THE HEALTH CARE FALSE CLAIM ACT

Act 323 of 1984

AN ACT to prohibit fraud in the obtaining of benefits or payments in connection with health care coverage and insurance; to prohibit kickbacks or bribes in connection with such coverage and insurance; to prohibit conspiracies in obtaining benefits or payments; to provide for certain powers and duties of certain state and local officers and agencies; to provide for and preclude certain civil actions; and to prescribe penalties.

History: 1984, Act 323, Eff. Mar. 29, 1985 ;-- Am. 1996, Act 229, Imd. Eff. June 5, 1996

The People of the State of Michigan enact:

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752.1001 Short title.

Sec. 1.

This act shall be known and may be cited as "the health care false claim act".

History: 1984, Act 323, Eff. Mar. 29, 1985

752.1002 Definitions.

Sec. 2.

As used in this act:

(a) "Claim" means any attempt to cause a health care corporation or health care insurer to make the payment of a health care benefit.

(b) "Deceptive" means making a claim to a health care corporation or health care insurer which contains a statement of fact or which fails to reveal a material fact, which statement or failure leads the health care corporation or health care insurer to believe the represented or suggested state of affair to be other than it actually is.

(c) "False" means wholly or partially untrue or deceptive.

(d) "Health care benefit" means the right under a contract or a certificate or policy of insurance to have a payment made by a health care corporation or health care insurer for a specified health care service.

(e) "Health care corporation" means a nonprofit dental care corporation incorporated under Act No. 125 of the Public Acts of 1963, being sections 550.351 to 550.373 of the Michigan Compiled Laws; a hospital service corporation, medical care corporation, or a consolidated hospital service corporation and medical care corporation incorporated or reincorporated under Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws, or incorporated or consolidated under Act No. 108 or 109 of the Public Acts of 1939; or a health maintenance organization licensed under Act No. 368 of the Public Acts of 1978, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws.

(f) "Health care insurer" means any insurance company authorized to provide health insurance in this state or any legal entity which is self-insured and providing health care benefits to its employees.

(g) "Health facility or agency" means a health facility or agency, as defined in section 20106 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.20106 of the Michigan Compiled Laws.

(h) "Knowing" and "knowingly" means that a person is in possession of facts under which he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a health care benefit. "Knowing" or "knowingly" does not include conduct which is an error or mistake unless the person's course of conduct indicates a systematic or persistent tendency to cause inaccuracies to be present.

(i) "Person" means an individual, corporation, partnership, association, or any other legal entity.

History: 1984, Act 323, Eff. Mar. 29, 1985

752.1003 False claims, statements, or representations; violation as separate offense; liability of health facility or agency; concealing or failing to disclose certain events; violation of section as felony; penalty; section inapplicable to application for coverage.

Sec. 3.

(1) A person shall not make or present or cause to be made or presented to a health care corporation or health care insurer a claim for payment of health care benefits knowing the claim to be false.

(2) A person shall not make or present or cause to be made or presented to a health care corporation or health care insurer a claim for payment of health care benefits which he or she knows falsely represents that the goods or services were medically necessary in accordance with professionally accepted standards. Each claim which violates this subsection shall constitute a separate offense. A health facility or agency shall not be liable under this subsection unless the health facility or agency, pursuant to a conspiracy, combination, or collusion with a physician or other provider, falsely represents the medical necessity of the particular goods or services for which the claim was made.

(3) A person shall not knowingly make or cause to be made a false statement or false representation of a material fact to a health care corporation or health care insurer for use in determining rights to health care benefits. Each claim which violates this subsection shall constitute a separate violation.

(4) A person who, having knowledge of the occurrence of an event affecting his or her initial or continued right to receive a health care benefit, or the continued right of any other person on whose behalf he or she has applied for or is receiving a health care benefit, shall not conceal or fail to disclose that event with intent to obtain a health care benefit to which the person or any other person is not entitled, or to obtain a health care benefit in an amount greater than that to which the person or any other person is entitled.

(5) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 4 years, or by a fine of not more than $50,000.00, or both.

(6) This section does not apply to statements made on an application for coverage under a certificate or policy of insurance issued by a health care insurer or coverage under a certificate issued by a health care corporation.

History: 1984, Act 323, Eff. Mar. 29, 1985

752.1004 Kickbacks, bribes, or rebates as felony; penalty.

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Sec. 4.

A person who solicits, offers, pays, or receives a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part by a health care corporation or health care insurer, or who receives a rebate of a fee or charge for referring an individual to another person for the furnishing of health care benefits, is guilty of a felony, punishable by imprisonment for not more than 4 years, or by a fine of not more than $50,000.00, or both.

History: 1984, Act 323, Eff. Mar. 29, 1985

752.1004a Violation of MCL 752.1004; exceptions; cost-sharing requirements not altered; definitions.

Sec. 4a.

(1) Neither of the following violates section 4:

(a) A rebate or discount from a drug manufacturer or from a company that licenses or distributes the drugs of a drug manufacturer to or for the benefit of a consumer for the administration or the consumer's use of a drug manufactured or licensed or distributed by the drug manufacturer or company, including for consumer cost-sharing requirements for the administration or drug. As used in this subdivision, "administration" means injection, infusion, or similar means of application.

(b) A monetary payment from a drug manufacturer to a consumer, the consumer's health professional, or a vendor that has a contract with the drug manufacturer, for a health care service that the prescribing information of a qualified drug requires or recommends for initiating drug therapy.

(2) This section does not alter any copayment, deductible, coinsurance, or other cost-sharing requirements under a contract, certificate, or policy issued by a health care corporation or health care insurer.

(3) As used in this section:

(a) "Consumer's health professional" means a health professional who did not prescribe the qualified drug or who does not have a financial relationship to the health professional who prescribed the qualified drug.

(b) "Health care service" means any of the following:

(i) Monitoring for bradycardia or atrioventricular conduction.

(ii) Monitoring blood pressure.

(iii) An electrocardiogram.

(iv) A cardiac evaluation by a physician.

(v) A complete blood count test.

(vi) A liver function test.

(vii) An eye examination for macular edema.

(viii) A pulmonary function test, if clinically indicated.

(ix) A vaccination.

(x) An additional service included in the prescribing information by the United States Food and Drug Administration.

(c) "Health professional" means an individual who is licensed or otherwise authorized to engage in a health profession under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

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(d) "Physician" means an individual licensed or otherwise authorized to engage in the practice of medicine under part 170 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17097, or to engage in the practice of osteopathic medicine and surgery under part 175 of the public health code, 1978 PA 368, MCL 333.17501 to 333.17556.

(e) "Qualified drug" means a drug that has a United States Food and Drug Administration approved indication to treat multiple sclerosis.

History: Add. 2004, Act 411, Imd. Eff. Nov. 29, 2004 ;-- Am. 2016, Act 80, Eff. July 11, 2016 ;-- Am. 2020, Act 317, Imd. Eff. Dec. 29, 2020

752.1004b Rebate or discount from medical supply or device manufacturer; use; effect.

Sec. 4b.

(1) A rebate or discount from a medical supply or device manufacturer or from a company that licenses or distributes medical supplies or devices for a medical supply or device manufacturer to a consumer for that consumer's use of a medical supply or device manufactured or licensed or distributed by that manufacturer or company does not violate section 4.

(2) This section does not alter any copayment, deductible, coinsurance, or other cost-sharing requirements under a contract, certificate, or policy issued by a health care corporation or health care insurer.

History: Add. 2004, Act 410, Imd. Eff. Nov. 29, 2004

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752.1005 Agreement, combination, or conspiracy to defraud as felony; penalty.

Sec. 5.

(1) A person shall not enter into an agreement, combination, or conspiracy to defraud a health care corporation or health care insurer by making or presenting, or aiding another to make or present a false claim for payment of health care benefits.

(2) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 10 years, or by a fine of not more than $50,000.00, or both.

History: 1984, Act 323, Eff. Mar. 29, 1985

752.1006 Second or subsequent offense; penalty.

Sec. 6.

A person who is convicted of a second or subsequent offense under this act may be sentenced to imprisonment for a term of not more than twice the term otherwise authorized, or fined an amount not more than twice the amount otherwise authorized, or both.

History: 1984, Act 323, Eff. Mar. 29, 1985

752.1007 Evidence; rebuttable presumptions.

Sec. 7.

(1) In a prosecution under this act, it shall not be necessary to show that the person had knowledge of similar acts having been performed in the past by a person acting on the person's

behalf, nor to show that the person had actual notice that the acts by the persons acting on the person's behalf occurred, to establish the fact that a false statement or representation was knowingly made.

(2) It shall be a rebuttable presumption that a person knowingly made a claim for a health care benefit if the person's actual, facsimile, stamped, typewritten, or similar signature is used on the form required for the making of the claim for the health care benefit.

(3) If a claim for a health care benefit is made by means of computer billing tapes or other electronic means, it shall be a rebuttable presumption that the person knowingly made the claim if the person has advised the health care corporation or health care insurer in writing that claims for health care benefits will be submitted by use of computer billing tapes or other electronic means.

(4) In any civil or criminal action under this act the certificate of an authorized agent of the health care corporation or health care insurer setting forth that documentary material or any compilation thereof is an authentic record or compilation of records of the health care corporation or health care insurer shall create a rebuttable presumption that the record or compilation is authentic.

History: 1984, Act 323, Eff. Mar. 29, 1985

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752.1008 Investigation; service and contents of written demands; action to enforce demand; serving notice of hearing and copy of pleadings; orders; confidentiality; duties of peace officers appointed as investigators.

Sec. 8.

(1) The attorney general, an assistant attorney general on behalf of the attorney general, or a prosecuting attorney may conduct an investigation of an alleged violation of this act.

(2) If the attorney general or a prosecuting attorney has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation for violation of this act, the attorney general or a prosecuting attorney, after notifying the attorney general, may serve upon the person, before bringing any criminal action, a written demand to appear and be examined under oath, and to produce the document or object for inspection and copying. The demand shall include all of the following:

(a) Be served upon the person in the manner required for service of process in this state.

(b) Describe the nature of the conduct constituting the violation under investigation.

(c) Describe the document or object with sufficient definiteness to permit it to be fairly identified.

(d) Contain a copy of any written interrogatories.

(e) Prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories, and within which the document or object must be produced, and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general or prosecuting attorney making the demand, on or before that time.

(f) Specify a place for the taking of testimony or for production and designate the person who shall be custodian of the document of object.

(g) Contain a copy of subsection (3).

(3) If a person objects to or otherwise fails to comply with the written demand served upon him or her under subsection (2), the attorney general or a prosecuting attorney, after notifying or at the request of the attorney general, may file in the circuit court of the county in which the

person resides or in which the person maintains a principal place of business within this state an action to enforce the demand. Notice of hearing the action and a copy of all pleadings shall be served upon the person, who may appear in opposition. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been or is presently occurring a violation of this act, and that the information sought or document of object demanded is relevant to the investigation, the court shall order the person to comply with the demand, subject to modification the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

(4) Except as required by federal law, any procedure, testimony taken, or material produced shall be kept confidential by the attorney general or a prosecuting attorney before bringing an action against a person under this act for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or disclosure is authorized by the court.

(5) For purposes of enforcing this act, the attorney general may appoint investigators who shall be peace officers and whose duties include, but are not limited to, the following:

(a) To execute and serve search warrants, arrest warrants, subpoenas, administrative warrants, and summonses issued under the authority of the state.

(b) To seize property pursuant to the laws of this state.

(c) Investigators appointed by the attorney general may exercise the powers provided in this subsection when working in conjunction with local law enforcement agencies or the department of state police.

History: 1984, Act 323, Eff. Mar. 29, 1985

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752.1008a Person not subject to civil liability.

Sec. 8a.

If acting in good faith, a person is not subject to civil liability for providing information, investigating, or cooperating with an investigation or examination under this act.

History: Add. 1996, Act 229, Imd. Eff. June 5, 1996

752.1009 Liability of person to health care corporation or health care insurer.

Sec. 9.

A person who receives a health care benefit or payment from a health care corporation or health care insurer which the person knows that he or she is not entitled to receive or be paid; or a person who knowingly presents or causes to be presented a claim which contains a false statement, shall be liable to the health care corporation or health care insurer for the full amount of the benefit or payment made.

History: 1984, Act 323, Eff. Mar. 29, 1985

752.1010 Restitution.

Sec. 10.

Any person convicted of a violation of section 3, 4, or 5, in addition to any fines or sentences imposed, including any order of probation, may be ordered to make restitution to a health care corporation or health care insurer.

History: 1984, Act 323, Eff. Mar. 29, 1985

752.1011 Prosecution or civil action for violation of other laws.

Sec. 11.

This act shall not be construed to prohibit or limit a prosecution of or civil action against a person for the violation of any other law of this state.

History: 1984, Act 323, Eff. Mar. 29, 1985

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