

[Passed Both Houses]

[Second Reprint]

**SENATE, No. 1814**

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**STATE OF NEW JERSEY**

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INTRODUCED JANUARY 27, 1997

**By Senator MATHEUSSEN, Assemblywomen Wright  
and Quigley**

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

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 17 of P.L.1968, c.413 (C.30:4D-17) is amended to read  
8 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

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate SHH committee amendments adopted March 20, 1997.

<sup>2</sup> Assembly floor amendments adopted December 4, 1997.

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

7 (4) Knowingly and willfully converts benefits or payments or any  
8 part thereof received for the use and benefit of any provider or any  
9 person, firm, partnership, corporation or other entity to a use other  
10 than the use and benefit of such provider or such person, firm,  
11 partnership, corporation or entity; is guilty of a high misdemeanor  
12 and, upon conviction thereof, shall be liable to a penalty of not more  
13 than \$10,000.00 for the first and each subsequent offense or to  
14 imprisonment for not more than three years or both.

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

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

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

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

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

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

43 (e) Any person, firm, corporation, partnership, or other legal entity  
44 who violates the provisions of any of the foregoing subsections of this  
45 section shall, in addition to any other penalties provided by law, be  
46 liable to civil penalties of (1) payment of interest on the amount of the

1 excess benefits or payments at the maximum legal rate in effect on the  
2 date the payment was made to said person, firm, corporation,  
3 partnership or other legal entity for the period from the date upon  
4 which payment was made to the date upon which repayment is made  
5 to the State, (2) payment of an amount not to exceed three-fold the  
6 amount of such excess benefits or payments, and (3) payment in the  
7 sum of \$2,000.00 for each excessive claim for assistance, benefits or  
8 payments.

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

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

39 (h) Upon the failure of any person, firm, corporation, partnership  
40 or other legal entity to comply within 10 days after service of any  
41 order of the director or his designee directing payment of any amount  
42 found to be due pursuant to subsection (g) of this section, or at any  
43 time prior to any final agency adjudication not involving a recipient or  
44 former recipient of benefits under this act, the director may issue a  
45 certificate to the clerk of the superior court that such person, firm,  
46 corporation, partnership or other legal entity is indebted to the State

1 for the payment of such amount. A copy of such certificate shall be  
2 served upon the person, firm, corporation, partnership or other legal  
3 entity against whom the order was entered. Thereupon the clerk shall  
4 immediately enter upon his record of docketed judgments the name of  
5 the person, firm, corporation, partnership or other legal entity so  
6 indebted, and of the State, a designation of the statute under which  
7 such amount is found to be due, the amount due, and the date of the  
8 certification. Such entry shall have the same force and effect as the  
9 entry of a docketed judgment in the Superior Court. Such entry,  
10 however, shall be without prejudice to the right of appeal to the  
11 Appellate Division of the Superior Court from the final order of the  
12 director or his designee.

13 (i) In order to satisfy any recovery claim asserted against a  
14 provider under this section, [whether or not that claim has been the  
15 subject of final agency adjudication,] <sup>2</sup>whether or not that claim has  
16 been the subject of final agency adjudication,<sup>2</sup> the division or its fiscal  
17 agents is authorized to withhold funds otherwise payable under this act  
18 to the provider <sup>2</sup>[, except that] . In a contested case,<sup>2</sup> the division or  
19 its fiscal agents <sup>2</sup>[may not begin to withhold funds until] shall place  
20 the State portion of the disputed recovery claim in escrow, to be  
21 released with interest only<sup>2</sup> after final agency adjudication [in a  
22 contested case] if the provider prevails<sup>2</sup>.

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

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

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43 2. (New Section) The Commissioner of <sup>1</sup>[Human] Health and  
44 Senior<sup>1</sup> Services shall pay or credit a long-term care facility for any net  
45 amount discovered to be owing to the facility <sup>2</sup>after notice of  
46 underpayment to the facility<sup>2</sup> as a result of an audit performed

1 pursuant to subsection h. of section 7 of P.L.1968, c.413 (C.30:4D-7).  
2 If the payment or credit is not made within <sup>2</sup>[45] 60<sup>2</sup> days of the  
3 <sup>2</sup>[audit] notice of underpayment<sup>2</sup>, the payment or credit shall include  
4 interest on the amount due, at the maximum legal rate in effect on the  
5 date the payment became due, except that the duty to pay interest shall  
6 not apply until federal financial participation is available for the  
7 interest payment.

8 <sup>2</sup>The provisions of this section shall apply to an audit performed for  
9 any fiscal year ending after November 30, 1996.<sup>2</sup>

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11 3. This act shall take effect immediately.

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16 Requires Commissioner of Health and Senior Services to reimburse  
17 Medicaid long-term care facilities for underpayments discovered by  
18 audit.