

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE DRS85047-MK-3 (10/12)

Short Title: Prohibit Co-pay Waiver/Medicaid Providers. (Public)

Sponsors: Senator Tillman (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE REGULAR BUSINESS PRACTICE OF WAIVING
3 REQUIRED MEDICAID RECIPIENT CO-PAYMENTS BY A MEDICAID PROVIDER
4 CONSTITUTES FRAUD.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 108A-63 reads as rewritten:

7 "§ 108A-63. Medical assistance provider fraud.

8 (a) It shall be unlawful for any provider of medical assistance under this Part to
9 knowingly and willfully make or cause to be made any false statement or representation of a
10 material fact:

- 11 (1) In any application for payment under this Part, or for use in determining
12 entitlement to such payment; or
13 (2) With respect to the conditions or operation of a provider or facility in order
14 that such provider or facility may qualify or remain qualified to provide
15 assistance under this Part.

16 (b) It shall be unlawful for any provider of medical assistance to knowingly and
17 willfully conceal or fail to disclose any fact or event affecting:

- 18 (1) His initial or continued entitlement to payment under this Part; or
19 (2) The amount of payment to which such person is or may be entitled.

20 (c) Except as otherwise provided in subsection (e) of this section, any person who
21 violates a provision of this section shall be guilty of a Class I felony.

22 (d) "Provider" shall include any person who provides goods or services under this Part
23 and any other person acting as an employee, representative or agent of such person.

24 (e) In connection with the delivery of or payment for benefits, items, or services under
25 this Part, it shall be unlawful for any provider of medical assistance under this Part to
26 knowingly and willfully execute, or attempt to execute, a scheme or artifice to:

- 27 (1) Defraud the Medical Assistance Program.
28 (2) Obtain, by means of false or fraudulent pretenses, representations, or
29 promises of material fact, any of the money or property owned by, or under
30 the custody or control of, the Medical Assistance Program.
31 (3) Waive the collection of co-payments owed by recipients of medical
32 assistance as required under the Medical Assistance Program with the intent
33 to induce recipients to purchase, lease, or order items or services from the
34 provider.

35 A violation of this subsection is a Class H felony. A conspiracy to violate this subsection is a
36 Class I felony.



1 (f) It shall be unlawful for any provider, with the intent to obstruct, delay, or mislead an
2 investigation of a violation of this section by the Attorney General's office, to knowingly and
3 willfully make or cause to be made a false entry in, alter, destroy, or conceal, or make a false
4 statement about a financial, medical, or other record related to the provision of a benefit, item,
5 or service under this Part.

6 (g) It shall be unlawful for any person to knowingly and willfully solicit or receive any
7 remuneration (including any kickback, bribe, ~~or rebate~~rebate, or waiver of a co-payment owed
8 by a recipient of medical assistance) directly or indirectly, overtly or covertly, in cash or
9 in-kind:

10 (1) In return for referring an individual to a person for the furnishing or
11 arranging for the furnishing of any item or service for which payment may
12 be made in whole or in part under this Part.

13 (2) In return for purchasing, leasing, ordering, or arranging for or
14 recommending purchasing, leasing, or ordering any good, facility, service, or
15 item for which payment may be made in whole or in part under this Part.

16 (h) It shall be unlawful for any person to knowingly and willfully offer or pay any
17 remuneration (including any kickback, bribe, ~~or rebate~~rebate, or waiver of a co-payment owed
18 by a recipient of medical assistance) directly or indirectly, overtly or covertly, in cash or
19 in-kind to any person to induce such person:

20 (1) To refer an individual to a person for the furnishing or arranging for the
21 furnishing of any item or service for which payment may be made in whole
22 or in part under this Part.

23 (2) To purchase, lease, order, or arrange for or recommend purchasing, leasing,
24 or ordering any good, facility, service, or item for which payment may be
25 made in whole or in part under this Part.

26 (i) Subsections (g) and (h) of this section shall not apply to:

27 (1) Contracts between the State and a public or private agency where part of the
28 agency's responsibility is referral of a person to a provider.

29 (2) Any conduct or activity that is specified in 42 U.S.C. § 1320a-7b(b)(3), as
30 amended, or any federal regulations adopted pursuant thereto.

31 (i1) For enforcement purposes, a provider that waives a co-payment owed by a recipient
32 of medical assistance in violation of subsections (g) and (h) of this section shall be considered
33 in violation of those subsections regardless of the monetary amount that is waived by the
34 provider. A provider of medical assistance shall not be in violation of subsections (g) and (h) of
35 this section if the provider waives a co-payment owed by a recipient of medical assistance for
36 any of the following reasons:

37 (1) The waiver is authorized under the Medical Assistance Program.

38 (2) The provider determines on an individual basis that the collection of the
39 co-payment amount would create a substantial financial hardship for the
40 recipient, provided the waiver of co-payments is not a regular business
41 practice of the provider. For the purposes of this subdivision, a provider shall
42 be considered engaged in the regular business practice of waiving
43 co-payments if the provider holds himself or herself out to recipients as
44 waiving required co-payments.

45 (3) The provider has made a good faith effort to collect the co-payment amount
46 but the provider's reasonable collection efforts fail.

47 (i2) For the purposes of this section, the waiver of a co-payment includes a full or partial
48 waiver of the amount that is owed by the recipient of medical assistance.

49 (j) Nothing in subsections (g) and (h) of this section shall be interpreted or construed to
50 conflict with 42 U.S.C. § 1320a-7b(b), as ~~amended, or with federal common law or federal~~
51 ~~agency interpretations of the statute~~amended.

1 (k) The Department shall suspend or terminate a provider's participation in the Medical
2 Assistance Program if the provider is convicted of a violation of this section, whether upon a
3 verdict after trial or upon a plea of guilty or nolo contendere, in accordance with administrative
4 sanctions and remedial measures established by the Department. The administrative sanctions
5 or remedial measures required by this subsection shall be in addition to the imposition of any
6 criminal penalties."

7 **SECTION 2.** G.S. 108A-70.12(a) reads as rewritten:

8 "(a) Liability for Certain Acts. – It shall be unlawful for any provider of medical
9 assistance under the Medical Assistance Program ~~to~~ to do any of the following:

10 (1) Knowingly present, or cause to be presented to the Medical Assistance
11 Program a false or fraudulent claim for payment or ~~approval~~; or approval.

12 (2) Knowingly make, use, or cause to be made or used a false record or
13 statement to get a false or fraudulent claim paid or approved by the Medical
14 Assistance Program.

15 (3) Knowingly waive a co-payment, in part or in full, owed by a recipient of
16 medical assistance related to a claim presented to the Medical Assistance
17 Program for payment or approval. A provider may be found in violation of
18 this subdivision regardless of the monetary amount that is waived by the
19 provider. A provider of medical assistance is not in violation of this
20 subdivision if the provider waives a co-payment, in part or in full, owed by a
21 recipient of medical assistance for any of the following reasons:

22 a. The waiver is authorized under the Medical Assistance Program.

23 b. The provider determines on an individual basis that the collection of
24 the co-payment amount would create a substantial financial hardship
25 for the recipient, provided the waiver of co-payments is not a regular
26 business practice of the provider. For the purposes of this
27 sub-subdivision, a provider shall be considered engaged in the
28 regular business practice of waiving co-payments if the provider
29 holds himself or herself out to recipients as waiving required
30 co-payments.

31 c. The provider has made a good faith effort to collect the co-payment
32 amount but the provider's reasonable collection efforts fail.

33 Each claim presented or caused to be presented in violation of this section is a separate
34 violation."

35 **SECTION 3.** This act becomes effective December 1, 2013, and applies to acts and
36 offenses committed on or after that date.