

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 2040

Short Title: Medicaid Fraud/Incr. Penalty/Subpoena.

(Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR MEDICAL ASSISTANCE PROVIDER FRAUD; AND TO AUTHORIZE INVESTIGATIVE DEMAND PROCEDURES IN CASES OF MEDICAL ASSISTANCE PROVIDER FRAUD.

The General Assembly of North Carolina enacts:

SECTION 1. Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"§ 108A-63.1. Authorized investigative demand procedures.

(a) In any investigation relating to any act or activity involving medical assistance provider fraud, the Attorney General may issue in writing and cause to be served a subpoena:

(1) Requiring the production of any records (including any books, papers, documents, electronic media, or other objects or tangible things), which may be relevant to an authorized law enforcement inquiry, that a person or legal entity may possess or have care, custody, or control;
or

(2) Requiring a custodian of records to give testimony concerning the production and authentication of the records.

(b) A subpoena under this section shall describe the objects required to be produced and shall also prescribe a return date within a reasonable period of time within which the objects can be assembled and made available.

(c) The production of records shall not be required under this section at any place more than 500 miles distant from the place where the subpoena for the production of the records is served.

(d) Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the State.

(e) A subpoena issued under this section may be served by any person who is at least 18 years of age and is designated in the subpoena to serve it. Service upon a

1 natural person may be made by personal delivery of the subpoena to the natural person.
2 Service may be made upon a domestic or foreign corporation or upon a partnership or
3 other unincorporated association that is subject to suit under a common name, by
4 delivering the subpoena to an officer, to a managing or general agent, or to any other
5 agent authorized by appointment or by law to receive service of process. The affidavit
6 of the person serving the subpoena entered on a true copy thereof by the person serving
7 it shall be proof of service.

8 (f) In the case of contumacy by or refusal to obey a subpoena issued to any
9 person, the Attorney General may invoke the aid of any court of this State within the
10 jurisdiction of which the investigation is carried on or of which the subpoenaed person
11 is an inhabitant, or in which the subpoenaed person carries on business or may be found,
12 to compel compliance with the subpoena. The court may issue an order requiring the
13 subpoenaed person to appear before the Attorney General to produce records, if so
14 ordered, or to give testimony concerning the production and authentication of the
15 records. Failure to obey the order of the court may be punished by the court as contempt
16 thereof. All process in any such case may be served in any judicial district of this State
17 in which the person may be found.

18 (g) Notwithstanding any other State law to the contrary, any person, including
19 officers, agents, and employees, receiving a summons under this section, who complies
20 in good faith with the summons and thus produces the materials sought, shall not be
21 liable in any court of this State to any customer or other person for the production or for
22 nondisclosure of the production to the customer.

23 (h) Health information about an individual that is disclosed under this section
24 may not be used in, or disclosed to any person for use in, any administrative, civil, or
25 criminal action or investigation directed against the individual who is the subject of the
26 information unless the action or investigation arises out of and is directly related to
27 receipt of health care or payment for health care or action involving a fraudulent claim
28 related to health; or if authorized by an appropriate order of a court of competent
29 jurisdiction, granted after application showing good cause therefore.

30 (1) In assessing good cause under this subsection, the court shall weigh
31 the public interest and the need for disclosure against the injury to the
32 patient, to the physician-patient relationship, and to the treatment
33 services.

34 (2) Upon the granting of an order to disclose, the court, in determining the
35 extent to which any disclosure of all or any part of any record is
36 necessary, shall impose appropriate safeguards against unauthorized
37 disclosure."

38 **SECTION 2.** G.S. 108A-63 reads as rewritten:

39 **"§ 108A-63. Medical assistance provider fraud.**

40 (a) It shall be unlawful for any provider of medical assistance under this Part to
41 knowingly and willfully make or cause to be made any false statement or representation
42 of a material fact:

43 (1) In any application for payment under this Part, or for use in
44 determining entitlement to such payment; or

1 (2) With respect to the conditions or operation of a provider or facility in
2 order that such provider or facility may qualify or remain qualified to
3 provide assistance under this Part.

4 (b) It shall be unlawful for any provider of medical assistance to knowingly and
5 willfully conceal or fail to disclose any fact or event affecting:

6 (1) His initial or continued entitlement to payment under this Part; or

7 (2) The amount of payment to which such person is or may be entitled.

8 (c) Any person who violates a provision of this section shall be guilty of a ~~Class-I~~
9 Class H felony.

10 (d) "Provider" shall include any person who provides goods or services under this
11 Part and any other person acting as an employee, representative or agent of such person.

12 (e) It shall be unlawful for any provider of medical assistance to knowingly and
13 willfully execute a scheme or artifice to violate this section. Any person who knowingly
14 and willfully executes a scheme or artifice to violate this section shall be guilty of a
15 Class H felony if the payments applied for or affected total less than one hundred
16 thousand dollars (\$100,000) and a Class C felony if the payments applied for or affected
17 total one hundred thousand dollars (\$100,000) or more."

18 **SECTION 3.** This act becomes effective December 1, 2006.