

[First Reprint]
SENATE, No. 754

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 15, 1996

By Senators CARDINALE and Ciesla

1 AN ACT concerning insurance fraud and certain self-insurance funds
2 and amending P.L.1983, c.320 ¹and P.L.1993, c.362¹.

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.1983, c.320 (C.17:33A-3) is amended to read
8 as follows:

9 3. As used in this act:

10 "Attorney General" means the Attorney General of New Jersey or
11 his designated representatives.

12 "Commissioner" means the Commissioner of ¹the Department of
13 Banking and¹ Insurance.

14 "Director" means the Director of the Division of Insurance Fraud
15 Prevention in the Department of ¹Banking and¹ Insurance.

16 "Division" means the Division of Insurance Fraud Prevention
17 established by this act.

18 "Hospital" means any general hospital, mental hospital,
19 convalescent home, nursing home or any other institution, whether
20 operated for profit or not, which maintains or operates facilities for
21 health care.

22 "Insurance company" means:

23 a. Any corporation, association, partnership, reciprocal exchange,
24 interinsurer, Lloyd's insurer, fraternal benefit society or other person
25 engaged in the business of insurance pursuant to Subtitle 3 of Title 17
26 of the Revised Statutes (C.17:17-1 et seq.), or Subtitle 3 of Title 17B
27 of the New Jersey Statutes (C.17B:17-1 et seq.);

28 b. Any medical service corporation operating pursuant to
29 P.L.1940, c.74 (C.17:48A-1 et seq.);

30 c. Any hospital service corporation operating pursuant to
31 P.L.1938, c.366 (C.17:48-1 et seq.);

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted September 19, 1996.

- 1 d. Any health service corporation operating pursuant to P.L.1985,
2 c.236 (C.17:48E-1 et seq.);
- 3 e. Any dental service corporation operating pursuant to P.L.1968,
4 c.305 (C.17:48C-1 et seq.);
- 5 f. Any dental plan organization operating pursuant to P.L.1979,
6 c.478 (C.17:48D-1 et seq.);
- 7 g. Any insurance plan operating pursuant to P.L.1970, c.215
8 (C.17:29D-1);
- 9 h. The New Jersey Insurance Underwriting Association operating
10 pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.);
- 11 i. The New Jersey Automobile Full Insurance Underwriting
12 Association operating pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.)
13 and the Market Transition Facility operating pursuant to section 88 of
14 P.L.1990, c.8 (C.17:33B-11); [and]
- 15 j. Any risk retention group or purchasing group operating pursuant
16 to the "Liability Risk Retention Act of 1986," 15 U.S.C. §3901 et seq.;
- 17 k. Any fund or joint self-insurance fund operating pursuant to
18 Article 1 of chapter 10 of Title 40A of the New Jersey Statutes
19 (N.J.S.40A:10-1 et seq.), Article 3 of chapter 10 of Title 40A of the
20 New Jersey Statutes (N.J.S.40A:10-6 et seq.), Article 4 of chapter 10
21 of Title 40A of the New Jersey Statutes (N.J.S.40A:10-12 et seq.),
22 P.L.1983, c.372 (C.40A:10-36 et seq.), P.L.1983, c.108
23 (C.18A:18B-1 et seq.), or P.L.1992, c.51 (C.40A:10-52 et seq.); and
- 24 l. The New Jersey State Health Benefits Program operating
25 pursuant to P.L.1961, c.49 (C.52:14-17.25 et seq.).
- 26 "Person" means a person as defined in R.S.1:1-2, and shall include,
27 unless the context otherwise requires, a practitioner.
- 28 "Practitioner" means a licensee of this State authorized to practice
29 medicine and surgery, psychology, chiropractic, or law or any other
30 licensee of this State whose services are compensated, directly or
31 indirectly, by insurance proceeds, or a licensee similarly licensed in
32 other states and nations or the practitioner of any nonmedical
33 treatment rendered in accordance with a recognized religious method
34 of healing.
- 35 "Producer" means an insurance producer as defined in section 2 of
36 P.L.1987, c.293 (C.17:22A-2), licensed to transact the business of
37 insurance in this State pursuant to the provisions of the "New Jersey
38 Insurance Producer Licensing Act," P.L.1987, c.293 (C.17:22A-1 et
39 seq.).
- 40 "Statement" includes, but is not limited to, any application, writing,
41 notice, expression, statement, proof of loss, bill of lading, receipt,
42 invoice, account, estimate of property damage, bill for services,
43 diagnosis, prescription, hospital or physician record, X-ray, test result
44 or other evidence of loss, injury or expense.
45 (cf: P.L.1991, c.331, s.1)

1 2. Section 8 of P.L.1983, c.320 (C.17:33A-8) is amended to read
2 as follows:

3 8. a. There is established in the Department of ¹Banking and¹
4 Insurance the Division of Insurance Fraud Prevention. The division
5 shall assist the commissioner in administratively investigating
6 allegations of insurance fraud and in developing and implementing
7 programs to prevent insurance fraud and abuse. The division shall
8 promptly notify the Attorney General of any insurance application or
9 claim which involves criminal activity. When so required by the
10 commissioner and the Attorney General, the division shall cooperate
11 with the Attorney General in the investigation and prosecution of
12 criminal violations.

13 b. The commissioner shall appoint the full-time supervisory and
14 investigative personnel of the division, including the director, who
15 shall hold their employment at the pleasure of the commissioner
16 without regard to the provisions of Title 11A of the New Jersey
17 Statutes and shall receive such salaries as the commissioner from time
18 to time designates, and who shall be qualified by training and
19 experience to perform the duties of their position.

20 c. When so requested by the commissioner, the Attorney General
21 may assign one or more deputy attorneys general to assist the division
22 in the performance of its duties.

23 d. The commissioner shall also appoint the clerical and other staff
24 necessary for the division to fulfill its responsibilities under this act.
25 The personnel shall be employed subject to the provisions of Title 11A
26 of the New Jersey Statutes, and other applicable statutes.

27 e. The commissioner shall appoint an insurance fraud advisory
28 board consisting of eight representatives from insurers doing business
29 in this State. The members of the board shall serve for two year terms
30 and until their successors are appointed and qualified. The members
31 of the board shall receive no compensation. The board shall advise the
32 commissioner with respect to the implementation of this act, when so
33 requested by the commissioner.

34 f. The Director of the Division of Budget and Accounting in the
35 Department of the Treasury shall, on or before September 1 in each
36 year, ascertain and certify to the commissioner the total amount of
37 expenses incurred by the State in connection with the administration
38 of this act during the preceding fiscal year, which expenses shall
39 include, in addition to the direct cost of personal service, the cost of
40 maintenance and operation, the cost of retirement contributions made
41 and the workers' compensation paid for and on account of personnel,
42 rentals for space occupied in State owned or State leased buildings and
43 all other direct and indirect costs of the administration thereof.

44 g. The commissioner shall, on or before October 15 in each year,
45 apportion the amount so certified to him among all of the ¹insurance¹
46 companies writing ¹or providing¹ the class or classes of insurance

1 described in Subtitle 3 of Title 17 of the Revised Statutes (C.17:17-1
2 et seq.), and Subtitle 3 of Title 17B of the New Jersey Statutes
3 (C.17B:17-1 et seq.), within this State in the proportion that the net
4 premiums received by each of them for such insurance written ¹or
5 provided¹ or renewed on risks within this State during the calendar
6 year immediately preceding, as reported to him, bears to the sum total
7 of all such net premiums received by all companies writing ¹or
8 providing¹ that insurance within the State during the year, as reported,
9 except that no one company shall be assessed for more than 5% of the
10 amount apportioned. The commissioner shall certify the sum
11 apportioned to each company on or before November 15 next ensuing,
12 and to the Division of Taxation in the Department of the Treasury.
13 Each company shall pay the amount so certified as apportioned to it
14 to the said Division of Taxation on or before December 31 next
15 ensuing, and the sum paid shall be paid into the State Treasury in
16 reimbursement to the State for the expenses paid.

17 "Net premiums received" means gross premiums written, less return
18 premiums thereon and dividends credited or paid to policyholders and
19 also means and includes contributions made to funds and joint
20 self-insurance funds which are included in the definition of an
21 insurance company pursuant to section 3 of P.L.1983, c.320
22 (C.17:33A-3) and the New Jersey State Health Benefits Program, less
23 return contributions.

24 h. The total appropriations recoverable under this section for the
25 operation of the division shall not exceed \$500,000.00 during its first
26 full fiscal year of operation.

27 (cf: P.L.1991, c.331, s.5)

28

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

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

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

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

1 claim; or

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

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

9 (a) a motor vehicle insurance policy, that the person to be insured
10 resides or is domiciled in this State when, in fact, that person resides
11 or is domiciled in a state other than this State; or

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

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

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

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

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

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

42 (cf: P.L.1995, c.132, s.1)

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44 ¹4. Section 6 of P.L.1983, c.320 (C.17:33A-6) is amended to read
45 as follows:

46 6. a. Insurance claim forms shall contain a statement in a form

1 approved by the commissioner that clearly states in substance the
2 following: "Any person who knowingly files a statement of claim
3 containing any false or misleading information is subject to criminal
4 and civil penalties."

5 b. (Deleted by amendment, P.L.1987, c.342.)

6 c. Insurance application forms shall contain a statement in a form
7 approved by the commissioner that clearly states in substance the
8 following: "Any person who includes any false or misleading
9 information on an application for an insurance policy or coverage is
10 subject to criminal and civil penalties."¹

11 (cf: P.L.1995 ,c.132, s.2)

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13 ^{15.} Section 1 of P.L.1993, c.362 (C.17:33A-15) is amended to read
14 as follows:

15 1. a. Every insurer writing or providing health insurance in this
16 State shall, within 120 days of the adoption of regulations by the
17 commissioner pursuant to this act, file with the commissioner a plan
18 for the prevention of fraudulent health insurance claims. The plan
19 shall be deemed approved by the commissioner if not affirmatively
20 approved or disapproved by the commissioner within 90 days of the
21 date of filing. The commissioner may call upon the expertise of the
22 director in his review of plans filed pursuant to this subsection.
23 During the 90-day approval period the commissioner may request such
24 amendments to the plan as he deems necessary. Any subsequent
25 amendments to a plan filed with and approved by the commissioner
26 shall be submitted for filing and deemed approved if not affirmatively
27 approved or disapproved within 90 days from the filing date.

28 b. The implementation of plans filed and approved pursuant to
29 subsection a. of this section shall be monitored by the division. The
30 division shall promptly notify the Attorney General of any evidence of
31 criminal activity encountered in the course of monitoring the
32 implementation and execution of the plans. Each insurer writing or
33 providing health insurance in this State shall report to the director on
34 an annual basis, beginning January 1, 1994, on the experience in
35 implementing its fraud prevention plan.

36 c. In addition to any other penalties provided pursuant to
37 P.L.1983, c.320 (C.17:33A-1 et seq.), the commissioner may impose
38 a penalty of up to \$5,000 per day on any insurer for: failure to submit
39 a plan; failure to submit any amendments to an approved plan; failure
40 to properly implement an approved plan in a reasonable manner and
41 within a reasonable time period; failure to provide a report pursuant
42 to subsection b. of this section; or for any other violation of the
43 provisions of this section. Any penalty imposed and collected
44 pursuant to this subsection shall be deposited in the unemployment
45 compensation fund created pursuant to R.S.43:21-9 and shall be
46 dedicated exclusively to the purposes stated therein.

1 d. For the purposes of this section, "insurer" means an insurance
2 company as defined in subsections a., b., c., d., e., [and] f. k.and l. of
3 section 3 of P.L.1983, c.320 (C.17:33A-3).¹
4 (cf: P.L.1993,c.362,s.1)

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6 ¹[3.] 6¹ This act shall take effect immediately.

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11 Includes self-insurance funds of public entities under the "New Jersey
12 Insurance Fraud Prevention Act."