

COUNCIL OF THE DISTRICT OF COLUMBIA

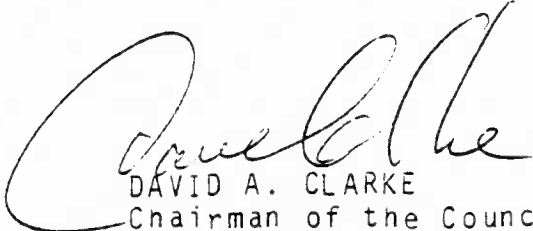
NOTICE

D.C. LAW 5-193

"Medicaid Provider Fraud Prevention
Amendments Act of 1984".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 5-511 on first and second readings, December 4, 1984 and December 18, 1984, respectively. Following the signature of the Mayor on January 11, 1985, this legislation was assigned Act No. 5-258, published in the February 22, 1985 edition of the D.C. Register, (Vol. 32 page 1010) and transmitted to Congress January 24, 1985 for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 5-193, effective March 16, 1985.


DAVID A. CLARKE
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

January	24,25,28,29,30,31	-
February	1,4,5,6,7,19,20,21,22,25,26,27,28	
March	1,4,5,6,7,8,11,12,13,14,15	

D.C. ACT 5 - 2 5 8

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JAN 1 1 1985

To prohibit fraud under the District of Columbia's Medicaid Program and to amend the D.C. Code to modify the admissibility of medical assistance evidence; and for other purposes.

CODIFICATION
New chapter
7 of title 1

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
That this act may be cited as the "Medicaid Provider Fraud Prevention Amendments Act of 1984."

Sec. 2. Definitions.

(a) For the purposes of this act, the term:

(1) "Benefit" means any benefit authorized under the District of Columbia Medicaid Program.

(2) "Claim", "request for payment", or "claim for payment" means an application or communication, whether written, oral, electronic impulse, or magnetic tape, which is submitted by a person to the Department of Human Services of the District of Columbia for payment and which is used to identify any item or service for which payment may be made under the District of Columbia Medicaid Program.

(3) "Conditions of participation" means those items set forth in the provider agreement with the District of Columbia which a provider has agreed to meet in providing items or services under the District of Columbia Medicaid Program.

New,
D.C. Code,
sec. 3-701
Note,
D.C. Code,
sec. 3-204.
(1985 supp.)

REPRODUCED BY THE DISTRICT OF COLUMBIA ARCHIVES

(4) "Department" means the Department of Human Services of the District of Columbia or its agent.

(5) "Director" means the Director of the Department of Human Services.

(6) "Item or service" means:

(A) any particular item, device, medical supply, or service claimed to have been provided to a recipient and listed in an itemized claim for program payment or a request for payment; and

(B) in the case of a claim based on costs, any entry or omission in a cost report, books of accounts, or other documents supporting the claim.

(7) "Medicaid legislation" means title 19 of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. sec. 1396 et seq.).

(8) "Medicaid program" means the program authorized by title 19 of the Social Security Act and by An Act To enable the District of Columbia to receive Federal financial assistance under title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved Dec. 27, 1967 (81 Stat. 744; D.C. code, sec. 1-359), and administered by the Department of Human Services.

(9) "Payment" means any payment made by the District of Columbia to a provider for any item or service under the District of Columbia Medicaid Program.

(10) "Person" means an individual, firm, partnership, group, corporation, professional corporation or

association, institution, agency, or other entity, public or private, that has been approved or seeks to be approved by the District of Columbia to provide medical assistance to recipients.

(11) "Provider agreement" means a contract executed by the District of Columbia and a provider pursuant to title 19 of the Social Security Act and which contract sets forth the rights, duties, and obligations of the parties.

(12) "Provider" means an individual or entity furnishing services under a provider agreement.

(13) "Recipient" means any individual who has been designated as eligible to receive or who receives any item or service under the District of Columbia Medicaid Program.

(14) "Record" means any medical, professional, or business record relating to the care or treatment of a recipient which is maintained or required to be maintained by a provider.

(15) "Sign" means to affix a signature, directly or indirectly, by means of a handwriting, typewriter, signature stamp, computer impulse, or any other means.

Sec. 3. (a) A person shall be guilty of a misdemeanor punishable by a fine of not more than \$500 or imprisonment not to exceed 1 year, or both, for each violation of the following prohibitions in this section.

(b) No one may, with intent to defraud, by means of a false claim, false statement, failure to disclose

New,
D.C. Code,
sec. 3-702
Note,
D.C. Code,
secs. 22-25
-3811 & -3812
(1985 supp.)

information, or other fraudulent scheme or device, obtain or attempt to obtain:

(1) authorization to become or remain a provider;

(2) a higher rate of payment than that to which the person is entitled as a provider;

(3) payment, as a provider, for items or services that the person knows or has reason to know was not provided as claimed;

(4) payment which may not be made under the program under which the claim was made; or

(5) payment submitted in violation of an agreement between the person and the District of Columbia.

(c) No one may solicit, accept, or agree to accept any type of remuneration for the following:

(1) referring a recipient to a particular provider of any item or service or for which payment may be made under the District of Columbia Medicaid Program; or

(2) recommending the purchase, lease, or order of any good, facility, service, or item for which payment may be made under the District of Columbia Medicaid Program.

(d) No one may confer, offer, or agree to confer or offer any type of remuneration for the conduct described in subsection (c).

(e) No one may charge, solicit, accept, or attempt to charge, solicit, accept or receive anything of value from a recipient or provider in addition to the amount of money payable under the District of Columbia Medicaid Program.

(f) No one may solicit, receive, or attempt to solicit

or receive anything of value as a precondition for admitting a recipient to a hospital, skilled nursing facility, intermediate care facility, or any other facility, or as a condition for providing any item or service to a recipient.

Sec. 4. (a) Any person that presents or causes to be presented to an officer, employee, or agent of the District of Columbia a claim under the Medicaid program that is for a medical or other item or service that the person knows or has reason to know was not provided as claimed, or that requests a payment which may not be made under the program under which the claim was made, or is submitted in violation of an agreement between the person and the District of Columbia, shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than \$2,000 for each item or service. In addition, the person shall be subject to an assessment of not more than twice the amount claimed for each item or service in place of the damages sustained by the District of Columbia because of the claim.

(b)(1) The Director may initiate a proceeding to determine whether to impose a civil money penalty or assessment under subsection (a), but only as authorized by the Corporation Counsel pursuant to procedures agreed upon by them.

(2) The Director shall not make a determination adverse to any person under subsection (a) until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at

New,
D.C. Code,
sec. 3-703
Note,
D.C. Code,
sec. 22-2511
22-2514
(1985 supp.)

which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(c) In determining the amount or scope of any penalty or assessment imposed pursuant to subsection (a), the Director shall take into account the following:

- (1) the nature of claims and the circumstances under which they were presented;
- (2) the degree of culpability, history of prior offenses, and financial condition of the person presenting the claims; and
- (3) other matters as justice may require.

(d) Any person adversely affected by a determination under this section may obtain a review of the determination in the Court of Appeals of the District of Columbia in accordance with section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Code, sec. 1-1510).

(e) Civil money penalties and assessments imposed under this section may be recovered in a civil action in the name of the District of Columbia by the Corporation Counsel. Amounts recovered under this section shall be paid to the District of Columbia Treasurer and allocated, first, to reimburse the Medicaid Program and, then, to the General Fund of the District of Columbia. The amount of the penalty or assessment, when finally determined, may be deducted from any sum then or later owing by the District of Columbia to the person against whom the penalty or assessment has been

charged.

(f) A determination by the Director to impose a penalty or assessment under subsection (a) shall be final unless timely appealed pursuant to subsection (d). Matters that were raised or that could have been raised in a hearing before the Director or in an appeal pursuant to subsection (d) may not be raised as a defense to a civil action brought by the District of Columbia.

(g) Whenever the Director's determination to impose a penalty or assessment under subsection (a) becomes final, the Director shall notify the appropriate licensing agency or organization that the penalty or assessment has become final and also about the reasons for the penalty or assessment.

(h) Testimony in any civil proceeding pursuant to this act and the fruits of that testimony shall be inadmissible as evidence in a criminal trial except in a prosecution for perjury or false statement.

Sec. 5. (a) Criminal prosecutions under section 3 and civil actions brought under section 4(e) shall be brought in the Superior Court of the District of Columbia by the Corporation Counsel.

New,
D.C. Code,
sec. 3-704
Note,
D.C. Code,
secs. 22-251
& 23-101
(1985 supp.)

(b) In addition to any power to bring criminal or civil actions or otherwise carry out the duties under this act, the Corporation Counsel shall have the authority to investigate all alleged violations of this act and, in exercising this power, may issue subpoenas for witnesses to appear and testify or to produce all books, records, papers,

or documents in any investigation into alleged violations of this act.

(c) Witnesses, other than those employed by the District of Columbia, summoned under subsection 5(b) shall be paid the same fees and mileage that witnesses are paid in the Superior Court of the District of Columbia, but the fees need not be tendered to the witnesses before they appear and testify or produce books, records, papers, or documents.

(d) Any willful false swearing on the part of any witness testifying about a material fact pursuant to a subpoena issued under subsection 5(b) shall be subject to prosecution pursuant to section 401 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Code, sec. 22-2511).

(e) If any witness having been personally summoned shall neglect or refuse to obey the subpoena, the Corporation Counsel may report that fact to the Superior Court of the District of Columbia. The Superior Court of the District of Columbia may compel obedience to the subpoena to the same extent as witnesses may be compelled to obey the subpoenas of that court.

(f) The Corporation Counsel may administer oaths to witnesses summoned in any investigation under subsection 5(b).

(g) No person holding records required to be maintained by the medicaid legislation or regulations promulgated pursuant to that legislation may refuse to

provide the Corporation Counsel with access to the records on the basis that release would violate any recipient's right of privacy, any recipient's privilege against disclosure or use, or any professional or other privilege or right.

Sec. 6. The Mayor shall issue rules to implement the provisions of this act pursuant to title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code, sec. 1-1501 et seq.).

New,
D.C. Code,
sec. 3-705
(1985 supp.)

Sec. 7. D.C. Code, sec. 14-307(b), is amended as follows:

(a) By striking the word "or" at the end of paragraph (2);

D.C. Code,
sec. 14-307
(1985 supp.)

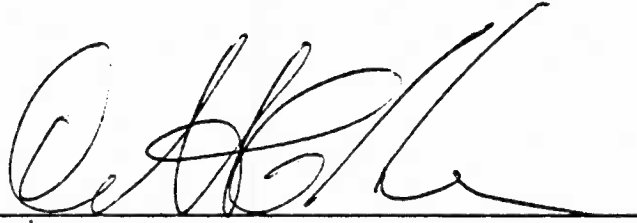
(b) By striking "." at the end of paragraph (3) and inserting "; or" in its place; and

(c) By adding at the end a new paragraph to read as follows:

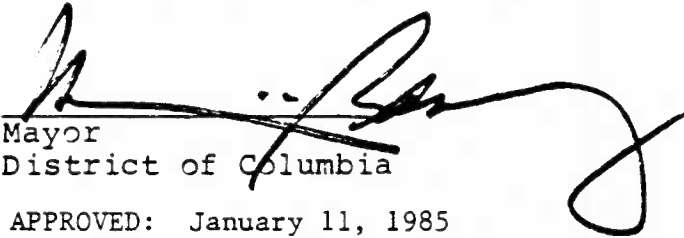
"(4) evidence in criminal or civil cases where a person is alleged to have defrauded the District of Columbia or federal government in relation to receiving or providing services under the District of Columbia medical assistance program authorized by title 19 of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. sec. 1396 et seq.)."

Sec. 8. This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as

provided in section 602(c)(1) of the District of Columbia
Self-Government and Governmental Reorganization Act,
approved December 24, 1973 (87 Stat. 813; D.C. Code, sec.
1-233(c)(1)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: January 11, 1985



COUNCIL OF THE DISTRICT OF COLUMBIA

Council Period Five - Second Session

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: B5-511

Item on Consent Calendar
ACTION & DATE: Adopted First Reading, 12-04-84
VOICE VOTE: Unanimous
Recorded vote on request
Absent: Smith

ROLL CALL VOTE: - RESULT

Table with 15 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. for CHMN. CLARKE, CRAWFORD, JARVIS, KANE, MASON, MOORE, JR., RAY, ROLARK, SHACKLETON, SMITH, JR., SPAULDING, WILSON, WINTER.

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

Signature of Secretary to the Council

Date: 12/20/84

Item on Consent Calendar
ACTION & DATE: Adopted Final Reading, 12-18-84
VOICE VOTE: Unanimous
Recorded vote on request
Absent: Winter

ROLL CALL VOTE: - RESULT

Table with 15 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. for CHMN. CLARKE, CRAWFORD, JARVIS, KANE, MASON, MOORE, JR., RAY, ROLARK, SHACKLETON, SMITH, JR., SPAULDING, WILSON, WINTER.

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

Signature of Secretary to the Council

Date: 12/20/84

Item on Consent Calendar
ACTION & DATE:
VOICE VOTE:
Recorded vote on request
Absent:

ROLL CALL VOTE: - RESULT

Table with 15 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. for CHMN. CLARKE, CRAWFORD, JARVIS, KANE, MASON, MOORE, JR., RAY, ROLARK, SHACKLETON, SMITH, JR., SPAULDING, WILSON, WINTER.

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD