

CHAPTER 376

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 17-1139

BY REPRESENTATIVE(S) Landgraf and Michaelson Jenet, Becker K., Buckner, Carver, Esgar, Exum, Ginal, Hansen, Hooton, Jackson, Kennedy, Kraft-Tharp, Lawrence, Lee, Lontine, McLachlan, Mitsch Bush, Pettersen, Rosenthal, Van Winkle, Winter, Young;
also SENATOR(S) Martinez Humenik and Kefalas, Aguilar, Kerr, Merrifield, Moreno, Todd.

AN ACT**CONCERNING IMPROVING MEDICAID CLIENT PROTECTIONS THROUGH EFFECTIVE ENFORCEMENT OF MEDICAID PROVIDER REQUIREMENTS.**

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

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

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

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

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

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

(e) The state department should have intermediate options to ensure that

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

providers out of compliance can come into compliance and remain enrolled in the medicaid program.

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

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

25.5-4-301. Recoveries - overpayments - penalties - interest - adjustments - liens - review or audit procedures. (1) (a) (II.5) (A) A provider of medical services ~~shall be liable to a recipient or the estate of a recipient if the provider knowingly receives or seeks collection through a third party of an amount in violation of subparagraph (I) of this paragraph (a). The provider shall be liable for the amount unlawfully received, statutory interest on the amount received from the date of receipt until the date of repayment, plus a civil monetary penalty equal to one-half of the amount unlawfully received~~ WHO BILLS OR SEEKS COLLECTION THROUGH A THIRD PARTY FROM A RECIPIENT OR THE ESTATE OF A RECIPIENT FOR MEDICAL SERVICES AUTHORIZED BY TITLE XIX OF THE SOCIAL SECURITY ACT IN AN AMOUNT IN VIOLATION OF SUBSECTION (1)(a)(I) OF THIS SECTION IS LIABLE FOR AND SUBJECT TO THE FOLLOWING: A REFUND TO THE RECIPIENT OF ANY AMOUNT UNLAWFULLY RECEIVED FROM THE RECIPIENT, PLUS STATUTORY INTEREST FROM THE DATE OF THE RECEIPT UNTIL THE DATE OF REPAYMENT; A CIVIL MONETARY PENALTY OF ONE HUNDRED DOLLARS FOR EACH VIOLATION OF SUBSECTION (1)(a)(I) OF THIS SECTION; AND ALL AMOUNTS SUBMITTED TO A COLLECTION AGENCY IN THE NAME OF THE MEDICAID RECIPIENT. **When determining income or resources for purposes of determining eligibility or benefit amounts for any state-funded program under this title** TITLE 25.5, the state department shall exclude from consideration any ~~moneys~~ MONEY received by a recipient pursuant to this ~~subparagraph (II.5)~~ SUBSECTION (1)(a)(II.5). THE IMPOSITION OF A CIVIL MONETARY PENALTY BY THE STATE DEPARTMENT MAY BE APPEALED ADMINISTRATIVELY.

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

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

(D) THE PROVISIONS OF SUBSECTION (1)(a)(II.5)(A) OF THIS SECTION SHALL NOT

APPLY IF A RECIPIENT KNOWINGLY MISREPRESENTS THEIR MEDICAID COVERAGE STATUS TO A PROVIDER OF MEDICAL SERVICES AND THE PROVIDER SUBMITS DOCUMENTATION TO THE STATE DEPARTMENT THAT THE RECIPIENT KNOWINGLY MISREPRESENTED THEIR MEDICAID COVERAGE STATUS AND THE DOCUMENTATION CLEARLY ESTABLISHES A GOOD CAUSE BASIS FOR GRANTING AN EXCEPTION TO THE PROVIDER.

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

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

SECTION 3. 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: June 6, 2017