

SENATE, No. 1814

STATE OF NEW JERSEY

INTRODUCED JANUARY 27, 1997

By Senator MATHEUSSEN

1 AN ACT concerning audits of Medicaid long-term care facilities and  
2 amending and supplementing P.L.1968, c.413.

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

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7 1. Section 17 of P.L.1968, c.413 (C.30:4D-17) is amended to  
8 read as follows:

9 17. (a) Any person who willfully obtains benefits under this act to  
10 which he is not entitled or in a greater amount than that to which he  
11 is entitled and any provider who willfully receives medical assistance  
12 payments to which he is not entitled or in a greater amount than that  
13 to which he is entitled is guilty of a high misdemeanor and, upon  
14 conviction thereof, shall be liable to a penalty of not more than  
15 \$10,000.00 or to imprisonment for not more than 3 years or both.

16 (b) Any provider, or any person, firm, partnership, corporation or  
17 entity, who:

18 (1) Knowingly and willfully makes or causes to be made any false  
19 statement or representation of a material fact in any cost study, claim  
20 form, or any document necessary to apply for or receive any benefit or  
21 payment under this act; or

22 (2) At any time knowingly and willfully makes or causes to be made  
23 any false statement, written or oral, of a material fact for use in  
24 determining rights to such benefit or payment under this act; or

25 (3) Conceals or fails to disclose the occurrence of an event which  
26 (i) affects his initial or continued right to any such benefit or  
27 payment, or

28 (ii) affects the initial or continued right to any such benefit or  
29 payment of any provider or any person, firm, partnership, corporation  
30 or other entity in whose behalf he has applied for or is receiving such  
31 benefit or payment with an intent to fraudulently secure benefits or  
32 payments not authorized under this act or in greater amount than that  
33 which is authorized under this act; or

34 (4) Knowingly and willfully converts benefits or payments or any

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

**Matter underlined thus is new matter.**

1 part thereof received for the use and benefit of any provider or any  
2 person, firm, partnership, corporation or other entity to a use other  
3 than the use and benefit of such provider or such person, firm,  
4 partnership, corporation or entity; is guilty of a high misdemeanor  
5 and, upon conviction thereof, shall be liable to a penalty of not more  
6 than \$10,000.00 for the first and each subsequent offense or to  
7 imprisonment for not more than three years or both.

8 (c) Any provider, or any person, firm, partnership, corporation or  
9 entity who solicits, offers, or receives any kickback, rebate or bribe in  
10 connection with:

11 (1) The furnishing of items or services for which payment is or may  
12 be made in whole or in part under this act; or

13 (2) The furnishing of items or services whose cost is or may be  
14 reported in whole or in part in order to obtain benefits or payments  
15 under this act; or

16 (3) The receipt of any benefit or payment under this act, is guilty  
17 of a high misdemeanor and, upon conviction thereof, shall be liable to  
18 a penalty of not more than \$10,000.00 or to imprisonment for not  
19 more than 3 years or both.

20 This subsection shall not apply to (A) a discount or other reduction  
21 in price under this act if the reduction in price is properly disclosed  
22 and appropriately reflected in the costs claimed or charges made under  
23 this act; and (B) any amount paid by an employer to an employee who  
24 has a bona fide employment relationship with such employer for  
25 employment in the provision of covered items or services.

26 (d) Whoever knowingly and willfully makes or causes to be made  
27 or induces or seeks to induce the making of any false statement or  
28 representation of a material fact with respect to the conditions or  
29 operations of any institution or facility in order that such institution or  
30 facility may qualify either upon initial certification or recertification as  
31 a hospital, skilled nursing facility, intermediate care facility, or health  
32 agency, thereby entitling them to receive payments under this act, shall  
33 be guilty of a high misdemeanor and shall be liable to a penalty of not  
34 more than \$3,000.00 or imprisonment for not more than 1 year or  
35 both.

36 (e) Any person, firm, corporation, partnership, or other legal entity  
37 who violates the provisions of any of the foregoing subsections of this  
38 section shall, in addition to any other penalties provided by law, be  
39 liable to civil penalties of (1) payment of interest on the amount of the  
40 excess benefits or payments at the maximum legal rate in effect on the  
41 date the payment was made to said person, firm, corporation,  
42 partnership or other legal entity for the period from the date upon  
43 which payment was made to the date upon which repayment is made  
44 to the State, (2) payment of an amount not to exceed three-fold the  
45 amount of such excess benefits or payments, and (3) payment in the  
46 sum of \$2,000.00 for each excessive claim for assistance, benefits or

1 payments.

2 (f) Any person, firm, corporation, partnership or other legal entity,  
3 other than an individual recipient of medical services reimbursable by  
4 the Division of Medical Assistance and Health Services, who, without  
5 intent to violate this act, obtains medical assistance or other benefits  
6 or payments under this act in excess of the amount to which he is  
7 entitled, shall be liable to a civil penalty of payment of interest on the  
8 amount of the excess benefits or payments at the maximum legal rate  
9 in effect on the date the benefit or payment was made to said person,  
10 firm, corporation, partnership, or other legal entity for the period  
11 from September 15, 1976 or the date upon which payment was made,  
12 whichever is later, to the date upon which repayment is made to the  
13 State, provided, however, that no such person, firm, corporation,  
14 partnership or other legal entity shall be liable to such civil penalty  
15 when excess medical assistance or other benefits or payments under  
16 this act are obtained by such person, firm, corporation, partnership or  
17 other legal entity as a result of error made by the Division of Medical  
18 Assistance and Health Services, as determined by said division;  
19 provided, further, that if preliminary notification of an overpayment  
20 is not given to a provider by the division within 180 days after  
21 completion of the field audit as defined by regulation, no interest shall  
22 accrue during the period beginning 180 days after completion of the  
23 field audit and ending on the date preliminary notification is given to  
24 the provider.

25 (g) All interest and civil penalties provided for in this act and all  
26 medical assistance and other benefits to which a person, firm,  
27 corporation, partnership, or other legal entity was not entitled shall be  
28 recovered in an administrative procedure held pursuant to the  
29 "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1, et  
30 seq.), except that recovery actions against minors or incompetents  
31 shall be initiated in a court of competent jurisdiction.

32 (h) Upon the failure of any person, firm, corporation, partnership  
33 or other legal entity to comply within 10 days after service of any  
34 order of the director or his designee directing payment of any amount  
35 found to be due pursuant to subsection (g) of this section, or at any  
36 time prior to any final agency adjudication not involving a recipient or  
37 former recipient of benefits under this act, the director may issue a  
38 certificate to the clerk of the superior court that such person, firm,  
39 corporation, partnership or other legal entity is indebted to the State  
40 for the payment of such amount. A copy of such certificate shall be  
41 served upon the person, firm, corporation, partnership or other legal  
42 entity against whom the order was entered. Thereupon the clerk shall  
43 immediately enter upon his record of docketed judgments the name of  
44 the person, firm, corporation, partnership or other legal entity so  
45 indebted, and of the State, a designation of the statute under which  
46 such amount is found to be due, the amount due, and the date of the

1 certification. Such entry shall have the same force and effect as the  
2 entry of a docketed judgment in the Superior Court. Such entry,  
3 however, shall be without prejudice to the right of appeal to the  
4 Appellate Division of the Superior Court from the final order of the  
5 director or his designee.

6 (i) In order to satisfy any recovery claim asserted against a provider  
7 under this section, [whether or not that claim has been the subject of  
8 final agency adjudication,] the division or its fiscal agents is authorized  
9 to withhold funds otherwise payable under this act to the provider,  
10 except that the division or its fiscal agents may not begin to withhold  
11 funds until after final agency adjudication in a contested case.

12 (j) The Attorney General may, when requested by the commissioner  
13 or his agent, apply ex parte to the Superior Court to compel any party  
14 to comply forthwith with a subpoena issued under this act. Any party  
15 who, having been served with a subpoena issued pursuant to the  
16 provisions of this act, fails either to attend any hearing, or to appear  
17 or be examined, to answer any question or to produce any books,  
18 records, accounts, papers or documents, shall be liable to a penalty of  
19 \$500.00 for each such failure, to be recovered in the name of the  
20 State in a summary civil proceeding to be initiated in the Superior  
21 Court. The Attorney General shall prosecute the actions for the  
22 recovery of the penalty prescribed in this section when requested to  
23 do so by the commissioner or his agent and when, in the judgment of  
24 the Attorney General, the facts and law warrant such prosecution.  
25 Such failure on the part of the party shall be punishable as contempt  
26 of court by the court in the same manner as like failure is punishable  
27 in an action pending in the court when the matter is brought before  
28 the court by motion filed by the Attorney General and supported by  
29 affidavit stating the circumstances.

30 (cf: P.L.1979, c.365, s.16)

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32 2. (New Section) The Commissioner of Human Services shall pay  
33 or credit a long-term care facility for any net amount discovered to be  
34 owing to the facility as a result of an audit performed pursuant to  
35 subsection h. of section 7 of P.L.1968, c.413 (C.30:4D-7). If the  
36 payment or credit is not made within 45 days of the audit, the payment  
37 or credit shall include interest on the amount due, at the maximum  
38 legal rate in effect on the date the payment became due, except that  
39 the duty to pay interest shall not apply until federal financial  
40 participation is available for the interest payment.

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42 3. This act shall take effect immediately.

STATEMENT

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This bill prohibits the Division of Medical Assistance and Health Services in the Department of Human Services or its fiscal agents from recovering a claim asserted against a Medicaid provider until after a final agency adjudication in accordance with the Administrative Procedure Act. Under current law, the division may recover a disputed claim before the claim is heard before an impartial body.

The bill also requires the Commissioner of Human Services to pay or credit a Medicaid long-term care facility for any net amount found to be owing to the facility as a result of an audit. Under current law, the commissioner's reimbursement of any underpayment is discretionary.

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Requires Commissioner of Human Services to reimburse Medicaid long-term care facilities for underpayments discovered by audit.