CHAPTER 50-24.8
MEDICAID FRAUD CONTROL UNIT

50-24.8-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Benefit" means the provision of anything of pecuniary value under the Medicaid program.
2. "Claim" means:
   a. Any request or demand, whether under a contract or otherwise, for money or property under the Medicaid program regardless of whether the state has title to the money or property which is:
      (1) Presented to an officer, employee, or agent of the state; or
      (2) Made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and if the state:
         (a) Provides or has provided any portion of the money or property requested or demanded; or
         (b) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.
   b. A claim does not include requests or demands for money or property the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or property.
3. "Department" means the department of health and human services.
4. "Document" means an application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, or other form.
5. "Fraud" means any conduct or activity prohibited by law or rule involving knowing conduct or omission to perform a duty that results in or may result in payments to which the person is not entitled.
6. "Knowingly" means "knowingly" as defined in section 12.1-02-02.
7. "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.
8. "Medicaid agency" means an agency or entity of state, county, or local government which administers any part of the Medicaid program, whether under direct statutory authority or under contract with an authorized agency of the state or federal government.
9. "Misappropriation of patient property" means exploitation, deliberate misplacement, or wrongful use or taking of a patient's property, whether temporary or permanent, without authorization by the patient or the patient's designated representative. The term includes conduct with respect to a patient's property, which would constitute a criminal offense under chapter 12.1-23.
10. "Obligation" means an established duty, whether fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.
11. "Patient abuse" means the willful infliction of physical or mental injury of a patient or unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or mental anguish of a patient. The term includes conduct with respect to a patient which would constitute a criminal offense under chapter 12.1-16, 12.1-17, 12.1-18, 12.1-20, or 12.1-22.
12. "Patient neglect" means a failure, through inattentiveness, carelessness, or other omission, to provide to a patient goods and services necessary to avoid physical harm, mental anguish, or mental illness if an omission is not caused by factors beyond the person's control or by good-faith errors in judgment. The term includes conduct with respect to a patient which would constitute a criminal offense under section 12.1-17-03.

13. "Provider" means a person that furnishes items or services for which payment is claimed under the Medicaid program.
14. "Record" means medical, professional, business, or financial information and documents, whether in written, electronic, magnetic, microfilm, or other form:
    a. Pertaining to the provision of treatment, care, services, or items to a recipient;
    b. Pertaining to the income and expenses of the provider; or
    c. Otherwise relating to or pertaining to a determination of entitlement to payment or reimbursement under the Medicaid program.

50-24.8-02. Liability for certain acts - Civil penalty.

1. Except as provided in subsections 2 and 3, a person is liable to the state for a civil penalty of not less than one thousand dollars and not more than ten thousand dollars for each act specified in this section, three times the amount of damages the state sustains because of the person's act, and costs of the investigation and litigation fees, if the person:
    a. Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;
    b. Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
    c. Conspires to commit a violation of this section;
    d. Has possession, custody, or control of public property or money used or to be used by the state and knowingly delivers or causes to be delivered less than all of that money or property;
    e. Is authorized to make or deliver a document certifying receipt of property used or to be used by the state and, with the intent to defraud the state, makes or delivers a receipt without completely knowing the information on the receipt is true; or
    f. Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state.
2. The court may assess not less than two times the amount of damages the state sustains because of the act of the person and the person is liable to the state for the costs of the civil action brought to recover any such penalty or damages if the court finds:
    a. The person committing the act furnished the attorney general with all information known to that person about the act within thirty days after the date on which the person first obtained the information;
    b. The person fully cooperated with any investigation of the act by the attorney general; and
    c. At the time the person furnished the attorney general with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the violation.
3. If the total claim made or presented by a person under subsection 1 is less than one hundred thousand dollars, the civil penalty for which the person is liable may not be more than fifteen percent of the total claim submitted.

50-24.8-03. Limitation of actions.

1. A civil action filed under this chapter must be brought by the later of:
    a. Six years after the date on which the violation was committed; or
    b. Three years after the date facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances.
2. An action may not be brought pursuant to subdivision b of subsection 1 more than ten years after the date on which the violation was committed.

50-24.8-04. Investigation and action by attorney general.

The attorney general's Medicaid fraud control unit shall investigate an alleged violation of this chapter and may file a civil action, a criminal action, or both against any person that violated or is violating this chapter.

50-24.8-05. Burden of proof.

The standard of proof in a civil action brought under this chapter is the preponderance of the evidence.

50-24.8-06. Effect of criminal conviction.

A defendant convicted in any criminal proceeding under this chapter is precluded from subsequently denying the essential elements of the criminal offense of which the defendant was convicted in any civil proceeding. For purposes of this section, a conviction may result from a verdict or plea of guilty.

50-24.8-07. Costs and attorney's fees.

If the state favorably settles or prevails in a civil action in which the state intervened or filed, the state is entitled to be awarded reasonable expenses, consultant and expert witness fees, costs, and attorney's fees. In an action in which outside counsel is engaged by the attorney general, the costs and attorney's fees awarded to that counsel must equal the outside counsel's charges reasonably incurred for costs and attorney's fees in prosecuting the action. The expenses, fees, and costs must be awarded against the defendant. The state is not liable for costs, attorney's fees, or other expenses incurred by a person in bringing or defending an action under this chapter.

50-24.8-08. Relief from retaliatory actions.

1. An employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under this chapter or other efforts to stop one or more violations of this chapter.
2. Relief under subsection 1 includes reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An action under this section may be brought in the appropriate district court for the relief provided in this subsection.
3. A civil action under this section may not be brought more than three years after the date the retaliation occurred.

50-24.8-09. Medicaid fraud control unit.

The Medicaid fraud control unit is established as a division of the attorney general's office. The Medicaid fraud control unit, which is under the supervision and control of the attorney general, consists of the agents and employees the attorney general considers necessary and appropriate. The Medicaid fraud control unit is a criminal justice agency within the meaning of section 12-60-16.1. Agents designated by the attorney general have peace officer status and authority, including the authority of search, seizure, and arrest. All recovered money will be forwarded to the designated state Medicaid agency for appropriate allocation between the federal government and the general fund. The portion of state match appropriations for the Medicaid fraud control unit will be appropriated from the general fund.

50-24.8-10. Powers and duties of Medicaid fraud control unit.

1. The Medicaid fraud control unit shall:

a. Investigate and prosecute under applicable criminal or civil laws fraud and patient abuse or neglect by providers or any other person, including cases referred by the department;
b. Review complaints of patient abuse, patient neglect, and misappropriation of patient property and, if appropriate, investigate and initiate criminal or civil proceedings or refer the complaint to another federal, state, or local agency for action;
c. Refer to the department for collection and, if appropriate, imposition of appropriate provider administrative actions involving provider overpayments and abuse;
d. Communicate and cooperate with and, subject to applicable confidentiality laws, provide information to other federal, state, and local agencies involved in the investigation and prosecution of health care fraud, patient abuse, and other improper activities related to the Medicaid program;
e. Transmit to other state and federal agencies, in accordance with law, reports of convictions, copies of judgments and sentences imposed and other information and documents for purposes of program exclusions or other sanctions or penalties under Medicaid, Medicare, or other state or federal benefit or assistance programs;
f. Recommend to state agencies appropriate or necessary adoption or revision of laws, rules, policies, and procedures to prevent fraud, abuse, and other improper activities under the Medicaid program and to aid in the investigation and prosecution of fraud, abuse, and other improper activities under the Medicaid program; and
g. Enter an agreement with the Medicaid agency regarding referrals, information sharing, and improper payment recoveries as provided in title 42, Code of Federal Regulations, part 455, section 23.

2. The Medicaid fraud control unit may:
a. Initiate criminal prosecutions and civil actions pursuant to subsection 1 in any court of competent jurisdiction in the state;
b. Upon request, obtain information and records from applicants, recipients, and providers;
c. Subject to applicable federal confidentiality laws and rules and for purposes related to any investigation or prosecution under subsection 1, obtain from the department, local offices of public assistance, and other local, county, or state government departments or agencies records and other information, including applications, provider enrollment forms, claims and reports, individual or entity tax returns, or other information provided to or in the possession of the tax commissioner or the state auditor;
d. Refer appropriate cases to federal, other state, or local agencies for investigation, prosecution, or imposition of penalties, restrictions, or sanctions;
e. Work cooperatively with federal agencies; and
f. Enter agreements with the department and other federal, state, and local agencies in furtherance of the unit's mission.

50-24.8-11. Medicaid fraud - Criminal penalty.

1. A person commits a criminal offense under this section if the person knowingly:
a. Presents for allowance, for payment, or for the purpose of concealing, avoiding, or decreasing an obligation to pay a false or fraudulent medical assistance claim, bill, account, voucher, or writing to a public agency, public servant, or contractor authorized to allow or pay medical assistance claims;
b. Solicits, accepts, offers, or provides any remuneration, including a kickback, bribe, or rebate in exchange for purchasing, leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or items from a provider for which payment may be made under the Medicaid program;

c. Solicits, accepts, offers, or provides any remuneration, including a kickback, bribe, or rebate in exchange for a fee for referring a recipient to another provider or arranging for the furnishing of services or items for which payment may be made under the Medicaid program;
d. Fails or refuses to provide covered medically necessary services to eligible recipients as required with respect to a managed care contract, health maintenance organization contract, or similar contract or subcontract under the Medicaid program; or
e. Conspires with another person to commit a violation of this section.

2. Conduct or activity that does not violate or which is protected under the provisions of, or federal regulations adopted under 42 U.S.C. 1395nn and 42 U.S.C. 1320a-7b(b), is not considered an offense under subdivision b of subsection 1, and the conduct or activity must be accorded the same protections allowed under federal laws and regulations.
3. A person convicted of this offense involving payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims not exceeding one thousand dollars in value is guilty of a class A misdemeanor.
4. Notwithstanding subsection 3, if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims of the Medicaid fraud were part of a common scheme and exceed one thousand dollars in value, a violation of this chapter is a class C felony.
5. Notwithstanding subsection 3, if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims of the Medicaid fraud were part of a common scheme and exceed ten thousand dollars in value but do not exceed fifty thousand dollars, a violation of this chapter is a class B felony.
6. Notwithstanding subsection 3, if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims of the Medicaid fraud were part of a common scheme and exceed fifty thousand dollars in value, a violation of this chapter is a class A felony.
   a. For purposes of imposing sentence for a conviction under this chapter, the value of payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims involved is the greater of the value of Medicaid payments or benefits received as a result of the illegal conduct or activity or the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claim involved.
   b. Amounts involved in Medicaid fraud committed pursuant to a common scheme or the same transaction may be aggregated in determining the value involved.
   c. A person convicted of the offense of Medicaid fraud must be suspended from participation in the Medicaid program:
      (1) For any period of time not less than one year for a first offense or the person may be permanently terminated from participation in the medical assistance program;
      (2) For any period of time not less than three years for a second offense, or the person may be permanently terminated from participation in the medical assistance program; or
      (3) Permanently for a third offense.
7. In addition to any other penalty provided by law, a person convicted of Medicaid fraud is not entitled to bill or collect from the recipient, the Medicaid program, or any other third-party payer for the services or items involved and shall repay to the Medicaid program any payments or benefits obtained by any person for the services or items involved.

50-24.8-11.1. Failure to create, retain, and provide records - Penalty.

1. A person that submits a claim for or receives a payment for a good or service under the state's Medicaid program, at the time the good or service is provided, shall create and retain records as required by rule of the department and chapter 50-24.8.

2. A person that submits a claim for or receives payment for a good or service under the state's Medicaid program which willfully fails to create records at the time the service or good is provided, fails to maintain or retain the records for the length of time stated in the most current provider agreement applicable to that provider, fails to provide records when requested to do so by the department or attorney general, or destroys the records in a manner inconsistent with the most current provider agreement applicable to that provider, is guilty of a class A misdemeanor if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims related to the failure to create, retain, or provide records or related to the destruction of records does not exceed ten thousand dollars and a class C felony if the value is greater than ten thousand dollars.
3. It is an affirmative defense to a prosecution under this section that the records in question were lost or destroyed in a natural disaster or by an act that did not result from the conduct of the defendant.
4. The consequences and punishments under subsections 6 and 7 of section 50-24.8-11 apply to this section.

50-24.8-12. Investigative demands and administrative subpoenas - Failure to comply - Confidentiality.

1. If the attorney general, or a designee, has reason to believe a person may be in possession, custody, or control of documentary material or information relevant to an investigation under this chapter, the attorney general, or a designee, may, before commencing a proceeding under section 50-24.8-04 issue in writing and cause to be served upon the person, an investigative demand or administrative subpoena requiring the person to, under oath:
   a. Produce the documentary material for inspection and copying, including exempt and confidential records;
   b. Answer in writing written interrogatories with respect to the documentary material or information;
   c. Give oral testimony concerning the subject matter of the investigation, including any documentary material or information; or
   d. Furnish any combination of the material, answers, or testimony.
2. If a person objects to or otherwise fails to comply with an investigative demand or administrative subpoena served upon that person under subsection 1, the attorney general may file in the district court a petition for an order to enforce the demand or subpoena. If the court finds the demand or subpoena is proper, the court shall order the person to comply with the demand or subpoena and may grant such injunctive or other relief as may be required until the person complies with the demand or subpoena. Notice of hearing on the petition and a copy of the petition must be served upon the person that may appear in opposition to the petition. If the attorney general prevails in an action brought under this subsection, the court shall award to the attorney general reasonable attorney's fees, costs, and expenses incurred in bringing the action.
3. Any testimony taken or material produced under this section must be kept confidential by the attorney general before bringing an action against a person under this chapter for the violation under investigation, unless:
   a. Confidentiality is waived by the person being investigated and the person that testified, answered interrogatories, or produced material;
   b. Disclosure is authorized by the court;
   c. Disclosure is made to other law enforcement agencies; or
   d. Disclosure is made to non-law enforcement investigative partners with which the attorney general deems necessary to collaborate to complete the investigation.
4. Disclosure pursuant to this section is not a violation of section 12.1-13-01.
5. An active investigation record of the Medicaid fraud control unit is an exempt record unless the investigation is closed and not referred for further investigation or adjudication.

50-24.8-13. Cooperation of governmental agencies with Medicaid fraud control unit.

All local, county, and state departments and agencies shall cooperate with the Medicaid fraud control unit and the unit's agents and employees to effectuate the purposes of the unit.

50-24.8-14. Authorization to adopt rules.

The attorney general may adopt rules, pursuant to chapter 28-32, to implement this chapter.