

By Senator Diaz de la Portilla

36-1918-04

1 A bill to be entitled
2 An act relating to medicaid provider fraud;
3 amending s. 409.920, F.S.; revising the
4 elements of the offense of Medicaid provider
5 fraud to require that a person must have
6 willfully engaged in certain prohibited
7 activities rather than only knowingly engaged
8 in those prohibited activities; providing that
9 proof of a false statement or representation
10 gives rise to an inference of the willful
11 submission of a fraudulent claim under certain
12 circumstances; reenacting s. 921.0022(3)(g),
13 F.S., relating to the offense severity ranking
14 chart of the Criminal Punishment Code, to
15 incorporate the amendment to s. 409.920, F.S.,
16 in a reference thereto; providing an effective
17 date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Subsections (2), (5), and (6) of section
22 409.920, Florida Statutes, are amended to read:

23 409.920 Medicaid provider fraud.--

24 (2) It is unlawful to:

25 (a) Knowingly and willfully make, cause to be made, or
26 aid and abet in the making of any false statement or false
27 representation of a material fact, by commission or omission,
28 in any claim submitted to the agency or its fiscal agent for
29 payment.

30 (b) Knowingly and willfully make, cause to be made, or
31 aid and abet in the making of a claim for items or services

1 that are not authorized to be reimbursed by the Medicaid
2 program.

3 (c) Knowingly and willfully charge, solicit, accept,
4 or receive anything of value, other than an authorized
5 copayment from a Medicaid recipient, from any source in
6 addition to the amount legally payable for an item or service
7 provided to a Medicaid recipient under the Medicaid program or
8 knowingly and willfully fail to credit the agency or its
9 fiscal agent for any payment received from a third-party
10 source.

11 (d) Knowingly and willfully make or in any way cause
12 to be made any false statement or false representation of a
13 material fact, by commission or omission, in any document
14 containing items of income and expense that is or may be used
15 by the agency to determine a general or specific rate of
16 payment for an item or service provided by a provider.

17 (e) Knowingly and willfully solicit, offer, pay, or
18 receive any remuneration, including any kickback, bribe, or
19 rebate, directly or indirectly, overtly or covertly, in cash
20 or in kind, in return for referring an individual to a person
21 for the furnishing or arranging for the furnishing of any item
22 or service for which payment may be made, in whole or in part,
23 under the Medicaid program, or in return for obtaining,
24 purchasing, leasing, ordering, or arranging for or
25 recommending, obtaining, purchasing, leasing, or ordering any
26 goods, facility, item, or service, for which payment may be
27 made, in whole or in part, under the Medicaid program.

28 (f) Knowingly and willfully submit false or misleading
29 information or statements to the Medicaid program for the
30 purpose of being accepted as a Medicaid provider.

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1 A person who violates this subsection commits a felony of the
2 third degree, punishable as provided in s. 775.082, s.
3 775.083, or s. 775.084.

4 (5) Proof that a claim was submitted to the agency or
5 its fiscal agent which contained a false statement or a false
6 representation of a material fact, by commission or omission,
7 unless satisfactorily explained, gives rise to an inference
8 that the person whose signature appears as the provider's
9 authorizing signature on the claim form, or whose signature
10 appears on an agency electronic claim submission agreement
11 submitted for claims made to the fiscal agent by electronic
12 means, had knowledge of and willfully made the false statement
13 or false representation. This subsection applies whether the
14 signature appears on the claim form or the electronic claim
15 submission agreement by means of handwriting, typewriting,
16 facsimile signature stamp, computer impulse, initials, or
17 otherwise.

18 (6) Proof of submission to the agency or its fiscal
19 agent of a document containing items of income and expense,
20 which document is used or that may be used by the agency or
21 its fiscal agent to determine a general or specific rate of
22 payment and which document contains a false statement or a
23 false representation of a material fact, by commission or
24 omission, unless satisfactorily explained, gives rise to the
25 inference that the person who signed the certification of the
26 document had knowledge of and willfully made the false
27 statement or representation. This subsection applies whether
28 the signature appears on the document by means of handwriting,
29 typewriting, facsimile signature stamp, electronic
30 transmission, initials, or otherwise.

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1 Section 2. For the purpose of incorporating the
2 amendment made by this act to section 409.920, Florida
3 Statutes, in a reference thereto, paragraph (g) of subsection
4 (3) of section 921.0022, Florida Statutes, is reenacted to
5 read:

6 921.0022 Criminal Punishment Code; offense severity
7 ranking chart.--

8 (3) OFFENSE SEVERITY RANKING CHART

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10 Florida	Felony	
11 Statute	Degree	Description
		(g) LEVEL 7
15 316.027(1)(b)	2nd	Accident involving death, failure 16 to stop; leaving scene.
17 316.193(3)(c)2.	3rd	DUI resulting in serious bodily 18 injury.
19 327.35(3)(c)2.	3rd	Vessel BUI resulting in serious 20 bodily injury.
21 402.319(2)	2nd	Misrepresentation and negligence 22 or intentional act resulting in 23 great bodily harm, permanent 24 disfiguration, permanent 25 disability, or death.
26 409.920(2)	3rd	Medicaid provider fraud.
27 456.065(2)	3rd	Practicing a health care 28 profession without a license.

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1	456.065(2)	2nd	Practicing a health care
2			profession without a license
3			which results in serious bodily
4			injury.
5	458.327(1)	3rd	Practicing medicine without a
6			license.
7	459.013(1)	3rd	Practicing osteopathic medicine
8			without a license.
9	460.411(1)	3rd	Practicing chiropractic medicine
10			without a license.
11	461.012(1)	3rd	Practicing podiatric medicine
12			without a license.
13	462.17	3rd	Practicing naturopathy without a
14			license.
15	463.015(1)	3rd	Practicing optometry without a
16			license.
17	464.016(1)	3rd	Practicing nursing without a
18			license.
19	465.015(2)	3rd	Practicing pharmacy without a
20			license.
21	466.026(1)	3rd	Practicing dentistry or dental
22			hygiene without a license.
23	467.201	3rd	Practicing midwifery without a
24			license.
25	468.366	3rd	Delivering respiratory care
26			services without a license.
27	483.828(1)	3rd	Practicing as clinical laboratory
28			personnel without a license.
29	483.901(9)	3rd	Practicing medical physics
30			without a license.
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1	484.013(1)(c)	3rd	Preparing or dispensing optical
2			devices without a prescription.
3	484.053	3rd	Dispensing hearing aids without a
4			license.
5	494.0018(2)	1st	Conviction of any violation of
6			ss. 494.001-494.0077 in which the
7			total money and property
8			unlawfully obtained exceeded
9			\$50,000 and there were five or
10			more victims.
11	560.123(8)(b)1.	3rd	Failure to report currency or
12			payment instruments exceeding
13			\$300 but less than \$20,000 by
14			money transmitter.
15	560.125(5)(a)	3rd	Money transmitter business by
16			unauthorized person, currency or
17			payment instruments exceeding
18			\$300 but less than \$20,000.
19	655.50(10)(b)1.	3rd	Failure to report financial
20			transactions exceeding \$300 but
21			less than \$20,000 by financial
22			institution.
23	782.051(3)	2nd	Attempted felony murder of a
24			person by a person other than the
25			perpetrator or the perpetrator of
26			an attempted felony.
27	782.07(1)	2nd	Killing of a human being by the
28			act, procurement, or culpable
29			negligence of another
30			(manslaughter).
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1	782.071	2nd	Killing of human being or viable
2			fetus by the operation of a motor
3			vehicle in a reckless manner
4			(vehicular homicide).
5	782.072	2nd	Killing of a human being by the
6			operation of a vessel in a
7			reckless manner (vessel
8			homicide).
9	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
10			causing great bodily harm or
11			disfigurement.
12	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
13			weapon.
14	784.045(1)(b)	2nd	Aggravated battery; perpetrator
15			aware victim pregnant.
16	784.048(4)	3rd	Aggravated stalking; violation of
17			injunction or court order.
18	784.07(2)(d)	1st	Aggravated battery on law
19			enforcement officer.
20	784.074(1)(a)	1st	Aggravated battery on sexually
21			violent predators facility staff.
22	784.08(2)(a)	1st	Aggravated battery on a person 65
23			years of age or older.
24	784.081(1)	1st	Aggravated battery on specified
25			official or employee.
26	784.082(1)	1st	Aggravated battery by detained
27			person on visitor or other
28			detainee.
29	784.083(1)	1st	Aggravated battery on code
30			inspector.
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1	790.07(4)	1st	Specified weapons violation
2			subsequent to previous conviction
3			of s. 790.07(1) or (2).
4	790.16(1)	1st	Discharge of a machine gun under
5			specified circumstances.
6	790.165(2)	2nd	Manufacture, sell, possess, or
7			deliver hoax bomb.
8	790.165(3)	2nd	Possessing, displaying, or
9			threatening to use any hoax bomb
10			while committing or attempting to
11			commit a felony.
12	790.166(3)	2nd	Possessing, selling, using, or
13			attempting to use a hoax weapon
14			of mass destruction.
15	790.166(4)	2nd	Possessing, displaying, or
16			threatening to use a hoax weapon
17			of mass destruction while
18			committing or attempting to
19			commit a felony.
20	796.03	2nd	Procuring any person under 16
21			years for prostitution.
22	800.04(5)(c)1.	2nd	Lewd or lascivious molestation;
23			victim less than 12 years of age;
24			offender less than 18 years.
25	800.04(5)(c)2.	2nd	Lewd or lascivious molestation;
26			victim 12 years of age or older
27			but less than 16 years; offender
28			18 years or older.
29	806.01(2)	2nd	Maliciously damage structure by
30			fire or explosive.
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1	810.02(3)(a)	2nd	Burglary of occupied dwelling;
2			unarmed; no assault or battery.
3	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
4			unarmed; no assault or battery.
5	810.02(3)(d)	2nd	Burglary of occupied conveyance;
6			unarmed; no assault or battery.
7	812.014(2)(a)	1st	Property stolen, valued at
8			\$100,000 or more; cargo stolen
9			valued at \$50,000 or more;
10			property stolen while causing
11			other property damage; 1st degree
12			grand theft.
13	812.014(2)(b)3.	2nd	Property stolen, emergency
14			medical equipment; 2nd degree
15			grand theft.
16	812.0145(2)(a)	1st	Theft from person 65 years of age
17			or older; \$50,000 or more.
18	812.019(2)	1st	Stolen property; initiates,
19			organizes, plans, etc., the theft
20			of property and traffics in
21			stolen property.
22	812.131(2)(a)	2nd	Robbery by sudden snatching.
23	812.133(2)(b)	1st	Carjacking; no firearm, deadly
24			weapon, or other weapon.
25	817.234(8)(a)	2nd	Solicitation of motor vehicle
26			accident victims with intent to
27			defraud.
28	817.234(9)	2nd	Organizing, planning, or
29			participating in an intentional
30			motor vehicle collision.
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1	817.234(11)(c)	1st	Insurance fraud; property value
2			\$100,000 or more.
3	817.2341(2)(b)&		
4	(3)(b)	1st	Making false entries of material
5			fact or false statements
6			regarding property values
7			relating to the solvency of an
8			insuring entity which are a
9			significant cause of the
10			insolvency of that entity.
11	825.102(3)(b)	2nd	Neglecting an elderly person or
12			disabled adult causing great
13			bodily harm, disability, or
14			disfigurement.
15	825.103(2)(b)	2nd	Exploiting an elderly person or
16			disabled adult and property is
17			valued at \$20,000 or more, but
18			less than \$100,000.
19	827.03(3)(b)	2nd	Neglect of a child causing great
20			bodily harm, disability, or
21			disfigurement.
22	827.04(3)	3rd	Impregnation of a child under 16
23			years of age by person 21 years
24			of age or older.
25	837.05(2)	3rd	Giving false information about
26			alleged capital felony to a law
27			enforcement officer.
28	838.015	2nd	Bribery.
29	838.016	2nd	Unlawful compensation or reward
30			for official behavior.
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1	838.021(3)(a)	2nd	Unlawful harm to a public
2			servant.
3	838.22	2nd	Bid tampering.
4	872.06	2nd	Abuse of a dead human body.
5	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
6			cocaine (or other drug prohibited
7			under s. 893.03(1)(a), (1)(b),
8			(1)(d), (2)(a), (2)(b), or
9			(2)(c)4.) within 1,000 feet of a
10			child care facility, school, or
11			state, county, or municipal park
12			or publicly owned recreational
13			facility or community center.
14	893.13(1)(e)1.	1st	Sell, manufacture, or deliver
15			cocaine or other drug prohibited
16			under s. 893.03(1)(a), (1)(b),
17			(1)(d), (2)(a), (2)(b), or
18			(2)(c)4., within 1,000 feet of
19			property used for religious
20			services or a specified business
21			site.
22	893.13(4)(a)	1st	Deliver to minor cocaine (or
23			other s. 893.03(1)(a), (1)(b),
24			(1)(d), (2)(a), (2)(b), or
25			(2)(c)4. drugs).
26	893.135(1)(a)1.	1st	Trafficking in cannabis, more
27			than 25 lbs., less than 2,000
28			lbs.
29	893.135		
30	(1)(b)1.a.	1st	Trafficking in cocaine, more than
31			28 grams, less than 200 grams.

1	893.135		
2	(1)(c)1.a.	1st	Trafficking in illegal drugs,
3			more than 4 grams, less than 14
4			grams.
5	893.135		
6	(1)(d)1.	1st	Trafficking in phencyclidine,
7			more than 28 grams, less than 200
8			grams.
9	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
10			than 200 grams, less than 5
11			kilograms.
12	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
13			than 14 grams, less than 28
14			grams.
15	893.135		
16	(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4
17			grams or more, less than 14
18			grams.
19	893.135		
20	(1)(h)1.a.	1st	Trafficking in
21			gamma-hydroxybutyric acid (GHB),
22			1 kilogram or more, less than 5
23			kilograms.
24	893.135		
25	(1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1
26			kilogram or more, less than 5
27			kilograms.
28	893.135		
29	(1)(k)2.a.	1st	Trafficking in Phenethylamines,
30			10 grams or more, less than 200
31			grams.

1 896.101(5)(a) 3rd Money laundering, financial
2 transactions exceeding \$300 but
3 less than \$20,000.
4 896.104(4)(a)1. 3rd Structuring transactions to evade
5 reporting or registration
6 requirements, financial
7 transactions exceeding \$300 but
8 less than \$20,000.

9 Section 3. This act shall take effect July 1, 2004.

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11 SENATE SUMMARY

12
13 Revises the elements of the offense of Medicaid fraud to
14 make it unlawful to willfully, rather than just
15 knowingly, provide false or misleading information to the
16 Agency of Health Care Administration. Provides that proof
17 that a document was submitted with false or misleading
18 information or proof of a false claim creates an
19 inference that the person whose signature appears knew of
20 and willfully made the false statement or
21 misrepresentation.
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