

SENATE, No. 2270

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 17, 1997

By Senator MATHEUSSEN

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

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

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8 1. As used in this act:

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

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

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23 2. a. A practitioner is guilty of a crime of the second degree if that
24 person knowingly commits health care claims fraud. In addition to all
25 other criminal penalties allowed by law, a person convicted under this
26 subsection may be subject to a fine of up to five times the pecuniary
27 benefit obtained or sought to be obtained.

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

33 c. A person, who is not a practitioner, is guilty of a crime of the
34 third degree if that person knowingly commits health care claims
35 fraud. A person, who is not a practitioner, is guilty of a crime of the
36 second degree if that person knowingly commits five or more acts of
37 health care claims fraud and the aggregate pecuniary benefit obtained

1 or sought to be obtained is at least \$1,000. In addition to all other
2 criminal penalties allowed by law, a person convicted under this
3 subsection c. may be subject to a fine of up to five times the pecuniary
4 benefit obtained or sought to be obtained.

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

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

15 f. (1) The falsity, fictitiousness, fraudulence or misleading nature
16 of a statement is presumed in the case of a practitioner who attempts
17 to submit, submits, causes to be submitted, or attempts to cause to be
18 submitted, any record, bill, claim or other document for treatment or
19 procedure without the practitioner having performed an assessment of
20 the physical or mental condition of the patient or client necessary to
21 determine the appropriate course of treatment.

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

29 (3) Proof that a person has made three or more separate false
30 statements in a record, bill, claim or other document without that
31 person having made a reasonable inquiry as to the truthfulness of each
32 statement shall give rise to the presumption that the person knew each
33 statement was false.

34 (4) Proof that a practitioner has made a material statement that
35 appears in a record, bill, claim or other document shall give rise to the
36 presumption that the practitioner is aware of the truth or falsity of the
37 statement, and intends that the statement be taken as true.

38 g. Nothing in this act shall preclude an indictment and conviction
39 for any other offense defined by the laws of this State.

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41 3. a. (1) A practitioner convicted of health care claims fraud
42 pursuant to subsection a. of section 2 of P.L. , c. (C.) (pending
43 before the Legislature as this bill) or a substantially similar crime under
44 the laws of another state or the United States shall forfeit his or her
45 license and be forever barred from the practice of the profession.

46 (2) Upon a first conviction of health care claims fraud pursuant to

1 subsection b. of section 2 of P.L. , c. (C.) (pending before the
2 Legislature as this bill) or a substantially similar crime under the laws
3 of another state or the United States, a practitioner shall have his or
4 her license suspended and be barred from the practice of the profession
5 for a period of at least one year.

6 (3) Upon a second conviction of health care claims fraud pursuant
7 to subsection b. of section 2 of P.L. , c. (C.) (pending before the
8 Legislature as this bill) or a substantially similar crime under the laws
9 of another state or the United States, a practitioner shall forfeit his or
10 her license and be forever barred from the practice of the profession.

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

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

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

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

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

26 c. No court shall grant a stay of an order of license forfeiture or
27 suspension pending appeal of a conviction or forfeiture or suspension
28 order unless the court is clearly convinced that there is a substantial
29 likelihood of success on the merits. If the conviction is reversed or the
30 order of license forfeiture or suspension is overturned, the license
31 shall be restored, in accordance with applicable procedures, unless the
32 appropriate licensing agency determines to suspend or revoke the
33 license.

34 d. In any case in which the issue of license forfeiture or
35 suspension is not raised in a court of this State at the time of a finding
36 of guilt, entry of a guilty plea or sentencing, a license forfeiture or
37 suspension required by this section may be ordered by a court or by
38 the appropriate licensing agency of this State upon application of the
39 county prosecutor or the Attorney General or upon application of the
40 appropriate licensing agency having authority to revoke or suspend the
41 professional's license. The fact that a court has declined to order
42 license forfeiture or suspension shall not preclude the appropriate
43 licensing agency having authority to revoke or suspend the
44 professional's license from seeking to do so on the ground that the
45 conduct giving rise to the conviction demonstrates that the person is
46 unfit to hold the license or is otherwise liable for an offense as

1 specified in section 8 of P.L.1978, c.73 (C.45:1-21).

2 e. If the Supreme Court of the State of New Jersey issues Rules
3 of Court pursuant to this act, the Supreme Court may revoke the
4 license to practice law of any attorney who has been convicted, under
5 the laws of this State, of health care claims fraud pursuant to section
6 2 of P.L. , c. (C.) (pending before the Legislature as this bill), or
7 an offense which, if committed in this State, would constitute health
8 care claims fraud.

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

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13 4. This act shall take effect immediately.

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STATEMENT

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18 This bill implements the Attorney General's recommendations to
19 reform the criminal laws to address health care claims fraud
20 perpetrated by health care practitioners and others, particularly in the
21 treatment of patients involved in automobile accidents. This bill
22 complements the "New Jersey Insurance Fraud Prevention Act,"
23 P.L.1983, c.320 (C.17:33A-1 et seq.), under the jurisdiction of the
24 Department of Banking and Insurance. This bill creates the new
25 criminal offense of health care claims fraud and, in certain
26 circumstances, requires the revocation or suspension of the licenses of
27 those practitioners who commit this type of fraud.

28 New Jersey's Code of Criminal Justice does not address health care
29 claims fraud in a manner that permits efficient prosecution and
30 effective punishment. Under current statutes, a person commits a
31 crime of the second degree if the amount of the theft is \$75,000 or
32 more. However, in the context of health care claims fraud where
33 individual fraudulent claims may be relatively small, a prosecutor may
34 be required to prove hundreds of separate claims as fraudulent to
35 arrive at the \$75,000 amount.

The new crime of health care claims fraud would allow the prosecution of this conduct in an efficient and effective manner. This bill would cover not only those instances of claims for treatments that were not provided, but also false and misleading statements concerning the necessity of treatment and the nature and scope of treatment.

Under this bill, it would be a crime of the second degree when a practitioner knowingly submits, or attempts to submit, one fraudulent claim or when a person who is not a practitioner submits, or attempts to submit, five or more fraudulent claims with an aggregate amount of at least \$1,000. It would be a crime of the third degree when a person who is not a practitioner knowingly submits, or attempts to submit,

1 one fraudulent claim. The bill also creates lesser offenses applicable
2 to reckless, rather than knowing, fraudulent conduct.

3 In addition, this bill establishes four presumptions that a court
4 would use in its decision-making process. The first presumption
5 would allow the trier of fact to infer that a statement has a false or
6 misleading nature when a practitioner submits or attempts to submit
7 a claim for treatment without having performed an individualized
8 assessment of the physical or mental condition of the patient. The
9 second presumption would allow the trier of fact to infer that a
10 statement has a false or misleading nature when the claim shows more
11 treatments than can be performed during the time in which the claimed
12 treatments were represented to have been performed. The third
13 presumption provides that if a person has made three or more false
14 statements in any record without having made a reasonable inquiry that
15 each statement is true, the trier of fact can infer that the person knew
16 the statements were false. The fourth presumption would allow the
17 trier of fact to infer that a practitioner is aware of the truth or falsity
18 of a material statement the practitioner made in a record, bill, claim or
19 other document and intends that the statement be taken as true.

20 This bill provides for the automatic revocation or suspension of the
21 State license of any practitioner who commits health care claims fraud.
22 In addition, if the Supreme Court of New Jersey issues rules pursuant
23 to the bill, the Supreme Court may revoke the professional license to
24 practice law of any attorney convicted of health care claims fraud.

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29 Makes health care claims fraud a criminal offense and provides for
30 forfeiture of professional licenses in certain instances.