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[Third Reprint]

SENATE, No. 1711

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MAY 8, 2008

Sponsored by:

Senator DIANE B. ALLEN

District 7 (Burlington and Camden)

Senator DANA L. REDD

District 5 (Camden and Gloucester)

Assemblywoman ELEASE EVANS

District 35 (Bergen and Passaic)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington and Camden)

Co-Sponsored by:

Assemblymen Fisher, Prieto, Assemblywoman Tucker, Assemblyman

Chiappone, Assemblywomen Quijano, Rodriguez, Wagner, Assemblymen

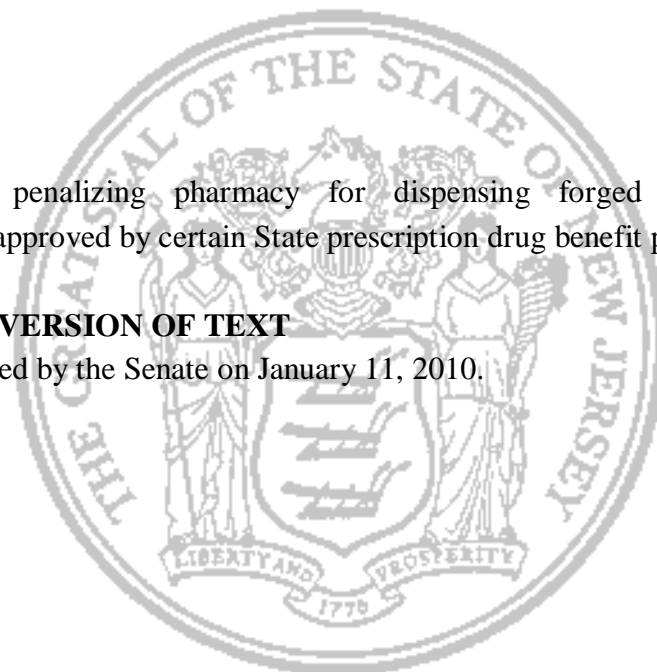
Green, Giblin, Schaer, Conners and Assemblywoman Handlin

SYNOPSIS

Prohibits penalizing pharmacy for dispensing forged or fraudulent prescription approved by certain State prescription drug benefit programs.

CURRENT VERSION OF TEXT

As amended by the Senate on January 11, 2010.



(Sponsorship Updated As Of: 1/12/2010)

1 AN ACT concerning ¹forged and¹ fraudulent prescriptions and
2 supplementing P.L.1968, c.413 (C.30:4D-1 et seq.), P.L.1975,
3 c.194 (C.30:4D-20 et seq.) ²[¹, ¹ and],² P.L.2001, c.96 (C.30:4D-
4 43 et seq.)², and P.L.2005, c.156 (C.30:4J-8 et al.)².

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

8
9 1. a. A ¹[**pharmacist**] pharmacy¹ shall receive full payment
10 and shall not be penalized for dispensing a ¹forged or¹ fraudulent
11 prescription that has been approved by the State Medicaid program
12 established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), unless
13 the pharmacist or ²[**his**] an² employee or agent ²of the pharmacy²
14 has committed the ¹forgery or¹ fraud ¹or has knowingly facilitated
15 the commission of a forgery or fraud^{1 2}, ³[**and**] or³ has failed to
16 comply with the requirements set forth in subsection c. of this
17 section².

18 b. ¹As used in this section, “has committed the forgery or fraud
19 or has knowingly facilitated the commission of a forgery or fraud”
20 means that a person:

21 (1) knowingly and willfully made or caused to be made any
22 false statement or representation of a material fact in any document
23 or electronic transmission necessary to receive payment by the
24 program for the prescription;

25 (2) knowingly and willfully made or caused to be made any
26 false statement, written or oral, of a material fact for use in
27 determining the right to payment by the program for the
28 prescription; or

29 (3) concealed or failed to disclose a fact or the occurrence of an
30 event that affects the right to payment by the program for the
31 prescription.

32 c. The provisions of this section shall not be construed as
33 relieving a pharmacist of his obligation to comply with any
34 requirements provided under any State or federal statute or
35 regulation for the pharmacist:

36 (1) to seek verification of a prescription from an authorized
37 prescriber or the latter’s authorized agent before filling the
38 prescription whenever the pharmacist has reason to question the
39 authenticity, accuracy, or appropriateness of the prescription; and

40 (2) to not fill the prescription when the authenticity, accuracy,
41 or appropriateness of the prescription is in question and no such
42 verification has been provided.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHE committee amendments adopted December 8, 2008.

²Assembly floor amendments adopted January 7, 2010.

³Senate floor amendments adopted January 11, 2010.

1 ²A pharmacist who fails to comply with these requirements shall
2 be subject to exclusion or debarment as a provider under the State
3 Medicaid program, and the recovery of monies improperly
4 expended by the State due to the dispensing of the forged or
5 fraudulent prescription. If these monies cannot be recovered from
6 the pharmacist, the pharmacy shall be subject to the recovery.²

7 d.¹ The ²[State Medicaid program] Office of the Medicaid
8 Inspector General² shall make every reasonable effort to identify an
9 individual who ¹[commits prescription drug fraud under the
10 program] has committed the forgery or fraud or has knowingly
11 facilitated the commission of a forgery or fraud¹ and collect from
12 the individual the amount paid by the program for the dispensed
13 prescription, in addition to any other penalties that may apply. If
14 the ¹'forgery or' fraud involves the misuse or theft of a Medicaid
15 eligibility identification card, the card shall be ²[recalled] subject
16 to a pharmacy restriction process under which the Medicaid
17 recipient is permitted to use the card only at a single pharmacy of
18 the recipient's choosing.

19 e. The pharmacist and each employee and agent of the
20 pharmacy shall cooperate fully with the Office of the Medicaid
21 Inspector General in any investigation of forged or fraudulent
22 prescriptions and shall respond fully to any request for information
23 or other assistance by the Division of Medical Assistance and
24 Health Services in the Department of Human Services in regard to
25 such prescriptions².

26
27 2. a. A ¹[pharmacist] pharmacy¹ shall receive full payment
28 and shall not be penalized for dispensing a ¹'forged or' fraudulent
29 prescription that has been approved by the State Medicaid program
30 established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), unless
31 the pharmacist or ²[his] an² employee or agent ²of the pharmacy²
32 has committed the 'forgery or' fraud ¹or has knowingly facilitated
33 the commission of a forgery or fraud^{1 2}, ³[and] or³ has failed to
34 comply with the requirements set forth in subsection c. of this
35 section².

36 b. ¹As used in this section, "has committed the forgery or fraud
37 or has knowingly facilitated the commission of a forgery or fraud"
38 means that a person:

39 (1) knowingly and willfully made or caused to be made any
40 false statement or representation of a material fact in any document
41 or electronic transmission necessary to receive payment by the
42 program for the prescription;

43 (2) knowingly and willfully made or caused to be made any
44 false statement, written or oral, of a material fact for use in
45 determining the right to payment by the program for the
46 prescription; or

1 (3) concealed or failed to disclose a fact or the occurrence of an
2 event that affects the right to payment by the program for the
3 prescription.

4 c. The provisions of this section shall not be construed as
5 relieving a pharmacist of his obligation to comply with any
6 requirements provided under any State or federal statute or
7 regulation for the pharmacist:

8 (1) to seek verification of a prescription from an authorized
9 prescriber or the latter's authorized agent before filling the
10 prescription whenever the pharmacist has reason to question the
11 authenticity, accuracy, or appropriateness of the prescription; and

12 (2) to not fill the prescription when the authenticity, accuracy,
13 or appropriateness of the prescription is in question and no such
14 verification has been provided.

15 ²A pharmacist who fails to comply with these requirements shall
16 be subject to exclusion or debarment as a provider under the
17 program, and the recovery of monies improperly expended by the
18 State due to the dispensing of the forged or fraudulent prescription.
19 If these monies cannot be recovered from the pharmacist, the
20 pharmacy shall be subject to the recovery.²

21 d.¹ The program shall make every reasonable effort to identify an
22 individual who ¹[commits prescription drug fraud under the
23 program] has committed the forgery or fraud or has knowingly
24 facilitated the commission of a forgery or fraud¹ and collect from
25 the individual the amount paid by the program for the dispensed
26 prescription, in addition to any other penalties that may apply. If
27 the ¹forgery or¹ fraud involves the misuse or theft of a
28 "Pharmaceutical Assistance to the Aged and Disabled" program
29 eligibility identification card, the card shall be ²[recalled] subject
30 to a pharmacy restriction process under which the program recipient
31 is permitted to use the card only at a single pharmacy of the
32 recipient's choosing.

33 e. The pharmacist and each employee and agent of the
34 pharmacy shall cooperate fully with the program, or any entity
35 acting on its behalf, in any investigation of forged or fraudulent
36 prescriptions and shall respond fully to any request for information
37 or other assistance by the program in regard to such prescriptions².

38
39 3. a. A ¹[pharmacist] pharmacy¹ shall receive full payment
40 and shall not be penalized for dispensing a ¹forged or¹ fraudulent
41 prescription that has been approved by the State Medicaid program
42 established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), unless
43 the pharmacist or ²[his] an² employee or agent ²of the pharmacy²
44 has committed the ¹forgery or¹ fraud ¹or has knowingly facilitated
45 the commission of a forgery or fraud¹ ²; ³[and] or³ has failed to
46 comply with the requirements set forth in subsection c. of this
47 section².

1 b. ¹As used in this section, “has committed the forgery or fraud
2 or has knowingly facilitated the commission of a forgery or fraud”
3 means that a person:

4 (1) knowingly and willfully made or caused to be made any
5 false statement or representation of a material fact in any document
6 or electronic transmission necessary to receive payment by the
7 program for the prescription;

8 (2) knowingly and willfully made or caused to be made any
9 false statement, written or oral, of a material fact for use in
10 determining the right to payment by the program for the
11 prescription; or

12 (3) concealed or failed to disclose a fact or the occurrence of an
13 event that affects the right to payment by the program for the
14 prescription.

15 c. The provisions of this section shall not be construed as
16 relieving a pharmacist of his obligation to comply with any
17 requirements provided under any State or federal statute or
18 regulation for the pharmacist:

19 (1) to seek verification of a prescription from an authorized
20 prescriber or the latter’s authorized agent before filling the
21 prescription whenever the pharmacist has reason to question the
22 authenticity, accuracy, or appropriateness of the prescription; and

23 (2) to not fill the prescription when the authenticity, accuracy,
24 or appropriateness of the prescription is in question and no such
25 verification has been provided.

26 ²A pharmacist who fails to comply with these requirements shall
27 be subject to exclusion or debarment as a provider under the
28 program, and the recovery of monies improperly expended by the
29 State due to the dispensing of the forged or fraudulent prescription.
30 If these monies cannot be recovered from the pharmacist, the
31 pharmacy shall be subject to the recovery.²

32 d.¹ The program shall make every reasonable effort to identify
33 an individual who ¹[commits prescription drug fraud under the
34 program] has committed the forgery or fraud or has knowingly
35 facilitated the commission of a forgery or fraud¹ and collect from
36 the individual the amount paid by the program for the dispensed
37 prescription, in addition to any other penalties that may apply. If
38 the ¹forgery or¹ fraud involves the misuse or theft of a Senior Gold
39 eligibility identification card, the card shall be ²[recalled] subject
40 to a pharmacy restriction process under which the program recipient
41 is permitted to use the card only at a single pharmacy of the
42 recipient’s choosing.

43 e. The pharmacist and each employee and agent of the
44 pharmacy shall cooperate fully with the program, or any entity
45 acting on its behalf, in any investigation of forged or fraudulent
46 prescriptions and shall respond fully to any request for information
47 or other assistance by the program in regard to such prescriptions².

1 ²4. a. A pharmacy shall receive full payment and shall not be
2 penalized for dispensing a forged or fraudulent prescription that has
3 been approved by the NJ FamilyCare Program established pursuant
4 to P.L.2005, c.156 (C.30:4J-8 et al.), unless the pharmacist or an
5 employee or agent of the pharmacy has committed the forgery or
6 fraud or has knowingly facilitated the commission of a forgery or
7 fraud, ³[and] or³ has failed to comply with the requirements set
8 forth in subsection c. of this section.

9 b. As used in this section, “has committed the forgery or fraud
10 or has knowingly facilitated the commission of a forgery or fraud”
11 means that a person:

12 (1) knowingly and willfully made or caused to be made any
13 false statement or representation of a material fact in any document
14 or electronic transmission necessary to receive payment by the
15 program for the prescription;

16 (2) knowingly and willfully made or caused to be made any
17 false statement, written or oral, of a material fact for use in
18 determining the right to payment by the program for the
19 prescription; or

20 (3) concealed or failed to disclose a fact or the occurrence of an
21 event that affects the right to payment by the program for the
22 prescription.

23 c. The provisions of this section shall not be construed as
24 relieving a pharmacist of his obligation to comply with any
25 requirements provided under any State or federal statute or
26 regulation for the pharmacist:

27 (1) to seek verification of a prescription from an authorized
28 prescriber or the latter’s authorized agent before filling the
29 prescription whenever the pharmacist has reason to question the
30 authenticity, accuracy, or appropriateness of the prescription; and

31 (2) to not fill the prescription when the authenticity, accuracy,
32 or appropriateness of the prescription is in question and no such
33 verification has been provided.

34 A pharmacist who fails to comply with these requirements shall
35 be subject to exclusion or debarment as a provider under the NJ
36 FamilyCare Program, and the recovery of monies improperly
37 expended by the State due to the dispensing of the forged or
38 fraudulent prescription. If these monies cannot be recovered from
39 the pharmacist, the pharmacy shall be subject to the recovery.

40 d. The Office of the Medicaid Inspector General shall make
41 every reasonable effort to identify an individual who has committed
42 the forgery or fraud or has knowingly facilitated the commission of
43 a forgery or fraud and collect from the individual the amount paid
44 by the program for the dispensed prescription, in addition to any
45 other penalties that may apply. If the forgery or fraud involves the
46 misuse or theft of a NJ FamilyCare Program eligibility
47 identification card, the card shall be subject to a pharmacy
48 restriction process under which the program recipient is permitted

1 to use the card only at a single pharmacy of the recipient's
2 choosing.

3 e. The pharmacist and each employee and agent of the
4 pharmacy shall cooperate fully with the Office of the Medicaid
5 Inspector General in any investigation of forged or fraudulent
6 prescriptions and shall respond fully to any request for information
7 or other assistance by the Division of Medical Assistance and
8 Health Services in the Department of Human Services in regard to
9 such prescriptions.²

10

11 ²[4.] 5.² This act shall take effect immediately.

SENATE, No. 1711

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MAY 8, 2008

Sponsored by:

Senator DIANE B. ALLEN

District 7 (Burlington and Camden)

Senator DANA L. REDD

District 5 (Camden and Gloucester)

SYNOPSIS

Prohibits penalizing pharmacist for dispensing fraudulent prescription approved by Medicaid, PAAD or Senior Gold.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/14/2008)

1 AN ACT concerning fraudulent prescriptions and supplementing
2 P.L.1968, c.413 (C.30:4D-1 et seq.), P.L.1975, c.194 (C.30:4D-
3 20 et seq.) and P.L.2001, c.96 (C.30:4D-43 et seq.).

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

7
8 1. a. A pharmacist shall receive full payment and shall not be
9 penalized for dispensing a fraudulent prescription that has been
10 approved by the State Medicaid program established pursuant to
11 P.L.1968, c.413 (C.30:4D-1 et seq.), unless the pharmacist or his
12 employee or agent has committed the fraud.

13 b. The State Medicaid program shall make every reasonable
14 effort to identify an individual who commits prescription drug fraud
15 under the program and collect from the individual the amount paid
16 by the program for the dispensed prescription, in addition to any
17 other penalties that may apply. If the fraud involves the misuse or
18 theft of a Medicaid eligibility identification card, the card shall be
19 recalled.

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21 2. a. A pharmacist shall receive full payment and shall not be
22 penalized for dispensing a fraudulent prescription that has been
23 approved by the "Pharmaceutical Assistance to the Aged and
24 Disabled" program established pursuant to P.L.1975, c.194
25 (C.30:4D-20 et seq.), unless the pharmacist or his employee or
26 agent has committed the fraud.

27 b. The program shall make every reasonable effort to identify an
28 individual who commits prescription drug fraud under the program
29 and collect from the individual the amount paid by the program for
30 the dispensed prescription, in addition to any other penalties that
31 may apply. If the fraud involves the misuse or theft of a
32 "Pharmaceutical Assistance to the Aged and Disabled" program
33 eligibility identification card, the card shall be recalled.

34
35 3. a. A pharmacist shall receive full payment and shall not be
36 penalized for dispensing a fraudulent prescription that has been
37 approved by the "Senior Gold Prescription Discount Program"
38 established pursuant to P.L.2001, c.96 (C.30:4D-43 et seq.), unless
39 the pharmacist or his employee or agent has committed the fraud.

40 b. The program shall make every reasonable effort to identify an
41 individual who commits prescription drug fraud under the program
42 and collect from the individual the amount paid by the program for
43 the dispensed prescription, in addition to any other penalties that
44 may apply. If the fraud involves the misuse or theft of a Senior
45 Gold eligibility identification card, the card shall be recalled.

46
47 4. This act shall take effect immediately.

STATEMENT

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This bill provides that a pharmacist shall receive full payment and shall not be penalized for dispensing a fraudulent prescription that has been approved by the State Medicaid program, the "Pharmaceutical Assistance to the Aged and Disabled" (PAAD) program or the "Senior Gold Prescription Discount Program," (Senior Gold) unless the pharmacist or his employee or agent has committed the fraud.

The bill also provides that the Medicaid, PAAD and Senior Gold programs shall make every reasonable effort to identify an individual who commits prescription drug fraud under the respective program and collect from the individual the amount paid by the program for the dispensed prescription, in addition to any other penalties that may apply. If the fraud involves the misuse or theft of a Medicaid, PAAD or Senior Gold eligibility identification card, the card shall be recalled.

This bill is intended to insure that an individual who commits prescription drug fraud, rather than the pharmacist who unwittingly dispenses a fraudulent prescription, under any of these State-funded programs is penalized for the fraud.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 1711

STATE OF NEW JERSEY

DATED: OCTOBER 27, 2008

The Senate Health, Human Services and Senior Citizens Committee reports favorably Senate Bill No. 1711.

This bill provides that a pharmacist shall receive full payment and shall not be penalized for dispensing a fraudulent prescription that has been approved by the State Medicaid program, the "Pharmaceutical Assistance to the Aged and Disabled" (PAAD) program or the "Senior Gold Prescription Discount Program," (Senior Gold) unless the pharmacist or his employee or agent has committed the fraud.

The bill also provides that the Medicaid, PAAD and Senior Gold programs shall make every reasonable effort to identify an individual who commits prescription drug fraud under the respective program and collect from the individual the amount paid by the program for the dispensed prescription, in addition to any other penalties that may apply. If the fraud involves the misuse or theft of a Medicaid, PAAD or Senior Gold eligibility identification card, the card shall be recalled.

This bill is intended to insure that an individual who commits prescription drug fraud, rather than the pharmacist who unwittingly dispenses a fraudulent prescription, under any of these State-funded programs is penalized for the fraud.

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

SENATE, No. 1711

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 8, 2008

The Assembly Health and Senior Services Committee reports favorably and with committee amendments Senate Bill No. 1711.

As amended by the committee, the purpose of this bill is to ensure that an individual who commits prescription drug forgery or fraud, rather than the pharmacist who unwittingly dispenses a forged or fraudulent prescription, under certain State-funded prescription drug benefit programs is penalized for the forgery or fraud.

The bill provides specifically as follows:

- A pharmacy is to receive full payment and not be penalized for dispensing a forged or fraudulent prescription that has been approved by the State Medicaid program, the "Pharmaceutical Assistance to the Aged and Disabled" (PAAD) program, or the "Senior Gold Prescription Discount Program" (Senior Gold), unless the pharmacist or his employee or agent has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud.
- The bill defines the phrase, "has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud," to mean that a person:
 - knowingly and willfully made or caused to be made any false statement or representation of a material fact in any document or electronic transmission necessary to receive payment by the respective program for the prescription;
 - knowingly and willfully made or caused to be made any false statement, written or oral, of a material fact for use in determining the right to payment by the respective program for the prescription; or
 - concealed or failed to disclose a fact or the occurrence of an event that affects the right to payment by the respective program for the prescription.
- The provisions of the bill are not to be construed as relieving a pharmacist of his obligation to comply with any requirements provided under any State or federal statute or regulation for the pharmacist:
 - to seek verification of a prescription from an authorized

prescriber or the latter's authorized agent before filling the prescription whenever the pharmacist has reason to question the authenticity, accuracy, or appropriateness of the prescription; and

-- to not fill the prescription when the authenticity, accuracy, or appropriateness of the prescription is in question and no such verification has been provided.

- The Medicaid, PAAD, and Senior Gold programs must make every reasonable effort to identify an individual who has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud under the respective program and collect from the individual the amount paid by the program for the dispensed prescription, in addition to any other penalties that may apply.
- If the forgery or fraud involves the misuse or theft of a Medicaid, PAAD, or Senior Gold eligibility identification card, the card is to be recalled.

As reported by the committee, this bill is identical to Assembly Bill No. 3411 (ACA) (Evans/Conaway), which the committee also reported on this date.

COMMITTEE AMENDMENTS

The committee amendments to the bill:

- require that the pharmacy, rather than the pharmacist, receive full payment as provided in the bill;
- apply the provisions of the bill to forged or fraudulent prescriptions;
- stipulate that full payment is to be made to a pharmacy unless the pharmacist or his employee or agent has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud;
- include a definition of the phrase, "has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud";
- clarify that the provisions of the bill are not to be construed as relieving a pharmacist of his obligation to comply with any requirements provided under any State or federal statute or regulation for the pharmacist: and

-- to seek verification of a prescription from an authorized prescriber or the latter's authorized agent before filling the prescription whenever the pharmacist has reason to question the authenticity, accuracy, or appropriateness of the prescription; and

-- to not fill the prescription when the authenticity, accuracy, or appropriateness of the prescription is in question and no such verification has been provided.

STATEMENT TO
[First Reprint]
SENATE, No. 1711

with Assembly Floor Amendments
(Proposed by Assemblywoman EVANS)

ADOPTED: JANUARY 7, 2010

These amendments revise the provisions of this bill to provide as follows:

- A pharmacy is to receive full payment and not be penalized for dispensing a forged or fraudulent prescription that has been approved by the State Medicaid program, unless the pharmacist or an employee or agent of the pharmacy has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud, and has failed to comply with the requirements set forth in the bill concerning verification of the prescription.
- A pharmacist who fails to comply with these requirements is subject to exclusion or debarment as a Medicaid provider, and the recovery of monies improperly expended by the State due to the dispensing of the forged or fraudulent prescription. If these monies cannot be recovered from the pharmacist, the pharmacy will be subject to the recovery.
- The Office of the Medicaid Inspector General is to make every reasonable effort to identify an individual who has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud and collect from the individual the amount paid by the program for the dispensed prescription, in addition to any other penalties that may apply.
- If the forgery or fraud involves the misuse or theft of a Medicaid eligibility identification card, the card is to be subject to a pharmacy restriction process under which the Medicaid recipient is permitted to use the card only at a single pharmacy of the recipient's choosing.
- The pharmacist and each employee and agent of the pharmacy are to cooperate fully with the Office of the Medicaid Inspector General in any investigation of forged or fraudulent prescriptions and to respond fully to any request for information or other assistance by the Division of Medical Assistance and Health Services in the Department of Human Services in regard to such prescriptions.
- The amendments make comparable changes, as applicable, with respect to prescriptions covered under the other programs referenced in the bill.
- Finally, the amendments apply the provisions of the bill to prescriptions dispensed to individuals enrolled in the NJ FamilyCare Program.

STATEMENT TO
[Second Reprint]
SENATE, No. 1711

with Senate Floor Amendments
(Proposed by Senator ALLEN)

ADOPTED: JANUARY 11, 2010

These amendments revise the provisions of this bill to provide that a pharmacy is to receive full payment and not be penalized for dispensing a forged or fraudulent prescription that has been approved by the State Medicaid program, or other State pharmaceutical assistance program as stipulated in the bill, unless:

- the pharmacist or an employee or agent of the pharmacy has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud; or (rather than “and”)
- has failed to comply with the requirements set forth in the bill concerning verification of the prescription.

ASSEMBLY, No. 3411

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED OCTOBER 27, 2008

Sponsored by:

Assemblywoman ELEASE EVANS

District 35 (Bergen and Passaic)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington and Camden)

SYNOPSIS

Prohibits penalizing pharmacist for dispensing fraudulent prescription approved by Medicaid, PAAD or Senior Gold.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/9/2008)

1 AN ACT concerning fraudulent prescriptions and supplementing
2 P.L.1968, c.413 (C.30:4D-1 et seq.), P.L.1975, c.194 (C.30:4D-
3 20 et seq.) and P.L.2001, c.96 (C.30:4D-43 et seq.).
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. a. A pharmacist shall receive full payment and shall not be
9 penalized for dispensing a fraudulent prescription that has been
10 approved by the State Medicaid program established pursuant to
11 P.L.1968, c.413 (C.30:4D-1 et seq.), unless the pharmacist or his
12 employee or agent has committed the fraud.

13 b. The State Medicaid program shall make every reasonable
14 effort to identify an individual who commits prescription drug fraud
15 under the program and collect from the individual the amount paid
16 by the program for the dispensed prescription, in addition to any
17 other penalties that may apply. If the fraud involves the misuse or
18 theft of a Medicaid eligibility identification card, the card shall be
19 recalled.
20

21 2. a. A pharmacist shall receive full payment and shall not be
22 penalized for dispensing a fraudulent prescription that has been
23 approved by the "Pharmaceutical Assistance to the Aged and
24 Disabled" program established pursuant to P.L.1975, c.194
25 (C.30:4D-20 et seq.), unless the pharmacist or his employee or
26 agent has committed the fraud.

27 b. The program shall make every reasonable effort to identify
28 an individual who commits prescription drug fraud under the
29 program and collect from the individual the amount paid by the
30 program for the dispensed prescription, in addition to any other
31 penalties that may apply. If the fraud involves the misuse or theft
32 of a "Pharmaceutical Assistance to the Aged and Disabled" program
33 eligibility identification card, the card shall be recalled.
34

35 3. a. A pharmacist shall receive full payment and shall not be
36 penalized for dispensing a fraudulent prescription that has been
37 approved by the "Senior Gold Prescription Discount Program"
38 established pursuant to P.L.2001, c.96 (C.30:4D-43 et seq.), unless
39 the pharmacist or his employee or agent has committed the fraud.

40 b. The "Senior Gold Prescription Discount Program" shall
41 make every reasonable effort to identify an individual who commits
42 prescription drug fraud under the program and collect from the
43 individual the amount paid by the program for the dispensed
44 prescription, in addition to any other penalties that may apply. If
45 the fraud involves the misuse or theft of a Senior Gold eligibility
46 identification card, the card shall be recalled.
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48 4. This act shall take effect immediately.

STATEMENT

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This bill provides that a pharmacist shall receive full payment and shall not be penalized for dispensing a fraudulent prescription that has been approved by the State Medicaid program, the "Pharmaceutical Assistance to the Aged and Disabled" (PAAD) program or the "Senior Gold Prescription Discount Program," unless the pharmacist or his employee or agent has committed the fraud.

The bill also provides that the State Medicaid program, the PAAD program or the Senior Gold program shall make every reasonable effort to identify an individual who commits prescription drug fraud under the program and collect from the individual the amount paid by the program for the dispensed prescription, in addition to any other penalties that may apply. If the fraud involves the misuse or theft of a Medicaid, PAAD or Senior Gold eligibility identification card, the card shall be recalled.

This bill is intended to insure that an individual who commits prescription drug fraud, rather than the pharmacist who unwittingly dispenses a fraudulent prescription, under any of these State-funded programs is penalized for the fraud.

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3411

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 8, 2008

The Assembly Health and Senior Services Committee reports favorably and with committee amendments Assembly Bill No. 3411.

As amended by the committee, the purpose of this bill is to ensure that an individual who commits prescription drug forgery or fraud, rather than the pharmacist who unwittingly dispenses a forged or fraudulent prescription, under certain State-funded prescription drug benefit programs is penalized for the forgery or fraud.

The bill provides specifically as follows:

- A pharmacy is to receive full payment and not be penalized for dispensing a forged or fraudulent prescription that has been approved by the State Medicaid program, the "Pharmaceutical Assistance to the Aged and Disabled" (PAAD) program, or the "Senior Gold Prescription Discount Program" (Senior Gold), unless the pharmacist or his employee or agent has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud.
- The bill defines the phrase, "has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud," to mean that a person:
 - knowingly and willfully made or caused to be made any false statement or representation of a material fact in any document or electronic transmission necessary to receive payment by the respective program for the prescription;
 - knowingly and willfully made or caused to be made any false statement, written or oral, of a material fact for use in determining the right to payment by the respective program for the prescription; or
 - concealed or failed to disclose a fact or the occurrence of an event that affects the right to payment by the respective program for the prescription.
- The provisions of the bill are not to be construed as relieving a pharmacist of his obligation to comply with any requirements provided under any State or federal statute or regulation for the pharmacist:
 - to seek verification of a prescription from an authorized

prescriber or the latter's authorized agent before filling the prescription whenever the pharmacist has reason to question the authenticity, accuracy, or appropriateness of the prescription; and

-- to not fill the prescription when the authenticity, accuracy, or appropriateness of the prescription is in question and no such verification has been provided.

- The Medicaid, PAAD, and Senior Gold programs must make every reasonable effort to identify an individual who has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud under the respective program and collect from the individual the amount paid by the program for the dispensed prescription, in addition to any other penalties that may apply.
- If the forgery or fraud involves the misuse or theft of a Medicaid, PAAD, or Senior Gold eligibility identification card, the card is to be recalled.

As reported by the committee, this bill is identical to Senate Bill No. 1711 (ACA) (Allen/Redd), which the committee also reported on this date.

COMMITTEE AMENDMENTS

The committee amendments to the bill:

- require that the pharmacy, rather than the pharmacist, receive full payment as provided in the bill;
- apply the provisions of the bill to forged or fraudulent prescriptions;
- stipulate that full payment is to be made to a pharmacy unless the pharmacist or his employee or agent has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud;
- include a definition of the phrase, "has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud";
- clarify that the provisions of the bill are not to be construed as relieving a pharmacist of his obligation to comply with any requirements provided under any State or federal statute or regulation for the pharmacist: and

-- to seek verification of a prescription from an authorized prescriber or the latter's authorized agent before filling the prescription whenever the pharmacist has reason to question the authenticity, accuracy, or appropriateness of the prescription; and

-- to not fill the prescription when the authenticity, accuracy, or appropriateness of the prescription is in question and no such verification has been provided.

FISCAL ESTIMATE
[First Reprint]
ASSEMBLY, No. 3411
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: MAY 28, 2009

SUMMARY

- Synopsis:** Prohibits penalizing pharmacy for dispensing forged or fraudulent prescription approved by certain State prescription drug benefit programs.
- Type of Impact:** A possible increase in General Fund expenditures that cannot be determined.
- Agencies Affected:** Departments of Health and Senior Services and Human Services.

Office of Legislative Services Estimate

Fiscal Impact	<u>Years 1 – 3</u>
State Cost	A possible increase in General Fund expenditures that cannot be determined.

- The Office of Legislative Services cannot estimate possible costs to the State associated with this bill because information is not available as to the number of prescriptions or the value of such prescriptions that are currently not paid in various State prescription drug programs due to prescription drug forgery or fraud.

BILL DESCRIPTION

Assembly Bill No. 3411 (1R) of 2008 seeks to ensure that an individual who commits prescription drug forgery or fraud, rather than the pharmacist who unwittingly dispenses a forged or fraudulent prescription, under certain State-funded prescription drug benefit programs is penalized for the forgery or fraud. At present, the pharmacy that unwittingly dispenses a forged or fraudulent prescription may be penalized financially. The provisions of the bill affect the State Medicaid, Pharmaceutical Assistance to the Aged and Disabled and Senior Gold programs.

FISCAL ANALYSIS

EXECUTIVE BRANCH

No fiscal information has been provided.

OFFICE OF LEGISLATIVE SERVICES

Though total State costs may increase as a result of not financially penalizing a pharmacy that unwittingly dispenses a forged or fraudulent prescription that has been approved by the State Medicaid, Pharmaceutical Assistance to the Aged and Disabled and Senior Gold programs, the Office of Legislative Services is unable to estimate any potential increase in costs because information is not available as to the number or dollar value of prescription drugs that may have been forged or fraudulently dispensed in various State sponsored prescription drug programs.

Section: Human Services

*Analyst: Jay A. Hershberg
Principal Fiscal Analyst*

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

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3411

with Assembly Floor Amendments
(Proposed by Assemblywoman EVANS)

ADOPTED: JANUARY 7, 2010

These amendments revise the provisions of this bill to provide as follows:

- A pharmacy is to receive full payment and not be penalized for dispensing a forged or fraudulent prescription that has been approved by the State Medicaid program, unless the pharmacist or an employee or agent of the pharmacy has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud, and has failed to comply with the requirements set forth in the bill concerning verification of the prescription.
- A pharmacist who fails to comply with these requirements is subject to exclusion or debarment as a Medicaid provider, and the recovery of monies improperly expended by the State due to the dispensing of the forged or fraudulent prescription. If these monies cannot be recovered from the pharmacist, the pharmacy will be subject to the recovery.
- The Office of the Medicaid Inspector General is to make every reasonable effort to identify an individual who has committed the forgery or fraud or has knowingly facilitated the commission of a forgery or fraud and collect from the individual the amount paid by the program for the dispensed prescription, in addition to any other penalties that may apply.
- If the forgery or fraud involves the misuse or theft of a Medicaid eligibility identification card, the card is to be subject to a pharmacy restriction process under which the Medicaid recipient is permitted to use the card only at a single pharmacy of the recipient's choosing.
- The pharmacist and each employee and agent of the pharmacy are to cooperate fully with the Office of the Medicaid Inspector General in any investigation of forged or fraudulent prescriptions and to respond fully to any request for information or other assistance by the Division of Medical Assistance and Health Services in the Department of Human Services in regard to such prescriptions.
- The amendments make comparable changes, as applicable, with respect to prescriptions covered under the other programs referenced in the bill.
- Finally, the amendments apply the provisions of the bill to prescriptions dispensed to individuals enrolled in the NJ FamilyCare Program.