

CHAPTER 121

**HEALTH CARE POLICY AND FINANCING**

**HOUSE BILL 01-1040**

BY REPRESENTATIVE(S) Young, Miller, Bacon, Boyd, Clapp, Coleman, Daniel, Decker, Fairbank, Garcia, Grossman, Lee, Mace, Plant, Ragsdale, Romanoff, Sinclair, Stafford, Tochtrop, and Williams S.; also SENATOR(S) Reeves, Anderson, Lamborn, Linkhart, Taylor, Windels, Epps, Hanna, Hernandez, Matsunaka, May, and Nichol.

**AN ACT**

CONCERNING PENALTIES FOR FALSE MEDICAID CLAIMS.

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

**SECTION 1.** Article 4 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 11  
PENALTIES FOR FALSE  
MEDICAID CLAIMS**

**26-4-1101. Legislative declaration.** IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT ALL EFFORTS BE MADE TO ELIMINATE FRAUD AND ABUSE IN THE COLORADO MEDICAL ASSISTANCE PROGRAMS. TO ACCOMPLISH THIS GOAL, THE STATE DEPARTMENT MUST HAVE AVAILABLE ADMINISTRATIVE AND CIVIL REMEDIES AND SANCTIONS AGAINST PROVIDERS WHO PRESENT FALSE RECORDS, STATEMENTS, OR CLAIMS TO THE STATE DEPARTMENT, ITS FISCAL AGENT, OR OTHER STATE OFFICIALS OR EMPLOYEES.

**26-4-1102. Definitions.** AS USED IN THIS PART 11, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BENEFIT" MEANS ANY MEDICAL ASSISTANCE REIMBURSED OR REIMBURSABLE UNDER THIS ARTICLE.

(2) "CLAIM" MEANS ANY COMMUNICATION, WHETHER ORAL, WRITTEN, ELECTRONIC, OR MAGNETIC, THAT INCLUDES A REQUEST OR DEMAND FOR MONEY OR

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

PROPERTY AS REIMBURSEMENT FOR A BENEFIT. EACH ITEM LISTED WITHIN ANY COMMUNICATION THAT IDENTIFIES MULTIPLE ITEMS AS SEPARATELY REIMBURSABLE IS DEEMED A SEPARATE CLAIM.

(3) "COST DOCUMENT" MEANS ANY COST REPORT OR SIMILAR DOCUMENT THAT STATES INCOME OR EXPENSES AND IS OR MAY BE USED TO DETERMINE A RATE OF PAYMENT FOR A PROVIDER UNDER THIS ARTICLE.

(4) "PERSON" MEANS ANY INDIVIDUAL OR ENTITY HOLDING OR CAPABLE OF HOLDING A LEGAL OR BENEFICIAL INTEREST IN PROPERTY.

**26-4-1103. Unlawful act - exceptions.** (1) IT IS UNLAWFUL FOR ANY PERSON TO:

(a) INTENTIONALLY OR WITH RECKLESS DISREGARD MAKE OR CAUSE TO BE MADE ANY FALSE REPRESENTATION OF A MATERIAL FACT IN CONNECTION WITH A CLAIM;

(b) INTENTIONALLY OR WITH RECKLESS DISREGARD PRESENT OR CAUSE TO BE PRESENTED TO THE STATE DEPARTMENT A FALSE CLAIM FOR PAYMENT OR APPROVAL;

(c) INTENTIONALLY OR WITH RECKLESS DISREGARD PRESENT OR CAUSE TO BE PRESENTED ANY COST DOCUMENT REQUIRED BY THE MEDICAL ASSISTANCE PROGRAM THAT THE PERSON KNOWS CONTAINS A FALSE MATERIAL STATEMENT;

(d) AS TO SERVICES FOR WHICH A LICENSE IS REQUIRED, INTENTIONALLY OR WITH RECKLESS DISREGARD MAKE OR CAUSE TO BE MADE A CLAIM WITH KNOWLEDGE THAT THE INDIVIDUAL WHO FURNISHED THE SERVICES WAS NOT LICENSED TO PROVIDE SUCH SERVICES;

(e) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, INTENTIONALLY OR WITH RECKLESS DISREGARD OFFER, SOLICIT, RECEIVE, OR PAY ANY REMUNERATION, INCLUDING ANY KICKBACK, BRIBE, OR REBATE, DIRECTLY OR INDIRECTLY, OVERTLY OR COVERTLY, IN CASH OR IN KIND:

(I) IN RETURN FOR REFERRING AN INDIVIDUAL TO A PERSON FOR THE FURNISHING OR ARRANGING FOR THE FURNISHING OF ANY ITEM OR SERVICE FOR WHICH PAYMENT MAY BE MADE IN WHOLE OR IN PART UNDER THIS ARTICLE; OR

(II) IN RETURN FOR PURCHASING, LEASING, ORDERING, OR ARRANGING FOR OR RECOMMENDING PURCHASING, LEASING, ORDERING, OR ARRANGING FOR ANY GOOD, FACILITY, SERVICE, OR ITEM FOR WHICH PAYMENT MAY BE MADE IN WHOLE OR IN PART UNDER THIS ARTICLE.

(2) IT SHALL NOT BE UNLAWFUL UNDER PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION IF THE REMUNERATION OBTAINED BY THE PROVIDER OR OTHER ENTITY IS:

(a) PERMITTED PURSUANT TO SECTION 26-4-410.5 OR ANY SAFE HARBOR REGULATIONS OF THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES;

(b) PROPERLY DISCLOSED AND APPROPRIATELY REFLECTED IN THE CLAIMS OR COST DOCUMENTS SUBMITTED UNDER THIS ARTICLE;

(c) PAID BY AN EMPLOYER TO AN EMPLOYEE WHO HAS A BONA FIDE EMPLOYMENT RELATIONSHIP WITH SUCH EMPLOYER FOR EMPLOYMENT IN PROVIDING THE MEDICAL ASSISTANCE; OR

(d) PAID BY A VENDOR OF GOODS OR SERVICES TO A PERSON AUTHORIZED TO ACT AS A PURCHASING AGENT FOR A GROUP OF PROVIDERS AND:

(I) THE PERSON HAS A WRITTEN CONTRACT WITH THE PROVIDERS THAT SPECIFIES THE AMOUNT TO BE PAID TO THE PERSON WHICH AMOUNT MAY BE A FIXED AMOUNT OR A FIXED PERCENTAGE OF THE VALUE OF THE PURCHASES MADE BY THE PERSON; OR

(II) IN THE CASE OF A PROVIDER OF SERVICES, THE PERSON DISCLOSES, IN SUCH FORM AND MANNER AS THE STATE DEPARTMENT REQUIRES, TO THE PROVIDER AND, UPON REQUEST, TO THE STATE DEPARTMENT THE AMOUNT RECEIVED FROM EACH SUCH VENDOR WITH RESPECT TO PURCHASES MADE BY OR ON BEHALF OF THE PROVIDER.

(3) AS USED IN THIS PART 11, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "INTENTIONALLY" MEANS THAT, WITH RESPECT TO INFORMATION, THE PERSON HAS ACTUAL KNOWLEDGE OF THE FALSITY OF THE INFORMATION AND ACTS WITH SPECIFIC INTENT TO DEFRAUD.

(b) "RECKLESS DISREGARD" MEANS THAT THE PERSON ACTS WITH CONSCIOUS INDIFFERENCE TO THE TRUTH OR THE FALSITY OF THE INFORMATION. "RECKLESS DISREGARD" DOES NOT REQUIRE PROOF OF SPECIFIC INTENT TO DEFRAUD.

**26-4-1104. Restitution - civil penalties.** (1) (a) THE STATE DEPARTMENT MAY COMMENCE A CIVIL ACTION AGAINST ANY PERSON BELIEVED BY THE STATE DEPARTMENT TO HAVE VIOLATED THE PROVISIONS OF THIS PART 11.

(b) UPON FINDING THAT SUCH PERSON HAS INTENTIONALLY VIOLATED THE PROVISIONS OF THIS PART 11, THE COURT SHALL ORDER SUCH PERSON TO PAY TO THE STATE DEPARTMENT:

(I) FULL RESTITUTION IN THE AMOUNT OF ALL MEDICAL ASSISTANCE FOUND BY THE COURT TO HAVE BEEN RECEIVED BY THE PERSON BECAUSE OF SUCH VIOLATION; AND

(II) A CIVIL PENALTY OF FIVE THOUSAND DOLLARS PER CLAIM OR TWO TIMES THE AMOUNT OF ALL MEDICAL ASSISTANCE FOUND BY THE COURT TO HAVE BEEN RECEIVED BY THE PERSON BECAUSE OF SUCH VIOLATION OR BOTH.

(c) UPON FINDING THAT SUCH PERSON HAS, WITH RECKLESS DISREGARD, VIOLATED THE PROVISIONS OF THIS PART 11, THE COURT SHALL ORDER SUCH PERSON TO PAY TO THE STATE DEPARTMENT:

(I) FULL RESTITUTION IN THE AMOUNT OF ALL MEDICAL ASSISTANCE FOUND BY THE COURT TO HAVE BEEN RECEIVED BY THE PERSON BECAUSE OF SUCH VIOLATION; AND

(II) A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS PER CLAIM, BUT IN NO EVENT MORE THAN FIFTY THOUSAND DOLLARS, OR TWO TIMES THE AMOUNT OF ALL MEDICAL ASSISTANCE FOUND BY THE COURT TO HAVE BEEN RECEIVED BY THE

PERSON BECAUSE OF SUCH VIOLATION.

(2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, THE CIVIL PENALTY PROVIDED FOR IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION OR IN SUBPARAGRAPH (II) OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION SHALL BE LIMITED TO NOT MORE THAN THE AMOUNT OF ALL MEDICAL ASSISTANCE FOUND BY THE COURT TO HAVE BEEN RECEIVED BY THE PERSON BECAUSE OF SUCH VIOLATION IF:

(a) THE PERSON COMMITTING THE VIOLATION FURNISHED TO THE DEPARTMENT, ITS FISCAL AGENT, OR THE MEDICAID FRAUD UNIT OF THE DEPARTMENT OF LAW ALL INFORMATION KNOWN TO SUCH PERSON ABOUT THE VIOLATION WITHIN THIRTY DAYS AFTER THE DATE ON WHICH THE PERSON FIRST OBTAINED THE INFORMATION; AND

(b) SUCH PERSON FULLY COOPERATED WITH ANY INVESTIGATION OF SUCH VIOLATION AND AT THE TIME THAT THE PERSON FURNISHED THE DEPARTMENT WITH THE INFORMATION NO CRIMINAL PROSECUTION, CIVIL ACTION, OR ADMINISTRATIVE ACTION HAD COMMENCED WITH RESPECT TO THE VIOLATION, AND THE PERSON DID NOT HAVE ACTUAL KNOWLEDGE OF THE EXISTENCE OF AN INVESTIGATION INTO SUCH VIOLATION.

(3) (a) IN ANY ACTION COMMENCED UNDER THIS SECTION WHETHER TRIED BY A COURT OR TO A JURY, THE AMOUNT OF RESTITUTION AND PENALTY SHALL BE DETERMINED BY THE COURT.

(b) IN ANY ACTION COMMENCED UNDER THIS SECTION, THE STANDARD OF PROOF SHALL BE BY A PREPONDERANCE OF THE EVIDENCE.

(c) IN ORDER TO ASSIST THE COURT IN DETERMINING THE AMOUNT OF RESTITUTION, THE DEPARTMENT OF LAW, AFTER APPROPRIATE INVESTIGATION, SHALL RECOMMEND TO THE COURT AN AMOUNT THAT WOULD MAKE THE STATE DEPARTMENT WHOLE WITH RESPECT TO THE MONEY WRONGFULLY RECEIVED PURSUANT TO THIS ARTICLE AND ALL OTHER MEASURABLE MONETARY DAMAGES DIRECTLY RELATED TO THE CAUSE OF ACTION. IF THE DEFENDANT DISAGREES WITH THE RECOMMENDATION OF THE DEPARTMENT OF LAW, THE DEFENDANT SHALL BE ENTITLED TO INTRODUCE EVIDENCE IN MITIGATION OF THE AMOUNT RECOMMENDED.

(4) THE CAUSE OF ACTION, PENALTIES, AND REMEDIES PROVIDED BY THIS PART 11 ARE NOT EXCLUSIVE, BUT ARE IN ADDITION TO ANY OTHER AVAILABLE CIVIL, CRIMINAL, OR ADMINISTRATIVE ACTION, PENALTY, OR REMEDY; EXCEPT THAT, IF A PENALTY IS ALSO AVAILABLE UNDER FEDERAL LAW, THE PENALTY UNDER THIS PART 11 AND THE FEDERAL LAW SHALL NOT BE IMPOSED UPON THE SAME DOLLAR OF OVERPAYMENT. ANY PENALTY UNDER FEDERAL LAW SHALL APPLY TO THE FEDERAL PORTION OF THE OVERPAYMENT, AND THE PENALTY UNDER THIS PART 11 SHALL APPLY TO THE STATE PORTION OF THE OVERPAYMENT.

**SECTION 2.** 13-80-103.5 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**13-80-103.5. General limitation of actions - six years.** (1) The following actions shall be commenced within six years after the cause of action accrues, and not

thereafter:

(e) ALL ACTIONS BROUGHT FOR RESTITUTION AND CIVIL PENALTIES PURSUANT TO SECTION 26-4-1104, C.R.S.

**SECTION 3. Effective date - applicability.** This act shall take effect July 1, 2001, and shall apply to causes of action arising on or after said date.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 12, 2001