

1 HB110  
2 147788-1  
3 By Representative McClendon  
4 RFD: State Government  
5 First Read: 05-FEB-13  
6 PFD: 02/01/2013

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8 SYNOPSIS: This bill would enact The Medicaid Fraud  
9 Reduction Act of 2013.

10 Under existing law, certain designated  
11 persons or entities are granted access information  
12 in the Controlled Substances Prescription Database  
13 of the Department of Public Health.

14 This bill would grant access to the database  
15 to authorized representatives of the Medicaid  
16 Agency investigating claims of potential fraud,  
17 abuse, or misuse of controlled substances by  
18 Medicaid recipients or providers.

19 Under existing law, a person who makes a  
20 false statement or representation of material fact  
21 in claim or application for payments on medical  
22 benefits from the Medicaid Agency is guilty of a  
23 felony. Prosecution for a felony offense is  
24 required to be commenced within three years of the  
25 offense and prosecution for a misdemeanor is  
26 required to be commenced within 12 months of the  
27 offense.

1                   This bill would rewrite the above law and  
2 would expand the list of prohibited fraudulent  
3 conduct and would provide felony and misdemeanor  
4 criminal penalties. The bill would also define  
5 "person" to include corporations and other entities  
6 and would provide that the statute of limitations  
7 for all offenses under this law would be six years.

8                   Amendment 621 of the Constitution of Alabama  
9 of 1901, now appearing as Section 111.05 of the  
10 Official Recompilation of the Constitution of  
11 Alabama of 1901, as amended, prohibits a general  
12 law whose purpose or effect would be to require a  
13 new or increased expenditure of local funds from  
14 becoming effective with regard to a local  
15 governmental entity without enactment by a 2/3 vote  
16 unless: it comes within one of a number of  
17 specified exceptions; it is approved by the  
18 affected entity; or the Legislature appropriates  
19 funds, or provides a local source of revenue, to  
20 the entity for the purpose.

21                   The purpose or effect of this bill would be  
22 to require a new or increased expenditure of local  
23 funds within the meaning of the amendment. However,  
24 the bill does not require approval of a local  
25 governmental entity or enactment by a 2/3 vote to  
26 become effective because it comes within one of the  
27 specified exceptions contained in the amendment.

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT

5  
6 Relating to Medicaid fraud; to enact The Medicaid  
7 Fraud Reduction Act of 2013; to amend Section 20-2-214, Code  
8 of Alabama 1975, relating to the Department of Public Health's  
9 Controlled Substances Prescription Database, to grant database  
10 access to certain authorized representatives of the Alabama  
11 Medicaid Agency investigating claims of potential fraud,  
12 abuse, or misuse of controlled substances by Medicaid  
13 recipients or providers; to amend Section 22-1-11 of the Code  
14 of Alabama 1975, relating to Medicaid fraud, to prohibit  
15 certain fraudulent conduct in obtaining medical benefits from  
16 the Medicaid Agency, to provide for a definition of person  
17 under the law, and to provide for a statute of limitations;  
18 and in connection therewith to have as its purpose or effect  
19 the requirement of a new or increased expenditure of local  
20 funds within the meaning of Amendment 621 of the Constitution  
21 of Alabama of 1901, now appearing as Section 111.05 of the  
22 Official Recompilation of the Constitution of Alabama of 1901,  
23 as amended.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. This bill shall be known and may be cited  
26 as The Medicaid Fraud Reduction Act of 2013.

1                   Section 2. Sections 20-2-214 and 22-1-11 of the Code  
2 of Alabama 1975, are amended to read as follows:

3                   "§20-2-214.

4                   "The following persons or entities shall be  
5 permitted access to the information in the controlled  
6 substances database, subject to the limitations indicated  
7 below:

8                   "(1) Authorized representatives of the certifying  
9 boards, provided, however, that access shall be limited to  
10 inquiries concerning the licensees of the certifying board.

11                   "(2) A licensed practitioner approved by the  
12 department who has authority to prescribe, dispense, or  
13 administer controlled substances, provided, however, that such  
14 access shall be limited to information concerning an assistant  
15 to physician with a Qualified Alabama Controlled Substances  
16 Registration Certificate over whom the practitioner exercises  
17 physician supervision and a current or prospective patient of  
18 the practitioner. Practitioners shall have no requirement or  
19 obligation to access or check the information in the  
20 controlled substances database prior to prescribing,  
21 dispensing, or administering medications or as part of their  
22 professional practice.

23                   "(3) A licensed assistant to physician approved by  
24 the department who is authorized to prescribe, administer, or  
25 dispense pursuant to a Qualified Alabama Controlled Substances  
26 Registration Certificate; provided, however, that such access

1 shall be limited to information concerning a current or  
2 prospective patient of the assistant to physician.

3 "(4) A licensed pharmacist approved by the  
4 department, provided, however, that such access is limited to  
5 information related to the patient or prescribing practitioner  
6 designated on a controlled substance prescription that a  
7 pharmacist has been asked to fill. Pharmacists shall have no  
8 requirement or obligation to access or check the information  
9 in the controlled substances database prior to dispensing or  
10 administering medications or as part of their professional  
11 practices.

12 "(5) State and local law enforcement authorities as  
13 authorized under Section 20-2-91, and federal law enforcement  
14 authorities authorized to access prescription information upon  
15 application to the department accompanied by an affidavit  
16 stating probable cause for the use of the requested  
17 information.

18 "(6) Employees of the department and consultants  
19 engaged by the department for operational and review purposes.

20 "(7) The prescription drug monitoring program of any  
21 of the other states or territories of the United States, if  
22 recognized by the Alliance for Prescription Drug Monitoring  
23 Programs under procedures developed by the United States  
24 Department of Justice or the Integrated Justice Information  
25 Systems Institute or successor entity subject to or consistent  
26 with limitations for access prescribed by this chapter for the  
27 Alabama Prescription Drug Monitoring Program.

1                   "(8) Authorized representatives of the Medicaid  
2                   Agency solely for the purpose of inquiries concerning possible  
3                   fraud, abuse, or misuse related to controlled substances by  
4                   Medicaid recipients or providers.

5                   "\$22-1-11.

6                   ~~"(a) Any person who, with intent to defraud or~~  
7                   ~~deceive, makes, or causes to be made or assists in the~~  
8                   ~~preparation of any false statement, representation, or~~  
9                   ~~omission of a material fact in any claim or application for~~  
10                   ~~any payment, regardless of amount, from the Medicaid Agency,~~  
11                   ~~knowing the same to be false; or with intent to defraud or~~  
12                   ~~deceive, makes, or causes to be made, or assists in the~~  
13                   ~~preparation of any false statement, representation, or~~  
14                   ~~omission of a material fact in any claim or application for~~  
15                   ~~medical benefits from the Medicaid Agency, knowing the same to~~  
16                   ~~be false; shall be guilty of a felony and upon conviction~~  
17                   ~~thereof shall be fined not more than ten thousand dollars~~  
18                   ~~(\$10,000) or imprisoned for not less than one nor more than~~  
19                   ~~five years, or both. The offense set out herein shall not be~~  
20                   ~~complete until the claim or application is received by the~~  
21                   ~~Medicaid Agency or the contractor with the Medicaid Agency or~~  
22                   ~~its successor.~~

23                   "(a) (1) It shall be unlawful for any person to  
24                   knowingly do any of the following:

25                   "a. Fail, by false statement, misrepresentation,  
26                   impersonation, or other fraudulent means, to disclose a  
27                   material fact used in making a determination as to the

1 qualification of the person to receive medical benefits from  
2 the Medicaid Agency.

3 b. Fail to disclose a change in circumstances in  
4 order to obtain or continue to receive any medical benefits  
5 from the Medicaid Agency to which he or she is not entitled or  
6 in an amount larger than that to which he or she is entitled.

7 "c. Aid and abet another person in the commission of  
8 the prohibitions enumerated in subdivisions (a)(1)a. and  
9 (a)(1)b.

10 "d. Use, transfer, acquire, traffic, alter, forge,  
11 possess, attempt to use, attempt to transfer, attempt to  
12 acquire, attempt to traffic, attempt to alter, attempt to  
13 forge, attempt to possess, or aid and abet another person in  
14 the use, transfer, acquisition, traffic, alteration, forgery,  
15 or possession of a Medicaid identification card in any manner  
16 not authorized by law.

17 "e. File, attempt to file, or aid and abet in the  
18 filing of a claim for services to a recipient of medical  
19 benefits from the Medicaid Agency for services that were not  
20 rendered.

21 "f. File a false claim for items or services to the  
22 Medicaid Agency.

23 "g. Bill the recipient of medical benefits from the  
24 Medicaid Agency, or his or her family, for an amount in excess  
25 of that provided for by law or regulation.



1           "h. Fail to credit the state or its agents for  
2 payments received from Social Security, insurance, or other  
3 sources.

4           "i. In any way receive, attempt to receive, or aid  
5 and abet in the receipt of unauthorized payments or other  
6 unauthorized public assistance or authorization or  
7 identification to obtain medical benefits from the Medicaid  
8 Agency.

9           "(2)a. A person who violates this subsection, and  
10 the amount of the fraud is five hundred dollars (\$500) or  
11 more, shall be guilty of a Class C felony.

12           "b. A person who violates this subsection, and the  
13 amount of the fraud is less than five hundred dollars (\$500),  
14 shall be guilty of a Class A misdemeanor.

15           "c. Notwithstanding any other law to the contrary, a  
16 provider of Medicaid services who violates this subsection,  
17 regardless of the amount, shall be excluded from participating  
18 in any program administered by the Medicaid Agency for a  
19 minimum of three years.

20           "(3) For the purposes of this section, the term  
21 "fraud" includes, but is not limited to, the introduction of  
22 fraudulent records into a computer system, the unauthorized  
23 use of computer facilities, the intentional or deliberate  
24 alteration or destruction of computerized information or  
25 files, and the stealing of financial instruments, data, and  
26 other assets.

1           "(4) Repayment of medical benefits or return of  
2 authorization or identification wrongfully obtained is not a  
3 defense to, or ground for dismissal of, criminal charges  
4 brought under this section.

5           "(5) The introduction into evidence of a paid state  
6 warrant to the order of a Medicaid provider or Medicaid  
7 recipient is prima facie evidence that the provider or  
8 recipient received medical payments or benefits from the  
9 Medicaid Agency.

10           "(6) The introduction into evidence of a transaction  
11 history generated by a personal identification number (PIN)  
12 establishing a purchase or withdrawal by electronic benefit  
13 transfer is prima facie evidence that the identified recipient  
14 received medical benefits from the Medicaid Agency.

15           "(7) The Medicaid Agency shall create an error-prone  
16 or fraud-prone case profile within its information system and  
17 shall screen each application for Medicaid against the profile  
18 to identify cases that have a potential for error or fraud.  
19 Each case identified as having a potential for error or fraud  
20 shall be subjected to preeligibility/fraud screening.

21           "(b) Any person who knowingly solicits or receives  
22 any remuneration, including any kickback, bribe, or rebate,  
23 directly or indirectly, overtly or covertly, in cash or in  
24 kind:

25           "(1) In return for referring an individual to a  
26 person for the furnishing or arranging for the furnishing of

1 any item or service for which payment may be made in whole or  
2 in part by the Medicaid Agency or its agents, or

3 "(2) In return for purchasing, leasing, ordering, or  
4 arranging for or recommending purchasing, leasing, or ordering  
5 any good, facility, service, or item for which payment may be  
6 made in whole or in part by the Medicaid Agency, or its agents  
7 shall be guilty of a felony and upon conviction thereof, shall  
8 be fined not more than ten thousand dollars (\$10,000) or  
9 imprisoned for not less than one nor more than five years, or  
10 both.

11 "(c) Any person who knowingly offers or pays any  
12 remuneration including any kickback, bribe, or rebate directly  
13 or indirectly, overtly or covertly, in cash or in kind to any  
14 person to induce a person to refer an individual to a person  
15 for the furnishing or arranging for the furnishing of any item  
16 or service for which payment may be made in whole or in part  
17 by the Medicaid Agency or its agents, or to purchase, lease,  
18 order, or arrange for or recommend purchasing, leasing, or  
19 ordering any good, facility, service, or item for which  
20 payment may be made in whole or in part by the Medicaid  
21 Agency, or its agents, shall be guilty of a felony and upon  
22 conviction thereof shall be fined not more than ten thousand  
23 dollars (\$10,000) or imprisoned for not less than one nor more  
24 than five years, or both.

25 "(d) (1) Any provider of Medicaid services who  
26 submits a claim for or receives payment for a good or a  
27 service under the Medicaid program, shall maintain the records

1 necessary to disclose fully the nature of a good or a service  
2 for which a claim was submitted or payment was received, or  
3 the records necessary to disclose fully all income and  
4 expenditures upon which rates of payment were based, for a  
5 period of not less than six years following the date on which  
6 payment was received.

7 "(2) Any person or provider who fails to keep the  
8 records required by this subsection or who knowingly destroys  
9 the records within six years from the date payment was  
10 received is guilty of a Class A misdemeanor.

11 "~~(d)~~ (e) Subsections (b) and (c) of this section  
12 shall not apply to a discount or other reduction in price  
13 obtained by a provider of services or other entity under  
14 Medicaid if the reduction in price is properly disclosed and  
15 appropriately reflected in costs claimed or charges made by  
16 the provider or entity to the Medicaid Agency or its agents,  
17 or any amount paid by an employer to an employee who has a  
18 bona fide employment relationship with employer for employment  
19 in the provision of covered items or services.

20 "~~(e)~~ (f) Any two or more offenses in violation of  
21 this section may be charged in the same indictment in separate  
22 counts for each offense and the offense shall be tried  
23 together, with separate sentences being imposed for each  
24 offense for which the defendant is found guilty.

25 "(g) For purposes of this section, the term "person"  
26 includes an individual, corporation, partnership, or  
27 association.

1                   "(h) Notwithstanding any other provisions of law,  
2                   prosecution of an offense under this section must be commenced  
3                   within six years after the commission of the offense."

4                   Section 3. The provisions of this act are severable.  
5                   If any section, portion, or provision of this act is declared  
6                   unconstitutional, that declaration shall not affect the  
7                   remaining sections, portions, or provisions of this bill.

8                   Section 4. All laws or parts of laws which conflict  
9                   with this act are repealed.

10                  Section 5. Although this bill would have as its  
11                  purpose or effect the requirement of a new or increased  
12                  expenditure of local funds, the bill is excluded from further  
13                  requirements and application under Amendment 621, now  
14                  appearing as Section 111.05 of the Official Recompilation of  
15                  the Constitution of Alabama of 1901, as amended, because the  
16                  bill defines a new crime or amends the definition of an  
17                  existing crime.

18                  Section 6. This act shall become effective  
19                  immediately upon its passage and approval by the Governor, or  
20                  its otherwise becoming law.