

CF 7r2033

By: Senators Bromwell and Young

Introduced and read first time: January 31, 1997

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 1997

CHAPTER ____

1 AN ACT concerning

2 **Medical Assistance Program - Fraud**

3 FOR the purpose of establishing criminal penalties for Medicaid health plan fraud and
 4 false ~~statements~~ representations relating to Medicaid health plans; establishing a
 5 certain statute of limitations for Medicaid health plan fraud and false ~~statements~~
 6 representations relating to Medicaid health plans under certain circumstances;
 7 defining certain terms; altering a certain definition; and generally relating to fraud
 8 and the Medical Assistance Program.

9 BY repealing and reenacting, without amendments,
 10 Article - Courts and Judicial Proceedings
 11 Section 5-106(a) and (i)
 12 Annotated Code of Maryland
 13 (1995 Replacement Volume and 1996 Supplement)

14 BY adding to
 15 Article - Courts and Judicial Proceedings
 16 Section 5-106(t)
 17 Annotated Code of Maryland
 18 (1995 Replacement Volume and 1996 Supplement)

19 BY repealing and reenacting, with amendments,
 20 Article - Health - General
 21 Section 15-123
 22 Annotated Code of Maryland
 23 (1994 Replacement Volume and 1996 Supplement)

2

1 BY adding to
2 Article - Health - General
3 Section 15-123.1
4 Annotated Code of Maryland
5 (1994 Replacement Volume and 1996 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article - Courts and Judicial Proceedings**

9 5-106.

10 (a) Except as provided by this section, a prosecution for a misdemeanor shall be
11 instituted within one year after the offense was committed.

12 (i) A prosecution for the offense of Medicaid fraud under Article 27, § 230B of
13 this Code shall be instituted within 3 years after the offense was committed.

14 (T) A PROSECUTION FOR A MEDICAID OFFENSE UNDER § 15-123.1 OF THE
15 HEALTH - GENERAL ARTICLE SHALL BE INSTITUTED WITHIN 3 YEARS AFTER THE
16 OFFENSE WAS COMMITTED.

17 **Article - Health - General**

18 15-123.

19 (a) (1) (i) In this subsection the following words have the meanings
20 indicated.

21 (ii) "Convicted" includes being convicted after a plea of nolo
22 contendere.

23 (iii) "Fraud" includes the commission of or an attempt or conspiracy to
24 commit a crime such as concealment of medical records, embezzlement, false pretenses,
25 larceny, larceny after trust, Medicaid fraud, MEDICAID HEALTH PLAN FRAUD, FALSE
26 STATEMENTS REPRESENTATIONS RELATING TO MEDICAID HEALTH PLANS,
27 misappropriation by a fiduciary, or theft.

28 (iv) "Person" means an individual, partnership, limited partnership, or
29 corporation, including a professional corporation formed under Title 5, Subtitle 1 of the
30 Corporations and Associations Article.

31 (2) A person who is convicted of fraud in connection with the Program or a
32 similar program of any other state is ineligible for further payment under the Program.

33 (b) (1) Any health care provider who is convicted of fraud, or who suffers a
34 judgment in favor of this State in a civil action based on fraud, in obtaining Medicaid
35 overpayments is liable to this State for triple the amount of the overpayment.

36 (2) In either a criminal or civil action, the court shall award the appropriate
37 sum in its sentence or judgment.

3

1 15-123.1.

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (2) "BODILY INJURY" MEANS:

5 (I) A CUT, ABRASION, BRUISE, BURN, OR DISFIGUREMENT;

6 (II) ILLNESS;

7 (III) IMPAIRMENT OF THE FUNCTION OF A BODY PART, ORGAN, OR
8 MENTAL FACULTY;

9 (IV) PHYSICAL PAIN; OR

10 (V) ANY OTHER INJURY TO THE BODY.

11 ~~(3) "FALSE REPRESENTATIONS RELATING TO MEDICAID HEALTH~~
12 ~~PLANS" MEANS:~~

13 ~~(I) KNOWINGLY AND WILLFULLY CONCEALING, FALSIFYING, OR~~
14 ~~OMITTING A MATERIAL FACT; OR~~

15 ~~(II) KNOWINGLY AND WILLFULLY MAKING A MATERIALLY FALSE~~
16 ~~OR FRAUDULENT REPRESENTATION OR USING A DOCUMENT THAT CONTAINS A~~
17 ~~MATERIALLY FALSE OR FRAUDULENT REPRESENTATION.~~

18 ~~(4) "MEDICAID HEALTH PLAN" MEANS:~~

19 ~~(I) A STATE PLAN ESTABLISHED BY TITLE XIX OF THE SOCIAL~~
20 ~~SECURITY ACT OF 1939;~~

21 ~~(II) A PRIVATE HEALTH INSURANCE CARRIER, HEALTH~~
22 ~~MAINTENANCE ORGANIZATION, HEALTH CARE COOPERATIVE OR ALLIANCE, OR~~
23 ~~OTHER PERSON THAT PROVIDES OR CONTRACTS TO PROVIDE HEALTH CARE GOODS~~
24 ~~OR SERVICES THAT ARE REIMBURSED BY OR ARE A REQUIRED BENEFIT OF A STATE~~
25 ~~PLAN ESTABLISHED BY TITLE XIX OF THE SOCIAL SECURITY ACT OF 1939; OR~~

26 ~~(III) A PERSON THAT PROVIDES, CONTRACTS, OR SUBCONTRACTS~~
27 ~~TO PROVIDE HEALTH CARE GOODS OR SERVICES FOR AN ENTITY DESCRIBED IN~~
28 ~~SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH.~~

29 (3) "FALSE REPRESENTATION" MEANS:

30 (I) KNOWINGLY AND WILLFULLY CONCEALING, FALSIFYING, OR
31 OMITTING A MATERIAL FACT; OR

32 (II) KNOWINGLY AND WILLFULLY MAKING A MATERIALLY FALSE
33 OR FRAUDULENT STATEMENT OR USING A DOCUMENT THAT CONTAINS A
34 MATERIALLY FALSE OR FRAUDULENT STATEMENT.

35 (4) "HEALTH CARE SERVICE" MEANS ANY HEALTH OR MEDICAL CARE
36 PROCEDURE OR SERVICE RENDERED BY A HEALTH CARE PROVIDER THAT:

4

1 (I) PROVIDES TESTING, DIAGNOSIS, OR TREATMENT OF HUMAN
2 DISEASE OR DYSFUNCTION; OR

3 (II) DISPENSES DRUGS, MEDICAL DEVICES, MEDICAL APPLIANCES,
4 OR MEDICAL GOODS FOR THE TREATMENT OF HUMAN DISEASE OR DYSFUNCTION.

5 (5) (I) "MEDICAID HEALTH PLAN" MEANS:

6 1. A STATE PLAN ESTABLISHED BY TITLE XIX OF THE
7 SOCIAL SECURITY ACT; OR

8 2. A PRIVATE HEALTH INSURANCE CARRIER, HEALTH
9 MAINTENANCE ORGANIZATION, MANAGED CARE ORGANIZATION AS DEFINED IN §
10 15-101(E) OF THIS SUBTITLE, HEALTH CARE COOPERATIVE OR ALLIANCE, OR OTHER
11 PERSON THAT PROVIDES OR CONTRACTS TO PROVIDE HEALTH CARE SERVICES
12 THAT, IN WHOLE OR IN PART, ARE REIMBURSED BY OR ARE A REQUIRED BENEFIT
13 OF A STATE PLAN ESTABLISHED BY TITLE XIX OF THE SOCIAL SECURITY ACT.

14 (II) "MEDICAID HEALTH PLAN" INCLUDES A PERSON THAT
15 PROVIDES OR CONTRACTS OR SUBCONTRACTS TO PROVIDE HEALTH CARE
16 SERVICES FOR AN ENTITY DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.

17 ~~(5)~~ (6) "MEDICAID HEALTH PLAN FRAUD" MEANS:

18 (I) KNOWINGLY DEFRAUDING OR ATTEMPTING TO DEFRAUD A
19 MEDICAID HEALTH PLAN IN CONNECTION WITH THE DELIVERY OF OR PAYMENT
20 FOR HEALTH CARE GOODS OR SERVICES, INCLUDING DEFRAUDING OR
21 ATTEMPTING TO DEFRAUD A MEDICAID HEALTH PLAN OF THE RIGHT TO HONEST
22 SERVICES; OR

23 ~~(II) KNOWINGLY AND WILLFULLY MAKING A FALSE~~
24 ~~REPRESENTATION IN CONNECTION WITH THE DELIVERY OF OR PAYMENT FOR~~
25 ~~HEALTH CARE GOODS OR SERVICES THAT, IN WHOLE OR IN PART, ARE~~
26 ~~REIMBURSED BY OR ARE A REQUIRED BENEFIT OF A MEDICAID HEALTH PLAN.~~

27 (II) KNOWINGLY AND WILLFULLY OBTAINING OR ATTEMPTING TO
28 OBTAIN, BY MEANS OF A FALSE REPRESENTATION, MONEY, PROPERTY, OR ANY
29 THING OF VALUE IN CONNECTION WITH THE DELIVERY OF OR PAYMENT FOR
30 HEALTH CARE SERVICES THAT, IN WHOLE OR IN PART, ARE REIMBURSED BY OR
31 ARE A REQUIRED BENEFIT OF A MEDICAID HEALTH PLAN.

32 ~~(6)~~ (7) "REPRESENTATION" INCLUDES AN ACKNOWLEDGMENT,
33 CERTIFICATION, CLAIM, RATIFICATION, OR REPORT OF DEMOGRAPHIC STATISTICS,
34 ENCOUNTER DATA, ENROLLMENT CLAIMS, FINANCIAL INFORMATION, HEALTH
35 CARE SERVICES AVAILABLE OR RENDERED, AND THE QUALIFICATIONS OF A
36 PERSON THAT IS RENDERING HEALTH CARE OR ANCILLARY SERVICES.

37 ~~(7)~~ (8) "SERIOUS BODILY INJURY" MEANS A BODILY INJURY THAT
38 INVOLVES:

39 (I) A SUBSTANTIAL RISK OF DEATH;

40 (II) EXTREME PHYSICAL PAIN;

5

1 (III) PROTRACTED AND OBVIOUS DISFIGUREMENT; OR

2 (IV) PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OF A
3 BODY PART, ORGAN, OR MENTAL FACULTY.

4 (B) (1) A PERSON MAY NOT COMMIT MEDICAID HEALTH PLAN FRAUD.

5 (2) IF THE VALUE OF THE MONEY, ~~GOODS, OR SERVICES OR HEALTH~~
6 CARE SERVICES INVOLVED IS LESS THAN \$500 IN THE AGGREGATE, A PERSON WHO
7 VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION,
8 IS SUBJECT TO A FINE OF NOT MORE THAN \$50,000 OR IMPRISONMENT FOR NOT
9 MORE THAN 3 YEARS OR BOTH.

10 (3) IF THE VALUE OF THE MONEY, ~~GOODS, OR SERVICES OR HEALTH~~
11 CARE SERVICES INVOLVED IS \$500 OR MORE IN THE AGGREGATE, A PERSON WHO
12 VIOLATES THIS SUBSECTION IS GUILTY OF A FELONY AND, ON CONVICTION, IS
13 SUBJECT TO A FINE OF NOT MORE THAN \$100,000 OR IMPRISONMENT FOR NOT MORE
14 THAN 5 YEARS OR BOTH.

15 (C) (1) A PERSON MAY NOT MAKE FALSE ~~STATEMENTS~~ REPRESENTATIONS
16 RELATING TO MEDICAID HEALTH PLANS.

17 (2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A
18 MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A FINE OF NOT MORE THAN
19 \$50,000 OR IMPRISONMENT FOR NOT MORE THAN 3 YEARS OR BOTH.

20 (D) (1) IF A VIOLATION RESULTS IN SERIOUS BODILY INJURY TO AN
21 INDIVIDUAL, A PERSON WHO VIOLATES SUBSECTION (B) OR (C) OF THIS SECTION IS
22 GUILTY OF A FELONY AND, ON CONVICTION, IS SUBJECT TO A FINE OF NOT MORE
23 THAN \$100,000 OR IMPRISONMENT FOR NOT MORE THAN 20 YEARS OR BOTH.

24 (2) IF A VIOLATION RESULTS IN THE DEATH OF AN INDIVIDUAL, A
25 PERSON WHO VIOLATES SUBSECTION (B) OR (C) OF THIS SECTION IS GUILTY OF A
26 FELONY AND, ON CONVICTION, IS SUBJECT TO A FINE OF NOT MORE THAN \$200,000
27 OR IMPRISONMENT FOR NOT MORE THAN LIFE OR BOTH.

28 (E) UNLESS A GREATER FINE IS AUTHORIZED UNDER THIS SECTION, A
29 PERSON ~~WHO THAT IS NOT AN INDIVIDUAL AND THAT~~ VIOLATES SUBSECTION (B) OR
30 (C) OF THIS SECTION IS SUBJECT TO A FINE OF NOT MORE THAN:

31 (1) ~~\$50,000~~ \$100,000 FOR EACH MISDEMEANOR; AND

32 (2) \$250,000 FOR EACH FELONY.

33 (F) A PERSON WHO VIOLATES ~~SUBSECTIONS~~ SUBSECTION (B) OR (C) OF THIS
34 SECTION ~~SHALL~~ MAY BE REQUIRED TO MAKE FULL RESTITUTION OF THE MONEY,
35 ~~GOODS, SERVICES,~~ OR THE VALUE OF THE ~~GOODS OR SERVICES~~ HEALTH CARE
36 SERVICES UNLAWFULLY RECEIVED.

37 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
38 October 1, 1997.

