

HOUSE BILL NO. 556

INTRODUCED BY NOONAN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE MENTAL STATE RELATED TO ONE TYPE OF
5 MEDICAID FRAUD; CLARIFYING THAT A FALSE OR MISLEADING STATEMENT IS NEEDED FOR THAT
6 TYPE OF MEDICAID FRAUD; REMOVING A PROVISION ALLOWING A CONVICTION FOR ATTEMPTING
7 TO OBTAIN A SERVICE OR ITEM THAT THE PERSON IS NOT ENTITLED TO UNDER A REGULATION OR
8 POLICY NOT ADOPTED AS AN ADMINISTRATIVE RULE UNDER THE MONTANA ADMINISTRATIVE
9 PROCEDURE ACT; AND AMENDING SECTION 45-6-313, MCA."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 **Section 1.** Section 45-6-313, MCA, is amended to read:

14 **"45-6-313. Medicaid fraud.** (1) A person commits the offense of medicaid fraud when:

15 (a) the person obtains a medicaid payment or benefit for the person or another person by purposely or
16 knowingly:

17 (i) making, submitting, or authorizing the making or submitting of a false or misleading medicaid claim,
18 statement, representation, application, or document to a medicaid agency for a service or item ~~when that~~ the
19 person ~~knows or has reason to know that the person~~ is not entitled to under applicable statutes, ~~regulations, or~~
20 ~~under~~ rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment
21 requested or claimed; or

22 (ii) ~~making, submitting, or authorizing the making or submitting of a medicaid claim, statement,~~
23 ~~representation, application, or document under the medicaid program for a service or item when the person~~
24 ~~knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules, or~~
25 ~~policies to medicaid payment or benefit for the service or item or for the amount of payment requested or~~
26 ~~claimed; adopted under Title 2, chapter 4;~~

27 (b) the person purposely or knowingly:

28 (i) solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback, bribe,
29 or rebate, other than an amount legally payable under the medical assistance program, for furnishing services
30 or items for which payment may be made under the medicaid program or in return for purchasing, leasing,

1 ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or items from a
2 provider for which payment may be made under the medicaid program; or

3 (ii) makes, offers, or accepts a remuneration, a rebate of a fee, or a charge for referring a recipient to
4 another provider for the furnishing of services or items for which payment may be made under the medicaid
5 program; or

6 (c) the person, with respect to a managed care contract, health maintenance organization contract, or
7 similar contract or subcontract under the medicaid program, purposely or knowingly fails or refuses to provide
8 covered medically necessary services to eligible recipients as required by the contract.

9 (2) Any conduct or activity that does not violate or that is protected under the provisions of, or federal
10 regulations adopted under, 42 U.S.C. 1395nn or 42 U.S.C. 1320a-7b(b), as may be amended, is not considered
11 an offense under subsection (1)(b), and the conduct or activity must be accorded the same protections allowed
12 under federal laws and regulations.

13 (3) In a prosecution for a violation of this section, it is a defense if the person acted in reliance upon the
14 written authorization or advice of the department.

15 (4) (a) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims not
16 exceeding \$1,000 in value shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for
17 a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined \$1,000 and be
18 imprisoned in the county jail for a term not less than 10 days or more than 6 months. A person convicted of a
19 third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term not less than
20 30 days or more than 1 year.

21 (b) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims
22 exceeding \$1,000 in value shall be fined an amount not to exceed the greater of \$50,000 or 10 times the value
23 of the payments obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

24 (c) For purposes of imposing sentence for a conviction under subsection (1)(b), the value of payments
25 or benefits involved is the greater of the value of medicaid payments or benefits received as a result of the illegal
26 conduct or activity or the value of the remuneration, rebate, or charge involved.

27 (d) Amounts involved in medicaid fraud committed pursuant to a common scheme or the same
28 transaction may be aggregated in determining the value involved.

29 (e) A person convicted of the offense of medicaid fraud must be suspended from participation in the
30 medicaid program:

- 1 (i) for any period of time not less than 1 year for a first offense, or the person may be permanently
2 terminated from participation in the medical assistance program;
- 3 (ii) for any period of time not less than 3 years for a second offense, or the person may be permanently
4 terminated from participation in the medical assistance program; or
- 5 (iii) permanently for a third offense.
- 6 (5) In addition to any other penalty provided by law, a person convicted of medicaid fraud is not entitled
7 to bill or collect from the recipient, the medicaid program, or any other third-party payor for the services or items
8 involved and shall repay to the medicaid program any payments or benefits obtained by any person for the
9 services or items involved.
- 10 (6) The establishment of the criminal offenses specified in this section does not preclude the application
11 of any other provision of law."

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