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HOUSE BILL 377

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

M MICHAEL OLGUIN

FOR THE HEALTH AND WELFARE REFORM COMMITTEE

AN ACT

**RELATING TO MEDICAID FRAUD; REDUCING A PENALTY FOR CONVICTION
OF A MISDEMEANOR IN CERTAIN CIRCUMSTANCES.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 30-44-7 NMSA 1978 (being Laws 1989,
Chapter 286, Section 7, as amended) is amended to read:**

"30-44-7. MEDICAID FRAUD--DEFINED--PENALTIES. --

A. Medicaid fraud consists of:

**(1) paying, soliciting, offering or
receiving:**

**(a) a kickback or bribe in connection
with the furnishing of treatment, services or goods for which
payment is or may be made in whole or in part under the
program, including an offer or promise to, or a solicitation
or acceptance by, a health care official of anything of value**

Underscored material = new
[bracketed material] = delete

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1 with intent to influence a decision or commit a fraud
2 affecting a state or federally funded or mandated managed
3 health care plan;

4 (b) a rebate of a fee or charge made to
5 a provider for referring a recipient to a provider;

6 (c) anything of value, intending to
7 retain it and knowing it to be in excess of amounts authorized
8 under the program, as a precondition of providing treatment,
9 care, services or goods or as a requirement for continued
10 provision of treatment, care, services or goods; or

11 (d) anything of value, intending to
12 retain it and knowing it to be in excess of the rates
13 established under the program for the provision of treatment,
14 services or goods;

15 (2) providing with intent that a claim be
16 relied upon for the expenditure of public money:

17 (a) treatment, services or goods that
18 have not been ordered by a treating physician;

19 (b) treatment that is substantially
20 inadequate when compared to generally recognized standards
21 within the discipline or industry; or

22 (c) merchandise that has been
23 adulterated, debased or mislabeled or is outdated;

24 (3) presenting or causing to be presented for
25 allowance or payment with intent that a claim be relied upon

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1 for the expenditure of public money any false, fraudulent,
2 excessive, multiple or incomplete claim for furnishing
3 treatment, services or goods; or

4 (4) executing or conspiring to execute a plan
5 or action to:

6 (a) defraud a state or federally funded
7 or mandated managed health care plan in connection with the
8 delivery of or payment for health care benefits, including
9 engaging in any intentionally deceptive marketing practice in
10 connection with proposing, offering, selling, soliciting or
11 providing any health care service in a state or federally
12 funded or mandated managed health care plan; or

13 (b) obtain by means of false or
14 fraudulent representation or promise anything of value in
15 connection with the delivery of or payment for health care
16 benefits that are in whole or in part paid for or reimbursed
17 or subsidized by a state or federally funded or mandated
18 managed health care plan. This includes representations or
19 statements of financial information, enrollment claims,
20 demographic statistics, encounter data, health services
21 available or rendered and the qualifications of persons
22 rendering health care or ancillary services.

23 B. Except as otherwise provided for in this
24 section regarding the payment of fines by an entity, whoever
25 commits medicaid fraud as described in Paragraph (1) or (3) of

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1 Subsection A of this section is guilty of a fourth degree
2 felony and shall be sentenced pursuant to the provisions of
3 Section 31-18-15 NMSA 1978.

4 C. Except as otherwise provided for in this
5 section regarding the payment of fines by an entity, whoever
6 commits medicaid fraud as described in Paragraph (2) or (4) of
7 Subsection A of this section when the value of the benefit,
8 treatment, services or goods improperly provided is:

9 (1) not more than one hundred dollars (\$100)
10 is guilty of a petty misdemeanor and shall be sentenced
11 pursuant to the provisions of Section 31-19-1 NMSA 1978;

12 (2) more than one hundred dollars (\$100) but
13 not more than two hundred fifty dollars (\$250) is guilty of a
14 misdemeanor and shall be sentenced pursuant to the provisions
15 of Section 31-19-1 NMSA 1978;

16 (3) more than two hundred fifty dollars
17 (\$250) but not more than two thousand five hundred dollars
18 (\$2,500) is guilty of a fourth degree felony and shall be
19 sentenced pursuant to the provisions of Section 31-18-15 NMSA
20 1978;

21 (4) more than two thousand five hundred
22 dollars (\$2,500) but not more than twenty thousand dollars
23 (\$20,000) shall be guilty of a third degree felony and shall
24 be sentenced pursuant to the provisions of Section 31-18-15
25 NMSA 1978; and

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1 (5) more than twenty thousand dollars
2 (\$20,000) shall be guilty of a second degree felony and shall
3 be sentenced pursuant to the provisions of Section 31-18-15
4 NMSA 1978.

5 D. Except as otherwise provided for in this
6 section regarding the payment of fines by an entity, whoever
7 commits medicaid fraud when the fraud results in physical harm
8 or psychological harm to a recipient is guilty of a fourth
9 degree felony and shall be sentenced pursuant to the
10 provisions of Section 31-18-15 NMSA 1978.

11 E. Except as otherwise provided for in this
12 section regarding the payment of fines by an entity, whoever
13 commits medicaid fraud when the fraud results in great
14 physical harm or great psychological harm to a recipient is
15 guilty of a third degree felony and shall be sentenced
16 pursuant to the provisions of Section 31-18-15 NMSA 1978.

17 F. Except as otherwise provided for in this
18 section regarding the payment of fines by an entity, whoever
19 commits medicaid fraud when the fraud results in death to a
20 recipient is guilty of a second degree felony and shall be
21 sentenced pursuant to the provisions of Section 31-18-15 NMSA
22 1978.

23 G. If the person who commits medicaid fraud is an
24 entity rather than an individual, the entity shall be subject
25 to a fine of not more than [fifty thousand dollars (\$50,000)]

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1 ten thousand dollars (\$10,000) for each misdemeanor and not
2 more than two hundred fifty thousand dollars (\$250,000) for
3 each felony. "

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