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SENATE BILL 267

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MICHAEL S. SANCHEZ

FOR THE HEALTH CARE REFORM COMMITTEE

AN ACT

RELATING TO HEALTH CARE; AMENDING THE MEDICAID FRAUD ACT TO  
ADDRESS MANAGED CARE FRAUD; PROVIDING PENALTIES.

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

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

"30-44-1. SHORT TITLE. -- ~~[This act]~~ Chapter 30, Article 44  
NMSA 1978 may be cited as the "Medicaid Fraud Act". "

Section 2. Section 30-44-2 NMSA 1978 (being Laws 1989,  
Chapter 286, Section 2) is amended to read:

"30-44-2. DEFINITIONS. -- As used in the Medicaid Fraud Act:

A. "benefit" means money, treatment, services, goods  
or anything of value authorized under the program;

B. "claim" means any communication, whether oral,  
written, electronic or magnetic, ~~[which]~~ that identifies a

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1 treatment, good or service as reimbursable under the program;

2 C. "cost document" means any cost report or similar  
3 document [~~which~~] that states income or expenses and is used to  
4 determine a cost reimbursement based rate of payment for a  
5 provider under the program;

6 D. "covered person" means an individual who is  
7 entitled to receive health care benefits from a managed health  
8 care plan;

9 [~~D.-~~] E. "department" means the human services  
10 department;

11 [~~E.-~~] F. "great physical harm" means physical harm of  
12 a type [~~which~~] that causes physical loss of a bodily member or  
13 organ or functional loss of a bodily member or organ for a  
14 prolonged period of time;

15 [~~F.-~~] G. "great psychological harm" means  
16 psychological harm [~~which~~] that causes mental or emotional  
17 incapacitation for a prolonged period of time or [~~which~~] that  
18 causes extreme behavioral change or severe physical symptoms or  
19 [~~which~~] that requires psychological or psychiatric care;

20 H. "health care official" means:

21 (1) an administrator, officer, trustee,  
22 fiduciary, custodian, counsel, agent or employee of a managed  
23 care health plan;

24 (2) an officer, counsel, agent or employee of  
25 an organization that provides, proposes to or contracts to

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1 provide services to a managed health care plan; or

2 (3) an official, employee or agent of a state  
3 or federal agency with regulatory or administrative authority  
4 over a managed health care plan;

5 I. "managed health care plan" means a government-  
6 sponsored health benefit plan that requires a covered person to  
7 use, or creates incentives, including financial incentives, for  
8 a covered person to use health care providers managed, owned,  
9 under contract with or employed by a health care insurer or  
10 provider service network. A "managed health care plan" includes  
11 the health care services offered by a health maintenance  
12 organization, preferred provider organization, health care  
13 insurer, provider service network, entity or person that  
14 contracts to provide or provides goods or services that are  
15 reimbursed by or are a required benefit of a state or federally  
16 funded health benefit program, or any person or entity who  
17 contracts to provide goods or services to the program;

18 ~~[G.]~~ J. "person" includes individuals, corporations,  
19 partnerships and other associations;

20 ~~[H.]~~ K. "physical harm" means an injury to the body  
21 ~~[whi-eh]~~ that causes pain or incapacitation;

22 ~~[I.]~~ L. "program" means the medical assistance  
23 program authorized under Title XIX of the federal Social  
24 Security Act, 42 U.S.C. 1396, et seq. and implemented under  
25 Section 27-2-12 NMSA 1978;

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1           ~~[J-]~~ M. "provider" means any person who has applied  
2 to participate or who participates in the program as a supplier  
3 of treatment, services or goods;

4           ~~[K-]~~ N. "psychological harm" means emotional or  
5 psychological damage of such a nature as to cause fear,  
6 humiliation or distress or to impair a person's ability to enjoy  
7 the normal process of his life;

8           ~~[L-]~~ O. "recipient" means any individual who  
9 receives or requests benefits under the program;

10           ~~[M-]~~ P. "records" means any medical or business  
11 documentation, however recorded, relating to the treatment or  
12 care of any ~~[recipient]~~ recipient, to services or goods  
13 provided to any recipient or to reimbursement for treatment,  
14 services or goods, including any documentation required to be  
15 retained by regulations of the program; and

16           ~~[N-]~~ Q. "unit" means the medicaid ~~[providers]~~ fraud  
17 control unit or any other agency with power to investigate or  
18 prosecute fraud and abuse of the program. "

19           Section 3. Section 30-44-7 NMSA 1978 (being Laws 1989,  
20 Chapter 286, Section 7, as amended) is amended to read:

21           "30-44-7. **MEDICAID FRAUD--DEFINED--PENALTIES.** --

22           A. Medicaid fraud consists of:

23                   (1) paying, soliciting, offering or receiving:  
24                               (a) a kickback or bribe in connection  
25 with the furnishing of treatment, services or goods for which

1 payment is or may be made in whole or in part under the program,  
2 including an offer or promise to, or a solicitation or  
3 acceptance by, a health care official of anything of value with  
4 intent to influence a decision or commit a fraud affecting a  
5 state or federally funded or mandated managed health care plan;

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

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

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

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

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

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

24 (c) merchandise that has been  
25 adulterated, debased or mislabeled or is outdated; [or]

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1 (3) presenting or causing to be presented for  
2 allowance or payment with intent that a claim be relied upon for  
3 the expenditure of public money any false, fraudulent,  
4 excessive, multiple or incomplete claim for furnishing  
5 treatment, services or goods; or

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

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

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

25 B. Except as otherwise provided for in this section

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1 regarding the payment of fines by an entity, whoever commits  
2 medicaid fraud as described in Paragraph (1) or (3) of  
3 Subsection A of this section is guilty of a fourth degree felony  
4 and shall be sentenced pursuant to the provisions of Section  
5 31-18-15 NMSA 1978.

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

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

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

18 (3) more than two hundred fifty dollars (\$250)  
19 but not more than two thousand five hundred dollars (\$2,500) is  
20 guilty of a fourth degree felony and shall be sentenced pursuant  
21 to the provisions of Section [~~31-19-1~~] 31-18-15 NMSA 1978;

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

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

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

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

16 F. If the person who commits medicaid fraud is an  
17 entity rather than an individual, the entity shall be subject to  
18 a fine of not more than fifty thousand dollars (\$50,000) for  
19 each misdemeanor and not more than two hundred fifty thousand  
20 dollars (\$250,000) for each felony."

21 Section 4. Section 30-44-8 NMSA 1978 (being Laws 1989,  
22 Chapter 286, Section 8) is amended to read:

23 "30-44-8. CIVIL PENALTIES--CREATED--ENUMERATED--  
24 PRESUMPTION--LIMITATION OF ACTION.--

25 A. Any person who receives payment for furnishing

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1 treatment, services or goods under the program, which payment  
2 the person is not entitled to receive by reason of a violation  
3 of the Medicaid Fraud Act, shall, in addition to any other  
4 penalties or amounts provided by law, be liable for:

5 (1) payment of interest on the amount of the  
6 excess payments at the maximum legal rate in effect on the date  
7 the payment was made, for the period from the date payment was  
8 made to the date of repayment to the state;

9 (2) a civil penalty in an amount of up to ~~two~~  
10 three times the amount of excess payments;

11 (3) payment of a civil penalty of ~~five hundred~~  
12 dollars (\$500) up to ten thousand dollars (\$10,000) for each  
13 false or fraudulent claim submitted or representation made for  
14 providing treatment, services or goods; and

15 (4) payment of legal fees and costs of  
16 investigation and enforcement of civil remedies.

17 B. Penalties and interest amounts assessed under  
18 this section shall be ~~[paid into the health care trust fund~~  
19 ~~established in the Health Care Trust Fund Act if that act is in~~  
20 ~~effect, and if it is not, then those amounts shall be]~~ remitted  
21 to the state treasurer for deposit in the general fund.

22 C. Any legal fees, costs of investigation and costs  
23 of enforcement of civil remedies recovered on behalf of the  
24 state shall be remitted to the state treasurer for deposit in  
25 the general fund.

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D. A criminal action need not be brought against a person as a condition precedent to enforcement of civil liability under the Medicaid Fraud Act.

E. The remedies under this section are separate from and cumulative to any other administrative and civil remedies available under federal or state law or regulation.

F. The department may adopt regulations for the administration of the civil penalties contained in this section.

G. No action under this section shall be brought after the expiration of five years from the date the action accrues. "

1 FORTY-THIRD LEGISLATURE  
2 FIRST SESSION, 1997  
3  
4

5 March 10, 1997  
6

7 Mr. President:  
8

9 Your PUBLIC AFFAIRS COMMITTEE, to whom has been  
10 referred  
11

12 SENATE BILL 267  
13

14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, and thence referred to the  
16 JUDICIARY COMMITTEE.  
17

18 Respectfully submitted,  
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23 Shannon Robinson, Chairman  
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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

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Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Garcia, Ingle, Smith

Absent: None

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1 FORTY-THIRD LEGISLATURE  
2 FIRST SESSION, 1997  
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SB 267/a

5 March 15, 1997  
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7 Mr. President:  
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9 Your JUDICIARY COMMITTEE, to whom has been referred  
10

11 SENATE BILL 267  
12

13 has had it under consideration and reports same with  
14 recommendation that it DO PASS, amended as follows:  
15

16 1. On page 2, between lines 10 and 11, insert the following  
17 new subsection:  
18

19 "F. "entity" means a person other than an individual and  
20 includes corporations, partnerships, associations, joint-stock  
21 companies, unions, trusts, pension funds, unincorporated  
22 organizations, governments and political subdivisions thereof and  
23 nonprofit organizations;".  
24

25 2. Reletter the succeeding subsections accordingly.

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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SJC/SB 267

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3. On page 8, between lines 15 and 16, insert the following new subsection:

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

4. Reletter the succeeding subsection accordingly.

Respectfully submitted,

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**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

SJC/SB 267

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\_\_\_\_\_  
Fernando R. Macias, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 1 Against

Yes: 5

No: Payne

Excused: Tsosie, Vernon

Absent: None

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# **State of New Mexico House of Representatives**

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

**March 21, 1997**

**Mr. Speaker:**

**Your JUDICIARY COMMITTEE, to whom has been referred  
SENATE BILL 267, as amended  
has had it under consideration and reports same with  
recommendation that it DO PASS.**

**Respectfully submitted,**

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**Thomas P. Foy, Chairman**

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Alwin, Foy, Rios, Sanchez

Absent: None

M \S0267

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