

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 17-0719.01 Brita Darling x2241

HOUSE BILL 17-1139

HOUSE SPONSORSHIP

Landgraf and Michaelson Jenet,

SENATE SPONSORSHIP

Martinez Humenik and Kefalas,

House Committees

Public Health Care & Human Services

Senate Committees

State, Veterans, & Military Affairs

A BILL FOR AN ACT

101 **CONCERNING IMPROVING MEDICAID CLIENT PROTECTIONS THROUGH**
102 **EFFECTIVE ENFORCEMENT OF MEDICAID PROVIDER**
103 **REQUIREMENTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill subjects a provider of medicaid services to a civil monetary penalty if the provider improperly bills or seeks collection from a medicaid recipient or the estate of a medicaid recipient.

In addition, the bill allows the department of health care policy and financing (department) to require a corrective action plan from any

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
May 4, 2017

SENATE
2nd Reading Unamended
May 3, 2017

HOUSE
3rd Reading Unamended
April 27, 2017

HOUSE
Amended 2nd Reading
April 26, 2017

provider who fails to comply with rules, manuals, or bulletins issued by the department, the medical services board, or the department's fiscal agent or from a provider whose activities endanger the health, safety, or welfare of a medicaid recipient. Based on good cause, the department may suspend the enrollment of a medicaid provider for a period of time set forth in the bill. The provider has the right to appeal the suspension administratively.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Colorado's medicaid program provides critical health care
5 services to many of the state's residents;

6 (b) It is in the best interest of Colorado to do everything possible
7 to minimize error, inefficiency, and fraud in the medicaid program to
8 ensure the long-term viability of this safety-net program and to protect
9 clients from prohibited billing practices that harm them financially and
10 hurt their credit;

11 (c) The vast majority of providers enrolled in the medicaid
12 program are in compliance with the department of health care policy and
13 financing's (state department) rules, billing manuals, and provider
14 bulletins, and serve medicaid clients well;

15 (d) For the small number of providers out of compliance with the
16 state department's rules, billing manuals, and provider bulletins, the state
17 department has limited options to help those providers come into
18 compliance before terminating the provider from the national medicaid
19 provider network; and

20 (e) The state department should have intermediate options to
21 ensure that providers out of compliance can come into compliance and
22 remained enrolled in the medicaid program.

1 (2) Now, therefore, it is the intent of the general assembly that the
2 state department use the intermediate options outlined in this legislation
3 judiciously and that the state department collaborate with providers and
4 provider associations to improve compliance and understanding of the
5 state department's rules and policies.

6 **SECTION 2.** In Colorado Revised Statutes, 25.5-4-301, **amend**
7 (1)(a)(II.5)(A) and (1)(a)(II.5)(B); and **add** (1)(a)(II.5)(A.5),
8 (1)(a)(II.5)(C), and (15) as follows:

9 **25.5-4-301. Recoveries - overpayments - penalties - interest -**
10 **adjustments - liens - review or audit procedures.** (1) (a) (II.5) (A) A
11 provider of medical services ~~shall be liable to a recipient or the estate of~~
12 ~~a recipient if the provider knowingly receives or seeks collection through~~
13 ~~a third party of an amount in violation of subparagraph (I) of this~~
14 ~~paragraph (a). The provider shall be liable for the amount unlawfully~~
15 ~~received, statutory interest on the amount received from the date of~~
16 ~~receipt until the date of repayment, plus a civil monetary penalty equal to~~
17 ~~one-half of the amount unlawfully received~~ WHO BILLS OR SEEKS
18 COLLECTION THROUGH A THIRD PARTY FROM A RECIPIENT OR THE ESTATE
19 OF A RECIPIENT FOR MEDICAL SERVICES AUTHORIZED BY TITLE XIX OF THE
20 SOCIAL SECURITY ACT IN AN AMOUNT IN VIOLATION OF SUBSECTION
21 (1)(a)(I) OF THIS SECTION IS LIABLE FOR AND SUBJECT TO THE FOLLOWING:
22 A REFUND TO THE RECIPIENT OF ANY AMOUNT UNLAWFULLY RECEIVED
23 FROM THE RECIPIENT, PLUS STATUTORY INTEREST FROM THE DATE OF THE
24 RECEIPT UNTIL THE DATE OF REPAYMENT; A CIVIL MONETARY PENALTY OF
25 ONE HUNDRED DOLLARS FOR EACH VIOLATION OF SUBSECTION (1)(a)(I) OF
26 THIS SECTION; AND ALL AMOUNTS SUBMITTED TO A COLLECTION AGENCY
27 IN THE NAME OF THE MEDICAID RECIPIENT. When determining income or

1 resources for purposes of determining eligibility or benefit amounts for
2 any state-funded program under this ~~title~~ TITLE 25.5, the state department
3 shall exclude from consideration any ~~moneys~~ MONEY received by a
4 recipient pursuant to this ~~subparagraph (H.5)~~ SUBSECTION (1)(a)(II.5).
5 THE IMPOSITION OF A CIVIL MONETARY PENALTY BY THE STATE
6 DEPARTMENT MAY BE APPEALED ADMINISTRATIVELY.

7 (A.5) A PROVIDER OF MEDICAL SERVICES WHO, WITHIN THIRTY
8 DAYS OF NOTIFICATION BY THE STATE DEPARTMENT, OR LONGER IF
9 APPROVED BY THE STATE DEPARTMENT, VOIDS THE BILL, RETURNS ANY
10 AMOUNT UNLAWFULLY RECEIVED, AND MAKES EVERY REASONABLE
11 EFFORT TO RESOLVE ANY COLLECTION ACTIONS SO THAT THE RECIPIENT OR
12 THE ESTATE OF THE RECIPIENT HAS NO ADVERSE FINANCIAL
13 CONSEQUENCES IS NOT SUBJECT TO THE PROVISIONS OF SUBSECTION
14 (1)(a)(II.5)(A) OF THIS SECTION.

15 (B) In order to establish a claim for the CIVIL MONETARY penalty
16 established by ~~sub-subparagraph (A) of this subparagraph (H.5)~~
17 SUBSECTION (1)(a)(II.5)(A) OF THIS SECTION, a recipient or the estate of
18 a recipient, OR A PERSON ACTING ON BEHALF OF A RECIPIENT OR THE
19 ESTATE OF A RECIPIENT shall ~~forward a notice of claim to~~ NOTIFY the state
20 department. ~~and to the provider. The executive director of the state~~
21 ~~department shall promulgate rules for an informal hearing process for~~
22 ~~determination of the issue that shall allow a provider an opportunity to be~~
23 ~~heard.~~

24 (C) THE PROVISIONS OF SUBSECTION (1)(a)(II.5)(A) OF THIS
25 SECTION SHALL NOT APPLY IF A RECIPIENT KNOWINGLY MISREPRESENTS
26 THEIR MEDICAID COVERAGE STATUS TO A PROVIDER OF MEDICAL SERVICES
27 AND THE PROVIDER SUBMITS DOCUMENTATION TO THE STATE

1 DEPARTMENT THAT THE RECIPIENT KNOWINGLY MISREPRESENTED THEIR
2 MEDICAID COVERAGE STATUS AND THE DOCUMENTATION CLEARLY
3 ESTABLISHES A GOOD CAUSE BASIS FOR GRANTING AN EXCEPTION TO THE
4 PROVIDER.

5 (15) (a) THE STATE DEPARTMENT MAY REQUEST A WRITTEN
6 RESPONSE FROM ANY PROVIDER WHO FAILS TO COMPLY WITH THE RULES,
7 MANUALS, OR BULLETINS ISSUED BY THE STATE DEPARTMENT, STATE
8 BOARD, OR THE STATE DEPARTMENT'S FISCAL AGENT, OR FROM ANY
9 PROVIDER WHOSE ACTIVITIES ENDANGER THE HEALTH, SAFETY, OR
10 WELFARE OF MEDICAID RECIPIENTS. THE WRITTEN RESPONSE MUST
11 DESCRIBE HOW THE PROVIDER WILL COME INTO AND ENSURE FUTURE
12 COMPLIANCE. IF A WRITTEN RESPONSE IS REQUESTED, A PROVIDER HAS
13 THIRTY DAYS, OR LONGER IF APPROVED BY THE STATE DEPARTMENT, TO
14 SUBMIT THE WRITTEN RESPONSE.

15 (b) IF THE PROVIDER DOES NOT AGREE WITH THE STATE
16 DEPARTMENT'S FINDINGS THAT RESULTED IN THE REQUEST ISSUED
17 PURSUANT TO SUBSECTION (15)(a) OF THIS SECTION, THEN THE PROVIDER'S
18 WRITTEN RESPONSE MUST INCLUDE AN EXPLANATION AND SPECIFIC
19 REASONS FOR THE PROVIDER'S DISAGREEMENT.

20 **SECTION 3. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.