

CHAPTER 353

AN ACT establishing health care claims fraud as a criminal offense and supplementing chapters 21, 51 and 52 of Title 2C of the New Jersey Statutes.

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

1. The Legislature finds and declares:

a. Billions of dollars are spent each year on health care in New Jersey. Approximately ten percent of these costs can be attributed to fraud.

b. In order to maintain the financial integrity of the health care system in this State, it is necessary to prosecute and deter the commission of fraud.

c. Under the current law, it is difficult to prosecute and deter health care claims fraud because fraudulent claims often involve small amounts that require prosecutors to prove hundreds of relatively small thefts in order to establish a second degree offense.

d. It is, therefore, necessary to establish the crime of "health care claims fraud" to enable more efficient prosecution of criminally culpable persons who knowingly, or with criminal recklessness, submit false or fraudulent claims for payment or reimbursement for health care services. It is not the intent of this act to facilitate the prosecution of those persons who may make negligent errors in the preparation of filing of bills or claims.

C.2C:21-4.2 Definitions relative to health care claims fraud.

2. As used in this act:

"Health care claims fraud" means making, or causing to be made, a false, fictitious, fraudulent, or misleading statement of material fact in, or omitting a material fact from, or causing a material fact to be omitted from, any record, bill, claim or other document, in writing, electronically or in any other form, that a person attempts to submit, submits, causes to be submitted, or attempts to cause to be submitted for payment or reimbursement for health care services.

"Practitioner" means a person licensed in this State to practice medicine and surgery, chiropractic, podiatry, dentistry, optometry, psychology, pharmacy, nursing, physical therapy, or law; any other person licensed, registered or certified by any State agency to practice a profession or occupation in the State of New Jersey or any person similarly licensed, registered, or certified in another jurisdiction.

C.2C:21-4.3 Health care claims fraud, degree of crime; prosecution guidelines.

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

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

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

d. A person, who is not a practitioner subject to the provisions of subsection a. or b. of this section, is guilty of a crime of the fourth degree if that person recklessly commits health care claims fraud. In addition to all other criminal penalties allowed by law, a person convicted under this subsection may be subject to a fine of up to five times the pecuniary benefit obtained or sought to be obtained.

e. Each act of health care claims fraud shall constitute an additional, separate and distinct offense, except that five or more separate acts may be aggregated for the purpose of establishing liability pursuant to subsection c. of this section.

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

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

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

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

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

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

(2) Nothing in this act shall preclude an assignment judge from dismissing a prosecution of health care claims fraud if the assignment judge determines, pursuant to N.J.S. 2C:2-11, the conduct charged to be a de minimis infraction.

C.2C:51-5 Forfeiture, suspension of license; exceptions.

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

(2) Upon a first conviction of health care claims fraud pursuant to subsection b. of section 3 of P.L.1997, c.253 (C.2C:21-4.3) or a substantially similar crime under the laws of another state or the United States, a practitioner shall have his license suspended and be barred from the practice of the profession for a period of at least one year.

(3) Upon a second conviction of health care claims fraud pursuant to subsection b. of section 3 of P.L.1997, c.253 (C.2C:21-4.3) or a substantially similar crime under the laws of another state or the United States, a practitioner shall forfeit his license and be forever barred from the practice of the profession.

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

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

(2) Upon application of the county prosecutor or the Attorney General, when the license forfeiture or suspension is based upon a conviction of an offense under the laws of another state or of the United States. An order of license forfeiture or suspension pursuant to this paragraph shall be effective as of the date the person is found guilty by the trier of fact or pleads guilty to

the offense.

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

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

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

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

e. If the Supreme Court of the State of New Jersey issues Rules of Court pursuant to this act, the Supreme Court may revoke the license to practice law of any attorney who has been convicted, under the laws of this State, of health care claims fraud pursuant to section 3 of P.L.1997, c.253 (C.2C:21-4.3), or an offense which, if committed in this State, would constitute health care claims fraud.

f. Nothing in this section shall be construed to prevent or limit the appropriate licensing agency or any other party from taking any other action permitted by law against the practitioner.

C.2C:52-27.1 Petition to rescind order of debarment for health care claims fraud.

5. a. If an order of expungement of records of conviction under the provisions of chapter 52 of Title 2C of the New Jersey Statutes is granted by the court to a person convicted of health care claims fraud in which the court had ordered the offender's professional license be forfeited and the person be forever barred from the practice of the profession pursuant to paragraph (1) of subsection a. of section 4 of P.L.1997, c.253 (C.2C:51-5), the person may petition the court for an order to rescind the court's order of debarment if the person can demonstrate that the person is sufficiently rehabilitated.

b. If an order to rescind the court's order of debarment is granted, the person granted the order may apply to be licensed to practice the profession from which the offender was barred.

6. If any provision of this act, or an application of any provision is held invalid, the invalidity shall not affect other applications of the provision or other provisions of the act which reasonably can be given effect despite the invalidity.

7. This act shall take effect immediately.

Approved January 15, 1998.