

30:4D-2

LEGISLATIVE HISTORY CHECKLIST
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(Medicaid--various amendments on eligibility and recovery of false claims)

NJSA: 30:4D-2, et al

LAWS OF: 1979 CHAPTER: 365

BILL NO: S1419

SPONSOR(S): Hamilton and others

DATE INTRODUCED: October 23, 1978

COMMITTEE: ASSEMBLY: Institutions, Health and Welfare
SENATE: Institutions, Health and Welfare

AMENDED DURING PASSAGE: Yes Amendments during passage denoted by asterisks

DATE OF PASSAGE: ASSEMBLY: December 17, 1979
SENATE: August 6, 1979

DATE OF APPROVAL: February 4, 1980

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: ~~Yes~~ No
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: ~~No~~ YES

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

For background see:

HE22. General Research Corporation.

102:M48 Medicaid and AFDC fraud and abuse control and restitution efforts by states and localities. U.S. Department of Health, Education and Welfare, 1976-77.

KBP:pp

CHAPTER 365 LAWS OF N. J. 19 79
APPROVED, 2-4-80

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SENATE, No. 1419

STATE OF NEW JERSEY

INTRODUCED OCTOBER 23, 1978

By Senators HAMILTON, DWYER, MERLINO, J. RUSSO,
MARESSA, HIRKALA and A. RUSSO

Referred to Committee on Institutions, Health and Welfare

AN ACT to amend and supplement the "New Jersey Medical Assistance and Health Services Act," approved January 15, 1969 (P. L. 1968, c. 413).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

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

3 2. Declaration of purpose. It is the intent of the Legislature to
4 make statutory provision which will enable the State of New Jersey
5 to provide medical assistance, insofar as practicable, on behalf of
6 persons whose resources are determined to be inadequate to enable
7 them to secure quality medical care at their own expense, and to
8 enable the State, within the limits of funds available for any fiscal
9 year for such purposes, to obtain all benefits for medical assistance
10 provided by the Federal Social Security Act as it now reads or as
11 it may hereafter be amended, or by any other Federal act now in
12 effect or which may hereafter be enacted. *It is further the intent*
13 *of the Legislature that benefits provided hereunder shall be last*
14 *resource benefits notwithstanding any provisions contained in*
15 *contracts, wills, agreements or other instruments.*

1 2. Section 3 of P. L. 1968, c. 413 (C. 30:4D-3) is amended to
2 read as follows:

3 3. Definitions. As used in this act, and unless the context other-
4 wise requires:

5 a. "Applicant" means any person who has **[**applied for medical
6 assistance under this act**]** *made application for purposes of becom-*
7 *ing a "qualified applicant".*

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

8 h. "Commissioner" means the Commissioner of the Department
9 of **[Institutions and Agencies]** *Human Services*.

10 c. "Department" means the Department of **[Institutions and**
11 **Agencies]** *Human Services*, which is herein designated as the single
12 State agency to administer the provisions of this act.

13 d. "Director" means the Director of the Division of Medical
14 *Assistance and Health Services*.

15 e. "Division" means the Division of Medical Assistance and
16 *Health Services*.

17 f. "Medicaid" means the New Jersey Medical Assistance and
18 *Health Services Program*.

19 **[d.]** g. "Medical assistance" means payments on behalf of
20 recipients to providers for medical care and services *authorized*
21 *under this act*.

22 **[e.]** h. "Provider" means any person, public or private institu-
23 tion, agency or business concern **approved by the division** law-
24 fully providing medical care, services, goods and supplies autho-
25 rized under this act, holding, where applicable, a current valid
26 license to provide such services or to dispense such goods or sup-
26A plies.

27 **[f.]** i. "Qualified applicant" means a person who is a resident
28 of this State and is determined to need medical care and services
29 as provided under this act, and who:

30 (1) Is a recipient of **[old age assistance, assistance for the**
31 **permanently and totally disabled, assistance for the blind or**
32 **assistance for]** *aid to families with dependent children*; or

33 (2) *Is a recipient of supplemental security income for the aged,*
34 *blind and disabled under Title XVI of the Social Security Act; or*

35 (3) *Is an "ineligible spouse" of a recipient of supplemental*
36 *security income for the aged, blind and disabled under Title XVI*
37 *of the Social Security Act, as defined by the Federal Social Security*
38 *Administration; or*

39 **[(2)]** (4) Would be eligible to receive public assistance under
40 **[the State]** a categorical assistance **[programs]** *program* except
41 for failure to meet an eligibility condition or requirement imposed
42 under such State program which is prohibited under Title XIX
43 of the Federal Social Security Act such as a durational residence
44 requirement, relative responsibility, consent to imposition of a
45 lien; or

46 **[(3)]** (5) Is a child between 18 and 21 years of age who would
47 be eligible for **[assistance for]** *aid to families with dependent*
48 *children living in the family group except for lack of school*

49 attendance or pursuit of formalized vocational or technical train-
50 ing; or

51 *~~[(4)~~ (6) Is a spouse of a recipient of old age assistance,
52 assistance for the permanently and totally disabled, or assistance
53 for the blind who is living with such recipient and whose needs
54 are taken into account in determining the amount of cash payment
55 made to the recipient; or]*

56 ~~[(5)]~~ *~~[(7)]~~* *(6)* ~~[Is a child]~~ *Is an individual under 21 years*
57 *of age who qualifies for categorical assistance on the basis of finan-*
58 *cial eligibility, but does not qualify as a dependent child under the*
59 *State's program of aid to families with dependent children*
60 *(AFDC), or groups of such individuals, including but not limited*
61 *to, children in foster placement under supervision of the [Bureau*
62 *of Children's Services] Division of Youth and Family Services*
63 *whose maintenance is being paid in whole or in part from public*
64 *funds, [or is a child] children placed in a foster home or institu-*
65 *tion by a private adoption agency in New Jersey or children in*
66 *intermediate care facilities, including institutions for the mentally*
67 *retarded, or in psychiatric hospitals; or*

68 ~~[(6)~~ *~~[(8)]~~* *(7)* Meets the standard of need applicable to his
69 circumstances under a categorical assistance program ~~[or the pro-~~
70 ~~gram of Assistance to Families of the Working Poor]~~ *or supple-*
71 *mental security income program, but is not receiving such assist-*
72 *ance and applies for medical assistance only*~~;~~* [or]*

73 ~~[(7)~~ Is a recipient of assistance under the Assistance to the
74 Families of the Working Poor Act] *and* *.*

75 *~~[(9)~~ *Has not made a voluntary assignment or transfer of real*
76 *or personal property, or any interest or estate in property for the*
77 *purpose of becoming a qualified applicant. Voluntary assignments*
78 *or transfers for less than adequate consideration effected within*
79 *1 year of becoming or making application to become a qualified*
80 *applicant shall be deemed to have been made for the purpose of*
81 *becoming a qualified applicant in the absence of evidence to the*
81A *contrary supplied by the applicant.]**

81B *A person shall not be considered a qualified applicant if, within
81C 1 year of becoming or making application to become a qualified
81D applicant, he has made a voluntary assignment or transfer of real
81E or personal property, or any interest or estate in property, for less
81F than adequate consideration. Such voluntary assignment or trans-
81G fer of property shall be deemed to have been made for the purpose
82 of becoming a qualified applicant in the absence of evidence to
82A the contrary supplied by the applicant. This requirement shall not
82B be applicable to Supplemental Security Income applicants or aged,

82c *blind or disabled applicants for Medicaid only unless authorized*
82d *by Federal law.**

83 **[g]** *j.* "Recipient" means any **[person who is determined to**
84 *be eligible to receive medical assistance]* *qualified applicant*
85 *receiving benefits* under this act.

86 **[h]** *k.* "Resident" means a person *who is living, [other than*
87 *temporarily, within the State]* *in the State voluntarily with the*
88 *intention of making his home there and not for a temporary pur-*
89 *pose.* Temporary absences from the State, **[shall not cause a person**
90 *to lose his status as a resident of this State]* *with subsequent*
91 *returns to the State or intent to return when the purposes of the*
92 *absences have been accomplished, do not interrupt continuity of*
93 *residence.*

94 **[i]** *l.* "State Medicaid Commission" means the Governor, the
95 Commissioner of **[Institutions and Agencies]** *Human Services*, the
96 President of the Senate and the Speaker of the General Assembly,
97 hereby constituted a commission to approve and direct the means
98 and method for the payment of claims pursuant to this act.

99 *m.* "Third party" means any person, institution, corporation,
100 insurance company, public, private or governmental entity who
101 is or may be liable in contract, tort, or otherwise by law or equity
102 to pay all or part of the medical cost of injury, disease or disability
103 of an applicant for or recipient of medical assistance payable under
104 this act.

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

3 4. There is hereby created in the Department of **[Institutions**
4 *and Agencies]* *Human Services* a Division of Medical Assistance
5 and Health Services. The division shall perform those administra-
6 tive and operational functions vested in the department pursuant
7 to the provisions of this act and any other functions that the **[State**
8 *Board of Control]* *commissioner* may, from time to time, elect to
9 assign to such division. The division shall consult with and
10 coordinate programs related to medical assistance and health care
11 services being furnished by other State agencies to avoid duplica-
12 tion of effort.

1 4. Section 6 of P. L. 1968, c. 413 (C. 30:4D-6) is amended to read
2 as follows:

3 6. a. Subject to the requirements of Title XIX of the Federal
4 Social Security Act, the limitations imposed by this act and by the
5 rules and regulations promulgated pursuant thereto, the **[medical**
6 *assistance program]* *department* shall **[include]** *provide medical*

7 *assistance to qualified applicants* including authorized services
8 within each of the following classifications:

9 (1) Inpatient hospital services [(other than services in an in-
10 stitution for mental diseases)];

11 (2) Outpatient hospital services;

12 (3) Other laboratory and X-ray services;

13 (4) (a) Skilled nursing **or intermediate care** [home] facility
14 services [(other than services in an institution for mental diseases)
15 for persons 21 years of age or older];

16 (b) Such early and periodic screening and diagnosis of individ-
17 uals who are eligible under the program and are under age 21 to
18 ascertain their physical or mental defects and such health care,
19 treatment, and other measures to correct or ameliorate defects and
20 chronic conditions discovered thereby, as may be provided in
21 regulations of the Secretary of the Federal Department of Health,
22 Education and Welfare and approved by the commissioner;

23 (5) Physicians' services furnished in the office, the patient's
24 home, a hospital, a skilled nursing **or intermediate care** [home]
24A facility or elsewhere.

25 b. Subject to the limitations imposed by Federal law, by this
26 act, and by the rules and regulations promulgated pursuant thereto,
27 the medical assistance program may be expanded to include autho-
28 rized services within each of the following classifications:

29 (1) Medical care not included in subsection a. (5) above, or any
30 other type of remedial care recognized under State law, furnished
31 by licensed practitioners within the scope of their practice as
32 defined by State law; provided, however, at the program's incep-
33 tion such practitioners shall be limited to podiatrists and optom-
34 etrists];

35 (2) Home health care services;

36 (3) Clinic services;

37 (4) Dental services;

38 (5) Physical therapy and related services;

39 (6) Prescribed drugs, dentures, and prosthetic devices; and eye-
40 glasses prescribed by a physician skilled in diseases of the eye or
41 by an optometrist, whichever the individual may select;

42 (7) *Optometric services;*

43 (8) *Podiatric services;*

44 (9) *Chiropractic services;*

45 (10) *Psychological services;*

46 (11) *Inpatient psychiatric hospital services for individuals under*
47 *21 years of age, or under age 22 if they are receiving such services*
48 *immediately before attaining age 21;*

49 **[(7)]** (12) Other diagnostic, screening, preventive, and reha-
50 bilitative services, and other remedial care;

51 **[(8)]** (13) Inpatient hospital services, **[and]** skilled nursing
52 **[home]** facility services and intermediate care facility services for
53 individuals 65 years of age or over in an institution for mental
54 diseases;

55 (14) Intermediate care facility services;

56 (15) Transportation services;

57 **[(9)]** (16) Any other medical care and any other type of remedial
58 care recognized under State law, specified by the Secretary of the
59 Federal Department of Health, Education and Welfare, and
60 approved by the commissioner.

61 c. Payments for the foregoing services, goods and supplies fur-
62 nished pursuant to this act shall be made to the extent authorized
63 by this act, the rules and regulations promulgated pursuant thereto
64 and, where applicable, subject to the agreement of insurance pro-
65 vided for under this act. *Said payments shall constitute payment*
66 *in full to the provider on behalf of the recipient.* Every provider
67 making a claim for payment pursuant to this act shall certify in
68 writing *on the claim submitted* that no additional amount will be
69 charged to the recipient, *his family, his representative or others on*
70 *his behalf* for the services, goods and supplies furnished pursuant
71 *to this act.*

72 *No provider whose claim for payment pursuant to this act has*
73 *been denied because the services, goods or supplies were determined*
74 *to be medically unnecessary shall seek reimbursement from the*
75 *recipient, his family, his representative or others on his behalf for*
76 *such services, goods and supplies provided pursuant to this act;*
77 *provided, however, a provider may seek reimbursement from a*
78 *recipient for services, goods or supplies not authorized by this act,*
79 *if the recipient elected to receive the services, goods or supplies*
80 *with the knowledge that they were not authorized.*

81 d. Any individual eligible for medical assistance (including
82 drugs) may obtain such assistance from any **[institution, agency,**
83 **community pharmacy, or]** person* **[,]*** qualified to perform the
84 service or services required (including an organization which pro-
85 vides such services, or arranges for their availability on a pre-
86 payment basis), who undertakes to provide him such services.

87 e. Anything in this act to the contrary notwithstanding, no pay-
88 ments for medical assistance shall be made under this act with
89 respect to care or services for any individual who:

90 (1) Is an inmate of a public institution (except as a patient in a
91 medical institution); **[or]** provided, however*,* that an individual

92 *who is otherwise eligible may continue to receive services for the*
 93 *month in which he becomes an inmate, should the commissioner*
 94 *determine to expand the scope of Medicaid eligibility to include*
 95 *such an individual subject to the limitations imposed by Federal*
 96 *law and regulations, or*

97 (2) *Has not attained 65 years of age and who is a patient in an*
 98 *institution for mental diseases, or*

99 (3) *Is over 21 years of age and who is receiving inpatient*
 100 *psychiatric hospital services* [.] *in a psychiatric facility:* pro-*
 101 *vided, however, that an individual who was receiving such services*
 102 *immediately prior to attaining age 21 may continue to receive such*
 102A *services until he reaches age 22. *Nothing in this subsection shall*
 102B *prohibit the commissioner from extending medical assistance to*
 102C *all eligible persons receiving inpatient psychiatric services pro-*
 102D *vided that there is Federal financial participation available.**

103 *f. Any provision in a contract of insurance, will, trust agreement*
 104 *or other instrument which reduces or excludes coverage or payment*
 105 *for goods and services to an individual because of that individual's*
 106 *eligibility for or receipt of Medicaid benefits shall be null and void,*
 107 *and no payments shall be made under this act as a result of any*
 108 *such provision.*

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

3 7. Duties of commissioner. The commissioner is authorized and
 4 empowered to issue, or to cause to be issued through the Division
 5 of Medical Assistance and Health Services all necessary rules and
 6 regulations and administrative orders, and to do or cause to be
 7 done all other acts and things necessary to secure for the State of
 8 New Jersey the maximum Federal participation that is available
 9 with respect to a program of medical assistance, consistent with
 10 fiscal responsibility and within the limits of funds available for
 11 any fiscal year, and to the extent authorized by the medical assist-
 12 ance program plan; to adopt fee schedules with regard to medical
 13 assistance benefits and otherwise to accomplish the purposes of this
 14 act, including specifically the following:

15 a. Subject to the limits imposed by this act, to submit a plan for
 16 medical assistance, as required by Title XIX of the Federal Social
 17 Security Act, to the Federal Department of Health, Education and
 18 Welfare for approval pursuant to the provisions of such laws;
 19 to act for the State in making negotiations relative to the sub-
 20 mission and approval of such plan, to make such arrangements,
 21 not inconsistent with the law, as may be required by or pursuant

22 to Federal law to obtain and retain such approval and to secure
23 for the State the benefits of the provisions of such law;

24 b. Subject to the limits imposed by this act, to determine the
25 amount and scope of services to be covered, that the amounts to be
26 paid are reasonable, and the duration of medical assistance to be
27 furnished; provided, however, that the department shall provide
28 medical assistance on behalf of all recipients of categorical assist-
29 ance and such other related groups as are mandatory under Federal
30 laws and rules and regulations, as they now are or as they may
31 be hereafter amended, in order to obtain Federal matching funds
32 for such purposes and, in addition, provide medical assistance for
33 the foster children specified in section 3. [f. (5)] i. (7) of this act.
34 The medical assistance provided for these groups shall not be less in
35 scope, duration, or amount than is currently furnished such groups,
36 and in addition, shall include at least the minimum services re-
37 quired under Federal laws and rules and regulations to obtain
38 Federal matching funds for such purposes.

39 The commissioner is authorized and empowered, at such times
40 as he may determine feasible, within the limits of appropriated
41 funds for any fiscal year, to extend the scope, duration, and amount
42 of medical assistance on behalf of these groups of categorical
43 assistance recipients, related groups as are mandatory, and foster
44 children authorized pursuant to section 3. [f. (5)] i. (7) of this act,
45 so as to include, in whole or in part, the optional medical services
46 authorized under Federal laws and rules and regulations, and the
47 commissioner shall have the authority to establish and maintain the
48 priorities given such optional medical services; provided, however,
49 that medical assistance shall be provided to at least such groups
50 and in such scope, duration, and amount as are required to obtain
51 Federal matching funds;

52 The commissioner is further authorized and empowered, at such
53 times as he may determine feasible, within the limits of appropri-
54 ated funds for any fiscal year, to issue, or cause to be issued through
55 the Division of Medical Assistance and Health Services all neces-
56 sary rules, regulations and administrative orders, and to do or
57 cause to be done all other acts and things necessary to implement
58 and administer demonstration projects pursuant to Title XI, Sec-
59 tion 1115 of the Federal Social Security Act, including, but not
60 limited to waiving compliance with specific provisions of this act,
61 to the extent and for the period of time the commissioner deems
62 necessary, as well as contracting with any legal entity, including
63 but not limited to corporations organized pursuant to Title 14A,
64 New Jersey Statutes (N. J. S. 14A:1-1 et seq.) and Title 15, Re-

65 vised Statutes (R. S. 15:1-1 et seq.) as well as boards, groups,
66 agencies, persons and other public or private entities.

67-70 ***[In the event that the commissioner implements and administers**
71 *a demonstration project through a nonprofit corporation, the Gover-*
72 *nor shall appoint all of the trustees of said nonprofit corporation,*
73 *which trustees may include State or other governmental officials*
74 *appointed on an uncompensated basis as well as private citizens.*
75 *Any State official so appointed as a trustee by the Governor shall*
76 *be deemed to be serving in that capacity as part of his official duties,*
77 *and the holding of these positions shall not require said official to*
78 *disqualify himself in any matter coming before him in his capacity*
79 *either as trustee or State official.]**

80 c. To administer the provisions of this act;

81 d. To make reports to the Federal Department of Health, Edu-
82 cation and Welfare as from time to time may be required by such
83 Federal department and to the New Jersey Legislature as here-
84 inafter provided;

85 e. To assure that any applicant **[for medical assistance]**, *quali-*
86 *fied applicant or recipient* shall be afforded the opportunity for a
87 **[fair hearing by the department]* *hearing** should his claim for
88 medical assistance be denied, *reduced, terminated* or not acted upon
89 **[with reasonable promptness]** *within a reasonable time*;

90 f. To **[provide]** assure that **[either the recipient or the]** pro-
91 viders shall be afforded the opportunity for **[a fair]** **[either]* an*
92 *administrative hearing *or administrative review as the commis-*
93 *sioner shall by regulation determine]** within a reasonable time on
94 any valid complaint *arising out of the claims payment process*;

95 g. To provide safeguards to restrict the use or disclosure of
96 information concerning applicants and recipients to purposes
97 directly connected with administration of this act;

98 h. To *take all necessary action to recover any and all payments*
99 *incorrectly *made to* or illegally *[made to]* *received by* a*
100 **[recipient or provided]** *provider from such provider, the recipi-*
101 *ent]* or his estate *or from any other person, firm, corporation,*
102 *partnership or entity responsible for or receiving the benefit or*
103 *possession of the incorrect or illegal payments or their estates,*
104 *successors or assigns, and to assess and collect such penalties as*
104A *are provided for herein*;

105 i. To *take all necessary action to recover [any and all] the cost of*
106 *benefits incorrectly *provided to* [paid to a provider on behalf of]*
107 *or illegally *[provided to]* *obtained by* a recipient, including*
108 *those made after a voluntary divestiture of real or personal prop-*
109 *erty or any interest or estate in property for less than adequate*

110 consideration made for the purpose of qualifying for assistance
 111 from such recipient, legally responsible relative, representative
 111A payee, ***[any]*** *or any other* party or parties whose action or
 112 inaction resulted in the incorrect or illegal payments, or from their
 113 respective estates, as the case may be **[or from his estate]** and to
 114 assess and collect such penalties as are provided for herein, except
 115 that no lien may be imposed against property of the recipient prior
 116 to his death **[except pursuant to the judgment of a court]** *except in*
 117 *accordance with section 17 of P. L. 1968, c. 413 (C. 30:4D-17);*
 117A **provided, however, that no recovery action shall be initiated 5*
 117B *years after an incorrect payment has been made to a recipient*
 117C *when such incorrect payment was due solely to an error on the*
 117D *part of the State or any agency, agent or subdivision thereof;**

118 *j. To take all necessary action to recover the cost of benefits*
 119 *correctly provided to a recipient from the estate of said recipient in*
 120 *accordance with sections 6 through 12 of this amendatory and*
 121 *supplementary act;*

122 **[j.]** *k. To take all reasonable measures to ascertain the legal or*
 123 *equitable liability of third parties to pay for care and services*
 124 *(available under the plan) arising out of injury, disease, or dis-*
 125 *ability; where it is known that a third party has a **[legal]** liability,*
 126 *to treat such **[legal]** liability as a resource of the individual on*
 127 *whose behalf the care and services are made available for purposes*
 128 *of determining eligibility; and in any case where such a **[legal]***
 129 *liability is found to exist after medical assistance has been made*
 130 *available on behalf of the individual, to seek reimbursement for*
 131 *such assistance to the extent of such **[legal]** liability***[.]*** *;**[***In*
 132 *any case where such a legal liability is found the department shall*
 133 *be subrogated to the rights of the individual for whom medical*
 134 *assistance was made available;**]*****[***The commissioner shall have*
 135 *a right to recover the full amount of payments made to a provider*
 136 *under this act because of an injury, disease, or disability for which*
 137 *a third party is or may be liable in contract, tort or otherwise by*
 138 *law or equity;**]******

139 *l. To compromise, waive or settle and execute a release of any*
 140 *claim arising under this act *including interest or other penalties*,*
 141 *or designate another to compromise, waive or settle and execute*
 142 *a release of any claim arising under this act. The commissioner or*
 143 *his designee *whose title shall be specified by regulation* may com-*
 144 *promise*, settle* or waive any such claim in whole or in part, either*
 145 *in the interest of the Medicaid program***[**, or if the commissioner*
 146 *or such person designated by the commissioner determines that*
 147 *collection would result in undue hardship upon the person from*

148 *whom the recovery is sought,]** or for any other reason which the
149 *commissioner by regulation shall establish;*

150 **m. To pay or credit to a provider any net amount found by*
151 *final audit as defined by regulation to be owing to the provider.*
152 *Such payment, if it is not made within 45 days of the final audit,*
153 *shall include interest on the amount due at the maximum legal rate*
154 *in effect on the date the payment became due, except that such*
155 *interest shall not be paid on any obligation for the period preceding*
156 *September 15, 1976. This subsection shall not apply until Federal*
157 *financial participation is available for such interest payments;**

158 **[m.]* *n.* To issue, or designate another to issue, subpoenas to
159 *compel the attendance of witnesses and the production of books,*
160 *records, accounts, papers and documents of any party, whether or*
161 *not that party is a provider, which directly or indirectly relate to*
162 *goods or services provided under this act, for the purpose of assist-*
163 *ing in any investigation, examination, or inspection, or in any sus-*
164 *pension, debarment, disqualification, recovery, or other proceeding*
165 *arising under this act;**

166 *[k.]* *[n.]* *o.* To solicit, receive and review bids pursuant to
167 *the provisions of P. L. 1954, c. 48 (C. 52:34-6 et seq.) and all amend-*
168 *ments and supplements thereto, by authorized insurance companies*
169 *and nonprofit hospital service corporations or medical service cor-*
170 *porations, incorporated in New Jersey, and authorized to do busi-*
171 *ness pursuant to P. L. 1938, c. 366 (C. 17:48-1 et seq.) or P. L.*
172 *1940, c. 74 (C. 17:48A-1 et seq.), and to make recommendations in*
173 *connection therewith to the State Medicaid Commission;**

174 *[l.]* *[o.]* *p.* To contract, or otherwise provide as in this act
175 *provided, for the payment of claims in the manner approved by*
176 *the State Medicaid Commission;**

177 *[m.]* *[p.]* *q.* Where necessary, to advance funds to the
178 *underwriter or fiscal agent to enable such underwriter or fiscal*
179 *agent, in accordance with terms of its contract, to make payments*
180 *to providers;**

181 *[n.]* *[q.]* *r.* To *[contract with and to pay for appropriate*
182 *agencies that investigate and determine whether applicants for ben-*
183 *efits under this act are eligible therefor under the standards pre-*
184 *scribed by the department]* *enter into contracts with Federal, State,*
185 *or local governmental agencies, or other appropriate parties, when*
186 *necessary to carry out the provisions of this act;**

187 *[o.]* *[r.]* *s.* To assure that the nature and quality of the
188 *medical assistance provided for under this act shall be uniform*
189 *and equitable to all recipients.**

1 6. (New section) a. The commissioner may request the Attorney
2 General to enforce any rights against any third party, institute
3 legal proceedings against any third party, or intervene in any
4 pending proceeding against a third party initiated by a recipient,
5 his guardian, executor, administrator or other appropriate repre-
6 sentative, either in the commissioner's own name, as subrogee of
7 the rights of the recipient, or to enforce the commissioner's rights
8 as assignee of the recipient established in this section. If such a
9 legal proceeding is instituted by the Attorney General, written
10 notice shall be given to the recipient or his guardian, executor,
11 administrator or other appropriate representative, who shall then
12 have the right to intervene in the proceeding. Any recovery by the
13 recipient in excess of the outstanding claim of the division shall be
14 treated as a resource of said individual for purposes of determining
15 eligibility for assistance.

16 No action taken on behalf of the commissioner pursuant to
17 this subsection or any judgment rendered in such action shall be
18 a bar to any action upon the claim or cause of action by a recipient,
19 his guardian, executor, administrator or other appropriate repre-
20 sentative against a third party, or shall operate to deny the
21 recipient the recovery of that portion of his medical costs or other
22 damages not covered under this act.

23 b. When a recipient, his guardian, executor, administrator or
24 other appropriate representative brings an action for damages
25 against a third party, written notice shall be given to the Director
26 of the Division of Medical Assistance and Health Services. In
27 addition, every recipient or his legal representative shall promptly
28 notify the division of any recovery from a third party and shall
29 immediately reimburse the division in full from the proceeds of any
30 settlement, judgment, or other recovery in any action or claim
31 initiated against any such third party *~~without any~~* *subject*
32 *to a pro rata** deduction for counsel fees, costs, or other expenses
33 incurred by the recipient or the recipient's attorney*; *provided,*
33A *however, that the director may make application to a court of com-*
33B *petent jurisdiction for an award of counsel fees and costs incurred*
33C *in the pursuit of a claim under this subsection*.*

34 Any settlement, judgment, dismissal, exchange of releases, or
35 action affecting the disposition of a recipient's independent action
36 against a third party shall not serve to bar a claim or cause of
37 action brought by the Attorney General on behalf of the commis-
38 sioner against that third party under this section.

39 c. In addition to all other recovery methods set forth above,
40 every recipient, as a condition of eligibility for medical assistance
41 under this act, is hereby deemed to have assigned to the com-
42 missioner any rights to support for the purpose of medical care
43 as determined by a court or administrative order and any rights
44 to payment for medical care from any third party.

1 7. (New section) a. A lien may be filed against the estate of a
2 deceased recipient if his spouse is also deceased and he has no
3 surviving child who is under age 21 or is blind or permanently
4 and totally disabled, for the benefits correctly paid on behalf of
5 the recipient after he attained the age of 65, and this lien shall be
6 deemed a preferred claim against the recipient's estate having a
7 priority equivalent to that under subsection a.(4) of Section 50
8 of P. L. 1977, c. 412 (C. 3A:2A-47a.(4)).

9 b. A lien may be filed against the property, real or personal,
10 or any interest or estate in property, whether vested or contingent,
11 of any third party.

12 ***[Any]*** **Subject to section 6. b. of this amendatory and supple-*
13 *mentary act, any** third party recovery obtained by the division
14 under this subsection shall not be reduced by any counsel fees, costs,
15 or other expenses, or portions thereof, incurred by the recipient,
15A the third party, or their respective attorneys.

16 c. A certificate of debt may be filed against such parties and in
17 such a manner as is specified in subsection (h) of Section 17 of
18 P. L. 1968, c. 413 (C. 30:4D-17(h)).

1 8. (New section) All liens and certificates of debt under section 7
2 of this amendatory and supplementary act shall be in a form to
3 be prescribed by the commissioner, and shall be signed by the
4 commissioner or director, or by such person designated by the
5 commissioner or director.

1 9. (New section) All liens or certificates of debt under section 7
2 of this amendatory and supplementary act shall be filed with the
3 clerk or register of deeds and mortgages of the county wherein
4 the affected property is located, or with the clerk of the superior
5 court, and shall immediately attach to and become binding upon
6 all the property whether real or personal of the party against whom
7 said lien or certificate of debt is filed. If it is believed that said
8 party chargeable under said lien or certificate of debt has an
9 interest or estate whether vested or contingent in property within
10 the State, but the exact location of said property is not known,
11 then said liens or certificates of debt may be filed with the clerk
12 of the Superior Court and shall become binding upon all said
13 property of said party chargeable under said lien or certificate of
14 debt wherever situated within the State.

1 10. (New section) If it is found that any party chargeable under
2 any lien or certificate of debt filed pursuant to this act is possessed
3 of any goods, rights, credits, chattels, moneys or effects which are
4 held by any person, firm, or corporation for the present or sub-
5 sequent use of said individual, then the lien or certificate of debt
6 provided for herein, or a notice of the existence of said lien or
7 certificate of debt, may be forwarded by registered or certified
8 mail to said person, firm or corporation and shall become binding
9 upon any property rights so held. Such person, firm or corporation
10 shall thereafter be precluded from disposing of said property
11 rights until said lien or certificate of debt is satisfied or until the
12 department consents thereto, or until the procedure set forth in
13 section 13 of this amendatory and supplementary act is followed.

14 Any person, firm or corporation disposing of any such property
15 or moneys after receipt of notice of said lien or certificate of debt
16 shall be liable to the department for the value of such property or
17 moneys of which disposition has been made, or the amount set
18 forth in the department's lien or certificate of debt, whichever is
19 less.

1 11. (New section) The clerk of the county or register of deeds
2 and mortgages, or clerk of the superior court, as the case may be,
3 shall provide suitable books in which he shall enter the liens and
4 certificates of debt filed hereunder properly indexed in the name
5 of the party against whom the lien or certificate of debt has been
6 filed. All liens and certificates of debt and other papers incidental
7 thereto required hereunder shall be received and recorded by the
8 clerk of the county, register of deeds and mortgages, or clerk of the
9 superior court, as the case may be, without payment of fees by
10 the department or the division.

1 12. (New section) The commissioner or director or such person
2 designated by the commissioner or director is hereby authorized
3 to compromise, settle or waive in whole or in part any lien or
4 certificate of debt filed under the provisions of this act in accordance
5 with rules and regulations promulgated by the commissioner pur-
6 suant to subsection 7(1) of this amendatory and supplementary act.

7 To discharge any lien or certificate of debt filed hereunder,
8 the commissioner or director, or his duly constituted agent shall
9 file with the clerk of the county, register of deeds and mortgages,
10 or clerk of the superior court, as the case may be, a duly acknowl-
11 edged certificate or warrant setting forth the fact that the depart-
12 ment desires to discharge the lien or certificate of debt of record.

1 13. (New section) Any person affected in any manner, whether
2 directly or indirectly, by any lien filed under this act, or any

3 certificate of debt filed prior to a final agency adjudication in
 4 accordance with subsection (h) of section 17 of P. L. 1968, c. 413
 5 (C. 30:4D-17(h)), and desiring to examine the validity thereof or
 6 the facts and circumstances surrounding the entry thereof, may
 7 do so in an action brought in the *~~County Court~~ of the county
 9 wherein the lien or certificate of debt is filed, or in the~~]~~* Superior
 9 Court. The action shall be brought against the department, and the
 10 court may proceed in the action in a summary manner or otherwise
 11 and enter such judgment as it may deem appropriate.

12 Any person desiring to secure immediate discharge of any lien
 13 or of any certificate of debt filed prior to a final agency adjudication
 14 under subsection (h) of section 17 of P. L. 1968, c. 413
 15 (C. 30:4D-17(h)) may deposit with the court an amount of money
 16 sufficient to cover the sureties to be approved by said court. Upon
 17 proper notice of the deposit and posting of bond, a satisfaction
 18 of said lien or certificate of debt shall be filed forthwith with the
 19 county clerk, register of deeds and mortgages or the clerk of the
 20 superior court, as the case may be.

1 14. Section 12 of P. L. 1968, c. 413 (C. 30:4D-12) is amended to
 2 read as follows:

3 12. Subject to the limitations provided in sections 7, 8 and 9 of
 4 this act, the department shall (a) develop and employ such methods
 5 and procedures relating to the utilization of and the payment for
 6 medical care and services available under the plan as may be
 7 necessary to safeguard against unnecessary utilization of such care
 8 and services;

9 (b) Assure that payments (including payments for any drugs
 10 provided under the plan) are not in excess of reasonable charges
 11 (reasonable costs in the instance of inpatient hospital services)
 12 consistent with efficiency, economy and quality of care; *~~and~~*

13 (c) Prescribe standards that ~~participating~~ providers must
 14 meet~~.~~;

15 (d) *Require that any provider who renders health care services*
 16 *authorized under this act shall keep and maintain such individual*
 17 *records as are necessary to fully disclose the name of the recipient*
 18 *to whom the service was rendered, the date of the service rendered,*
 19 *the nature and extent of each such service rendered, and *~~such~~**
 20 **any* additional information*,* as the department may require by*
 21 *regulation. Records herein required to be kept and maintained*
 22 *shall be retained by the provider for a period of at least 5 years*
 23 *from the date the service was rendered;*

24 (e) *Require that providers who render health care services au-*
 25 *thorized under this act shall not be entitled to reimbursement for*

26 *the services rendered unless said services are documented pursuant*
 27 *to subsection (d) of this section. Any evidence other than the*
 28 *documentation required pursuant to subsection (d) of this section*
 29 *shall be inadmissible in any proceeding conducted pursuant to this*
 30 *act for the purpose of proving that said services were rendered;*
 30A **unless the evidence is found to be clear and convincing by the*
 30B *finder of fact; and**

31 *(f) Examine and make copies of any books and records of a pro-*
 32 *vider if they relate in any way to services rendered to any recipient*
 33 *under this act, and visit and inspect the premises or facilities of*
 34 *any provider it may deem necessary to carry out the provisions*
 35 *of this act and regulations adopted pursuant thereto.*

1 15. Section 14 of P. L. 1968, c. 413 (C. 30:4D-14) is amended to
 2 read as follows:

3 14. **【Pursuant】** *Subject to the limitations provided in this act*
 4 *and the Federal Social Security Act, the department shall prepare*
 5 *a comprehensive medical plan whereby the benefits of this program*
 6 *will be extended in accordance with the mandatory schedule for*
 7 *providing benefits required by the Federal legislation. This plan*
 8 *shall include alternative means of expanding the medical care*
 9 *benefits and coverage provided in this act. Such plan shall be*
 10 *reevaluated from time to time but no less than annually and shall*
 11 *be based upon a documented review of medical needs of low-income*
 12 *families in New Jersey, a detailed analysis of priorities of service,*
 13 *coverage, program costs and an evaluation of progress.*

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

3 17. Penalty. **【(a)** *It shall be unlawful for any person, firm, cor-*
 4 *poration, partnership or other entity to willfully, by means of a*
 5 *false statement or representation, or by deliberate concealment of*
 6 *any material fact, or other fraudulent scheme or device on behalf*
 7 *of himself or others, obtain or attempt to obtain medical assistance*
 8 *or other benefits or payments under this act to which he is not en-*
 9 *titled, or in a greater amount than to which he is entitled, and,*
 10 *further, it shall be unlawful for any provider to willfully receive*
 11 *medical assistance payments to which he is not entitled, or in a*
 12 *greater amount than to which he is entitled, or to falsify any report*
 13 *or document required under this act.*

14 *(b) Any person, firm, corporation, partnership or other legal*
 15 *entity who violates the provisions of subsection (a) of this sec-*
 16 *tion shall be guilty of a misdemeanor and shall be liable to a penalty*
 17 *of not more than \$10,000.00 for the first and each subsequent of-*
 18 *fense, or to imprisonment for not more than 3 years, or both.】*

19 (a) Any person who willfully obtains benefits under this act to
 20 which he is not entitled or in a greater amount than that to which
 21 he is entitled and any provider who *willfully* receives medical
 22 assistance payments to which he is not entitled or in a greater
 23 amount than that to which he is entitled is guilty of a high misde-
 24 meanor and, upon conviction thereof, shall be liable to a penalty
 25 of not more than \$10,000.00 or to imprisonment for not more than
 25A 3 years or both.

26 (b) Any provider, or any person, firm, partnership, corporation
 27 or entity, who:

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

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

36 (3) Conceals or fails to disclose the occurrence of an event which
 37 (i) affects his initial or continued right to any such benefit
 38 or payment, or

39 (ii) affects the initial or continued right to any such benefit
 40 or payment of any provider or any person, firm, partnership,
 41 corporation or other entity in whose behalf he has applied
 42 for or is receiving such benefit or payment* [.]*

43 with an intent to fraudulently secure benefits or payments not
 44 authorized under this act or in greater amount than that which is
 45 authorized under this act; or

46 (4) Knowingly and willfully converts benefits or payments or any
 47 part thereof received for the use and benefit of any provider or any
 48 person, firm, partnership, corporation or other entity to a use other
 49 than the use and benefit of such provider or such person, firm,
 50 partnership, corporation or entity;
 51 is guilty of a high misdemeanor and, upon conviction thereof, shall
 52 be liable to a penalty of not more than \$10,000.00 for the first and
 53 each subsequent offense or to imprisonment for not more than three
 54 years or both.

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

58 (1) The furnishing of items or services for which payment is or
 59 may be made in whole or in part under this act* [.]* *;* or

60 (2) *The furnishing of items or services whose cost is or may be*
 61 *reported in whole or in part in order to obtain benefits or payments*
 62 *under this act***[(.)]*** *;* or*

63 (3) *The receipt of any benefit or payment under this act, is guilty*
 64 *of a high misdemeanor and, upon conviction thereof, ***[(shall be***
 65 *guilty of a high misdemeanor and)]** shall be liable to a penalty of
 65A *not more than \$10,000.00 or to imprisonment for not more than 3*
 65B *years or both.*

66A **This subsection shall not apply to (A) a discount or other reduc-*
 66B *tion in price under this act if the reduction in price is properly*
 66C *disclosed and appropriately reflected in the costs claimed or charges*
 66D *made under this act; and (B) any amount paid by an employer to*
 66E *an employee who has a bona fide employment relationship with*
 66F *such employer for employment in the provision of covered items*
 66G *or services.**

67 (d) *Whoever knowingly and willfully makes or causes to be made*
 68 *or induces or seeks to induce the making of any false statement or*
 69 *representation of a material fact with respect to the conditions or*
 70 *operations of any institution or facility in order that such institu-*
 71 *tion or facility may qualify either upon initial certification or*
 72 *recertification as a hospital, skilled nursing facility, intermediate*
 73 *care facility, or health agency, thereby entitling them to receive*
 74 *payments under this act, shall be guilty of a high misdemeanor and*
 75 *shall be liable to a penalty of not more than \$3,000.00 or imprison-*
 76 *ment for not more than 1 year or both.*

77 **[(c)]** (e) *Any person, firm, corporation, partnership, or other*
 78 *legal entity who violates the provisions of **[(subsection (a))]** any*
 79 *of the foregoing subsections of this section shall, in addition to any*
 80 *other penalties provided by law, be liable to civil penalties of (1)*
 81 *payment of interest on the amount of the excess benefits or pay-*
 82 *ments at the maximum legal rate in effect on the date the payment*
 83 *was made to said person, firm, corporation, partnership or other*
 84 *legal entity for the period from the date upon which payment was*
 85 *made to the date upon which repayment is made to the State, (2)*
 86 *payment of an amount not to exceed three-fold the amount of such*
 87 *excess benefits or payments, and (3) payment in the sum of*
 88 *\$2,000.00 for each excessive claim for assistance, benefits or pay-*
 89 *ments.*

90 **[(d)]** (f) *Any person, firm, corporation, partnership or other*
 91 *legal entity, other than an individual recipient of medical services*
 92 *reimbursable by the Division of Medical Assistance and Health*
 93 *Services, who, without intent to violate this act, obtains medical*
 94 *assistance or other benefits or payments under this act in excess*
 95 *of the amount to which he is entitled, shall be liable to a civil penalty*

96 of payment of interest on the amount of the excess benefits or pay-
 97 ments at the maximum legal rate in effect on the date the benefit or
 98 payment was made to said person, firm, corporation, partnership,
 99 or other legal entity for the period from **September 15, 1976 or**
 100 the date upon which payment was made*, *whichever is later,** to
 101 the date upon which repayment is made to the State, provided, how-
 102 ever, that no such person, firm, corporation, partnership or other
 103 legal entity shall be liable to such civil penalty when excess medical
 104 assistance or other benefits or payments under this act are obtained
 105 by such person, firm, corporation, partnership or other legal entity
 106 as a result of error made by the Division of Medical Assistance
 107 and Health Services, as determined by said division***[(.)]*** *; *pro-*
 107A *vided, further, that if preliminary notification of an overpayment*
 107B *is not given to a provider by the division within 180 days after*
 107C *completion of the field audit as defined by regulation, no interest*
 107D *shall accrue during the period beginning 180 days after comple-*
 107E *tion of the field audit and ending on the date preliminary notifi-*
 107F *cation is given to the provider.**

108 **[(e)]** (g) All interest and *civil* penalties provided for in this act
 109 and all medical assistance and other benefits to which a person,
 110 firm, corporation, partnership, or other legal entity was not en-
 111 titled shall be recovered in an administrative procedure held pur-
 112 suant to the "Administrative Procedure Act," P. L. 1968, c. 410
 113 (C. 52:14B-1, et seq.), *except that recovery actions against minors*
 114 *or incompetents shall be initiated in a court of competent jurisdic-*
 115 *tion.*

116 **[(f)]** (h) Upon the failure of any person, firm, corporation,
 117 partnership or other legal entity to comply within 10 days after
 118 service of any order of the **[Attorney General]** *director* or his
 119 designee directing payment of any amount found to be due pur-
 120 suant to subsection **[(e)]** (g) of this section, *or at any time prior*
 121 *to any final agency adjudication not involving a recipient *or for-*
 122 *mer recipient* of benefits under this act,* the **[Attorney General]**
 123 *director* may issue a certificate to the clerk of the superior court
 124 that such person, firm, corporation, partnership or other legal en-
 125 tity is indebted to the State for the payment of such amount. A
 126 copy of such certificate shall be served upon the person, firm, cor-
 127 poration, partnership or other legal entity against whom the order
 128 was entered. Thereupon the clerk shall immediately enter upon
 129 his record of docketed judgments the name of the person, firm,
 130 corporation, partnership or other legal entity so indebted, and of
 131 the State, a designation of the statute under which such amount
 132 is found to be due, the amount due, and the date of the certification.

133 Such entry shall have the same force and effect as the entry of a
 134 docketed judgment in the Superior Court. Such entry, however,
 135 shall be without prejudice to the right of appeal to the Appellate
 136 Division of the Superior Court from the final order of the [Attor-
 137 ney General] *director* or his designee.

138 (i) *In order to satisfy any recovery claim asserted against a*
 139 *provider under this section, whether or not that claim has been the*
 140 *subject of final agency adjudication, the division or its fiscal *in-*
 141 *termediary]* *agents* is authorized to withhold funds otherwise*
 142 *payable under this act to the provider.*

143 (j) *The Attorney General *shall]* *may*, when requested by*
 144 *the commissioner or his agent, apply ex parte to the Superior Court*
 145 *to compel any party to comply forthwith with a subpoena issued*
 146 *under this act. Any party who, having been served with a subpoena*
 147 *issued pursuant to the provisions of this act, fails either to attend*
 148 *any hearing, or to appear or be examined, to answer any question or*
 149 *to produce any books, records, accounts, papers or documents, shall*
 150 *be liable to a penalty of \$500.00 for each such failure, to be re-*
 151 *covered in the name of the State in a summary civil proceeding to*
 152 *be initiated in the Superior Court. The Attorney General shall*
 153 *prosecute the actions for the recovery of the penalty prescribed in*
 154 *this section when requested to do so by the commissioner or his*
 155 *agent and when, in the judgment of the Attorney General, the facts*
 156 *and law warrant such prosecution. Such failure on the part of the*
 157 *party shall be punishable as contempt of court by the court in the*
 158 *same manner as like failure is punishable in an action pending in*
 159 *the court when the matter is brought before the court by motion*
 160 *filed by the Attorney General and supported by affidavit stating the*
 161 *circumstances.*

1 17. (New section) a. The director may suspend, debar or dis-
 2 qualify for good cause any provider presently participating or
 3 who has applied for participation in the program, or may suspend,
 4 debar or disqualify for good cause any person, company, firm,
 5 association, corporation or other entity who is participating
 6 directly or indirectly in the Medicaid program, or who is an agent,
 7 servant, employee or independent contractor of a provider in the
 8 Medicaid program.

9 b. The director may terminate or otherwise restrict medical
 10 assistance benefits to any eligible recipient thereof for good cause.

11 c. The director may promulgate such rules, regulations and
 12 administrative orders as are necessary to effectuate the provisions
 13 and purposes of this section.

1 18. (New section) Any decision, order, final judgment, or final
2 determination of the commissioner or director issued pursuant to
3 the provisions of this act not involving the recovery of Medicaid
4 payments may be enforced in a civil action brought in a summary
5 manner by the Attorney General on behalf of either the commis-
6 sioner or director in the Superior Court***[, Chancery Division]***.
7 In any such action said order, decision, final judgment or final de-
8 termination shall be considered res judicata, except ***[than]*** **that**
9 an appeal may be taken to the Appellate Division of the Superior
10 Court from the final decision of the commissioner or director in
11 accordance with the applicable Rules of the Court.

1 19. This act shall take effect immediately and, except for the
2 amendatory provisions of section 16(a) through (d) hereof, shall
3 apply to any and all claims, causes of action or proceedings arising
4 prior to, on or after the effective date of this act.

10 the final decision of the commissioner or director in accordance
11 with the applicable Rules of the Court.

1 19. This act shall take effect immediately and, except for the
2 amendatory provisions of section 16(a) through (d) hereof, shall
3 apply to any and all claims, causes of action or proceedings arising
4 prior to, on or after the effective date of this act.

SPONSORS' STATEMENT

Fraud and abuse of the Medicaid program by both providers and recipients continues to be a serious problem.

Although New Jersey's current recovery efforts have been praised by the U. S. Department of Health, Education and Welfare, both the Division of Medical Assistance and Health Services and the Attorney General's office have been hindered by limited authority and the lack of lien power. This bill will correct these deficiencies.

Similarly, although our current enforcement provisions are tougher than those of most states, investigations by the Attorney General's office have revealed grossly immoral conduct which is not presently prohibited. This bill provides a thorough definition of Medicaid fraud offenses, eliminating all loopholes uncovered by investigations.

The bill makes the following changes:

1. Clarification and implementation of the legislative intent that Medicaid dollars be last dollar coverage.

2. Updating the eligibility sections to reflect current federal law and state practice.

3. Requiring, as a condition of eligibility, that an applicant not have made a voluntary transfer or assignment of property for the purpose of qualifying for Medicaid benefits, deeming a transfer or assignment within one year of application to have been made for that purpose.

4. Expanding the commissioner's authority to recover funds from recipients, their estates and third parties.

5. Authorizing the filing of liens and certificates of debt against third parties to aid in the recovery of payments.

6. Broadening and clarifying the prohibition against willfully and fraudulently obtaining benefits or payments, adding a prohibition against misappropriation and against kickbacks, rebates or bribes.

7. Expanding the procedures available to aid the department in its recovery and enforcement actions.

SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE

STATEMENT TO

SENATE, No. 1419
with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 14, 1979

Fraud in and abuse of the Medicaid program by both providers and recipients continues to be a serious problem. Although New Jersey's current recovery efforts have been praised by the U.S. Department of Health, Education and Welfare, both the Division of Medical Assistance and Health Services and the Attorney General's office have been hindered by limited authority and the lack of lien power. Similarly, although our current enforcement provisions are tougher than those of most other states, investigations by the Attorney General's office have revealed grossly immoral conduct which is not presently prohibited. This bill corrects these deficiencies and provides a thorough definition of Medicaid fraud offenses, eliminating all loopholes uncovered by investigations.

This bill was developed with the cooperation and assistance of staff of the Department of Human Services, the office of the Governor's Assistant Counsel and the Attorney General's office.

The bill makes the following changes in the Medicaid statute:

1. Clarification and implementation of the legislative intent that Medicaid dollars be last dollar coverage.
2. Updating the eligibility sections to reflect current Federal law and State practice.
3. Requiring, as a condition of eligibility that an applicant not have made a voluntary transfer or assignment of property for the purpose of qualifying for medical benefits, deeming a transfer or assignment within 1 year of application to have been made for that purpose.
4. Expanding the commissioner's authority to recover funds from recipients, their estates, third parties, and others.
5. Authorizing the filing of liens against recipients, their estates, third parties, and others, and certificates of debt against providers and provider-related parties to aid in the recovery of payments that were incorrectly made or illegally obtained.
6. Broadening and clarifying the prohibition against willfully and fraudulently obtaining benefits or payments, adding a prohibition against misappropriation and against kickbacks, rebates or bribes.

7. Expanding the procedures available to aid the department in its recovery and enforcement actions.

The committee amended the bill to clarify the original intent and to provide Medicaid recipients and health care providers certain protections in the State's recovery of overpayments and reimbursement to providers of underpayments.

The committee deleted the provision in section 5. f. granting providers the opportunity for an administrative review, to conform the language of the bill with current practice. However, it is the committee's intent that this amendment does not preclude the opportunity for a fact-finding review as a simple means to settle a complaint.

The committee amended section 5. i. to include a 5-year statute of limitations on State recovery actions against Medicaid recipients in cases when an incorrect payment was made due solely to an error on the part of the State. The committee felt that recipients should not be liable indefinitely for overpayments due to an error on the part of the State. The committee, however, did not extend this limitation to provider related recoveries because it would impose too great a burden on the State. Although hospitals are audited annually and nursing homes every 3 years, due to limited auditing staff, the majority of providers (i.e., pharmacies, physicians, etc.) are audited less frequently than every 5 years. A 5-year statute of limitations for all providers, therefore, could mean that the Division of Medical Assistance and Health Services would have to expand its auditing staff so that it could audit all providers at least every 5 years. Division staff believe that an increase in staff for this purpose would not be cost effective.

The committee also added a provision after section 5. l. to require the State to pay interest to a provider on any amount due to the provider, whenever the State does not make payment within 45 days after the final audit, as defined by regulation. This provision, however, will be effective only if Federal financial participation is available. The committee believed that because providers are required to pay interest on overpayments due to the State, the State should also be required to pay interest when it owes money to a provider.

The committee amended section 16. f. on civil penalties to provide that in cases of unintentional errors, providers are liable for interest only from September 15, 1976 or the date upon which payment was made, whichever is later. September 15, 1976 is the effective date of P. L. 1976, c. 89, which created an interest penalty when unintentional provider errors result in overpayments by the State for Medicaid services. Regardless of the date from which interest accrues, however, providers are required to reimburse to the State the full amount of

the overpayment and interest will be computed on the entire amount of the overpayment.

The committee also added the provision to section 16. f. that if the State does not give the provider preliminary notification of an overpayment within 180 days of completion of a field audit, as defined by regulation, no interest shall accrue during the period beginning 180 days after the audit and ending on the date preliminary notification is given. This provision grants the provider relief from long delays on the part of the State in notifying the provider about an overpayment and serves as an incentive to the State to act on recovering overpayments as quickly as possible.

FROM THE OFFICE OF THE GOVERNOR

OR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

FEBRUARY 4, 1980

PAT SWEENEY

Governor Brendan Byrne today at noon signed two bills in a public ceremony in his office.

S-1419, sponsored by Senator William J. Hamilton, Jr. (D-Middlesex), is known as the Medicaid Fraud and Abuse bill. The bill makes the following changes in the Medicaid statute:

- Clarification that Medicaid dollars be the last dollar coverage;
- Updating the eligibility sections to reflect current federal law and state practice;
- Expanding the Commissioner of Human Services' authority to recover funds from recipients, their estates, third parties, and others;
- Broadening and clarifying the prohibition against willfully and fraudulently obtaining benefits or payments, adding a prohibition against misappropriation and against kickbacks, rebates or bribes;
- Expanding the procedures available to aid the department in its recovery and enforcement actions.

S-3294, also sponsored by Senator Hamilton, concerns the assessment and taxation of mobile homes. The legislation provides that unless a mobile home located on leased land was assessed and taxed as real property prior to March 20, 1979, then the mobile home shall not be so assessed and taxed until October 1, 1980, for the tax year 1981.

The bill is a response to "Koester v. Hunterdon County Board of Taxation," in which the New Jersey Supreme Court recently held that mobile homes on leased lands are taxable as real property if the mobile home serves as a permanent dwelling unit and receives, or is entitled to, the same municipal services as other dwelling units.

Prior to this decision it was the view of the courts that mobile homes on leased lands in commercially operated parks were not affixed to the land in a manner to qualify them as real property. The effect of the "Koester" decision is to require an abrupt shift in the manner in which most mobile homes in commercially operated parks are taxed.

The bill provides a moratorium to provide for an orderly transition to the real property tax. Implementation of the "Koester" decision is postponed until tax year (fiscal year) 1981, for most mobile homes.

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