

2C 21-3.2

LEGISLATIVE HISTORY CHECKLIST
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(Health care fraud)

NJSA: 2C:21-3.2 et al

LAWS OF: 1997 **CHAPTER:** 353

BILL NO: S2270

SPONSOR(S): Matheussen & others

DATE INTRODUCED: November 17, 1997

COMMITTEE: **ASSEMBLY:** ---

SENATE: Health

AMENDED DURING PASSAGE: Yes Amendments during passage denoted by
First reprint enacted superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** January 12, 1998

SENATE: December 15, 1997

DATE OF APPROVAL: January 15, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached: statement,
adopted 1-8-98

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: Yes

HEARINGS: No

974.90 New Jersey. Governor's Task Force on Health Care Fraud.
H434 Initial report...December 23, 1996. Trenton, 1996.
1996h

See newspaper clipping--attached:

"New law cracks down on health-fraud doctors," 1-16-98, New York Times.

KBP:pp

[Passed Both Houses]

[First Reprint]

SENATE, No. 2270

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 17, 1997

By Senator MATHEUSSEN, Assemblyman Talarico,
Assemblywoman Wright, Assemblymen Kramer, O'Toole

1 AN ACT establishing health care claims fraud as a criminal offense and
2 supplementing chapters 21 ¹[and] ¹ 51 ¹ and 52¹ of Title 2C of the
3 New Jersey Statutes.

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

7
8 ¹1. The Legislature finds and declares:

9 a. Billions of dollars are spent each year on health care in New
10 Jersey. Approximately ten percent of these costs can be attributed to
11 fraud.

12 b. In order to maintain the financial integrity of the health care
13 system in this State, it is necessary to prosecute and deter the
14 commission of fraud.

15 c. Under the current law, it is difficult to prosecute and deter
16 health care claims fraud because fraudulent claims often involve small
17 amounts that require prosecutors to prove hundreds of relatively small
18 thefts in order to establish a second degree offense.

19 d. It is, therefore, necessary to establish the crime of "health care
20 claims fraud" to enable more efficient prosecution of criminally
21 culpable persons who knowingly, or with criminal recklessness, submit
22 false or fraudulent claims for payment or reimbursement for health
23 care services. It is not the intent of this act to facilitate the
24 prosecution of those persons who may make negligent errors in the
25 preparation of filing of bills or claims.¹

26
27 ¹[1.] 2.¹ As used in this act:

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted January 8, 1998.

1 "Health care claims fraud" means making, or causing to be made,
2 a false, fictitious, fraudulent, or misleading statement of material fact
3 in, or omitting a material fact from, or causing a material fact to be
4 omitted from, any record, bill, claim or other document, in writing,
5 electronically or in any other form, that a person attempts to submit,
6 submits, causes to be submitted, or attempts to cause to be submitted
7 for payment or reimbursement for health care services.

8 "Practitioner" means a person licensed in this State to practice
9 medicine and surgery, chiropractic, podiatry, dentistry, optometry,
10 psychology, pharmacy, nursing, physical therapy, or law; any other
11 person licensed, registered or certified by any State agency to practice
12 a profession or occupation in the State of New Jersey or any person
13 similarly licensed, registered, or certified in another jurisdiction.

14

15 ¹[2] 3¹. a. A practitioner is guilty of a crime of the second degree
16 if that person knowingly commits health care claims fraud ¹in the
17 course of providing professional services¹. In addition to all other
18 criminal penalties allowed by law, a person convicted under this
19 subsection may be subject to a fine of up to five times the pecuniary
20 benefit obtained or sought to be obtained.

21 b. A practitioner is guilty of a crime of the third degree if that
22 person recklessly commits health care claims fraud ¹in the course of
23 providing professional services¹. In addition to all other criminal
24 penalties allowed by law, a person convicted under this subsection may
25 be subject to a fine of up to five times the pecuniary benefit obtained
26 or sought to be obtained.

27 c. A person, who is not a practitioner ¹subject to the provisions of
28 subsection a. or b. of this section¹, is guilty of a crime of the third
29 degree if that person knowingly commits health care claims fraud. A
30 person, who is not a practitioner ¹subject to the provisions of
31 subsection a. or b. of this section¹, is guilty of a crime of the second
32 degree if that person knowingly commits five or more acts of health
33 care claims fraud and the aggregate pecuniary benefit obtained or
34 sought to be obtained is at least \$1,000. In addition to all other
35 criminal penalties allowed by law, a person convicted under this
36 subsection ¹[c.]¹ may be subject to a fine of up to five times the
37 pecuniary benefit obtained or sought to be obtained.

38 d. A person, who is not a practitioner ¹subject to the provisions of
39 subsection a. or b. of this section¹, is guilty of a crime of the fourth
40 degree if that person recklessly commits health care claims fraud. In
41 addition to all other criminal penalties allowed by law, a person
42 convicted under this subsection ¹[d.]¹ may be subject to a fine of up
43 to five times the pecuniary benefit obtained or sought to be obtained.

44 e. Each act of health care claims fraud shall constitute an
45 additional, separate and distinct offense, except that five or more
46 separate acts may be aggregated for the purpose of establishing

1 liability pursuant to subsection c. of this section.

2 f. (1) The falsity, fictitiousness, fraudulence or misleading nature
3 of a statement ¹**【is presumed】** may be inferred by the trier of fact¹ in
4 the case of a practitioner who attempts to submit, submits, causes to
5 be submitted, or attempts to cause to be submitted, any record, bill,
6 claim or other document for treatment or procedure without the
7 practitioner ¹, or an associate of the practitioner.¹ having performed
8 an assessment of the physical or mental condition of the patient or
9 client necessary to determine the appropriate course of treatment.

10 (2) The falsity, fictitiousness, fraudulence or misleading nature of
11 a statement ¹**【is presumed】** may be inferred by the trier of fact¹ in
12 the case of a person who attempts to submit, submits, causes to be
13 submitted, or attempts to cause to be submitted any record, bill, claim
14 or other document for more treatments or procedures than can be
15 performed during the time in which the treatments or procedures were
16 represented to have been performed.

17 (3) ¹**【Proof that a person has made three or more separate false**
18 **statements in a record, bill, claim or other document without that**
19 **person having made a reasonable inquiry as to the truthfulness of each**
20 **statement shall give rise to the presumption that the person knew each**
21 **statement was false.**

22 (4)¹ Proof that a practitioner has ¹**【made a material statement that**
23 **appears in】** signed or initialed¹ a record, bill, claim or other document
24 ¹**【shall give】** gives¹ rise to ¹**【the presumption】** an inference¹ that the
25 practitioner ¹**【is aware of the truth or falsity of the statement, and**
26 **intends that the statement be taken as true】** has read and reviewed that
27 record, bill, claim or other document¹.

28 g. ¹In order to promote the uniform enforcement of this act, the
29 Attorney General shall develop health care claims fraud prosecution
30 guidelines and disseminate them to the county prosecutors within 120
31 days of the effective date of this act.

32 h. For the purposes of this section, a person acts recklessly with
33 respect to a material element of an offense when he consciously
34 disregards a substantial and unjustifiable risk that the material element
35 exists or will result from his conduct. The risk must be of such a
36 nature and degree that, considering the nature and purpose of the
37 actor's conduct and the circumstances known to him, its disregard
38 involves a gross deviation from the standard of conduct that a
39 reasonable person would observe in the actor's situation.

40 i. (1)¹ Nothing in this act shall preclude an indictment and
41 conviction for any other offense defined by the laws of this State.

42 ¹(2) Nothing in this act shall preclude an assignment judge from
43 dismissing a prosecution of health care claims fraud if the assignment
44 judge determines, pursuant to N.J.S. 2C:2-11, the conduct charged to
45 be a de minimis infraction.¹

1 ¹ **[3] 4**¹. a. (1) A practitioner convicted of health care claims
2 fraud pursuant to subsection a. of section ¹ **[2] 3**¹ of P.L. , c. (C.)
3 (pending before the Legislature as this bill) or a substantially similar
4 crime under the laws of another state or the United States shall forfeit
5 his ¹ **[or her]**¹ license and be forever barred from the practice of the
6 profession unless the court finds that such license forfeiture would be
7 a serious injustice which overrides the need to deter such conduct by
8 others and in such case the court shall determine an appropriate period
9 of license suspension which shall be for a period not less than one
10 year. If the court does not permanently forfeit such license pursuant
11 to this paragraph, the sentence shall not become final for 10 days in
12 order to permit the appeal of such sentence by the prosecution¹.

13 (2) Upon a first conviction of health care claims fraud pursuant to
14 subsection b. of section ¹ **[2] 3**¹ of P.L. , c. (C.) (pending before
15 the Legislature as this bill) or a substantially similar crime under the
16 laws of another state or the United States, a practitioner shall have his
17 ¹ **[or her]**¹ license suspended and be barred from the practice of the
18 profession for a period of at least one year.

19 (3) Upon a second conviction of health care claims fraud pursuant
20 to subsection b. of section ¹ **[2] 3**¹ of P.L. , c. (C.) (pending
21 before the Legislature as this bill) or a substantially similar crime under
22 the laws of another state or the United States, a practitioner shall
23 forfeit his ¹ **[or her]**¹ license and be forever barred from the practice
24 of the profession.

25 b. A court of this State shall enter an order of license forfeiture
26 or suspension pursuant to subsection a. of this section:

27 (1) Immediately upon a finding of guilt by the trier of fact or a plea
28 of guilty entered in any court of this State; or

29 (2) Upon application of the county prosecutor or the Attorney
30 General, when the license forfeiture or suspension is based upon a
31 conviction of an offense under the laws of another state or of the
32 United States. An order of license forfeiture or suspension pursuant
33 to this paragraph shall be effective as of the date the person is found
34 guilty by the trier of fact or pleads guilty to the offense.

35 This application may also be made in the alternative by the Attorney
36 General to the appropriate licensing agency.

37 The court shall provide notice of the forfeiture or suspension to the
38 appropriate licensing agency within 10 days of the date an order of
39 forfeiture or suspension is entered.

40 c. No court shall grant a stay of an order of license forfeiture or
41 suspension pending appeal of a conviction or forfeiture or suspension
42 order unless the court is clearly convinced that there is a substantial
43 likelihood of success on the merits. If the conviction is reversed or
44 the order of license forfeiture or suspension is overturned, the ¹ court
45 shall provide notice of reinstatement to the appropriate licensing
46 agency within 10 days of the date of the order of reinstatement. The¹

1 license shall be restored, in accordance with applicable procedures,
2 unless the appropriate licensing agency determines to suspend or
3 revoke the license.

4 d. In any case in which the issue of license forfeiture or
5 suspension is not raised in a court of this State at the time of a finding
6 of guilt, entry of a guilty plea or sentencing, a license forfeiture or
7 suspension required by this section may be ordered by a court or by
8 the appropriate licensing agency of this State upon application of the
9 county prosecutor or the Attorney General or upon application of the
10 appropriate licensing agency having authority to revoke or suspend the
11 professional's license. The fact that a court has declined to order
12 license forfeiture or suspension shall not preclude the appropriate
13 licensing agency having authority to revoke or suspend the
14 professional's license from seeking to do so on the ground that the
15 conduct giving rise to the conviction demonstrates that the person is
16 unfit to hold the license or is otherwise liable for an offense as
17 specified in section 8 of P.L.1978, c.73 (C.45:1-21).

18 e. If the Supreme Court of the State of New Jersey issues Rules
19 of Court pursuant to this act, the Supreme Court may revoke the
20 license to practice law of any attorney who has been convicted, under
21 the laws of this State, of health care claims fraud pursuant to section
22 ¹[2] ³ of P.L. , c. (C.) (pending before the Legislature as this
23 bill), or an offense which, if committed in this State, would constitute
24 health care claims fraud.

25 f. Nothing in this section shall be construed to prevent or limit the
26 appropriate licensing agency or any other party from taking any other
27 action permitted by law against the practitioner.

28

29 ¹5. a. If an order of expungement of records of conviction under the
30 provisions of chapter 52 of Title 2C of the New Jersey Statutes is
31 granted by the court to a person convicted of health care claims fraud
32 in which the court had ordered the offender's professional license be
33 forfeited and the person be forever barred from the practice of the
34 profession pursuant to paragraph (1) of subsection a. of section 4 of
35 P.L. c. (C.)(now pending before the Legislature as this bill), the
36 person may petition the court for an order to rescind the court's order
37 of debarment if the person can demonstrate that the person is
38 sufficiently rehabilitated.

39 b. If an order to rescind the court's order of debarment is
40 granted, the person granted the order may apply to be licensed to
41 practice the profession from which the offender was barred.¹

42

43 ¹6. If any provision of this act, or an application of any provision
44 is held invalid, the invalidity shall not affect other applications of the
45 provision or other provisions of the act which reasonably can be given
46 effect despite the invalidity.¹

1 ¹**[4.]** 7.¹ This act shall take effect immediately.

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5 Makes health care claims fraud a criminal offense and provides for
6 forfeiture of professional licenses in certain instances.

1 specified in section 8 of P.L.1978, c.73 (C.45:1-21).

2 e. If the Supreme Court of the State of New Jersey issues Rules
3 of Court pursuant to this act, the Supreme Court may revoke the
4 license to practice law of any attorney who has been convicted, under
5 the laws of this State, of health care claims fraud pursuant to section
6 2 of P.L. , c. (C.) (pending before the Legislature as this bill), or
7 an offense which, if committed in this State, would constitute health
8 care claims fraud.

9 f. Nothing in this section shall be construed to prevent or limit the
10 appropriate licensing agency or any other party from taking any other
11 action permitted by law against the practitioner.

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13 4. This act shall take effect immediately.

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STATEMENT

17

18 This bill implements the Attorney General's recommendations to
19 reform the criminal laws to address health care claims fraud
20 perpetrated by health care practitioners and others, particularly in the
21 treatment of patients involved in automobile accidents. This bill
22 complements the "New Jersey Insurance Fraud Prevention Act,"
23 P.L.1983, c.320 (C.17:33A-1 et seq.), under the jurisdiction of the
24 Department of Banking and Insurance. This bill creates the new
25 criminal offense of health care claims fraud and, in certain
26 circumstances, requires the revocation or suspension of the licenses of
27 those practitioners who commit this type of fraud.

28 New Jersey's Code of Criminal Justice does not address health care
29 claims fraud in a manner that permits efficient prosecution and
30 effective punishment. Under current statutes, a person commits a
31 crime of the second degree if the amount of the theft is \$75,000 or
32 more. However, in the context of health care claims fraud where
33 individual fraudulent claims may be relatively small, a prosecutor may
34 be required to prove hundreds of separate claims as fraudulent to
35 arrive at the \$75,000 amount.

36 The new crime of health care claims fraud would allow the
37 prosecution of this conduct in an efficient and effective manner. This
38 bill would cover not only those instances of claims for treatments that
39 were not provided, but also false and misleading statements concerning
40 the necessity of treatment and the nature and scope of treatment.

41 Under this bill, it would be a crime of the second degree when a
42 practitioner knowingly submits, or attempts to submit, one fraudulent
43 claim or when a person who is not a practitioner submits, or attempts
44 to submit, five or more fraudulent claims with an aggregate amount of
45 at least \$1,000. It would be a crime of the third degree when a person
46 who is not a practitioner knowingly submits, or attempts to submit,

1 one fraudulent claim. The bill also creates lesser offenses applicable
2 to reckless, rather than knowing, fraudulent conduct.

3 In addition, this bill establishes four presumptions that a court
4 would use in its decision-making process. The first presumption
5 would allow the trier of fact to infer that a statement has a false or
6 misleading nature when a practitioner submits or attempts to submit
7 a claim for treatment without having performed an individualized
8 assessment of the physical or mental condition of the patient. The
9 second presumption would allow the trier of fact to infer that a
10 statement has a false or misleading nature when the claim shows more
11 treatments than can be performed during the time in which the claimed
12 treatments were represented to have been performed. The third
13 presumption provides that if a person has made three or more false
14 statements in any record without having made a reasonable inquiry that
15 each statement is true, the trier of fact can infer that the person knew
16 the statements were false. The fourth presumption would allow the
17 trier of fact to infer that a practitioner is aware of the truth or falsity
18 of a material statement the practitioner made in a record, bill, claim or
19 other document and intends that the statement be taken as true.

20 This bill provides for the automatic revocation or suspension of the
21 State license of any practitioner who commits health care claims fraud.
22 In addition, if the Supreme Court of New Jersey issues rules pursuant
23 to the bill, the Supreme Court may revoke the professional license to
24 practice law of any attorney convicted of health care claims fraud.

25

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29 _____
30 Makes health care claims fraud a criminal offense and provides for
forfeiture of professional licenses in certain instances.

SENATE HEALTH COMMITTEE

STATEMENT TO

SENATE, No. 2270

STATE OF NEW JERSEY

DATED: DECEMBER 11, 1997

The Senate Health Committee reports favorably Senate Bill No. 2270.

This bill implements the Attorney General's recommendations to reform the criminal laws to address health care claims fraud perpetrated by health care practitioners and others, particularly in the treatment of patients involved in automobile accidents. This bill complements the "New Jersey Insurance Fraud Prevention Act," N.J.S.A.17:33A-1 et seq., under the jurisdiction of the Department of Banking and Insurance. This bill creates the new criminal offense of health care claims fraud and, in certain circumstances, requires the revocation or suspension of the licenses of those practitioners who commit this type of fraud.

New Jersey's Code of Criminal Justice does not address health care claims fraud in a manner that permits efficient prosecution and effective punishment. Under current statutes, a person commits a crime of the second degree if the amount of the theft is \$75,000 or more. However, in the context of health care claims fraud where individual fraudulent claims may be relatively small, a prosecutor may be required to prove hundreds of separate claims as fraudulent to arrive at the \$75,000 amount.

The new crime of health care claims fraud would allow the prosecution of this conduct in an efficient and effective manner. This bill would cover not only those instances of claims for treatments that were not provided, but also false and misleading statements concerning the necessity of treatment and the nature and scope of treatment.

The bill defines practitioner as a person licensed in this State to practice medicine and surgery, chiropractic, podiatry, dentistry, optometry, psychology, pharmacy, nursing, physical therapy or law; any other person licensed, registered or certified by any State agency to practice a profession or occupation in the State; or any person similarly licensed, registered or certified in another jurisdiction.

Under this bill, it would be a crime of the second degree when a practitioner knowingly submits, or attempts to submit, one fraudulent claim or when a person who is not a practitioner submits, or attempts to submit, five or more fraudulent claims with an aggregate amount of at least \$1,000. It would be a crime of the third degree when a person who is not a practitioner knowingly submits, or attempts to submit,

STATEMENT TO
SENATE, No. 2270

with Assembly Floor Amendments
(Proposed By Assemblyman TALARICO
and Assemblywoman WRIGHT)

ADOPTED: JANUARY 8, 1998

This bill creates the new criminal offense of health care claims fraud and, in certain circumstances, requires the revocation or suspension of the licenses of those practitioners who commit this type of fraud.

These floor amendments would amend the bill to provide a findings and declarations section.

These floor amendments would also change the presumptions to inferences in section 3 of the bill and omit in entirety what is currently the presumption concerning making three or more false statements. The floor amendments would authorize the Attorney General to develop health care claims fraud prosecution guidelines. The Attorney General would be required to disseminate those guidelines to county prosecutors within 120 days of the effective date of the bill. The floor amendments would add the criminal code definition of "recklessly." The amendments provide nothing in the act would preclude an assignment judge from dismissing a prosecution of health care claims fraud if the judge determines that the conduct charged to be a de minimis infraction pursuant to N.J.S. 2C:2-11.

Section 4 of the bill, which provides that any practitioner who is convicted of health care claims fraud would be forever barred from the practice of his profession, would be amended to authorize the court, if it finds that such license forfeiture would be a serious injustice which overrides the need to deter such conduct by others, to determine an appropriate period of license suspension which shall be for a period of not less than one year. The amendments would also provide that if the court does not permanently forfeit such license, the sentence would not become final for 10 days in order to permit the appeal of such sentence by the prosecution. Subsection c. of section 4 would be amended to require the court, if a conviction is reversed or the order of license forfeiture or suspension is overturned, to provide notice of reinstatement to the appropriate licensing agency within 10 days of the date of the order of reinstatement.

In addition, these floor amendments would add new sections 5 and 6 to the bill. Section 5 would provide that if an order of expungement is granted to a person whose professional license was forfeited, that person would be allowed to petition the court to rescind the court's order of debarment provided that the person can demonstrate that he

is sufficiently rehabilitated.

Section 6 provides that if any provisions of the act, or any application of any provision, is held invalid, the invalidity would not affect other applications of the provision or other provisions of the act which reasonably can be given effect despite the invalidity.

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OFFICE OF THE GOVERNOR NEWS RELEASE

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CONTACT: Pete McDonough
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RELEASE: Thurs. Jan. 15, 1998

Gov. Christie Whitman today signed legislation that cracks down on fraud perpetrated by physicians, health care providers and claimants and allows for the permanent revocation of professional licenses of those who abuse the system.

“Health care fraud is a known cause behind the high cost of health and automobile insurance rates. This legislation will strengthen our ability to go after those who take part in the filing of a false claim – whether they be a doctor, a pharmacist or any one else,” said Gov. Whitman. “And it helps us ensure that the punishment fits the crime. With this law, we will have the ability to take away the license – in some cases permanently -- of doctors who practice fraud.”

The legislation provides that licensed practitioners, including doctors, lawyers and pharmacists, who knowingly file a false, fraudulent or misleading statement in the course of providing services would be guilty of a crime of the second degree. A practitioner who recklessly commits such crimes during the course of providing professional services would be guilty of a crime of the third degree. The law also provides for the automatic revocation, or in some cases one-year suspension, of the state license of a practitioner who is found guilty of health-care claims fraud.

Under the new law, a person who is not acting as a licensed practitioner who knowingly submits, or attempts to submit, one fraudulent claim would be guilty of a third degree offense. A non-practitioner who knowingly submits to five or more claims valued at more than \$1,000 would be guilty of a second degree crime.

S-2270 was sponsored by Senator John Mattheussen (R-Camden/Gloucester) and Assembly Members Guy Talarico (R-Bergen) and Barbara Wright (R-Mercer/ Middlesex).

Gov. Whitman today also signed the following legislation:

A-2188, sponsored by Assembly members Alex DeCroce (R-Essex/Morris/Passaic) and Joseph Charles (D-Hudson), bars the filing of public and private claims for deficiencies in improvements

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to real property after ten years following the completion of the construction. Current law allowed public entities to file suit within ten years after the discovery of the defect. Private entities already have a limitation similar to that provided in the legislation signed today. The legislation equalizes the playing field to treat public and private entities in a similar fashion. Under the new law, exemptions would apply for willful misconduct or gross negligence. Projects under environmental remediation law or related to asbestos removal are also exempt from this new law. This law will apply only to a cause of action which occurs after the effective date of this bill.

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