

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1511

Introduced by

Representative Dosch

1 A BILL for an Act to provide for the establishment of a medicaid fraud control unit in the office of
2 the attorney general.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

- 5 1. "Abuse" means conduct by an applicant, recipient, provider, or other person
6 involving disregard of and an unreasonable failure to conform with the statutes and
7 rules governing the medical assistance program when the disregard or failure
8 results or may result in an incorrect determination that an individual is eligible for
9 medical assistance or payment by a medicaid agency of medical assistance
10 payments to which the provider is not entitled.
- 11 2. "Applicant" means an individual:
12 a. Who has submitted an application for determination of medicaid eligibility to a
13 medicaid agency on the individual's own behalf or on behalf of another
14 individual; or
15 b. On whose behalf an application has been submitted.
- 16 3. "Benefit" means the provision of anything of pecuniary value to or on behalf of a
17 recipient under the medicaid program.
- 18 4. "Claim" means a communication, whether in oral, written, electronic, magnetic, or
19 other form, that is used to claim specific services or items as payable or
20 reimbursable under the medicaid program or that states income, expense, or other
21 information that is or may be used to determine entitlement to or the rate of
22 payment under the medicaid program. The term includes any documents
23 submitted as part of or in support of the claim.
- 24 5. "Department" means the department of human services.

- 1 6. "Document" means any application, claim, form, report, record, writing, or
2 correspondence, whether in written, electronic, magnetic, or other form.
- 3 7. "Fraud" means any conduct or activity prohibited by statute or rule involving
4 purposeful or knowing conduct or omission to perform a duty that results in or may
5 result in medicaid payments or benefits to which the applicant, recipient, or
6 provider is not entitled.
- 7 8. "Medicaid" means the North Dakota medical assistance program established under
8 chapter 50-24.1.
- 9 9. "Medicaid agency" means any agency or entity of state, county, or local
10 government that administers any part of the medicaid program, whether under
11 direct statutory authority or under contract with an authorized agency of the state or
12 federal government. The term includes the department, the department of
13 corrections and rehabilitation, local offices of public assistance, and other local and
14 state agencies and their agents, contractors, and employees, when acting with
15 respect to medicaid eligibility, claims processing or payment, utilization review,
16 case management, provider certification, investigation, or other administration of
17 the medicaid program.
- 18 10. "Misappropriation of patient property" means exploitation, deliberate misplacement,
19 or wrongful use or taking of a patient's property, whether temporary or permanent,
20 without authorization by the patient or the patient's designated representative. The
21 term includes any conduct with respect to a patient's property that would constitute
22 a criminal offense under chapter 12.1-23.
- 23 11. "Patient abuse" means the willful infliction of physical or mental injury of a patient
24 or unreasonable confinement, intimidation, or punishment that results in pain,
25 physical or mental harm, or mental anguish of a patient. The term includes any
26 conduct with respect to a patient that would constitute a criminal offense under
27 chapter 12.1-16, 12.1-17, 12.1-18, 12.1-20, or 12.1-22.
- 28 12. "Patient neglect" means a failure, through inattentiveness, carelessness, or other
29 omission, to provide to a patient goods and services necessary to avoid physical
30 harm, mental anguish, or mental illness when an omission is not caused by factors
31 beyond the person's control or by good-faith errors in judgment. The term includes

any conduct with respect to a patient that would constitute a criminal offense under 12.1-17-03.

13. "Provider" means an individual, company, partnership, corporation, institution, facility, or other entity or business association that has enrolled or applied to enroll as a provider of services or items under the medical assistance program.

14. "Recipient" means an individual:

a. Who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the person actually has received any benefits; or

b. Who actually receives medicaid benefits, whether or not determined eligible.

15. "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 eligibility for or entitlement to payment or reimbursement under the medicaid program.

SECTION 2. 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, including individuals qualified by education, training, experience, and high professional competence in criminal and civil investigative procedures and high professional competence to prosecute crimes. 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.

SECTION 3. Powers and duties of medicaid fraud control unit.

1. The medicaid fraud control unit shall:

a. Investigate and prosecute under applicable criminal statutes fraud and abuse by applicants, recipients, providers, or any other persons, including cases referred by the department;

b. Review any complaint of patient abuse, patient neglect, and misappropriation of patient property and, when appropriate, shall investigate and initiate

1 criminal proceedings or refer the complaint to another federal, state, or local
2 agency for action;

3 c. Refer to the department for collection and, when appropriate, consideration
4 and imposition of appropriate recipient restrictions or provider sanctions cases
5 involving recipient or provider overpayments, fraud, abuse, inappropriate use
6 of services, or other improper activities discovered by the unit in carrying out
7 its activities;

8 d. Communicate and cooperate with and, subject to applicable confidentiality
9 laws, provide information to other federal, state, and local agencies involved
10 in the investigation and prosecution of health care fraud, abuse, and other
11 improper activities related to the medicaid program;

12 e. Transmit to other state and federal agencies, in accordance with law reports
13 of convictions, copies of judgments and sentences imposed and other
14 information and documents for purposes of program exclusions or other
15 sanctions or penalties under medicaid, medicare, or other state or federal
16 benefit or assistance programs; and

17 f. Recommend to state agencies appropriate or necessary adoption or revision
18 of statutes, rules, policies, and procedures to prevent fraud, abuse, and other
19 improper activities under the medicaid program and to aid in the investigation
20 and prosecution of fraud, abuse, and other improper activities under the
21 medicaid program.

22 2. The medicaid fraud control unit may:

23 a. Initiate criminal prosecutions pursuant to subsection 1 in any court of
24 competent jurisdiction in the state;

25 b. Upon written request, obtain information and records from applicants,
26 recipients, and providers;

27 c. Subject to applicable federal confidentiality laws and rules and for purposes
28 related to any investigation or prosecution under subsection 1, obtain from the
29 department, local offices of public assistance, and other local, county, or state
30 government departments or agencies records and other information, including
31 applicant and recipient applications, provider enrollment forms, claims and

- 1 reports, individual or entity tax returns, or other information provided to or in
2 the possession of the tax commissioner or the state auditor;
3 d. Refer appropriate cases to other federal, state, or local agencies for
4 investigation, prosecution, or imposition of penalties, restrictions, or sanctions;
5 and
6 e. Enter agreements with the department and other federal, state, and local
7 agencies in furtherance of the unit's mission.

8 **SECTION 4. Cooperation of governmental agencies with medicaid fraud control**
9 **unit.** All local, county, and state departments and agencies shall cooperate with the medicaid
10 fraud control unit and its agents and employees to effectuate the purposes of the unit.