

SENATE HEALTH COMMITTEE

STATEMENT TO

SENATE, No. 2270

STATE OF NEW JERSEY

DATED: DECEMBER 11, 1997

The Senate Health Committee reports favorably Senate Bill No. 2270.

This bill implements the Attorney General's recommendations to reform the criminal laws to address health care claims fraud perpetrated by health care practitioners and others, particularly in the treatment of patients involved in automobile accidents. This bill complements the "New Jersey Insurance Fraud Prevention Act," N.J.S.A.17:33A-1 et seq., under the jurisdiction of the Department of Banking and Insurance. This bill creates the new criminal offense of health care claims fraud and, in certain circumstances, requires the revocation or suspension of the licenses of those practitioners who commit this type of fraud.

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

The bill defines practitioner as 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; or any person similarly licensed, registered or certified in another jurisdiction.

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,

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

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

This bill provides for either the automatic temporary suspension or permanent revocation of the State license of any practitioner, based on the severity of the health care claims fraud crime that was committed. In addition, if the Supreme Court of New Jersey issues rules pursuant to the bill, the Supreme Court may revoke the professional license to practice law of any attorney convicted of health care claims fraud.