

SENATE FILE NO. SF0085

Wyoming Medicaid Fraud Control Act.

Sponsored by: Senator(s) Nethercott, Anselmi-Dalton, Baldwin,
Boner, 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.

6

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 criminal investigations and
23 prosecutions statewide relating to violations of applicable

1 state laws relating to fraud, waste, abuse, bribery or
2 kickbacks under Medicaid. The unit may also conduct criminal
3 investigations and prosecutions relating to patient abuse,
4 neglect, exploitation and other violations of law, if the
5 violation is primarily connected to Medicaid.

6

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

13

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

1

2 **42-4-404. Access to records.**

3

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

12

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

23

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

6

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

11

12 **42-4-405. Reporting to unit.**

13

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

22

23 **42-4-406. Fraud and false statements; criminal penalty.**

1

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

5

6 (i) Make or cause to be made a false or fraudulent
7 claim;

8

9 (ii) Deliberately conceal a material fact;

10

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

13

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

15

16 (b) A person who violates subsection (a) of this
17 section is guilty of:

18

19 (i) A misdemeanor punishable by imprisonment of
20 not more than six (6) months, a fine of not more than seven
21 hundred fifty dollars (\$750.00), or both, if the value of the
22 services or supplies under Medicaid is less than one thousand
23 dollars (\$1,000.00); or

1

2 (ii) A felony punishable by imprisonment for not
3 more than ten (10) years, a fine of not more than ten thousand
4 dollars (\$10,000.00), or both, if the value of the services
5 or supplies under Medicaid is one thousand dollars
6 (\$1,000.00) or more.

7

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

12

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

14

15 (ii) All reports stating income or expenses upon
16 which rates of payment by the department of health may be
17 based; and

18

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

21

22 (d) A person commits perjury if the person signs or
23 submits, or causes to be signed or submitted a statement under

1 subsection (c) of this section, knowing that the application,
2 report or invoice contains information that is false, in whole
3 or in part. Perjury under this subsection shall be punished
4 as specified in W.S. 6-5-301(b).

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6 **42-4-407. Kickbacks, bribes, undisclosed payments,**
7 **referral fees and illegal copayments; criminal penalty;**
8 **exception.**

9

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

11

12 (i) Act on behalf of a provider to purchase or
13 lease a service or supply for which payment may be made, in
14 whole or in part, under Medicaid and then solicit or accept
15 anything of additional value in connection with the purchase
16 or lease;

17

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

22

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

5

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

9

10 (b) A violation of subsection (a) of this section is a
11 felony punishable by imprisonment of not more than five (5)
12 years, a fine of not more than ten thousand dollars
13 (\$10,000.00), or both.

14

15 (c) A person does not commit a violation of paragraph
16 (a)(i) or (ii) of this section in cases where the additional
17 value transferred is a refund or discount made in the ordinary
18 course of business and is reflected by the records of the
19 person within a reasonable period of time after the transfer
20 of value.

21

22 **42-4-408. Failure to maintain records; destruction of**
23 **records; penalty.**

1

2 (a) A person, after submitting a claim or receiving a
3 payment for a service or supply under Medicaid, shall not
4 knowingly fail to maintain records required under Medicaid,
5 including records that fully disclose the nature of the
6 services or supplies provided to a recipient.

7

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

9

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

13

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

18

19 (B) The value of the claims for which records
20 were not maintained is less than five thousand dollars
21 (\$5,000.00).

22

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

4

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

9

10 (B) The value of the claims for which records
11 were not maintained is five thousand dollars (\$5,000.00) or
12 more.

13

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

17

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

23

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

4

5 **42-4-409. Aggregation of claims in certain cases.**

6

7 The value of claims relating to violations of this act through
8 a common scheme, or based on the same transaction or
9 occurrence, may be aggregated to determine the level of
10 penalty under this act, whether or not the claims were made
11 as part of the same claim under Medicaid.

12

13 **42-4-410. Suspension or exclusion as provider.**

14

15 (a) The department of health may suspend or exclude a
16 provider from providing services and supplies under Medicaid
17 if:

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19 (i) The department determines that the provider
20 has committed an offense under this act or the Wyoming
21 Medicaid False Claims Act, whether or not a criminal
22 prosecution is brought under this act or any civil action is
23 brought under the Wyoming Medicaid False Claims Act; or

1

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

4

5 (b) Any term of suspension or exclusion under this
6 section, which may be permanent, shall be determined by the
7 department of health.

8

9 (c) The department of health may adopt rules necessary
10 to implement this section.

11

12 **42-4-411. Provisions of act not exclusive remedies.**

13

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

17

18 **42-4-412. Rules.**

19

20 The attorney general, in consultation with the department of
21 health, may adopt rules to implement W.S. 42-4-401 through
22 42-4-409 and 42-4-411.

23

1 **Section 2.** W.S. 9-1-603(a) by creating a new paragraph
2 (x), 42-4-112(a) and 42-4-304(a) are amended to read:

3

4 **9-1-603. Duties generally; retention of qualified**
5 **practicing attorneys; matters in which county or state is**
6 **party or has interest; assistance to county and district**
7 **attorneys in felony trials; coordination of county and school**
8 **safety activities.**

9

10 (a) The attorney general shall:

11

12 (x) Supervise the Medicaid fraud control unit
13 created by W.S. 42-4-403.

14

15 **42-4-112. Confidentiality of records; penalty for**
16 **disclosure; authorized disclosure; applicability.**

17

18 (a) Subject to the Wyoming Medicaid Fraud Control Act,
19 any application, information and record obtained, compiled
20 and maintained for an applicant or qualified recipient of
21 medical assistance under this chapter is confidential and
22 shall not be disclosed or used for any purpose other than the
23 administration of this chapter.

1

2 **42-4-304. Investigations and prosecutions; powers of**
3 **prosecuting authority; remedies for retaliation; venue; no**
4 **private right of action.**

5

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

14

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

17

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

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20

(END)