
20 under the laws of this State, of health care claims fraud pursuant to
21 section 3 of P.L.1997, c.353 (C.2C:21-4.3), or an offense which, if
22 committed in this State, would constitute health care claims fraud,
23 insurance fraud pursuant to section 73 of P.L.2003, c.89 (C.2C:21-
24 4.6), or an offense which, if committed in this State, would
25 constitute insurance fraud.

26 f. Nothing in this section shall be construed to prevent or limit
27 the appropriate licensing agency or any other party from taking any
28 other action permitted by law against the practitioner.
29 (cf: P.L.2003, c.89, s.76)

30
31 4. Section 4 of P.L.1983, c.320 (C.17:33A-4) is amended to
32 read as follows:

33 4. a. A person or a practitioner violates this act if he:

34 (1) Presents or causes to be presented any written or oral
35 statement as part of, or in support of or opposition to, a claim for
36 payment or other benefit pursuant to an insurance policy or the
37 "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174
38 (C.39:6-61 et seq.), knowing that the statement contains any false or
39 misleading information concerning any fact or thing material to the
40 claim; or

41 (2) Prepares or makes any written or oral statement that is
42 intended to be presented to any insurance company, the Unsatisfied
43 Claim and Judgment Fund or any claimant thereof in connection
44 with, or in support of or opposition to any claim for payment or
45 other benefit pursuant to an insurance policy or the "Unsatisfied
46 Claim and Judgment Fund Law," P.L.1952, c.174 (C.39:6-61 et
47 seq.), knowing that the statement contains any false or misleading
48 information concerning any fact or thing material to the claim; or

1 (3) Conceals or knowingly fails to disclose the occurrence of an
2 event which affects any person's initial or continued right or
3 entitlement to (a) any insurance benefit or payment or (b) the
4 amount of any benefit or payment to which the person is entitled;

5 (4) Prepares or makes any written or oral statement, intended to
6 be presented to any insurance company or producer for the purpose
7 of obtaining:

8 (a) a motor vehicle insurance policy, that the person to be
9 insured maintains a principal residence in this State when, in fact,
10 that person's principal residence is in a state other than this State; or

11 (b) an insurance policy, knowing that the statement contains any
12 false or misleading information concerning any fact or thing
13 material to an insurance application or contract; or

14 (5) Conceals or knowingly fails to disclose any evidence,
15 written or oral, which may be relevant to a finding that a violation
16 of the provisions of paragraph (4) of this subsection a. has or has
17 not occurred.

18 b. A person or practitioner violates this act if he knowingly
19 assists, conspires with, or urges any person or practitioner to violate
20 any of the provisions of this act.

21 c. A person or practitioner violates this act if, due to the
22 assistance, conspiracy or urging of any person or practitioner, he
23 knowingly benefits, directly or indirectly, from the proceeds
24 derived from a violation of this act.

25 d. A person or practitioner who is the owner, administrator or
26 employee of any hospital violates this act if he knowingly allows
27 the use of the facilities of the hospital by any person in furtherance
28 of a scheme or conspiracy to violate any of the provisions of this
29 act.

30 e. A person or practitioner violates this act if, for pecuniary
31 gain, for himself or another, he directly or indirectly solicits any
32 person or practitioner to engage, employ or retain either himself or
33 any other person to manage, adjust or prosecute any claim or cause
34 of action, against any person, for damages for negligence, or, for
35 pecuniary gain, for himself or another, directly or indirectly solicits
36 other persons to bring causes of action to recover damages for
37 personal injuries or death, or for pecuniary gain, for himself or
38 another, directly or indirectly solicits other persons to make a claim
39 for personal injury protection benefits pursuant to P.L.1972, c.70
40 (C.39:6A-1 et seq.); provided, however, that this subsection shall
41 not apply to any conduct otherwise permitted by law or by rule of
42 the Supreme Court.

43 f. A practitioner violates the "New Jersey Insurance Fraud
44 Prevention Act," P.L.1983, c.320 (C.17:33A-1 et seq.), if that
45 practitioner, directly or indirectly related to a claim, waives,
46 rebates, gives, pays, or offers to waive, rebate, give or pay all or
47 part of the deductible, copayment, or coinsurance owed by a

1 covered person pursuant to the terms of an insurance policy
2 between the covered person and that person's insurance company.

3 (cf: P.L.1997, c.151, s.3)

4

5 5. This act shall take effect on the first day of the fourth month
6 next following enactment, and shall apply to any health care claim
7 submitted, attempted to be submitted, caused to be submitted, or
8 attempted to cause to be submitted, for payment or reimbursement
9 on or after that date.

10

11

12

STATEMENT

13

14 This bill establishes that a waiver, rebate or payment of an
15 insured's deductible, copayment, or coinsurance by a health care
16 practitioner, owed by a covered person pursuant to the terms of an
17 insurance policy between that person and an insurance company,
18 shall be considered a form of insurance fraud. The bill amends
19 several sections of the State's Criminal Code (Title 2C of the New
20 Jersey Statutes) concerning "health care claims fraud" and
21 "insurance fraud," as well as the "New Jersey Insurance Fraud
22 Prevention Act," P.L.1983, c.320 (C.17:33A-1 et seq.) in order to
23 accomplish its objectives.

24

25 First, the bill establishes that a health care practitioner is guilty
26 of a crime of the fourth degree involving health care claims fraud if
27 that practitioner, directly or indirectly related to a claim, knowingly
28 waives, rebates, gives, pays, or offers to waive, rebate, give or pay
29 all or part of the deductible, copayment, or coinsurance owed by a
30 covered person pursuant to the terms of an insurance policy
31 between the covered person and that person's insurance company.
32 A crime of the fourth degree is punishable by a term of
33 imprisonment of up to 18 months, a fine of up to \$10,000, or both.

34

35 The bill also incorporates this form of fourth degree health care
36 claims fraud within the relevant provisions of the Criminal Code
37 which describe the broader crime of "insurance fraud," set forth in
38 section 73 of P.L.2003, c.89 (C.2C:21-4.6).

39

40 In addition to the above described term of imprisonment and
41 fine, the commission of the fourth degree crime of health care
42 claims fraud may result in an order by the court or an appropriate
43 licensing agency, which suspends the guilty health care
44 practitioner's license or certificate for a period of not more than one
45 year, and bars the practitioner from the practice of the profession
46 during that time.

47

48 Second, under the "New Jersey Insurance Fraud Prevention Act,"
the bill establishes that a health care practitioner violates that act if
the practitioner, directly or indirectly related to a claim, waives,
rebates, gives, pays, or offers to waive, rebate, give or pay all or
part of the deductible, copayment, or coinsurance owed by a

1 covered person. In accordance with that act, a violation may
2 subject the health care practitioner to an administrative proceeding
3 before the Commissioner of Banking and Insurance, with a penalty
4 of between \$5,000 and \$15,000, plus restitution to any insurance
5 company that suffered losses due to the violation, or a civil action
6 in court with the same range of monetary penalties, plus payment of
7 court costs and reasonable attorneys' fees to the commissioner.

8 Further, violations of the "New Jersey Insurance Fraud
9 Prevention Act" may result in a recommendation to the appropriate
10 licensing agency with respect to a potential suspension or
11 revocation of the health care practitioner's license or certification.
12 See P.L.1998, c.21, s.41 (C.17:33A-25).