

SENATE FILE NO. SF0085

Wyoming Medicaid Fraud Control Act.

Sponsored by: Senator(s) Nethercott, Anselmi-Dalton, Baldwin,
Boner, Driskill, Kinskey and Perkins and
Representative(s) Greear, Larsen, Pownall,
Stith and Wilson

A BILL

for

1 AN ACT relating to medical assistance; establishing the
2 Medicaid fraud control unit within the office of the attorney
3 general; specifying duties; requiring access to Medicaid
4 records; creating criminal penalties relating to Medicaid;
5 authorizing the aggregation of claims under certain
6 circumstances; authorizing exclusion or suspension of
7 Medicaid providers; making conforming amendments; authorizing
8 the promulgation of rules; repealing provisions; and
9 providing for an effective date.

10

11 *Be It Enacted by the Legislature of the State of Wyoming:*

12

13 **Section 1.** W.S. 42-4-401 through 42-4-412 are created
14 to read:

1

2

ARTICLE 4

3

MEDICAID FRAUD CONTROL

4

5

42-4-401. Short title.

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7

This act may be cited as the "Wyoming Medicaid Fraud Control

8

Act".

9

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42-4-402. Definitions.

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12

(a) As used in this act:

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14

(i) "Claim" means as defined in W.S.

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42-4-302(a)(i);

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17

(ii) "Provider" means a person who furnishes

18

services or supplies for which payment is claimed under

19

Medicaid;

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21

(iii) "Record" means information in physical or

22

electronic form relating to:

23

1 (A) The treatment or care of any patient;

2

3 (B) A service or supply provided to a
4 Medicaid recipient;

5

6 (C) Rates paid for a service or supply;

7

8 (D) Any other information required to be kept
9 by rule of the Medicaid program.

10

11 (iv) "Unit" means the Medicaid fraud control unit
12 created by this act to investigate and prosecute fraud, waste,
13 abuse, bribery, kickback and related cases under Medicaid;

14

15 (v) "This act" means W.S. 42-4-401 through
16 42-4-412.

17

18 **42-4-403. Medicaid fraud control unit created; duties.**

19

20 (a) The Medicaid fraud control unit is recognized and
21 continued in existence within the office of the attorney
22 general. The unit shall conduct a statewide program for
23 investigating and prosecuting violations of all applicable

1 state laws pertaining to fraud in the administration of the
2 Medicaid program and the provision of services or supplies,
3 or the activities of providers of services or supplies, under
4 the state Medicaid plan. The unit may also conduct criminal
5 investigations and prosecutions relating to patient abuse,
6 neglect, exploitation and other violations of law, if the
7 violation is primarily connected to Medicaid.

8

9 (b) The office of the attorney general shall employ
10 attorneys, auditors, agents and other personnel which are
11 necessary to carry out the duties specified in this act in an
12 effective and efficient manner. Agents employed under this
13 subsection shall have the qualifications and powers of an
14 agent under W.S. 9-1-611(b)(i).

15

16 (c) The unit may file criminal charges without
17 consultation with another person or entity outside the office
18 of the attorney general. Before the filing of criminal charges
19 under this act, the unit may consult with the district
20 attorney of the judicial district in which the prosecution
21 would take place. If the district attorney, after
22 consultation, concurs with the decision to file criminal
23 charges, the unit may refer the case to the district attorney.

1 A district attorney may request that the unit assign an
2 attorney to assist with prosecution under this act.

3

4 **42-4-404. Access to records.**

5

6 (a) Notwithstanding any other provision of law, the
7 unit shall have full access to all records held by a provider
8 or by another person or entity acting on the provider's
9 behalf, if the unit determines that such information is
10 material to its duties under this act. A provider, or another
11 person or entity acting on the provider's behalf, shall
12 promptly comply with a request from the unit for access to
13 records.

14

15 (b) The unit shall avoid disclosure of personally
16 identifiable information concerning any patient received in
17 the course of an investigation, except as authorized by this
18 section. The unit may transmit personally identifiable
19 information to authorized persons, consistent with federal
20 law, including governmental entities responsible for
21 oversight of the health care system, benefit programs or the
22 regulation of health care facilities or health care

1 providers. The unit may also disclose information under this
2 section as otherwise permitted or required by law.

3

4 (c) No provider or other person or entity holding
5 records required to be made available to the unit under this
6 section may refuse to provide access on the basis that release
7 would violate any right of privacy, privilege against
8 disclosure or use or any other grounds for nondisclosure.

9

10 (d) Nothing in this section shall be interpreted to
11 limit the authority of the unit to use other legal processes
12 to conduct investigations and prosecutions authorized by this
13 act or other provisions of law.

14

15 **42-4-405. Reporting to unit.**

16

17 The department of health, department of family services,
18 health care licensing boards, state agencies and the agents,
19 contractors and subcontractors of these entities shall refer
20 to the unit all cases where reasonable cause likely exists
21 that fraud, waste, abuse, bribery or kickbacks relating to
22 Medicaid has occurred, is occurring or will occur, as well as

1 suspected cases of patient abuse, neglect or exploitation
2 under Medicaid.

3

4 **42-4-406. Fraud and false statements; criminal penalty.**

5

6 (a) In relation to the delivery of or payment for
7 services or supplies under Medicaid, a person shall not
8 knowingly, in whole or in part:

9

10 (i) Make or cause to be made a false or fraudulent
11 claim;

12

13 (ii) Deliberately conceal a material fact;

14

15 (iii) Make or cause to be made a false statement
16 or misrepresentation which will be used by another person;

17

18 (iv) Execute a scheme or artifice to commit fraud.

19

20 (b) A person who violates subsection (a) of this
21 section is guilty of:

22

1 (i) A misdemeanor punishable by imprisonment of
2 not more than six (6) months, a fine of not more than seven
3 hundred fifty dollars (\$750.00), or both, if the amount of
4 the claims for services or supplies under Medicaid is less
5 than one thousand dollars (\$1,000.00); or

6

7 (ii) A felony punishable by imprisonment for not
8 more than ten (10) years, a fine of not more than ten thousand
9 dollars (\$10,000.00), or both, if the amount of the claims
10 for services or supplies under Medicaid is one thousand
11 dollars (\$1,000.00) or more.

12

13 (c) The department of health shall ensure that the
14 following documents contain a statement, under penalty of
15 perjury and signed by the responsible provider, that all
16 matters stated therein are true and accurate:

17

18 (i) An application to become a Medicaid provider;

19

20 (ii) All reports stating income or expenses upon
21 which rates of payment by the department of health may be
22 based; and

23

1 (iii) Each invoice for payment of a service or
2 supply provided to a person eligible for Medicaid.

3

4 (d) A person commits perjury if the person signs or
5 submits, or causes to be signed or submitted a statement under
6 subsection (c) of this section, knowing that the application,
7 report or invoice contains information that is false, in whole
8 or in part. Perjury under this subsection shall be punished
9 as specified in W.S. 6-5-301(b).

10

11 **42-4-407. Kickbacks, bribes, undisclosed payments,**
12 **referral fees and illegal copayments; criminal penalty;**
13 **exception.**

14

15 (a) A person shall not knowingly, in whole or in part:

16

17 (i) Act on behalf of a provider to purchase or
18 lease a service or supply for which payment may be made, in
19 whole or in part, under Medicaid and then solicit or accept
20 anything of additional value in connection with the purchase
21 or lease;

22

1 (ii) Sell or lease to a provider a service or
2 supply for which payment may be made, in whole or in part,
3 under Medicaid, and offer, transfer or pay anything of
4 additional value in connection with the sale or lease;

5

6 (iii) Refer an individual to a provider for the
7 provision of a service or supply for which payment may be
8 made, in whole or in part, under Medicaid, and solicit or
9 accept anything of value in connection with the referral;

10

11 (iv) Act on behalf of a provider to charge,
12 solicit, accept or receive anything of value in addition to
13 the amount payable for a service or supply under Medicaid.

14

15 (b) A violation of subsection (a) of this section is a
16 felony punishable by imprisonment of not more than five (5)
17 years, a fine of not more than ten thousand dollars
18 (\$10,000.00), or both.

19

20 (c) A person does not commit a violation of paragraph
21 (a)(i) or (ii) of this section in cases where the additional
22 value transferred is a refund or discount made in the ordinary
23 course of business and is reflected by the records of the

1 person within a reasonable period of time after the transfer
2 of value.

3

4 **42-4-408. Failure to maintain records; destruction of**
5 **records; penalty.**

6

7 (a) A person, after submitting a claim or receiving a
8 payment for a service or supply under Medicaid, shall not
9 knowingly fail to maintain records required under Medicaid,
10 including records that fully disclose the nature of the
11 services or supplies provided to a recipient.

12

13 (b) A person who violates subsection (a) is guilty of:

14

15 (i) A misdemeanor punishable by imprisonment for
16 not more than thirty (30) days, a fine of not more than seven
17 hundred fifty dollars (\$750.00), or both, if:

18

19 (A) The claims for which records were not
20 maintained are less than twenty-five percent (25%) of the
21 Medicaid claims submitted by the provider in any consecutive
22 three (3) month period; and

23

1 (B) The amount of the claims for which
2 records were not maintained is less than five thousand dollars
3 (\$5,000.00).

4

5 (ii) A misdemeanor punishable by imprisonment for
6 not more than six (6) months, a fine of not more than one
7 thousand dollars (\$1,000.00), or both, if:

8

9 (A) The claims for which records were not
10 maintained are twenty-five percent (25%) or more of the
11 Medicaid claims submitted by the provider in any consecutive
12 three (3) month period; and

13

14 (B) The amount of the claims for which
15 records were not maintained is five thousand dollars
16 (\$5,000.00) or more.

17

18 (iii) A felony punishable by imprisonment for not
19 more than five (5) years, a fine of not more than ten thousand
20 dollars (\$10,000.00), or both, if:

21

22 (A) The person intended to defraud Medicaid
23 and the claims for which records were not maintained are

1 twenty-five percent (25%) or more of the Medicaid claims
2 submitted by the provider in any consecutive three (3) month
3 period; and

4

5 (B) The amount of the claims for which
6 records were not maintained is five thousand dollars
7 (\$5,000.00) or more.

8

9 **42-4-409. Aggregation of claims in certain cases.**

10

11 The amount of claims relating to violations of this act
12 through a common scheme, or based on the same transaction or
13 occurrence, may be aggregated to determine the level of
14 penalty under this act, whether or not the claims were made
15 as part of the same claim under Medicaid.

16

17 **42-4-410. Suspension or exclusion as provider.**

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19 (a) The department of health or the department of
20 family services may suspend or exclude a provider from
21 providing services and supplies under Medicaid if:

22

1 (i) The department determines that the provider
2 has committed an offense under this act or the Wyoming
3 Medicaid False Claims Act, whether or not a criminal
4 prosecution is brought under this act or any civil action is
5 brought under the Wyoming Medicaid False Claims Act; or

6

7 (ii) A provider fails to provide the unit with
8 access to records pursuant to W.S. 42-4-404(a).

9

10 (b) Any term of suspension or exclusion under this
11 section, which may be permanent, shall be determined by the
12 department of health or the department of family services.

13

14 (c) The department of health and the department of
15 family services may adopt rules necessary to implement this
16 section.

17

18 **42-4-411. Provisions of act not exclusive remedies.**

19

20 The provisions of this act shall not be exclusive and do not
21 preclude the use of any other criminal or civil remedy as
22 authorized by law.

23

1 **42-4-412. Rules.**

2

3 The attorney general, in consultation with the department of
4 health, may adopt rules to implement W.S. 42-4-401 through
5 42-4-409 and 42-4-411.

6

7 **Section 2.** W.S. 9-1-603(a) by creating a new paragraph
8 (x) and 42-4-304(a) are amended to read:

9

10 **9-1-603. Duties generally; retention of qualified**
11 **practicing attorneys; matters in which county or state is**
12 **party or has interest; assistance to county and district**
13 **attorneys in felony trials; coordination of county and school**
14 **safety activities.**

15

16 (a) The attorney general shall:

17

18 (x) Supervise the Medicaid fraud control unit
19 created by W.S. 42-4-401 et seq.

20

21 **42-4-304. Investigations and prosecutions; powers of**
22 **prosecuting authority; remedies for retaliation; venue; no**
23 **private right of action.**

1

2 (a) The ~~attorney general~~ Medicaid fraud control unit
3 created by W.S. 42-4-403 or a district attorney may
4 investigate alleged violations of W.S. 42-4-303(a) and (c).
5 If the ~~attorney general~~ Medicaid fraud control unit or
6 district attorney finds that a person has violated or is
7 violating W.S. 42-4-303(a) or (c), the ~~attorney general~~ unit
8 or district attorney may bring a civil action under this
9 section against that person.

10

11 **Section 3.** W.S. 42-4-111(a), (b), (d) and (e) is
12 repealed.

13

14 **Section 4.** This act is effective July 1, 2019.

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16

(END)