

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 137

Short Title: Prohibit Co-pay Waiver/Medicaid Providers. (Public)

Sponsors: Senators Tillman (Primary Sponsor); Bingham, Brock, Hise, and Pate.

Referred to: Health Care.

February 27, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT THE REGULAR BUSINESS PRACTICE OF WAIVING  
3 REQUIRED MEDICAID RECIPIENT CO-PAYMENTS BY A MEDICAID PROVIDER  
4 CONSTITUTES FRAUD.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 108A-63 reads as rewritten:

7 "§ 108A-63. Medical assistance provider fraud.

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

- 11 (1) In any application for payment under this Part, or for use in determining  
12 entitlement to such payment; or  
13 (2) With respect to the conditions or operation of a provider or facility in order  
14 that such provider or facility may qualify or remain qualified to provide  
15 assistance under this Part.

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

- 18 (1) His initial or continued entitlement to payment under this Part; or  
19 (2) The amount of payment to which such person is or may be entitled.

20 (c) Except as otherwise provided in subsection (e) of this section, any person who  
21 violates a provision of this section shall be guilty of a Class I felony.

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

24 (e) In connection with the delivery of or payment for benefits, items, or services under  
25 this Part, it shall be unlawful for any provider of medical assistance under this Part to  
26 knowingly and willfully execute, or attempt to execute, a scheme or artifice to:

- 27 (1) Defraud the Medical Assistance Program.  
28 (2) Obtain, by means of false or fraudulent pretenses, representations, or  
29 promises of material fact, any of the money or property owned by, or under  
30 the custody or control of, the Medical Assistance Program.  
31 (3) Waive the collection of co-payments owed by recipients of medical  
32 assistance as required under the Medical Assistance Program with the intent  
33 to induce recipients to purchase, lease, or order items or services from the  
34 provider.

35 A violation of this subsection is a Class H felony. A conspiracy to violate this subsection is a  
36 Class I felony.



1 (f) It shall be unlawful for any provider, with the intent to obstruct, delay, or mislead an  
2 investigation of a violation of this section by the Attorney General's office, to knowingly and  
3 willfully make or cause to be made a false entry in, alter, destroy, or conceal, or make a false  
4 statement about a financial, medical, or other record related to the provision of a benefit, item,  
5 or service under this Part.

6 (g) It shall be unlawful for any person to knowingly and willfully solicit or receive any  
7 remuneration (including any kickback, bribe, ~~or rebate~~rebate, or waiver of a co-payment owed  
8 by a recipient of medical assistance) directly or indirectly, overtly or covertly, in cash or  
9 in-kind:

10 (1) In return for referring an individual to a person for the furnishing or  
11 arranging for the furnishing of any item or service for which payment may  
12 be made in whole or in part under this Part.

13 (2) In return for purchasing, leasing, ordering, or arranging for or  
14 recommending purchasing, leasing, or ordering any good, facility, service, or  
15 item for which payment may be made in whole or in part under this Part.

16 (h) It shall be unlawful for any person to knowingly and willfully offer or pay any  
17 remuneration (including any kickback, bribe, ~~or rebate~~rebate, or waiver of a co-payment owed  
18 by a recipient of medical assistance) directly or indirectly, overtly or covertly, in cash or  
19 in-kind to any person to induce such person:

20 (1) To refer an individual to a person for the furnishing or arranging for the  
21 furnishing of any item or service for which payment may be made in whole  
22 or in part under this Part.

23 (2) To purchase, lease, order, or arrange for or recommend purchasing, leasing,  
24 or ordering any good, facility, service, or item for which payment may be  
25 made in whole or in part under this Part.

26 (i) Subsections (g) and (h) of this section shall not apply to:

27 (1) Contracts between the State and a public or private agency where part of the  
28 agency's responsibility is referral of a person to a provider.

29 (2) Any conduct or activity that is specified in 42 U.S.C. § 1320a-7b(b)(3), as  
30 amended, or any federal regulations adopted pursuant thereto.

31 (i1) For enforcement purposes, a provider that waives a co-payment owed by a recipient  
32 of medical assistance in violation of subsections (g) and (h) of this section shall be considered  
33 in violation of those subsections regardless of the monetary amount that is waived by the  
34 provider. A provider of medical assistance shall not be in violation of subsections (g) and (h) of  
35 this section if the provider waives a co-payment owed by a recipient of medical assistance for  
36 any of the following reasons:

37 (1) The waiver is authorized under the Medical Assistance Program.

38 (2) The provider determines on an individual basis that the collection of the  
39 co-payment amount would create a substantial financial hardship for the  
40 recipient, provided the waiver of co-payments is not a regular business  
41 practice of the provider. For the purposes of this subdivision, a provider shall  
42 be considered engaged in the regular business practice of waiving  
43 co-payments if the provider holds himself or herself out to recipients as  
44 waiving required co-payments.

45 (3) The provider has made a good faith effort to collect the co-payment amount  
46 but the provider's reasonable collection efforts fail.

47 (i2) For the purposes of this section, the waiver of a co-payment includes a full or partial  
48 waiver of the amount that is owed by the recipient of medical assistance.

49 (j) Nothing in subsections (g) and (h) of this section shall be interpreted or construed to  
50 conflict with 42 U.S.C. § 1320a-7b(b), as ~~amended, or with federal common law or federal~~  
51 ~~agency interpretations of the statute~~amended.

1       (k)    The Department shall suspend or terminate a provider's participation in the Medical  
2 Assistance Program if the provider is convicted of a violation of this section, whether upon a  
3 verdict after trial or upon a plea of guilty or nolo contendere, in accordance with administrative  
4 sanctions and remedial measures established by the Department. The administrative sanctions  
5 or remedial measures required by this subsection shall be in addition to the imposition of any  
6 criminal penalties."

7           **SECTION 2.** G.S. 108A-70.12(a) reads as rewritten:

8       "(a)   Liability for Certain Acts. – It shall be unlawful for any provider of medical  
9 assistance under the Medical Assistance Program ~~to~~ to do any of the following:

10       (1)   Knowingly present, or cause to be presented to the Medical Assistance  
11       Program a false or fraudulent claim for payment or ~~approval~~; or approval.

12       (2)   Knowingly make, use, or cause to be made or used a false record or  
13       statement to get a false or fraudulent claim paid or approved by the Medical  
14       Assistance Program.

15       (3)   Knowingly waive a co-payment, in part or in full, owed by a recipient of  
16       medical assistance related to a claim presented to the Medical Assistance  
17       Program for payment or approval. A provider may be found in violation of  
18       this subdivision regardless of the monetary amount that is waived by the  
19       provider. A provider of medical assistance is not in violation of this  
20       subdivision if the provider waives a co-payment, in part or in full, owed by a  
21       recipient of medical assistance for any of the following reasons:

22       a.     The waiver is authorized under the Medical Assistance Program.

23       b.     The provider determines on an individual basis that the collection of  
24       the co-payment amount would create a substantial financial hardship  
25       for the recipient, provided the waiver of co-payments is not a regular  
26       business practice of the provider. For the purposes of this  
27       sub-subdivision, a provider shall be considered engaged in the  
28       regular business practice of waiving co-payments if the provider  
29       holds himself or herself out to recipients as waiving required  
30       co-payments.

31       c.     The provider has made a good faith effort to collect the co-payment  
32       amount but the provider's reasonable collection efforts fail.

33       Each claim presented or caused to be presented in violation of this section is a separate  
34 violation."

35       **SECTION 3.** This act becomes effective December 1, 2013, and applies to acts and  
36 offenses committed on or after that date.