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LAW/RWH

SENATE, No. 2141

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 21, 2010

Sponsored by:

Senator THOMAS GOODWIN

District 14 (Mercer and Middlesex)

Senator JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblyman MICHAEL PATRICK CARROLL

District 25 (Morris)

Assemblywoman CAROLINE CASAGRANDE

District 12 (Mercer and Monmouth)

Co-Sponsored by:

Senator O'Toole and Assemblyman O'Scanlon

SYNOPSIS

Increases penalties against Medicaid fraud.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/29/2010)

S2141 GOODWIN, VAN DREW

2

1 AN ACT concerning penalties for Medicaid fraud, amending
2 N.J.S.2C:44-1, and amending and supplementing P.L.1968,
3 c.413.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. N.J.S.2C:44-1 is amended to read as follows:

9 2C:44-1. a. In determining the appropriate sentence to be
10 imposed on a person who has been convicted of an offense, the
11 court shall consider the following aggravating circumstances:

12 (1) The nature and circumstances of the offense, and the role of
13 the actor therein, including whether or not it was committed in an
14 especially heinous, cruel, or depraved manner;

15 (2) The gravity and seriousness of harm inflicted on the victim,
16 including whether or not the defendant knew or reasonably should
17 have known that the victim of the offense was particularly
18 vulnerable or incapable of resistance due to advanced age, ill-
19 health, or extreme youth, or was for any other reason substantially
20 incapable of exercising normal physical or mental power of
21 resistance;

22 (3) The risk that the defendant will commit another offense;

23 (4) A lesser sentence will depreciate the seriousness of the
24 defendant's offense because it involved a breach of the public trust
25 under chapters 27 and 30, or the defendant took advantage of a
26 position of trust or confidence to commit the offense;

27 (5) There is a substantial likelihood that the defendant is
28 involved in organized criminal activity;

29 (6) The extent of the defendant's prior criminal record and the
30 seriousness of the offenses of which he has been convicted;

31 (7) The defendant committed the offense pursuant to an
32 agreement that he either pay or be paid for the commission of the
33 offense and the pecuniary incentive was beyond that inherent in the
34 offense itself;

35 (8) The defendant committed the offense against a police or
36 other law enforcement officer, correctional employee or fireman,
37 acting in the performance of his duties while in uniform or
38 exhibiting evidence of his authority; the defendant committed the
39 offense because of the status of the victim as a public servant; or the
40 defendant committed the offense against a sports official, athletic
41 coach or manager, acting in or immediately following the
42 performance of his duties or because of the person's status as a
43 sports official, coach or manager;

44 (9) The need for deterring the defendant and others from
45 violating the law;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (10) The offense involved fraudulent or deceptive practices
2 committed against any department or division of State government;
- 3 (11) The imposition of a fine, penalty or order of restitution
4 without also imposing a term of imprisonment would be perceived
5 by the defendant or others merely as part of the cost of doing
6 business, or as an acceptable contingent business or operating
7 expense associated with the initial decision to resort to unlawful
8 practices;
- 9 (12) The defendant committed the offense against a person who
10 he knew or should have known was 60 years of age or older, or
11 disabled; and
- 12 (13) The defendant, while in the course of committing or
13 attempting to commit the crime, including the immediate flight
14 therefrom, used or was in possession of a stolen motor vehicle.
- 15 b. In determining the appropriate sentence to be imposed on a
16 person who has been convicted of an offense, the court may
17 properly consider the following mitigating circumstances:
- 18 (1) The defendant's conduct neither caused nor threatened
19 serious harm;
- 20 (2) The defendant did not contemplate that his conduct would
21 cause or threaten serious harm;
- 22 (3) The defendant acted under a strong provocation;
- 23 (4) There were substantial grounds tending to excuse or justify
24 the defendant's conduct, though failing to establish a defense;
- 25 (5) The victim of the defendant's conduct induced or facilitated
26 its commission;
- 27 (6) The defendant has compensated or will compensate the
28 victim of his conduct for the damage or injury that he sustained, or
29 will participate in a program of community service;
- 30 (7) The defendant has no history of prior delinquency or
31 criminal activity or has led a law-abiding life for a substantial
32 period of time before the commission of the present offense;
- 33 (8) The defendant's conduct was the result of circumstances
34 unlikely to recur;
- 35 (9) The character and attitude of the defendant indicate that he is
36 unlikely to commit another offense;
- 37 (10) The defendant is particularly likely to respond affirmatively
38 to probationary treatment;
- 39 (11) The imprisonment of the defendant would entail excessive
40 hardship to himself or his dependents;
- 41 (12) The willingness of the defendant to cooperate with law
42 enforcement authorities;
- 43 (13) The conduct of a youthful defendant was substantially
44 influenced by another person more mature than the defendant.
- 45 c. (1) A plea of guilty by a defendant or failure to so plead
46 shall not be considered in withholding or imposing a sentence of
47 imprisonment.

1 (2) When imposing a sentence of imprisonment the court shall
2 consider the defendant's eligibility for release under the law
3 governing parole, including time credits awarded pursuant to Title
4 30 of the Revised Statutes, in determining the appropriate term of
5 imprisonment.

6 d. Presumption of imprisonment. The court shall deal with a
7 person who has been convicted of a crime of the first or second
8 degree, or a crime of the third degree where the court finds that the
9 aggravating factor in paragraph (5) of subsection a. applies, by
10 imposing a sentence of imprisonment unless, having regard to the
11 character and condition of the defendant, it is of the opinion that his
12 imprisonment would be a serious injustice which overrides the need
13 to deter such conduct by others. Notwithstanding the provisions of
14 subsection e. of this section, the court shall deal with a person who
15 has been convicted of theft of a motor vehicle or of the unlawful
16 taking of a motor vehicle and who has previously been convicted of
17 either offense by imposing a sentence of imprisonment unless,
18 having regard to the character and condition of the defendant, it is
19 of the opinion that his imprisonment would be a serious injustice
20 which overrides the need to deter such conduct by others.

21 e. The court shall deal with a person convicted of an offense
22 other than a crime of the first or second degree, who has not
23 previously been convicted of an offense, without imposing a
24 sentence of imprisonment unless, having regard to the nature and
25 circumstances of the offense and the history, character and
26 condition of the defendant, it is of the opinion that his imprisonment
27 is necessary for the protection of the public under the criteria set
28 forth in subsection a., except that this subsection shall not apply if
29 the court finds that the aggravating factor in paragraph (5) of
30 subsection a. applies if the person is convicted of any of the
31 following crimes of the third degree: theft of a motor vehicle;
32 unlawful taking of a motor vehicle; eluding; if the person is
33 convicted of a crime of the third degree constituting use of a false
34 government document in violation of subsection c. of section 1 of
35 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime
36 of the third degree constituting distribution, manufacture or
37 possession of an item containing personal identifying information in
38 violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-
39 17.3); if the person is convicted of a crime of the third or fourth
40 degree constituting bias intimidation in violation of N.J.S.2C:16-1;
41 or if the person is convicted of a crime of the third degree under
42 section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if the person is
43 convicted of a crime of the third or fourth degree under the
44 provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-29 or
45 C.2C:33-30).

46 f. Presumptive Sentences. (1) Except for the crime of murder,
47 unless the preponderance of aggravating or mitigating factors, as set
48 forth in subsections a. and b., weighs in favor of a higher or lower

1 term within the limits provided in N.J.S.2C:43-6, when a court
2 determines that a sentence of imprisonment is warranted, it shall
3 impose sentence as follows:

4 (a) To a term of 20 years for aggravated manslaughter or
5 kidnapping pursuant to paragraph (1) of subsection c. of
6 N.J.S.2C:13-1 when the offense constitutes a crime of the first
7 degree;

8 (b) Except as provided in paragraph (a) of this subsection to a
9 term of 15 years for a crime of the first degree;

10 (c) To a term of seven years for a crime of the second degree;

11 (d) To a term of four years for a crime of the third degree; and

12 (e) To a term of nine months for a crime of the fourth degree.

13 In imposing a minimum term pursuant to 2C:43-6b., the
14 sentencing court shall specifically place on the record the
15 aggravating factors set forth in this section which justify the
16 imposition of a minimum term.

17 Unless the preponderance of mitigating factors set forth in
18 subsection b. weighs in favor of a lower term within the limits
19 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a
20 presumptive term of life imprisonment. Unless the preponderance
21 of aggravating and mitigating factors set forth in subsections a. and
22 b. weighs in favor of a higher or lower term within the limits
23 authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a
24 presumptive term of 50 years' imprisonment; sentences imposed
25 pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years'
26 imprisonment; and sentences imposed pursuant to 2C:43-7a.(4)
27 shall have a presumptive term of seven years' imprisonment.

28 In imposing a minimum term pursuant to 2C:43-7b., the
29 sentencing court shall specifically place on the record the
30 aggravating factors set forth in this section which justify the
31 imposition of a minimum term.

32 (2) In cases of convictions for crimes of the first or second
33 degree where the court is clearly convinced that the mitigating
34 factors substantially outweigh the aggravating factors and where the
35 interest of justice demands, the court may sentence the defendant to
36 a term appropriate to a crime of one degree lower than that of the
37 crime for which he was convicted. If the court does impose
38 sentence pursuant to this paragraph, or if the court imposes a
39 noncustodial or probationary sentence upon conviction for a crime
40 of the first or second degree, such sentence shall not become final
41 for 10 days in order to permit the appeal of such sentence by the
42 prosecution.

43 g. Imposition of Noncustodial Sentences in Certain Cases. If
44 the court, in considering the aggravating factors set forth in
45 subsection a., finds the aggravating factor in paragraph a.(2), a.(5),
46 a.(10), or a.(12) and does not impose a custodial sentence, the court
47 shall specifically place on the record the mitigating factors which
48 justify the imposition of a noncustodial sentence.

1 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
2 11), the presumption of imprisonment as provided in subsection d.
3 of this section shall not preclude the admission of a person to the
4 Intensive Supervision Program, established pursuant to the Rules
5 Governing the Courts of the State of New Jersey.
6 (cf: P.L.2007, c.341, s.7)

7
8 2. Section 17 of P.L.1968, c.413 (C.30:4D-17) is amended to
9 read as follows:

10 17. (a) Any person who willfully obtains benefits under this act
11 to which he is not entitled or in a greater amount than that to which
12 he is entitled and any provider who willfully receives medical
13 assistance payments to which he is not entitled or in a greater
14 amount than that to which he is entitled is guilty of a [high
15 misdemeanor and, upon conviction thereof, shall be liable to a
16 penalty of not more than \$10,000.00 or to imprisonment for not
17 more than 3 years or both] crime of the third degree, provided,
18 however, that the presumption of nonimprisonment set forth in
19 subsection e. of N.J.S.2C:44-1 for persons who have not previously
20 been convicted of an offense shall not apply to a person who is
21 convicted under the provisions of this subsection.

22 (b) Any provider, or any person, firm, partnership, corporation
23 or entity, who:

24 (1) Knowingly and willfully makes or causes to be made any
25 false statement or representation of a material fact in any cost study,
26 claim form, or any document necessary to apply for or receive any
27 benefit or payment under this act; or

28 (2) At any time knowingly and willfully makes or causes to be
29 made any false statement, written or oral, of a material fact for use
30 in determining rights to such benefit or payment under this act; or

31 (3) Conceals or fails to disclose the occurrence of an event
32 which

33 (i) affects his initial or continued right to any such benefit or
34 payment, or

35 (ii) affects the initial or continued right to any such benefit or
36 payment of any provider or any person, firm, partnership,
37 corporation or other entity in whose behalf he has applied for or is
38 receiving such benefit or payment

39 with an intent to fraudulently secure benefits or payments not
40 authorized under this act or in greater amount than that which is
41 authorized under this act; or

42 (4) Knowingly and willfully converts benefits or payments or
43 any part thereof received for the use and benefit of any provider or
44 any person, firm, partnership, corporation or other entity to a use
45 other than the use and benefit of such provider or such person, firm,
46 partnership, corporation or entity; is guilty of a [high misdemeanor
47 and, upon conviction thereof, shall be liable to a penalty of not
48 more than \$10,000.00 for the first and each subsequent offense or to

1 imprisonment for not more than three years or both] crime of the
2 third degree, provided, however, that the presumption of
3 nonimprisonment set forth in subsection e. of N.J.S.2C:44-1 for
4 persons who have not previously been convicted of an offense shall
5 not apply to a person who is convicted under the provisions of this
6 subsection.

7 (c) Any provider, or any person, firm, partnership, corporation
8 or entity who solicits, offers, or receives any kickback, rebate or
9 bribe in connection with:

10 (1) The furnishing of items or services for which payment is or
11 may be made in whole or in part under this act; or

12 (2) The furnishing of items or services whose cost is or may be
13 reported in whole or in part in order to obtain benefits or payments
14 under this act; or

15 (3) The receipt of any benefit or payment under this act, is
16 guilty of a [high misdemeanor and, upon conviction thereof, shall
17 be liable to a penalty of not more than \$10,000.00 or to
18 imprisonment for not more than 3 years or both] crime of the third
19 degree, provided, however, that the presumption of
20 nonimprisonment set forth in subsection e. of N.J.S.2C:44-1 for
21 persons who have not previously been convicted of an offense shall
22 not apply to a person who is convicted under the provisions of this
23 subsection.

24 This subsection shall not apply to (A) a discount or other
25 reduction in price under this act if the reduction in price is properly
26 disclosed and appropriately reflected in the costs claimed or charges
27 made under this act; and (B) any amount paid by an employer to an
28 employee who has a bona fide employment relationship with such
29 employer for employment in the provision of covered items or
30 services.

31 (d) Whoever knowingly and willfully makes or causes to be
32 made or induces or seeks to induce the making of any false
33 statement or representation of a material fact with respect to the
34 conditions or operations of any institution or facility in order that
35 such institution or facility may qualify either upon initial
36 certification or recertification as a hospital, skilled nursing facility,
37 intermediate care facility, or health agency, thereby entitling them
38 to receive payments under this act, shall be guilty of a [high
39 misdemeanor and shall be liable to a penalty of not more than
40 \$3,000.00 or imprisonment for not more than 1 year or both] crime
41 of the fourth degree.

42 (e) Any person, firm, corporation, partnership, or other legal
43 entity who violates the provisions of any of the foregoing
44 subsections of this section or any provisions of section 3 of
45 P.L.2007, c.265 (C.2A:32C-3), shall, in addition to any other
46 penalties provided by law, be liable to civil penalties of (1) payment
47 of interest on the amount of the excess benefits or payments at the

1 maximum legal rate in effect on the date the payment was made to
2 said person, firm, corporation, partnership or other legal entity for
3 the period from the date upon which payment was made to the date
4 upon which repayment is made to the State, (2) payment of an
5 amount not to exceed three-fold the amount of such excess benefits
6 or payments, and (3) payment in the sum of not less than and not
7 more than the civil penalty allowed under the federal False Claims
8 Act (31 U.S.C. s.3729 et seq.), as it may be adjusted for inflation
9 pursuant to the Federal Civil Penalties Inflation Adjustment Act of
10 1990, Pub.L.101-410 for each excessive claim for assistance,
11 benefits or payments.

12 (f) Any person, firm, corporation, partnership or other legal
13 entity, other than an individual recipient of medical services
14 reimbursable by the Division of Medical Assistance and Health
15 Services, who, without intent to violate this act, obtains medical
16 assistance or other benefits or payments under this act in excess of
17 the amount to which he is entitled, shall be liable to a civil penalty
18 of payment of interest on the amount of the excess benefits or
19 payments at the maximum legal rate in effect on the date the benefit
20 or payment was made to said person, firm, corporation, partnership,
21 or other legal entity for the period from September 15, 1976 or the
22 date upon which payment was made, whichever is later, to the date
23 upon which repayment is made to the State, provided, however, that
24 no such person, firm, corporation, partnership or other legal entity
25 shall be liable to such civil penalty when excess medical assistance
26 or other benefits or payments under this act are obtained by such
27 person, firm, corporation, partnership or other legal entity as a
28 result of error made by the Division of Medical Assistance and
29 Health Services, as determined by said division; provided, further,
30 that if preliminary notification of an overpayment is not given to a
31 provider by the division within 180 days after completion of the
32 field audit as defined by regulation, no interest shall accrue during
33 the period beginning 180 days after completion of the field audit
34 and ending on the date preliminary notification is given to the
35 provider.

36 (g) All interest and civil penalties provided for in this act and all
37 medical assistance and other benefits to which a person, firm,
38 corporation, partnership, or other legal entity was not entitled shall
39 be recovered in an administrative proceeding held pursuant to the
40 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
41 seq.), except that recovery actions against minors or incompetents
42 shall be initiated in a court of competent jurisdiction.

43 (h) Upon the failure of any person, firm, corporation,
44 partnership or other legal entity to comply within 10 days after
45 service of any order of the director or his designee directing
46 payment of any amount found to be due pursuant to subsection (g)
47 of this section, or at any time prior to any final agency adjudication
48 not involving a recipient or former recipient of benefits under this

1 act, the director may issue a certificate to the clerk of the Superior
2 Court that such person, firm, corporation, partnership or other legal
3 entity is indebted to the State for the payment of such amount. A
4 copy of such certificate shall be served upon the person, firm,
5 corporation, partnership or other legal entity against whom the
6 order was entered. Thereupon the clerk shall immediately enter
7 upon his record of docketed judgments the name of the person,
8 firm, corporation, partnership or other legal entity so indebted, and
9 of the State, a designation of the statute under which such amount is
10 found to be due, the amount due, and the date of the certification.
11 Such entry shall have the same force and effect as the entry of a
12 docketed judgment in the Superior Court. Such entry, however,
13 shall be without prejudice to the right of appeal to the Appellate
14 Division of the Superior Court from the final order of the director or
15 his designee.

16 (i) In order to satisfy any recovery claim asserted against a
17 provider under this section, whether or not that claim has been the
18 subject of final agency adjudication, the division or its fiscal agents
19 is authorized to withhold funds otherwise payable under this act to
20 the provider.

21 (j) The Attorney General may, when requested by the
22 commissioner or his agent, apply ex parte to the Superior Court to
23 compel any party to comply forthwith with a subpoena issued under
24 this act. Any party who, having been served with a subpoena issued
25 pursuant to the provisions of this act, fails either to attend any
26 hearing, or to appear or be examined, to answer any question or to
27 produce any books, records, accounts, papers or documents, shall be
28 liable to a penalty of \$500.00 for each such failure, to be recovered
29 in the name of the State in a summary civil proceeding to be
30 initiated in the Superior Court. The Attorney General shall
31 prosecute the actions for the recovery of the penalty prescribed in
32 this section when requested to do so by the commissioner or his
33 agent and when, in the judgment of the Attorney General, the facts
34 and law warrant such prosecution. Such failure on the part of the
35 party shall be punishable as contempt of court by the court in the
36 same manner as like failure is punishable in an action pending in
37 the court when the matter is brought before the court by motion
38 filed by the Attorney General and supported by affidavit stating the
39 circumstances.

40 (k) Notwithstanding the provisions of N.J.S.2C:43-3 to the
41 contrary, but in addition to any other penalty or disposition that may
42 be imposed by law:

43 (1) a person who violates the provisions of subsection (a), (b),
44 or (c) of this section shall be liable to a penalty of not less than
45 \$15,000 and not more than \$25,000 for each violation; and

46 (2) a person who violates the provisions of subsection (d) of this
47 section shall be liable to a penalty of not less than \$10,000 and not
48 more than \$25,000 for each violation.

1 (l) A person who violates the provisions of subsection (a), (b),
2 or (c) of this section under circumstances in which the aggregate
3 amount obtained or sought to be obtained is \$1,000 or more, who
4 has previously been convicted of a violation of the provisions of
5 subsection (a), (b), or (c) of this section within 10 years of the
6 current violation, under circumstances where the aggregate amount
7 obtained or sought to be obtained was \$1,000 or more, is guilty of a
8 crime of the second degree and, in addition to any other penalty or
9 disposition authorized by law and notwithstanding the provisions of
10 N.J.S.2C:43-3 to the contrary, shall be liable to a penalty of not less
11 than \$25,000 and not more than \$150,000 for each such repeat
12 violation.

13 (cf: P.L.2007, c.265, s.16)

14

15 3. (New section) In addition to any other action authorized or
16 required by law, the Attorney General shall refer any matter
17 regarding a person who is licensed or otherwise authorized to
18 practice a health care profession in this State pursuant to Title 45 or
19 Title 52 of the Revised Statutes and has been convicted of an
20 offense under the provisions of section 17 of P.L.1968, c.413
21 (C.30:4D-17), to the appropriate professional and occupational
22 licensing board within the Division of Consumer Affairs in the
23 Department of Law and Public Safety or the Director of the
24 Division of Consumer Affairs, as applicable, for such action as they
25 determine appropriate regarding that person's license or other
26 authorization to practice as a health care professional.

27

28 4. (New Section) Nothing in section 17 of P.L.1968, c.413
29 (C.30:4D-17) or in section 3 of P.L. , c. (pending before the
30 Legislature as this bill) shall be construed to preclude the
31 indictment or conviction for any other offense defined by law, or to
32 impair or limit the discretion and authority of the State regarding
33 any civil action, criminal prosecution, or other action authorized by
34 law.

35

36 5. This act shall take effect immediately.

37

38

39

STATEMENT

40

41 This bill increases the existing State statutory penalties for
42 committing Medicaid fraud, consistent with recommendations in the
43 Governor's proposed budget for Fiscal Year 2011, in order to
44 strengthen deterrence against any attempt to cheat the Medicaid
45 program of State and federal funds that are intended to serve the
46 health care needs of the medically indigent.

47

The specific provisions are as follows:

- 1 • The bill amends the sentencing provisions of Title 2C of the New
2 Jersey Statutes, at N.J.S.2C:44-1, to include the aggravating
3 factor set forth in paragraph (10) of subsection a. of that section
4 among the aggravating factors which require a sentencing court
5 that imposes a noncustodial sentence to “specifically place on the
6 record the mitigating factors which justify the imposition of a
7 noncustodial sentence.” The aggravating factor in paragraph (10)
8 applies in cases where “the offense involved fraudulent or
9 deceptive practices committed against any department or division
10 of State government.” This bill is intended to ensure that the
11 decision not to impose a custodial sentence in a Medicaid fraud
12 case, as well as other fraud involving public agencies or public
13 funds, is given especially careful consideration by the sentencing
14 court, since the matter involves fraud against the public.
- 15 • In addition, the bill makes the following revisions in section 17 of
16 P.L.1968, c.413 (C.30:4D-17), which is the statute governing
17 Medicaid fraud, to strengthen its penalty provisions:
- 18 -- upgrades certain offenses involving Medicaid fraud from a
19 “high misdemeanor” to a crime of the third degree (punishable by a
20 fine or by imprisonment for between three and five years, or both)
21 or a crime of the fourth degree (punishable by a fine or by
22 imprisonment for not more than 18 months, or both);
- 23 -- creates new mandatory monetary penalties for Medicaid fraud
24 offenses, which are in addition to any other penalty that may be
25 imposed by law, of not less than \$15,000 and not more than
26 \$25,000 for a crime of the third degree, and not less than \$10,000
27 and not more than \$25,000 for a crime of the fourth degree;
- 28 -- provides that the presumption against imprisonment set forth
29 in subsection e. of N.J.S.2C:44-1, for persons who have not been
30 previously convicted of an offense, will not apply to an offense
31 involving Medicaid fraud that is defined as a crime of the third
32 degree under this bill; and
- 33 -- creates a new crime of the second degree, with a monetary
34 penalty of not less than \$25,000 and not more than \$150,000, for
35 persons convicted of repeated Medicaid fraud offenses under certain
36 circumstances (specifically, where the aggregate amount obtained
37 or sought to be obtained is \$1,000 or more, and the person has
38 previously been convicted of such a violation within 10 years of the
39 current violation, under circumstances where the aggregate amount
40 obtained or sought to be obtained was also \$1,000 or more).
- 41 • The bill further provides that, in the case of a person who is
42 licensed or otherwise authorized to practice a health care
43 profession in this State and who has been convicted of Medicaid
44 fraud, the Attorney General, in addition to any other action
45 authorized or required by law, is to refer that matter to the
46 appropriate professional and occupational licensing board within
47 the Division of Consumer Affairs or to the director of the
48 division, as applicable, for such action as they determine

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- 1 appropriate regarding that person's license or other authorization
2 to practice as a health care professional.
- 3 • Nothing in the provisions of this bill is to be construed to
4 preclude the indictment or conviction for any other offense
5 defined by law, or to impair or limit the discretion and authority
6 of the State regarding any civil action, criminal prosecution, or
7 other action authorized by law.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2141

STATE OF NEW JERSEY

DATED: JUNE 23, 2010

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2141.

The bill increases the existing State statutory penalties for committing Medicaid fraud, consistent with recommendations in the Governor's proposed budget for Fiscal Year 2011, in order to strengthen deterrence against any attempt to cheat the Medicaid program of State and federal funds that are intended to serve the health care needs of the medically indigent.

The specific provisions are as follows:

- The bill amends the sentencing provisions of Title 2C of the New Jersey Statutes, at N.J.S.2C:44-1, to include the aggravating factor set forth in paragraph (10) of subsection a. of that section among the aggravating factors which require a sentencing court that imposes a noncustodial sentence to “specifically place on the record the mitigating factors which justify the imposition of a noncustodial sentence.” The aggravating factor in paragraph (10) applies in cases where “the offense involved fraudulent or deceptive practices committed against any department or division of State government.” This bill is intended to ensure that the decision not to impose a custodial sentence in a Medicaid fraud case, as well as other fraud involving public agencies or public funds, is given especially careful consideration by the sentencing court, since the matter involves fraud against the public.
- In addition, the bill makes the following revisions in section 17 of P.L.1968, c.413 (C.30:4D-17), which is the statute governing Medicaid fraud, to strengthen its penalty provisions:
 - upgrades certain offenses involving Medicaid fraud from a “high misdemeanor” to a crime of the third degree (punishable by a fine or by imprisonment for between three and five years, or both) or a crime of the fourth degree (punishable by a fine or by imprisonment for not more than 18 months, or both);
 - creates new mandatory monetary penalties for Medicaid fraud offenses, which are in addition to any other penalty that may be imposed by law, of not less than \$15,000 and not more than \$25,000 for a crime of the third degree, and not less than \$10,000 and not more than \$25,000 for a crime of the fourth degree;

-- provides that the presumption against imprisonment set forth in subsection e. of N.J.S.2C:44-1, for persons who have not been previously convicted of an offense, will not apply to an offense involving Medicaid fraud that is defined as a crime of the third degree under this bill; and

-- creates a new crime of the second degree, with a monetary penalty of not less than \$25,000 and not more than \$150,000, for persons convicted of repeated Medicaid fraud offenses under certain circumstances (specifically, where the aggregate amount obtained or sought to be obtained is \$1,000 or more, and the person has previously been convicted of such a violation within 10 years of the current violation, under circumstances where the aggregate amount obtained or sought to be obtained was also \$1,000 or more).

- The bill further provides that, in the case of a person who is licensed or otherwise authorized to practice a health care profession in this State and who has been convicted of Medicaid fraud, the Attorney General, in addition to any other action authorized or required by law, is to refer that matter to the appropriate professional and occupational licensing board within the Division of Consumer Affairs or to the director of the division, as applicable, for such action as they determine appropriate regarding that person's license or other authorization to practice as a health care professional.
- Nothing in the provisions of this bill is to be construed to preclude the indictment or conviction for any other offense defined by law, or to impair or limit the discretion and authority of the State regarding any civil action, criminal prosecution, or other action authorized by law.

FISCAL IMPACT:

This bill is intended to reduce Medicaid fraud, and consequently, restraint future State Medicaid costs. In addition, the enhanced financial penalties may increase State revenues. It is noted that the federal government would be credited for at least 50% of any monies recovered as a result of this act, depending on the actual federal Medicaid assistance percentage at the time the recovery is obtained.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2141
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JULY 19, 2010

SUMMARY

- Synopsis:** Increases penalties against Medicaid fraud.
- Type of Impact:** A possible increase in Medicaid recoveries, which would offset an equal amount of Medicaid expenditures.
- Agencies Affected:** Departments of Children and Families, Health and Senior Services, Human Services, Law and Public Safety, Treasury, and the Judiciary.

Office of Legislative Services Estimate

Fiscal Impact	<u>Years 1 - 3</u>
State Cost	A possible reduction in Medicaid expenditures that cannot be determined.
State Revenue	A possible increase in Medicaid recoveries that cannot be determined.

- During the FY 2007 – FY 2009 period, the State reported to the federal government that Fraud, Waste and Abuse Efforts resulted in gross recoveries between \$1.5 million and \$1.9 million. For the first quarter of FY 2010, gross recoveries were \$2.1 million on an annualized basis.

BILL DESCRIPTION

Senate Bill No. 2141 of 2010 increases State statutory penalties for committing Medicaid fraud in order to strengthen deterrence against any attempt to cheat the Medicaid program of funds that are intended to serve the health care needs of the medically indigent. The legislation:

- Creates a new mandatory monetary penalty for Medicaid fraud offenses of not less than \$15,000 and not more than \$25,000 for a crime of the third degree, and not less than \$10,000 and not more than \$25,000 for a crime of the fourth degree.
- Creates a new crime of the second degree, with a monetary penalty of not less than \$25,000 and not more than \$150,000, for persons convicted of repeated Medicaid fraud offenses under certain circumstances.

The legislation is intended to implement recommendations in the Governor's recommended FY 2011 budget to increase Medicaid fraud recoveries.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None provided.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services is unable to determine the fiscal impact of this bill. The provisions of the bill will likely increase State recoveries through higher penalties for Medicaid fraud. Such recoveries will be used to offset Medicaid expenditures.

During the FY 2007 – FY 2009 period, the State reported to the federal government that Fraud, Waste and Abuse Efforts resulted in recoveries of between \$1.5 million and \$1.9 million. In FY 2010, such activities may result in recoveries of \$2.1 million on an annualized basis. It is noted that even though recoveries are reported in the period monies were received, the actual fraud, waste and abuse may have occurred many years ago and is only now being settled.

Any funds recovered by the State are shared with the federal government, generally on a 50/50 basis. Thus, the State would realize only 50 percent of the amounts reported above.

Section: Human Services

*Analyst: Jay A. Hershberg
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-6 et seq.).

ASSEMBLY, No. 3015

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED JUNE 24, 2010

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblyman MICHAEL PATRICK CARROLL

District 25 (Morris)

Assemblywoman CAROLINE CASAGRANDE

District 12 (Mercer and Monmouth)

Co-Sponsored by:

Assemblyman O'Scanlon

SYNOPSIS

Increases penalties against Medicaid fraud.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/29/2010)

A3015 JOHNSON, CARROLL

2

1 AN ACT concerning penalties for Medicaid fraud, amending
2 N.J.S.2C:44-1, and amending and supplementing P.L.1968,
3 c.413.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. N.J.S.2C:44-1 is amended to read as follows:

9 2C:44-1. a. In determining the appropriate sentence to be
10 imposed on a person who has been convicted of an offense, the
11 court shall consider the following aggravating circumstances:

12 (1) The nature and circumstances of the offense, and the role of
13 the actor therein, including whether or not it was committed in an
14 especially heinous, cruel, or depraved manner;

15 (2) The gravity and seriousness of harm inflicted on the victim,
16 including whether or not the defendant knew or reasonably should
17 have known that the victim of the offense was particularly
18 vulnerable or incapable of resistance due to advanced age, ill-
19 health, or extreme youth, or was for any other reason substantially
20 incapable of exercising normal physical or mental power of
21 resistance;

22 (3) The risk that the defendant will commit another offense;

23 (4) A lesser sentence will depreciate the seriousness of the
24 defendant's offense because it involved a breach of the public trust
25 under chapters 27 and 30, or the defendant took advantage of a
26 position of trust or confidence to commit the offense;

27 (5) There is a substantial likelihood that the defendant is
28 involved in organized criminal activity;

29 (6) The extent of the defendant's prior criminal record and the
30 seriousness of the offenses of which he has been convicted;

31 (7) The defendant committed the offense pursuant to an
32 agreement that he either pay or be paid for the commission of the
33 offense and the pecuniary incentive was beyond that inherent in the
34 offense itself;

35 (8) The defendant committed the offense against a police or
36 other law enforcement officer, correctional employee or fireman,
37 acting in the performance of his duties while in uniform or
38 exhibiting evidence of his authority; the defendant committed the
39 offense because of the status of the victim as a public servant; or the
40 defendant committed the offense against a sports official, athletic
41 coach or manager, acting in or immediately following the
42 performance of his duties or because of the person's status as a
43 sports official, coach or manager;

44 (9) The need for deterring the defendant and others from
45 violating the law;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (10) The offense involved fraudulent or deceptive practices
2 committed against any department or division of State government;
- 3 (11) The imposition of a fine, penalty or order of restitution
4 without also imposing a term of imprisonment would be perceived
5 by the defendant or others merely as part of the cost of doing
6 business, or as an acceptable contingent business or operating
7 expense associated with the initial decision to resort to unlawful
8 practices;
- 9 (12) The defendant committed the offense against a person who
10 he knew or should have known was 60 years of age or older, or
11 disabled; and
- 12 (13) The defendant, while in the course of committing or
13 attempting to commit the crime, including the immediate flight
14 therefrom, used or was in possession of a stolen motor vehicle.
- 15 b. In determining the appropriate sentence to be imposed on a
16 person who has been convicted of an offense, the court may
17 properly consider the following mitigating circumstances:
- 18 (1) The defendant's conduct neither caused nor threatened
19 serious harm;
- 20 (2) The defendant did not contemplate that his conduct would
21 cause or threaten serious harm;
- 22 (3) The defendant acted under a strong provocation;
- 23 (4) There were substantial grounds tending to excuse or justify
24 the defendant's conduct, though failing to establish a defense;
- 25 (5) The victim of the defendant's conduct induced or facilitated
26 its commission;
- 27 (6) The defendant has compensated or will compensate the
28 victim of his conduct for the damage or injury that he sustained, or
29 will participate in a program of community service;
- 30 (7) The defendant has no history of prior delinquency or criminal
31 activity or has led a law-abiding life for a substantial period of time
32 before the commission of the present offense;
- 33 (8) The defendant's conduct was the result of circumstances
34 unlikely to recur;
- 35 (9) The character and attitude of the defendant indicate that he is
36 unlikely to commit another offense;
- 37 (10) The defendant is particularly likely to respond affirmatively
38 to probationary treatment;
- 39 (11) The imprisonment of the defendant would entail excessive
40 hardship to himself or his dependents;
- 41 (12) The willingness of the defendant to cooperate with law
42 enforcement authorities;
- 43 (13) The conduct of a youthful defendant was substantially
44 influenced by another person more mature than the defendant.
- 45 c. (1) A plea of guilty by a defendant or failure to so plead
46 shall not be considered in withholding or imposing a sentence of
47 imprisonment.

1 (2) When imposing a sentence of imprisonment the court shall
2 consider the defendant's eligibility for release under the law
3 governing parole, including time credits awarded pursuant to Title
4 30 of the Revised Statutes, in determining the appropriate term of
5 imprisonment.

6 d. Presumption of imprisonment. The court shall deal with a
7 person who has been convicted of a crime of the first or second
8 degree, or a crime of the third degree where the court finds that the
9 aggravating factor in paragraph (5) of subsection a. applies, by
10 imposing a sentence of imprisonment unless, having regard to the
11 character and condition of the defendant, it is of the opinion that his
12 imprisonment would be a serious injustice which overrides the need
13 to deter such conduct by others. Notwithstanding the provisions of
14 subsection e. of this section, the court shall deal with a person who
15 has been convicted of theft of a motor vehicle or of the unlawful
16 taking of a motor vehicle and who has previously been convicted of
17 either offense by imposing a sentence of imprisonment unless,
18 having regard to the character and condition of the defendant, it is
19 of the opinion that his imprisonment would be a serious injustice
20 which overrides the need to deter such conduct by others.

21 e. The court shall deal with a person convicted of an offense
22 other than a crime of the first or second degree, who has not
23 previously been convicted of an offense, without imposing a
24 sentence of imprisonment unless, having regard to the nature and
25 circumstances of the offense and the history, character and
26 condition of the defendant, it is of the opinion that his imprisonment
27 is necessary for the protection of the public under the criteria set
28 forth in subsection a., except that this subsection shall not apply if
29 the court finds that the aggravating factor in paragraph (5) of
30 subsection a. applies if the person is convicted of any of the
31 following crimes of the third degree: theft of a motor vehicle;
32 unlawful taking of a motor vehicle; eluding; if the person is
33 convicted of a crime of the third degree constituting use of a false
34 government document in violation of subsection c. of section 1 of
35 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime
36 of the third degree constituting distribution, manufacture or
37 possession of an item containing personal identifying information in
38 violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-
39 17.3); if the person is convicted of a crime of the third or fourth
40 degree constituting bias intimidation in violation of N.J.S.2C:16-1;
41 or if the person is convicted of a crime of the third degree under
42 section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if the person is
43 convicted of a crime of the third or fourth degree under the
44 provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-29 or
45 C.2C:33-30).

46 f. Presumptive Sentences. (1) Except for the crime of murder,
47 unless the preponderance of aggravating or mitigating factors, as set
48 forth in subsections a. and b., weighs in favor of a higher or lower

1 term within the limits provided in N.J.S.2C:43-6, when a court
2 determines that a sentence of imprisonment is warranted, it shall
3 impose sentence as follows:

4 (a) To a term of 20 years for aggravated manslaughter or
5 kidnapping pursuant to paragraph (1) of subsection c. of
6 N.J.S.2C:13-1 when the offense constitutes a crime of the first
7 degree;

8 (b) Except as provided in paragraph (a) of this subsection to a
9 term of 15 years for a crime of the first degree;

10 (c) To a term of seven years for a crime of the second degree;

11 (d) To a term of four years for a crime of the third degree; and

12 (e) To a term of nine months for a crime of the fourth degree.

13 In imposing a minimum term pursuant to 2C:43-6b., the
14 sentencing court shall specifically place on the record the
15 aggravating factors set forth in this section which justify the
16 imposition of a minimum term.

17 Unless the preponderance of mitigating factors set forth in
18 subsection b. weighs in favor of a lower term within the limits
19 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a
20 presumptive term of life imprisonment. Unless the preponderance
21 of aggravating and mitigating factors set forth in subsections a. and
22 b. weighs in favor of a higher or lower term within the limits
23 authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a
24 presumptive term of 50 years' imprisonment; sentences imposed
25 pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years'
26 imprisonment; and sentences imposed pursuant to 2C:43-7a.(4)
27 shall have a presumptive term of seven years' imprisonment.

28 In imposing a minimum term pursuant to 2C:43-7b., the
29 sentencing court shall specifically place on the record the
30 aggravating factors set forth in this section which justify the
31 imposition of a minimum term.

32 (2) In cases of convictions for crimes of the first or second
33 degree where the court is clearly convinced that the mitigating
34 factors substantially outweigh the aggravating factors and where the
35 interest of justice demands, the court may sentence the defendant to
36 a term appropriate to a crime of one degree lower than that of the
37 crime for which he was convicted. If the court does impose
38 sentence pursuant to this paragraph, or if the court imposes a
39 noncustodial or probationary sentence upon conviction for a crime
40 of the first or second degree, such sentence shall not become final
41 for 10 days in order to permit the appeal of such sentence by the
42 prosecution.

43 g. Imposition of Noncustodial Sentences in Certain Cases. If
44 the court, in considering the aggravating factors set forth in
45 subsection a., finds the aggravating factor in paragraph a.(2), a.(5),
46 a.(10), or a.(12) and does not impose a custodial sentence, the court
47 shall specifically place on the record the mitigating factors which
48 justify the imposition of a noncustodial sentence.

1 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
2 11), the presumption of imprisonment as provided in subsection d.
3 of this section shall not preclude the admission of a person to the
4 Intensive Supervision Program, established pursuant to the Rules
5 Governing the Courts of the State of New Jersey.
6 (cf: P.L.2007, c.341, s.7)

7
8 2. Section 17 of P.L.1968, c.413 (C.30:4D-17) is amended to
9 read as follows:

10 17. (a) Any person who willfully obtains benefits under this act
11 to which he is not entitled or in a greater amount than that to which
12 he is entitled and any provider who willfully receives medical
13 assistance payments to which he is not entitled or in a greater
14 amount than that to which he is entitled is guilty of a [high
15 misdemeanor and, upon conviction thereof, shall be liable to a
16 penalty of not more than \$10,000.00 or to imprisonment for not
17 more than 3 years or both] crime of the third degree, provided,
18 however, that the presumption of nonimprisonment set forth in
19 subsection e. of N.J.S.2C:44-1 for persons who have not previously
20 been convicted of an offense shall not apply to a person who is
21 convicted under the provisions of this subsection.

22 (b) Any provider, or any person, firm, partnership, corporation
23 or entity, who:

24 (1) Knowingly and willfully makes or causes to be made any
25 false statement or representation of a material fact in any cost study,
26 claim form, or any document necessary to apply for or receive any
27 benefit or payment under this act; or

28 (2) At any time knowingly and willfully makes or causes to be
29 made any false statement, written or oral, of a material fact for use
30 in determining rights to such benefit or payment under this act; or

31 (3) Conceals or fails to disclose the occurrence of an event
32 which

33 (i) affects his initial or continued right to any such benefit or
34 payment, or

35 (ii) affects the initial or continued right to any such benefit or
36 payment of any provider or any person, firm, partnership,
37 corporation or other entity in whose behalf he has applied for or is
38 receiving such benefit or payment

39 with an intent to fraudulently secure benefits or payments not
40 authorized under this act or in greater amount than that which is
41 authorized under this act; or

42 (4) Knowingly and willfully converts benefits or payments or
43 any part thereof received for the use and benefit of any provider or
44 any person, firm, partnership, corporation or other entity to a use
45 other than the use and benefit of such provider or such person, firm,
46 partnership, corporation or entity; is guilty of a [high misdemeanor
47 and, upon conviction thereof, shall be liable to a penalty of not
48 more than \$10,000.00 for the first and each subsequent offense or to

1 imprisonment for not more than three years or both] crime of the
2 third degree, provided, however, that the presumption of
3 nonimprisonment set forth in subsection e. of N.J.S.2C:44-1 for
4 persons who have not previously been convicted of an offense shall
5 not apply to a person who is convicted under the provisions of this
6 subsection.

7 (c) Any provider, or any person, firm, partnership, corporation
8 or entity who solicits, offers, or receives any kickback, rebate or
9 bribe in connection with:

10 (1) The furnishing of items or services for which payment is or
11 may be made in whole or in part under this act; or

12 (2) The furnishing of items or services whose cost is or may be
13 reported in whole or in part in order to obtain benefits or payments
14 under this act; or

15 (3) The receipt of any benefit or payment under this act, is guilty
16 of a [high misdemeanor and, upon conviction thereof, shall be
17 liable to a penalty of not more than \$10,000.00 or to imprisonment
18 for not more than 3 years or both] crime of the third degree,
19 provided, however, that the presumption of nonimprisonment set
20 forth in subsection e. of N.J.S.2C:44-1 for persons who have not
21 previously been convicted of an offense shall not apply to a person
22 who is convicted under the provisions of this subsection.

23 This subsection shall not apply to (A) a discount or other
24 reduction in price under this act if the reduction in price is properly
25 disclosed and appropriately reflected in the costs claimed or charges
26 made under this act; and (B) any amount paid by an employer to an
27 employee who has a bona fide employment relationship with such
28 employer for employment in the provision of covered items or
29 services.

30 (d) Whoever knowingly and willfully makes or causes to be
31 made or induces or seeks to induce the making of any false
32 statement or representation of a material fact with respect to the
33 conditions or operations of any institution or facility in order that
34 such institution or facility may qualify either upon initial
35 certification or recertification as a hospital, skilled nursing facility,
36 intermediate care facility, or health agency, thereby entitling them
37 to receive payments under this act, shall be guilty of a [high
38 misdemeanor and shall be liable to a penalty of not more than
39 \$3,000.00 or imprisonment for not more than 1 year or both] crime
40 of the fourth degree.

41 (e) Any person, firm, corporation, partnership, or other legal
42 entity who violates the provisions of any of the foregoing
43 subsections of this section or any provisions of section 3 of
44 P.L.2007, c.265 (C.2A:32C-3), shall, in addition to any other
45 penalties provided by law, be liable to civil penalties of (1) payment
46 of interest on the amount of the excess benefits or payments at the
47 maximum legal rate in effect on the date the payment was made to

1 said person, firm, corporation, partnership or other legal entity for
2 the period from the date upon which payment was made to the date
3 upon which repayment is made to the State, (2) payment of an
4 amount not to exceed three-fold the amount of such excess benefits
5 or payments, and (3) payment in the sum of not less than and not
6 more than the civil penalty allowed under the federal False Claims
7 Act (31 U.S.C. s.3729 et seq.), as it may be adjusted for inflation
8 pursuant to the Federal Civil Penalties Inflation Adjustment Act of
9 1990, Pub.L.101-410 for each excessive claim for assistance,
10 benefits or payments.

11 (f) Any person, firm, corporation, partnership or other legal
12 entity, other than an individual recipient of medical services
13 reimbursable by the Division of Medical Assistance and Health
14 Services, who, without intent to violate this act, obtains medical
15 assistance or other benefits or payments under this act in excess of
16 the amount to which he is entitled, shall be liable to a civil penalty
17 of payment of interest on the amount of the excess benefits or
18 payments at the maximum legal rate in effect on the date the benefit
19 or payment was made to said person, firm, corporation, partnership,
20 or other legal entity for the period from September 15, 1976 or the
21 date upon which payment was made, whichever is later, to the date
22 upon which repayment is made to the State, provided, however, that
23 no such person, firm, corporation, partnership or other legal entity
24 shall be liable to such civil penalty when excess medical assistance
25 or other benefits or payments under this act are obtained by such
26 person, firm, corporation, partnership or other legal entity as a
27 result of error made by the Division of Medical Assistance and
28 Health Services, as determined by said division; provided, further,
29 that if preliminary notification of an overpayment is not given to a
30 provider by the division within 180 days after completion of the
31 field audit as defined by regulation, no interest shall accrue during
32 the period beginning 180 days after completion of the field audit
33 and ending on the date preliminary notification is given to the
34 provider.

35 (g) All interest and civil penalties provided for in this act and all
36 medical assistance and other benefits to which a person, firm,
37 corporation, partnership, or other legal entity was not entitled shall
38 be recovered in an administrative proceeding held pursuant to the
39 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
40 seq.), except that recovery actions against minors or incompetents
41 shall be initiated in a court of competent jurisdiction.

42 (h) Upon the failure of any person, firm, corporation, partnership
43 or other legal entity to comply within 10 days after service of any
44 order of the director or his designee directing payment of any
45 amount found to be due pursuant to subsection (g) of this section, or
46 at any time prior to any final agency adjudication not involving a
47 recipient or former recipient of benefits under this act, the director
48 may issue a certificate to the clerk of the Superior Court that such

1 person, firm, corporation, partnership or other legal entity is
2 indebted to the State for the payment of such amount. A copy of
3 such certificate shall be served upon the person, firm, corporation,
4 partnership or other legal entity against whom the order was
5 entered. Thereupon the clerk shall immediately enter upon his
6 record of docketed judgments the name of the person, firm,
7 corporation, partnership or other legal entity so indebted, and of the
8 State, a designation of the statute under which such amount is found
9 to be due, the amount due, and the date of the certification. Such
10 entry shall have the same force and effect as the entry of a docketed
11 judgment in the Superior Court. Such entry, however, shall be
12 without prejudice to the right of appeal to the Appellate Division of
13 the Superior Court from the final order of the director or his
14 designee.

15 (i) In order to satisfy any recovery claim asserted against a
16 provider under this section, whether or not that claim has been the
17 subject of final agency adjudication, the division or its fiscal agents
18 is authorized to withhold funds otherwise payable under this act to
19 the provider.

20 (j) The Attorney General may, when requested by the
21 commissioner or his agent, apply ex parte to the Superior Court to
22 compel any party to comply forthwith with a subpoena issued under
23 this act. Any party who, having been served with a subpoena issued
24 pursuant to the provisions of this act, fails either to attend any
25 hearing, or to appear or be examined, to answer any question or to
26 produce any books, records, accounts, papers or documents, shall be
27 liable to a penalty of \$500.00 for each such failure, to be recovered
28 in the name of the State in a summary civil proceeding to be
29 initiated in the Superior Court. The Attorney General shall
30 prosecute the actions for the recovery of the penalty prescribed in
31 this section when requested to do so by the commissioner or his
32 agent and when, in the judgment of the Attorney General, the facts
33 and law warrant such prosecution. Such failure on the part of the
34 party shall be punishable as contempt of court by the court in the
35 same manner as like failure is punishable in an action pending in
36 the court when the matter is brought before the court by motion
37 filed by the Attorney General and supported by affidavit stating the
38 circumstances.

39 (k) Notwithstanding the provisions of N.J.S.2C:43-3 to the
40 contrary, but in addition to any other penalty or disposition that may
41 be imposed by law:

42 (1) a person who violates the provisions of subsection (a), (b), or
43 (c) of this section shall be liable to a penalty of not less than
44 \$15,000 and not more than \$25,000 for each violation; and

45 (2) a person who violates the provisions of subsection (d) of this
46 section shall be liable to a penalty of not less than \$10,000 and not
47 more than \$25,000 for each violation.

1 (l) A person who violates the provisions of subsection (a), (b),
2 or (c) of this section under circumstances in which the aggregate
3 amount obtained or sought to be obtained is \$1,000 or more, who
4 has previously been convicted of a violation of the provisions of
5 subsection (a), (b), or (c) of this section within 10 years of the
6 current violation, under circumstances where the aggregate amount
7 obtained or sought to be obtained was \$1,000 or more, is guilty of a
8 crime of the second degree and, in addition to any other penalty or
9 disposition authorized by law and notwithstanding the provisions of
10 N.J.S.2C:43-3 to the contrary, shall be liable to a penalty of not less
11 than \$25,000 and not more than \$150,000 for each such repeat
12 violation.

13 (cf: P.L.2007, c.265, s.16)

14

15 3. (New section) In addition to any other action authorized or
16 required by law, the Attorney General shall refer any matter
17 regarding a person who is licensed or otherwise authorized to
18 practice a health care profession in this State pursuant to Title 45 or
19 Title 52 of the Revised Statutes and has been convicted of an
20 offense under the provisions of section 17 of P.L.1968, c.413
21 (C.30:4D-17), to the appropriate professional and occupational
22 licensing board within the Division of Consumer Affairs in the
23 Department of Law and Public Safety or the Director of the
24 Division of Consumer Affairs, as applicable, for such action as they
25 determine appropriate regarding that person's license or other
26 authorization to practice as a health care professional.

27

28 4. (New Section) Nothing in section 17 of P.L.1968, c.413
29 (C.30:4D-17) or in section 3 of P.L. , c. (pending before the
30 Legislature as this bill) shall be construed to preclude the
31 indictment or conviction for any other offense defined by law, or to
32 impair or limit the discretion and authority of the State regarding
33 any civil action, criminal prosecution, or other action authorized by
34 law.

35

36 5. This act shall take effect immediately.

37

38

39

STATEMENT

40

41 This bill increases the existing State statutory penalties for
42 committing Medicaid fraud, consistent with recommendations in the
43 Governor's proposed budget for Fiscal Year 2011, in order to
44 strengthen deterrence against any attempt to cheat the Medicaid
45 program of State and federal funds that are intended to serve the
46 health care needs of the medically indigent.

47

The specific provisions are as follows:

- 1 • The bill amends the sentencing provisions of Title 2C of the New
2 Jersey Statutes, at N.J.S.2C:44-1, to include the aggravating
3 factor set forth in paragraph (10) of subsection a. of that section
4 among the aggravating factors which require a sentencing court
5 that imposes a noncustodial sentence to “specifically place on the
6 record the mitigating factors which justify the imposition of a
7 noncustodial sentence.” The aggravating factor in paragraph (10)
8 applies in cases where “the offense involved fraudulent or
9 deceptive practices committed against any department or division
10 of State government.” This bill is intended to ensure that the
11 decision not to impose a custodial sentence in a Medicaid fraud
12 case, as well as other fraud involving public agencies or public
13 funds, is given especially careful consideration by the sentencing
14 court, since the matter involves fraud against the public.
- 15 • In addition, the bill makes the following revisions in section 17 of
16 P.L.1968, c.413 (C.30:4D-17), which is the statute governing
17 Medicaid fraud, to strengthen its penalty provisions:
- 18 -- upgrades certain offenses involving Medicaid fraud from a
19 “high misdemeanor” to a crime of the third degree (punishable by a
20 fine or by imprisonment for between three and five years, or both)
21 or a crime of the fourth degree (punishable by a fine or by
22 imprisonment for not more than 18 months, or both);
- 23 -- creates new mandatory monetary penalties for Medicaid fraud
24 offenses, which are in addition to any other penalty that may be
25 imposed by law, of not less than \$15,000 and not more than
26 \$25,000 for a crime of the third degree, and not less than \$10,000
27 and not more than \$25,000 for a crime of the fourth degree;
- 28 -- provides that the presumption against imprisonment set forth
29 in subsection e. of N.J.S.2C:44-1, for persons who have not been
30 previously convicted of an offense, will not apply to an offense
31 involving Medicaid fraud that is defined as a crime of the third
32 degree under this bill; and
- 33 -- creates a new crime of the second degree, with a monetary
34 penalty of not less than \$25,000 and not more than \$150,000, for
35 persons convicted of repeated Medicaid fraud offenses under certain
36 circumstances (specifically, where the aggregate amount obtained
37 or sought to be obtained is \$1,000 or more, and the person has
38 previously been convicted of such a violation within 10 years of the
39 current violation, under circumstances where the aggregate amount
40 obtained or sought to be obtained was also \$1,000 or more).
- 41 • The bill further provides that, in the case of a person who is
42 licensed or otherwise authorized to practice a health care
43 profession in this State and who has been convicted of Medicaid
44 fraud, the Attorney General, in addition to any other action
45 authorized or required by law, is to refer that matter to the
46 appropriate professional and occupational licensing board within
47 the Division of Consumer Affairs or to the director of the
48 division, as applicable, for such action as they determine

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12

- 1 appropriate regarding that person's license or other authorization
2 to practice as a health care professional.
- 3 • Nothing in the provisions of this bill is to be construed to
4 preclude the indictment or conviction for any other offense
5 defined by law, or to impair or limit the discretion and authority
6 of the State regarding any civil action, criminal prosecution, or
7 other action authorized by law.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3015

STATE OF NEW JERSEY

DATED: JUNE 24, 2010

The Assembly Budget Committee reports favorably Assembly Bill No. 3015.

The bill increases the existing State statutory penalties for committing Medicaid fraud, consistent with recommendations in the Governor's proposed budget for Fiscal Year 2011, in order to strengthen deterrence against any attempt to cheat the Medicaid program of State and federal funds that are intended to serve the health care needs of the medically indigent.

The specific provisions are as follows:

- The bill amends the sentencing provisions of Title 2C of the New Jersey Statutes, at N.J.S.2C:44-1, to include the aggravating factor set forth in paragraph (10) of subsection a. of that section among the aggravating factors which require a sentencing court that imposes a noncustodial sentence to “specifically place on the record the mitigating factors which justify the imposition of a noncustodial sentence.” The aggravating factor in paragraph (10) applies in cases where “the offense involved fraudulent or deceptive practices committed against any department or division of State government.” This bill is intended to ensure that the decision not to impose a custodial sentence in a Medicaid fraud case, as well as other fraud involving public agencies or public funds, is given especially careful consideration by the sentencing court, since the matter involves fraud against the public.
- In addition, the bill makes the following revisions in section 17 of P.L.1968, c.413 (C.30:4D-17), which is the statute governing Medicaid fraud, to strengthen its penalty provisions:
 - upgrades certain offenses involving Medicaid fraud from a “high misdemeanor” to a crime of the third degree (punishable by a fine or by imprisonment for between three and five years, or both) or a crime of the fourth degree (punishable by a fine or by imprisonment for not more than 18 months, or both);
 - creates new mandatory monetary penalties for Medicaid fraud offenses, which are in addition to any other penalty that may be imposed by law, of not less than \$15,000 and not more than \$25,000 for a crime of the third degree, and not less than \$10,000 and not more than \$25,000 for a crime of the fourth degree;

-- provides that the presumption against imprisonment set forth in subsection e. of N.J.S.2C:44-1, for persons who have not been previously convicted of an offense, will not apply to an offense involving Medicaid fraud that is defined as a crime of the third degree under this bill; and

-- creates a new crime of the second degree, with a monetary penalty of not less than \$25,000 and not more than \$150,000, for persons convicted of repeated Medicaid fraud offenses under certain circumstances (specifically, where the aggregate amount obtained or sought to be obtained is \$1,000 or more, and the person has previously been convicted of such a violation within 10 years of the current violation, under circumstances where the aggregate amount obtained or sought to be obtained was also \$1,000 or more).

- The bill further provides that, in the case of a person who is licensed or otherwise authorized to practice a health care profession in this State and who has been convicted of Medicaid fraud, the Attorney General, in addition to any other action authorized or required by law, is to refer that matter to the appropriate professional and occupational licensing board within the Division of Consumer Affairs or to the director of the division, as applicable, for such action as they determine appropriate regarding that person's license or other authorization to practice as a health care professional.
- Nothing in the provisions of this bill is to be construed to preclude the indictment or conviction for any other offense defined by law, or to impair or limit the discretion and authority of the State regarding any civil action, criminal prosecution, or other action authorized by law.

FISCAL IMPACT:

This bill is intended to reduce Medicaid fraud and, consequently, restrain future State Medicaid costs. In addition, the enhanced financial penalties may increase State revenues.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 3015
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JULY 23, 2010

SUMMARY

- Synopsis:** Increases penalties against Medicaid fraud.
- Type of Impact:** A possible increase in Medicaid recoveries, which would offset an equal amount of Medicaid expenditures.
- Agencies Affected:** Departments of Children and Families, Health and Senior Services, Human Services, Law and Public Safety, Treasury, and the Judiciary.

Office of Legislative Services Estimate

Fiscal Impact	<u>Years 1 - 3</u>
State Cost	A possible reduction in Medicaid expenditures that cannot be determined.
State Revenue	A possible increase in Medicaid recoveries that cannot be determined.

- During the FY 2007 – FY 2009 period, the State reported to the federal government that Fraud, Waste and Abuse Efforts resulted in gross recoveries between \$1.5 million and \$1.9 million. For the first half of FY 2010, gross recoveries were \$3.0 million on an annualized basis.

BILL DESCRIPTION

Assembly Bill No. 3015 of 2010 increases State statutory penalties for committing Medicaid fraud in order to strengthen deterrence against any attempt to cheat the Medicaid program of funds that are intended to serve the health care needs of the medically indigent. The legislation:

- Creates a new mandatory monetary penalty for Medicaid fraud offenses of not less than \$15,000 and not more than \$25,000 for a crime of the third degree, and not less than \$10,000 and not more than \$25,000 for a crime of the fourth degree.
- Creates a new crime of the second degree, with a monetary penalty of not less than \$25,000 and not more than \$150,000, for persons convicted of repeated Medicaid fraud offenses under certain circumstances.

The legislation is intended to implement recommendations in the Governor's recommended FY 2011 budget to increase Medicaid fraud recoveries.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services is unable to determine the fiscal impact of this bill. The provisions of the bill will likely increase State recoveries through higher penalties for Medicaid fraud. Such recoveries will be used to offset Medicaid expenditures.

During the FY 2007 – FY 2009 period, the State reported to the federal government that Fraud, Waste and Abuse Efforts resulted in recoveries of between \$1.5 million and \$1.9 million. In FY 2010, such activities may result in recoveries of \$3.0 million on an annualized basis. It is noted that even though recoveries are reported in the period monies were received, the actual fraud, waste and abuse may have occurred many years ago and is only now being settled.

Any funds recovered by the State are shared with the federal government, generally on a 50/50 basis. Thus, the State would realize only 50 percent of the amounts reported above.

Section: Human Services

*Analyst: Jay Hershberg
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 2988

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 21, 2010

Sponsored by:

Assemblyman MICHAEL PATRICK CARROLL

District 25 (Morris)

Assemblywoman CAROLINE CASAGRANDE

District 12 (Mercer and Monmouth)

Co-Sponsored by:

Assemblywoman N.Munoz

SYNOPSIS

Increases penalties against Medicaid fraud.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/6/2011)

1 AN ACT concerning penalties for Medicaid fraud, amending
2 N.J.S.2C:44-1, and amending and supplementing P.L.1968,
3 c.413.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. N.J.S.2C:44-1 is amended to read as follows:

9 2C:44-1. a. In determining the appropriate sentence to be
10 imposed on a person who has been convicted of an offense, the
11 court shall consider the following aggravating circumstances:

12 (1) The nature and circumstances of the offense, and the role of
13 the actor therein, including whether or not it was committed in an
14 especially heinous, cruel, or depraved manner;

15 (2) The gravity and seriousness of harm inflicted on the victim,
16 including whether or not the defendant knew or reasonably should
17 have known that the victim of the offense was particularly
18 vulnerable or incapable of resistance due to advanced age, ill-
19 health, or extreme youth, or was for any other reason substantially
20 incapable of exercising normal physical or mental power of
21 resistance;

22 (3) The risk that the defendant will commit another offense;

23 (4) A lesser sentence will depreciate the seriousness of the
24 defendant's offense because it involved a breach of the public trust
25 under chapters 27 and 30, or the defendant took advantage of a
26 position of trust or confidence to commit the offense;

27 (5) There is a substantial likelihood that the defendant is
28 involved in organized criminal activity;

29 (6) The extent of the defendant's prior criminal record and the
30 seriousness of the offenses of which he has been convicted;

31 (7) The defendant committed the offense pursuant to an
32 agreement that he either pay or be paid for the commission of the
33 offense and the pecuniary incentive was beyond that inherent in the
34 offense itself;

35 (8) The defendant committed the offense against a police or other
36 law enforcement officer, correctional employee or fireman, acting
37 in the performance of his duties while in uniform or exhibiting
38 evidence of his authority; the defendant committed the offense
39 because of the status of the victim as a public servant; or the
40 defendant committed the offense against a sports official, athletic
41 coach or manager, acting in or immediately following the
42 performance of his duties or because of the person's status as a
43 sports official, coach or manager;

44 (9) The need for deterring the defendant and others from
45 violating the law;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (10) The offense involved fraudulent or deceptive practices
2 committed against any department or division of State government;
- 3 (11) The imposition of a fine, penalty or order of restitution
4 without also imposing a term of imprisonment would be perceived
5 by the defendant or others merely as part of the cost of doing
6 business, or as an acceptable contingent business or operating
7 expense associated with the initial decision to resort to unlawful
8 practices;
- 9 (12) The defendant committed the offense against a person who
10 he knew or should have known was 60 years of age or older, or
11 disabled; and
- 12 (13) The defendant, while in the course of committing or
13 attempting to commit the crime, including the immediate flight
14 therefrom, used or was in possession of a stolen motor vehicle.
- 15 b. In determining the appropriate sentence to be imposed on a
16 person who has been convicted of an offense, the court may
17 properly consider the following mitigating circumstances:
- 18 (1) The defendant's conduct neither caused nor threatened
19 serious harm;
- 20 (2) The defendant did not contemplate that his conduct would
21 cause or threaten serious harm;
- 22 (3) The defendant acted under a strong provocation;
- 23 (4) There were substantial grounds tending to excuse or justify
24 the defendant's conduct, though failing to establish a defense;
- 25 (5) The victim of the defendant's conduct induced or facilitated
26 its commission;
- 27 (6) The defendant has compensated or will compensate the
28 victim of his conduct for the damage or injury that he sustained, or
29 will participate in a program of community service;
- 30 (7) The defendant has no history of prior delinquency or criminal
31 activity or has led a law-abiding life for a substantial period of time
32 before the commission of the present offense;
- 33 (8) The defendant's conduct was the result of circumstances
34 unlikely to recur;
- 35 (9) The character and attitude of the defendant indicate that he is
36 unlikely to commit another offense;
- 37 (10) The defendant is particularly likely to respond affirmatively
38 to probationary treatment;
- 39 (11) The imprisonment of the defendant would entail excessive
40 hardship to himself or his dependents;
- 41 (12) The willingness of the defendant to cooperate with law
42 enforcement authorities;
- 43 (13) The conduct of a youthful defendant was substantially
44 influenced by another person more mature than the defendant.
- 45 c. (1) A plea of guilty by a defendant or failure to so plead
46 shall not be considered in withholding or imposing a sentence of
47 imprisonment.

1 (2) When imposing a sentence of imprisonment the court shall
2 consider the defendant's eligibility for release under the law
3 governing parole, including time credits awarded pursuant to Title
4 30 of the Revised Statutes, in determining the appropriate term of
5 imprisonment.

6 d. Presumption of imprisonment. The court shall deal with a
7 person who has been convicted of a crime of the first or second
8 degree, or a crime of the third degree where the court finds that the
9 aggravating factor in paragraph (5) of subsection a. applies, by
10 imposing a sentence of imprisonment unless, having regard to the
11 character and condition of the defendant, it is of the opinion that his
12 imprisonment would be a serious injustice which overrides the need
13 to deter such conduct by others. Notwithstanding the provisions of
14 subsection e. of this section, the court shall deal with a person who
15 has been convicted of theft of a motor vehicle or of the unlawful
16 taking of a motor vehicle and who has previously been convicted of
17 either offense by imposing a sentence of imprisonment unless,
18 having regard to the character and condition of the defendant, it is
19 of the opinion that his imprisonment would be a serious injustice
20 which overrides the need to deter such conduct by others.

21 e. The court shall deal with a person convicted of an offense
22 other than a crime of the first or second degree, who has not
23 previously been convicted of an offense, without imposing a
24 sentence of imprisonment unless, having regard to the nature and
25 circumstances of the offense and the history, character and
26 condition of the defendant, it is of the opinion that his imprisonment
27 is necessary for the protection of the public under the criteria set
28 forth in subsection a., except that this subsection shall not apply if
29 the court finds that the aggravating factor in paragraph (5) of
30 subsection a. applies if the person is convicted of any of the
31 following crimes of the third degree: theft of a motor vehicle;
32 unlawful taking of a motor vehicle; eluding; if the person is
33 convicted of a crime of the third degree constituting use of a false
34 government document in violation of subsection c. of section 1 of
35 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime
36 of the third degree constituting distribution, manufacture or
37 possession of an item containing personal identifying information in
38 violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-
39 17.3); if the person is convicted of a crime of the third or fourth
40 degree constituting bias intimidation in violation of N.J.S.2C:16-1;
41 or if the person is convicted of a crime of the third degree under
42 section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if the person is
43 convicted of a crime of the third or fourth degree under the
44 provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-29 or
45 C.2C:33-30).

46 f. Presumptive Sentences. (1) Except for the crime of murder,
47 unless the preponderance of aggravating or mitigating factors, as set
48 forth in subsections a. and b., weighs in favor of a higher or lower

1 term within the limits provided in N.J.S.2C:43-6, when a court
2 determines that a sentence of imprisonment is warranted, it shall
3 impose sentence as follows:

4 (a) To a term of 20 years for aggravated manslaughter or
5 kidnapping pursuant to paragraph (1) of subsection c. of
6 N.J.S.2C:13-1 when the offense constitutes a crime of the first
7 degree;

8 (b) Except as provided in paragraph (a) of this subsection to a
9 term of 15 years for a crime of the first degree;

10 (c) To a term of seven years for a crime of the second degree;

11 (d) To a term of four years for a crime of the third degree; and

12 (e) To a term of nine months for a crime of the fourth degree.

13 In imposing a minimum term pursuant to 2C:43-6b., the
14 sentencing court shall specifically place on the record the
15 aggravating factors set forth in this section which justify the
16 imposition of a minimum term.

17 Unless the preponderance of mitigating factors set forth in
18 subsection b. weighs in favor of a lower term within the limits
19 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a
20 presumptive term of life imprisonment. Unless the preponderance
21 of aggravating and mitigating factors set forth in subsections a. and
22 b. weighs in favor of a higher or lower term within the limits
23 authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a
24 presumptive term of 50 years' imprisonment; sentences imposed
25 pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years'
26 imprisonment; and sentences imposed pursuant to 2C:43-7a.(4)
27 shall have a presumptive term of seven years' imprisonment.

28 In imposing a minimum term pursuant to 2C:43-7b., the
29 sentencing court shall specifically place on the record the
30 aggravating factors set forth in this section which justify the
31 imposition of a minimum term.

32 (2) In cases of convictions for crimes of the first or second
33 degree where the court is clearly convinced that the mitigating
34 factors substantially outweigh the aggravating factors and where the
35 interest of justice demands, the court may sentence the defendant to
36 a term appropriate to a crime of one degree lower than that of the
37 crime for which he was convicted. If the court does impose
38 sentence pursuant to this paragraph, or if the court imposes a
39 noncustodial or probationary sentence upon conviction for a crime
40 of the first or second degree, such sentence shall not become final
41 for 10 days in order to permit the appeal of such sentence by the
42 prosecution.

43 g. Imposition of Noncustodial Sentences in Certain Cases. If
44 the court, in considering the aggravating factors set forth in
45 subsection a., finds the aggravating factor in paragraph a.(2), a.(5),
46 a.(10), or a.(12) and does not impose a custodial sentence, the court
47 shall specifically place on the record the mitigating factors which
48 justify the imposition of a noncustodial sentence.

1 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
2 11), the presumption of imprisonment as provided in subsection d.
3 of this section shall not preclude the admission of a person to the
4 Intensive Supervision Program, established pursuant to the Rules
5 Governing the Courts of the State of New Jersey.
6 (cf: P.L.2007, c.341, s.7)

7
8 2. Section 17 of P.L.1968, c.413 (C.30:4D-17) is amended to
9 read as follows:

10 17. (a) Any person who willfully obtains benefits under this act
11 to which he is not entitled or in a greater amount than that to which
12 he is entitled and any provider who willfully receives medical
13 assistance payments to which he is not entitled or in a greater
14 amount than that to which he is entitled is guilty of a [high
15 misdemeanor and, upon conviction thereof, shall be liable to a
16 penalty of not more than \$10,000.00 or to imprisonment for not
17 more than 3 years or both] crime of the third degree, provided,
18 however, that the presumption of nonimprisonment set forth in
19 subsection e. of N.J.S.2C:44-1 for persons who have not previously
20 been convicted of an offense shall not apply to a person who is
21 convicted under the provisions of this subsection.

22 (b) Any provider, or any person, firm, partnership, corporation
23 or entity, who:

24 (1) Knowingly and willfully makes or causes to be made any
25 false statement or representation of a material fact in any cost study,
26 claim form, or any document necessary to apply for or receive any
27 benefit or payment under this act; or

28 (2) At any time knowingly and willfully makes or causes to be
29 made any false statement, written or oral, of a material fact for use
30 in determining rights to such benefit or payment under this act; or

31 (3) Conceals or fails to disclose the occurrence of an event which

32 (i) affects his initial or continued right to any such benefit or
33 payment, or

34 (ii) affects the initial or continued right to any such benefit or
35 payment of any provider or any person, firm, partnership,
36 corporation or other entity in whose behalf he has applied for or is
37 receiving such benefit or payment

38 with an intent to fraudulently secure benefits or payments not
39 authorized under this act or in greater amount than that which is
40 authorized under this act; or

41 (4) Knowingly and willfully converts benefits or payments or
42 any part thereof received for the use and benefit of any provider or
43 any person, firm, partnership, corporation or other entity to a use
44 other than the use and benefit of such provider or such person, firm,
45 partnership, corporation or entity; is guilty of a [high misdemeanor
46 and, upon conviction thereof, shall be liable to a penalty of not
47 more than \$10,000.00 for the first and each subsequent offense or to
48 imprisonment for not more than three years or both] crime of the

1 third degree, provided, however, that the presumption of
2 nonimprisonment set forth in subsection e. of N.J.S.2C:44-1 for
3 persons who have not previously been convicted of an offense shall
4 not apply to a person who is convicted under the provisions of this
5 subsection.

6 (c) Any provider, or any person, firm, partnership, corporation or
7 entity who solicits, offers, or receives any kickback, rebate or bribe
8 in connection with:

9 (1) The furnishing of items or services for which payment is or
10 may be made in whole or in part under this act; or

11 (2) The furnishing of items or services whose cost is or may be
12 reported in whole or in part in order to obtain benefits or payments
13 under this act; or

14 (3) The receipt of any benefit or payment under this act, is guilty
15 of a [high misdemeanor and, upon conviction thereof, shall be
16 liable to a penalty of not more than \$10,000.00 or to imprisonment
17 for not more than 3 years or both] crime of the third degree,
18 provided, however, that the presumption of nonimprisonment set
19 forth in subsection e. of N.J.S.2C:44-1 for persons who have not
20 previously been convicted of an offense shall not apply to a person
21 who is convicted under the provisions of this subsection.

22 This subsection shall not apply to (A) a discount or other
23 reduction in price under this act if the reduction in price is properly
24 disclosed and appropriately reflected in the costs claimed or charges
25 made under this act; and (B) any amount paid by an employer to an
26 employee who has a bona fide employment relationship with such
27 employer for employment in the provision of covered items or
28 services.

29 (d) Whoever knowingly and willfully makes or causes to be
30 made or induces or seeks to induce the making of any false
31 statement or representation of a material fact with respect to the
32 conditions or operations of any institution or facility in order that
33 such institution or facility may qualify either upon initial
34 certification or recertification as a hospital, skilled nursing facility,
35 intermediate care facility, or health agency, thereby entitling them
36 to receive payments under this act, shall be guilty of a [high
37 misdemeanor and shall be liable to a penalty of not more than
38 \$3,000.00 or imprisonment for not more than 1 year or both] crime
39 of the fourth degree.

40 (e) Any person, firm, corporation, partnership, or other legal
41 entity who violates the provisions of any of the foregoing
42 subsections of this section or any provisions of section 3 of
43 P.L.2007, c.265 (C.2A:32C-3), shall, in addition to any other
44 penalties provided by law, be liable to civil penalties of (1) payment
45 of interest on the amount of the excess benefits or payments at the
46 maximum legal rate in effect on the date the payment was made to
47 said person, firm, corporation, partnership or other legal entity for
48 the period from the date upon which payment was made to the date

1 upon which repayment is made to the State, (2) payment of an
2 amount not to exceed three-fold the amount of such excess benefits
3 or payments, and (3) payment in the sum of not less than and not
4 more than the civil penalty allowed under the federal False Claims
5 Act (31 U.S.C. s.3729 et seq.), as it may be adjusted for inflation
6 pursuant to the Federal Civil Penalties Inflation Adjustment Act of
7 1990, Pub.L.101-410 for each excessive claim for assistance,
8 benefits or payments.

9 (f) Any person, firm, corporation, partnership or other legal
10 entity, other than an individual recipient of medical services
11 reimbursable by the Division of Medical Assistance and Health
12 Services, who, without intent to violate this act, obtains medical
13 assistance or other benefits or payments under this act in excess of
14 the amount to which he is entitled, shall be liable to a civil penalty
15 of payment of interest on the amount of the excess benefits or
16 payments at the maximum legal rate in effect on the date the benefit
17 or payment was made to said person, firm, corporation, partnership,
18 or other legal entity for the period from September 15, 1976 or the
19 date upon which payment was made, whichever is later, to the date
20 upon which repayment is made to the State, provided, however, that
21 no such person, firm, corporation, partnership or other legal entity
22 shall be liable to such civil penalty when excess medical assistance
23 or other benefits or payments under this act are obtained by such
24 person, firm, corporation, partnership or other legal entity as a
25 result of error made by the Division of Medical Assistance and
26 Health Services, as determined by said division; provided, further,
27 that if preliminary notification of an overpayment is not given to a
28 provider by the division within 180 days after completion of the
29 field audit as defined by regulation, no interest shall accrue during
30 the period beginning 180 days after completion of the field audit
31 and ending on the date preliminary notification is given to the
32 provider.

33 (g) All interest and civil penalties provided for in this act and all
34 medical assistance and other benefits to which a person, firm,
35 corporation, partnership, or other legal entity was not entitled shall
36 be recovered in an administrative proceeding held pursuant to the
37 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
38 seq.), except that recovery actions against minors or incompetents
39 shall be initiated in a court of competent jurisdiction.

40 (h) Upon the failure of any person, firm, corporation, partnership
41 or other legal entity to comply within 10 days after service of any
42 order of the director or his designee directing payment of any
43 amount found to be due pursuant to subsection (g) of this section, or
44 at any time prior to any final agency adjudication not involving a
45 recipient or former recipient of benefits under this act, the director
46 may issue a certificate to the clerk of the Superior Court that such
47 person, firm, corporation, partnership or other legal entity is
48 indebted to the State for the payment of such amount. A copy of

1 such certificate shall be served upon the person, firm, corporation,
2 partnership or other legal entity against whom the order was
3 entered. Thereupon the clerk shall immediately enter upon his
4 record of docketed judgments the name of the person, firm,
5 corporation, partnership or other legal entity so indebted, and of the
6 State, a designation of the statute under which such amount is found
7 to be due, the amount due, and the date of the certification. Such
8 entry shall have the same force and effect as the entry of a docketed
9 judgment in the Superior Court. Such entry, however, shall be
10 without prejudice to the right of appeal to the Appellate Division of
11 the Superior Court from the final order of the director or his
12 designee.

13 (i) In order to satisfy any recovery claim asserted against a
14 provider under this section, whether or not that claim has been the
15 subject of final agency adjudication, the division or its fiscal agents
16 is authorized to withhold funds otherwise payable under this act to
17 the provider.

18 (j) The Attorney General may, when requested by the
19 commissioner or his agent, apply ex parte to the Superior Court to
20 compel any party to comply forthwith with a subpoena issued under
21 this act. Any party who, having been served with a subpoena issued
22 pursuant to the provisions of this act, fails either to attend any
23 hearing, or to appear or be examined, to answer any question or to
24 produce any books, records, accounts, papers or documents, shall be
25 liable to a penalty of \$500.00 for each such failure, to be recovered
26 in the name of the State in a summary civil proceeding to be
27 initiated in the Superior Court. The Attorney General shall
28 prosecute the actions for the recovery of the penalty prescribed in
29 this section when requested to do so by the commissioner or his
30 agent and when, in the judgment of the Attorney General, the facts
31 and law warrant such prosecution. Such failure on the part of the
32 party shall be punishable as contempt of court by the court in the
33 same manner as like failure is punishable in an action pending in
34 the court when the matter is brought before the court by motion
35 filed by the Attorney General and supported by affidavit stating the
36 circumstances.

37 (k) Notwithstanding the provisions of N.J.S.2C:43-3 to the
38 contrary, but in addition to any other penalty or disposition that may
39 be imposed by law:

40 (1) a person who violates the provisions of subsection (a), (b), or
41 (c) of this section shall be liable to a penalty of not less than
42 \$15,000 and not more than \$25,000 for each violation; and

43 (2) a person who violates the provisions of subsection (d) of this
44 section shall be liable to a penalty of not less than \$10,000 and not
45 more than \$25,000 for each violation.

46 (l) A person who violates the provisions of subsection (a), (b), or
47 (c) of this section under circumstances in which the aggregate
48 amount obtained or sought to be obtained is \$1,000 or more, who

1 has previously been convicted of a violation of the provisions of
2 subsection (a), (b), or (c) of this section within 10 years of the
3 current violation, under circumstances where the aggregate amount
4 obtained or sought to be obtained was \$1,000 or more, is guilty of a
5 crime of the second degree and, in addition to any other penalty or
6 disposition authorized by law and notwithstanding the provisions of
7 N.J.S.2C:43-3 to the contrary, shall be liable to a penalty of not less
8 than \$25,000 and not more than \$150,000 for each such repeat
9 violation.

10 (cf: P.L.2007, c.265, s.16)

11
12 3. (New section) In addition to any other action authorized or
13 required by law, the Attorney General shall refer any matter
14 regarding a person who is licensed or otherwise authorized to
15 practice a health care profession in this State pursuant to Title 45 or
16 Title 52 of the Revised Statutes and has been convicted of an
17 offense under the provisions of section 17 of P.L.1968, c.413
18 (C.30:4D-17), to the appropriate professional and occupational
19 licensing board within the Division of Consumer Affairs in the
20 Department of Law and Public Safety or the Director of the
21 Division of Consumer Affairs, as applicable, for such action as they
22 determine appropriate regarding that person's license or other
23 authorization to practice as a health care professional.

24
25 4. (New Section) Nothing in section 17 of P.L.1968, c.413
26 (C.30:4D-17) or in section 3 of P.L. , c. (pending before the
27 Legislature as this bill) shall be construed to preclude the
28 indictment or conviction for any other offense defined by law, or to
29 impair or limit the discretion and authority of the State regarding
30 any civil action, criminal prosecution, or other action authorized by
31 law.

32
33 5. This act shall take effect immediately.

34 35 36 STATEMENT

37
38 This bill increases the existing State statutory penalties for
39 committing Medicaid fraud, consistent with recommendations in the
40 Governor's proposed budget for Fiscal Year 2011, in order to
41 strengthen deterrence against any attempt to cheat the Medicaid
42 program of State and federal funds that are intended to serve the
43 health care needs of the medically indigent.

44 The specific provisions are as follows:

- 45 • The bill amends the sentencing provisions of Title 2C of the New
46 Jersey Statutes, at N.J.S.2C:44-1, to include the aggravating
47 factor set forth in paragraph (10) of subsection a. of that section
48 among the aggravating factors which require a sentencing court

1 that imposes a noncustodial sentence to “specifically place on the
2 record the mitigating factors which justify the imposition of a
3 noncustodial sentence.” The aggravating factor in paragraph (10)
4 applies in cases where “the offense involved fraudulent or
5 deceptive practices committed against any department or division
6 of State government.” This bill is intended to ensure that the
7 decision not to impose a custodial sentence in a Medicaid fraud
8 case, as well as other fraud involving public agencies or public
9 funds, is given especially careful consideration by the sentencing
10 court, since the matter involves fraud against the public.

11 • In addition, the bill makes the following revisions in section 17 of
12 P.L.1968, c.413 (C.30:4D-17), which is the statute governing
13 Medicaid fraud, to strengthen its penalty provisions:

14 -- upgrades certain offenses involving Medicaid fraud from a
15 “high misdemeanor” to a crime of the third degree (punishable by a
16 fine or by imprisonment for between three and five years, or both)
17 or a crime of the fourth degree (punishable by a fine or by
18 imprisonment for not more than 18 months, or both);

19 -- creates new mandatory monetary penalties for Medicaid fraud
20 offenses, which are in addition to any other penalty that may be
21 imposed by law, of not less than \$15,000 and not more than
22 \$25,000 for a crime of the third degree, and not less than \$10,000
23 and not more than \$25,000 for a crime of the fourth degree;

24 -- provides that the presumption against imprisonment set forth
25 in subsection e. of N.J.S.2C:44-1, for persons who have not been
26 previously convicted of an offense, will not apply to an offense
27 involving Medicaid fraud that is defined as a crime of the third
28 degree under this bill; and

29 -- creates a new crime of the second degree, with a monetary
30 penalty of not less than \$25,000 and not more than \$150,000, for
31 persons convicted of repeated Medicaid fraud offenses under certain
32 circumstances (specifically, where the aggregate amount obtained
33 or sought to be obtained is \$1,000 or more, and the person has
34 previously been convicted of such a violation within 10 years of the
35 current violation, under circumstances where the aggregate amount
36 obtained or sought to be obtained was also \$1,000 or more).

37 • The bill further provides that, in the case of a person who is
38 licensed or otherwise authorized to practice a health care
39 profession in this State and who has been convicted of Medicaid
40 fraud, the Attorney General, in addition to any other action
41 authorized or required by law, is to refer that matter to the
42 appropriate professional and occupational licensing board within
43 the Division of Consumer Affairs or to the director of the
44 division, as applicable, for such action as they determine
45 appropriate regarding that person’s license or other authorization
46 to practice as a health care professional.

47 • Nothing in the provisions of this bill is to be construed to
48 preclude the indictment or conviction for any other offense

1 defined by law, or to impair or limit the discretion and authority
2 of the State regarding any civil action, criminal prosecution, or
3 other action authorized by law.