

CHAPTER 217

AN ACT concerning oversight of the hospital charity care subsidy program, amending R.S.54:50-9 and P.L.1992, c.160, and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.26:2H-18.60a Short title.

1. This act shall be known and may be cited as the “Charity Care Fraud Prevention and Detection Act.”

C.26:2H-18.60b Findings, declaration relative to oversight of the hospital charity care subsidy program.

2. The Legislature finds and declares that it is manifestly in the best interest of this State and its taxpayers to enact into law certain recommendations made by the New Jersey State Commission of Investigation in its April 2007 report on the hospital charity care subsidy program and to implement additional measures which are designed to prevent real and potential waste, fraud, and abuse in this program and ensure that it serves its intended purpose of assisting hospitals to meet their statutory obligations and fulfill their mission as essential health care providers to the residents of this State.

C.26:2H-18.60c Required procedures by hospital for charity care.

3. The Commissioner of Health and Senior Services shall require the use of procedures by hospitals to ensure their uniform collection from applicants for charity care pursuant to section 10 of P.L.1992, c.160 (C.26:2H-18.60) and the transmission to the Department of Health and Senior Services of such demographic and financial information as the commissioner requires pursuant to section 14 of P.L.1995, c.133 (C.26:2H-18.59c) and any other information that the commissioner determines necessary to ensure the efficient, cost-effective operation of the hospital charity care subsidy program and to prevent and detect fraudulent charity care claims.

C.26:2H-18.60d Inter-agency agreement with Medicaid Inspector General.

4. a. The Commissioner of Health and Senior Services and the Medicaid Inspector General shall establish an inter-agency agreement under which the staff and resources of the Office of the Medicaid Inspector General are utilized to:

(1) investigate charity care claims, which that office or the Department of Health and Senior Services reasonably suspects may be fraudulent, with the same authority as that granted to the Medicaid Inspector General to investigate complaints related to Medicaid integrity, fraud, and abuse pursuant to P.L.2007, c.58 (C.30:4D-53 et al.); and

(2) recover monies from third party payers that were paid as charity care subsidies based upon fraudulent charity care claims.

b. The commissioner and the Medicaid Inspector General shall take such actions as are necessary to ensure that any monies recovered pursuant to subsection a. of this section are deposited in the Health Care Subsidy Fund and used for the purposes of providing charity care subsidies pursuant to P.L.1992, c.160 (C.26:2H-18.51 et al.).

C.26:2H-18.60e Inter-agency agreement with State Treasurer.

5. The Commissioner of Health and Senior Services and the State Treasurer shall establish an inter-agency agreement under which the staff and resources of the Division of Taxation in the Department of the Treasury are utilized to conduct random checks of

personal State income tax returns filed by persons determined eligible for charity care pursuant to section 10 of P.L.1992, c.160 (C.26:2H-18.60), in consultation with the commissioner, and with the Medicaid Inspector General pursuant to section 4 of P.L.2007, c.217 (C.26:2H-18.60d), for the purposes of determining the validity of charity care claims for health care services provided to those persons.

6. R.S.54:50-9 is amended to read as follows:

Certain officers entitled to examine records.

54:50-9. Nothing herein contained shall be construed to prevent:

a. The delivery to a taxpayer or the taxpayer's duly authorized representative of a copy of any report or any other paper filed by the taxpayer pursuant to the provisions of this subtitle or of any such State tax law;

b. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

c. The director, in the director's discretion and subject to reasonable conditions imposed by the director, from disclosing the name and address of any licensee under any State tax law, unless expressly prohibited by such State tax law;

d. The inspection by the Attorney General or other legal representative of this State of the reports or files relating to the claim of any taxpayer who shall bring an action to review or set aside any tax imposed under any State tax law or against whom an action or proceeding has been instituted in accordance with the provisions thereof;

e. The examination of said records and files by the Comptroller, State Auditor or State Commissioner of Finance, or by their respective duly authorized agents;

f. The furnishing, at the discretion of the director, of any information contained in tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the tax laws, to the taxing officials of any other state, the District of Columbia, the United States and the territories thereof, providing said jurisdictions grant like privileges to this State and providing such information is to be used for tax purposes only;

g. The furnishing, at the discretion of the director, of any material information disclosed by the records or files to any law enforcing authority of this State who shall be charged with the investigation or prosecution of any violation of the criminal provisions of this subtitle or of any State tax law;

h. The furnishing by the director to the State agency responsible for administering the Child Support Enforcement program pursuant to Title IV-D of the federal Social Security Act, Pub.L.93-647 (42 U.S.C. s.651 et seq.), with the names, home addresses, social security numbers and sources of income and assets of all absent parents who are certified by that agency as being required to pay child support, upon request by the State agency and pursuant to procedures and in a form prescribed by the director;

i. The furnishing by the director to the Board of Public Utilities any information contained in tax information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be necessary for the administration of P.L.1991, c.184 (C.54:30A-18.6 et al.) and P.L.1997, c.162 (C.54:10A-5.25 et al.);

j. The furnishing by the director to the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety any information contained in tax information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be relevant, in the discretion of the director, in any

proceeding conducted for the issuance, suspension or revocation of any license authorized pursuant to Title 33 of the Revised Statutes;

k. The inspection by the Attorney General or other legal representative of this State of the reports or files of any tobacco product manufacturer, as defined in section 2 of P.L.1999, c.148 (C.52:4D-2), for any period in which that tobacco product manufacturer was not or is not in compliance with subsection a. of section 3 of P.L.1999, c.148 (C.52:4D-3), or of any licensed distributor as defined in section 102 of P.L.1948, c.65 (C.54:40A-2), for the purpose of facilitating the administration of the provisions of P.L.1999, c.148 (C.52:4D-1 et seq.);

l. The furnishing, at the discretion of the director, of information as to whether a contractor or subcontractor holds a valid business registration as defined in section 1 of P.L.2001, c.134 (C.52:32-44);

m. The furnishing by the director to a State agency as defined in section 1 of P.L.1995, c.158 (C.54:50-24) the names of licensees subject to suspension for non-payment of State tax indebtedness pursuant to P.L.2004, c.58 (C.54:50-26.1 et al.);

n. The release to the United States Department of the Treasury, Bureau of Financial Management Service, or its successor of relevant taxpayer information for purposes of implementing a reciprocal collection and offset of indebtedness agreement entered into between the State of New Jersey and the federal government pursuant to section 1 of P.L.2006, c.32 (C.54:49-12.7);

o. The examination of said records and files by the Commissioner of Health and Senior Services, the Medicaid Inspector General, or their respective duly authorized agents, pursuant to section 5 of P.L.2007, c.217 (C.26:2H-18.60e).

C.26:2H-18.60f Reporting system established.

7. The Commissioner of Health and Senior Services shall establish a mechanism, by means of a toll-free telephone hotline or electronic mail, through which persons may confidentially report suspected incidents of fraudulent charity care claims to the Department of Health and Senior Services.

C.26:2H-18.60g Recovery for fraudulent claim.

8. If a charity care claim is determined to be fraudulent, a hospital shall be entitled to recover from the patient the difference between the amount of the charity care claim and the amount that the patient would have otherwise been charged by the hospital to provide the health care services for which the charity care claim was filed.

9. Section 13 of P.L.1992, c.160 (C.26:2H-18.63) is amended to read as follows:

C.26:2H-18.63 Civil penalties for false statement, misrepresentation.

13. a. Any person or entity who makes a false statement or misrepresentation of a material fact in order to qualify any person or entity for any benefits to which he is not entitled under this act or P.L.1996, c.28 (C.26:2H-18.59e et al.), shall, in addition to any other penalty to which the person or entity may be subject under law, be liable to civil penalties of:

(1) payment of interest on the amount of the excess benefits or subsidy payments at the maximum legal rate in effect on the date the benefits were provided to the person or payment was made to the person or entity, for the period from the date upon which benefits were provided or payment was made to the date upon which repayment is made to the department; and

(2) payment of an amount not to exceed three times the amount of the excess benefit or subsidy payment.

b. A hospital which, without intent to violate this act, obtains a subsidy payment in excess of the amount to which it is entitled, shall be liable to a civil penalty of payment of interest on the amount of the excess payment at the maximum legal rate in effect on the date the payment was made to the hospital, from the date upon which payment was made to the date upon which repayment is made to the department, except that a hospital shall not be liable to the civil penalty when an excess subsidy payment is obtained by the hospital as a result of an error made by the department, as determined by the commissioner.

c. All interest and civil penalties provided for in this section shall be recovered in an administrative proceeding held pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

d. In order to satisfy any recovery claim asserted against a hospital under this section, whether or not that claim has been the subject of final agency adjudication, the commissioner is authorized to withhold subsidy payments otherwise payable under this act to the hospital.

e. A person who is seeking health care services at a hospital as a patient for a non-emergency or elective procedure who does not furnish proof of health insurance coverage for the services or eligibility for charity care or reduced charge charity care in accordance with the provisions of section 10 of P.L.1992, c.160 (C.26:2H-18.60), or for any other program of benefits funded by the State, shall be required to provide sworn financial information sufficient to determine eligibility for any such program of benefits. Notwithstanding any other provision of law to the contrary, if the person does not provide the required financial information or the hospital determines that the person is ineligible for any of the aforementioned benefits, the hospital shall be entitled to conclude an arrangement with the person, or an individual acting on the person's behalf, to receive payment from or on behalf of that person as a condition of the provision of health care services to that person.

For the purposes of this subsection, "non-emergency or elective procedure" means a procedure to treat a condition that is not an "emergency" as defined in N.J.A.C.8:38-1.2.

f. Commencing one year after the effective date of P.L.2007, c.217 (C.26:2H-18.60a et al.) and notwithstanding the provisions of any other statute or regulation to the contrary, a hospital that receives a subsidy payment pursuant to P.L.1992, c.160 (C.26:2H-18.51 et al.), on the basis of a charity care claim that the hospital had reasonable cause to suspect was fraudulent as determined by the commissioner, shall, in addition to any other penalty to which the hospital may be subject under law, be subject to a reduction of \$2 in the distribution of charity care subsidy payments that it receives during the next succeeding fiscal year for each \$1 of subsidy payment received by the hospital on the basis of the fraudulent claim.

If the hospital complied with the regulations and procedures established by the department with respect to charity care documentation, the claims shall be deemed to be presumptively non-fraudulent unless the commissioner determines that the hospital knew or should have known that the information submitted was inaccurate.

g. In any year in which the Legislature and Governor reuses a base year for the calculation of charity care reimbursement, notwithstanding the provisions of section 3 of P.L.2004, c.113 (C. 26:2H-18.59i) to the contrary, a hospital subject to a penalty under subsection f. of this section for that base year shall not be subject to the penalty for the same fraudulent claims in the subsequent year when the base year is reused.

10. a. The Commissioner of Health and Senior Services, in consultation with the New Jersey Hospital Association, the Hospital Alliance of New Jersey, and the New Jersey Council of Teaching Hospitals, shall study the feasibility of establishing a centralized electronic registry of persons who have been determined eligible for charity care in accordance with the provisions of section 10 of P.L.1992, c.160 (C.26:2H-18.60) and issuing distinctive identification numbers to those persons exclusively for the purposes of the registry, in order to facilitate administration of the hospital charity care subsidy program and detect fraudulent charity care claims.

b. The commissioner shall report on the findings of the feasibility study conducted pursuant to subsection a. of this section to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), no later than the 120th day after the effective date of this act.

11. a. The State Auditor shall conduct a review of the management and operations of the hospital charity care subsidy program, with particular attention to those aspects of the program analyzed by the New Jersey State Commission of Investigation in its April 2007 report and utilizing all of the means and authority at the disposal of the State Auditor or his legally authorized representatives pursuant to the provisions of chapter 24 of Title 52 of the Revised Statutes, in order to identify opportunities to enhance prevention and detection of waste, fraud, and abuse in the program. The books, records, and accounts of any hospital and the Department of Health and Senior Services shall be open to inspection and audit by the State Auditor, or any legally authorized representative thereof, in so far as the State Auditor determines that they relate to the purposes of this section.

b. The State Auditor shall report to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), on his findings and recommendations no later than the 180th day after the effective date of this act.

12. This act shall take effect on the 30th day after enactment, but the Commissioner of Health and Senior Services may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved December 20, 2007.