~~Indicates Matter Stricken~~

Indicates New Matter

AS PASSED BY THE SENATE

May 1, 2014

**S. 919**

Introduced by Senator L. Martin

S. Printed 5/1/14--S.

Read the first time January 14, 2014.

**A** **BILL**

TO AMEND SECTION 43‑7‑60, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FALSE CLAIMS, STATEMENTS, AND REPRESENTATIONS FOR PURPOSES OF QUALIFYING FOR AND RECEIVING PAYMENT FOR AND REIMBURSEMENT OF MEDICAID CLAIMS AND BENEFITS, SO AS TO PROHIBIT ANY PERSON FROM ENGAGING IN THE PROHIBITED CONDUCT AND TO EXPAND OFFENSES AND PENALTIES FOR VIOLATING THE PROVISIONS OF THE ARTICLE; AND TO AMEND SECTION 43‑7‑90, RELATING TO ENFORCEMENT OF THE ARTICLE, SO AS TO PROVIDE THE ATTORNEY GENERAL, OR A DESIGNEE, ADDITIONAL POWERS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 43‑7‑60 of the 1976 Code, as added by Act 468 of 1994, is amended to read:

“Section 43‑7‑60. (A) For purposes of this section:

(1) 'provider' ~~includes~~ means:

(a) an individual, firm, corporation, association, institution, or other legal entity which is provided, or is approved to provide, medical assistance to a recipient pursuant to the State Medical Assistance Plan and consistent with Title XIX of the Social Security Act-Medical Assistance, also know as Medicaid; and ~~a person who provides goods, services, or assistance and who is entitled or claims to be entitled to receive reimbursement, payment, or benefits under the state's Medicaid program. "Provider" also includes a person acting as an employee, representative, or agent of the provider.~~

(b) a person who acts as an employee, representative, or agent of the provider.

(2) ‘False claim, statement, or representation’ means a claim, statement, or representation made or presented in any form including, but not limited to, a claim, statement, or representation ~~which~~ that is computer generated or transmitted or is made, produced, or transmitted by an electronic means or device.

(B) It is unlawful for a provider of medical assistance, goods, or services, or another person, ~~to~~ knowingly and wilfully to make or cause to be made a false claim, statement, or representation of a material fact:

(1) in an application or request, including an electronic or computer generated claim, for a benefit, payment, or reimbursement from a state or federal agency ~~which~~ that administers or assists in the administration of the state’s medical assistance or Medicaid program; or

(2) on a report, certificate, or similar document, including an electronic or computer generated claim, submitted to a state or federal agency ~~which~~ that administers or assists in the administration of the state’s Medicaid program in order for a provider or facility to qualify or remain qualified under the state’s Medicaid program to provide assistance, goods, or services, or receive reimbursement, payment, or benefit for this assistance, goods, or services.

~~For purposes of this subsection, each false claim, representation, or statement constitutes a separate offense.~~

(C) It is unlawful for a provider of medical assistance, goods, or services, or another person, knowingly and wilfully to conceal or fail to disclose ~~any~~ a material fact, event, or transaction ~~which~~ that affects the:

(1) provider’s initial or continued entitlement to payment, reimbursement, or benefits under the state’s Medicaid plan; or

(2) amount of payment, reimbursement, or benefit to which the provider may be entitled for services, goods, or assistance rendered.

~~For purposes of this subsection, each fact, event, or transaction concealed or not disclosed constitutes a separate offense.~~

(D) A person who violates ~~the provisions of~~ this section ~~is guilty of~~ commits medical assistance provider fraud, ~~a Class A misdemeanor and, upon conviction, must be imprisoned not more than three years and fined not more than one thousand dollars for each offense.~~ which is punishable as follows:

(1) for a first offense in which the amount of the economic advantage or benefit received is:

(a) not ascertainable or is less than one thousand dollars, is guilty of a misdemeanor, and, upon conviction or entry of a plea of guilty or nolo contendere, must be fined not less than one hundred nor more than five hundred dollars or imprisoned not more than thirty days;

(b) one thousand dollars or more but less than ten thousand dollars, is guilty of a misdemeanor, and, upon conviction or entry of a plea of guilty or nolo contendere, must be fined not less than two thousand nor more than ten thousand dollars or imprisoned not more than three years, or both;

(c) ten thousand dollars or more but less than fifty thousand dollars, is guilty of a felony, and, upon conviction or entry of a plea of guilty or nolo contendere, must be fined not less than ten thousand nor more than fifty thousand dollars or imprisoned not more than five years, or both; or

(e) fifty thousand dollars or more, is guilty of a felony, and, upon conviction or entry of a plea of guilty or nolo contendere, must be fined not less than twenty thousand nor more than one hundred thousand dollars or imprisoned not more than ten years, or both; and

(2) for a second or subsequent offense, regardless of the amount of the economic advantage or benefit received, is guilty of a felony, and, upon conviction, must be fined not less than twenty thousand nor more than one hundred thousand dollars or imprisoned not more than ten years, or both.

(E) In addition to all other remedies provided by law, the Attorney General may bring an action to recover damages equal to three times the amount of an overstatement or overpayment, and the court may impose a civil penalty of two thousand dollars for each false claim, representation, or overstatement made to a state or federal agency ~~which~~ that administers funds under the state’s Medicaid program. Upon a finding that the provider has violated a provision of this section, the state agency ~~which~~ that administers the Medicaid program may impose other administrative sanctions against the provider authorized by law. A civil or criminal action brought ~~under~~ pursuant to this section may be filed or brought in either the county where the false claim, statement, or representation originated or in the county in which the false claim, statement, or representation was received by the Department of Health and Human Services ~~Finance Commission~~ or other agency of the State responsible for administering the state’s Medicaid Program.”

SECTION 2. Section 43‑7‑90 of the 1976 Code, as added by Act 468 of 1994, is amended to read:

“Section 43‑7‑90. The Attorney General has the authority and responsibility to investigate and initiate appropriate action for alleged or suspected violations of Sections 43‑7‑60 through 43‑7‑80. In conducting investigations pursuant to this article, the Attorney General, or his designee, may issue subpoenas to a provider or another person compelling the production of records in any form, including electronic records or data, in the possession, custody, or control of the person to whom the subpoena is issued. If there is noncompliance with a subpoena issued pursuant to this section, the Attorney General may petition the circuit court for an order compelling compliance with the subpoena.”

SECTION 3. This act takes effect upon approval by the Governor, except that any provider with an offense committed between July 14, 1994, and the effective date of this act who is found in violation after the effective date of this act is considered for penalty purposes an offense pursuant to Section 43-7-60(D)(2), as added by this act.

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