

CHAPTER 30

AN ACT concerning penalties for Medicaid fraud, amending N.J.S.2C:44-1, and amending and supplementing P.L.1968, c.413.

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

1. N.J.S.2C:44-1 is amended to read as follows:

Criteria for withholding or imposing sentence of imprisonment.

2C:44-1. a. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court shall consider the following aggravating circumstances:

(1) The nature and circumstances of the offense, and the role of the actor therein, including whether or not it was committed in an especially heinous, cruel, or depraved manner;

(2) The gravity and seriousness of harm inflicted on the victim, including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, ill-health, or extreme youth, or was for any other reason substantially incapable of exercising normal physical or mental power of resistance;

(3) The risk that the defendant will commit another offense;

(4) A lesser sentence will depreciate the seriousness of the defendant's offense because it involved a breach of the public trust under chapters 27 and 30, or the defendant took advantage of a position of trust or confidence to commit the offense;

(5) There is a substantial likelihood that the defendant is involved in organized criminal activity;

(6) The extent of the defendant's prior criminal record and the seriousness of the offenses of which he has been convicted;

(7) The defendant committed the offense pursuant to an agreement that he either pay or be paid for the commission of the offense and the pecuniary incentive was beyond that inherent in the offense itself;

(8) The defendant committed the offense against a police or other law enforcement officer, correctional employee or fireman, acting in the performance of his duties while in uniform or exhibiting evidence of his authority; the defendant committed the offense because of the status of the victim as a public servant; or the defendant committed the offense against a sports official, athletic coach or manager, acting in or immediately following the performance of his duties or because of the person's status as a sports official, coach or manager;

(9) The need for deterring the defendant and others from violating the law;

(10) The offense involved fraudulent or deceptive practices committed against any department or division of State government;

(11) The imposition of a fine, penalty or order of restitution without also imposing a term of imprisonment would be perceived by the defendant or others merely as part of the cost of doing business, or as an acceptable contingent business or operating expense associated with the initial decision to resort to unlawful practices;

(12) The defendant committed the offense against a person who he knew or should have known was 60 years of age or older, or disabled; and

(13) The defendant, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a stolen motor vehicle.

b. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court may properly consider the following mitigating circumstances:

- (1) The defendant's conduct neither caused nor threatened serious harm;
- (2) The defendant did not contemplate that his conduct would cause or threaten serious harm;
- (3) The defendant acted under a strong provocation;
- (4) There were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense;
- (5) The victim of the defendant's conduct induced or facilitated its commission;
- (6) The defendant has compensated or will compensate the victim of his conduct for the damage or injury that he sustained, or will participate in a program of community service;
- (7) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense;
- (8) The defendant's conduct was the result of circumstances unlikely to recur;
- (9) The character and attitude of the defendant indicate that he is unlikely to commit another offense;
- (10) The defendant is particularly likely to respond affirmatively to probationary treatment;
- (11) The imprisonment of the defendant would entail excessive hardship to himself or his dependents;
- (12) The willingness of the defendant to cooperate with law enforcement authorities;
- (13) The conduct of a youthful defendant was substantially influenced by another person more mature than the defendant.

c. (1) A plea of guilty by a defendant or failure to so plead shall not be considered in withholding or imposing a sentence of imprisonment.

(2) When imposing a sentence of imprisonment the court shall consider the defendant's eligibility for release under the law governing parole, including time credits awarded pursuant to Title 30 of the Revised Statutes, in determining the appropriate term of imprisonment.

d. Presumption of imprisonment. The court shall deal with a person who has been convicted of a crime of the first or second degree, or a crime of the third degree where the court finds that the aggravating factor in paragraph (5) of subsection a. applies, by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others. Notwithstanding the provisions of subsection e. of this section, the court shall deal with a person who has been convicted of theft of a motor vehicle or of the unlawful taking of a motor vehicle and who has previously been convicted of either offense by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others.

e. The court shall deal with a person convicted of an offense other than a crime of the first or second degree, who has not previously been convicted of an offense, without

imposing a sentence of imprisonment unless, having regard to the nature and circumstances of the offense and the history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for the protection of the public under the criteria set forth in subsection a., except that this subsection shall not apply if the court finds that the aggravating factor in paragraph (5) of subsection a. applies or if the person is convicted of any of the following crimes of the third degree: theft of a motor vehicle; unlawful taking of a motor vehicle; eluding; if the person is convicted of a crime of the third degree constituting use of a false government document in violation of subsection c. of section 1 of P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime of the third degree constituting distribution, manufacture or possession of an item containing personal identifying information in violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-17.3); if the person is convicted of a crime of the third or fourth degree constituting bias intimidation in violation of N.J.S.2C:16-1; if the person is convicted of a crime of the third degree under section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if the person is convicted of a crime of the third or fourth degree under the provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-29 or C.2C:33-30).

f. Presumptive Sentences. (1) Except for the crime of murder, unless the preponderance of aggravating or mitigating factors, as set forth in subsections a. and b., weighs in favor of a higher or lower term within the limits provided in N.J.S.2C:43-6, when a court determines that a sentence of imprisonment is warranted, it shall impose sentence as follows:

(a) To a term of 20 years for aggravated manslaughter or kidnapping pursuant to paragraph (1) of subsection c. of N.J.S.2C:13-1 when the offense constitutes a crime of the first degree;

(b) Except as provided in paragraph (a) of this subsection to a term of 15 years for a crime of the first degree;

(c) To a term of seven years for a crime of the second degree;

(d) To a term of four years for a crime of the third degree; and

(e) To a term of nine months for a crime of the fourth degree.

In imposing a minimum term pursuant to 2C:43-6b., the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

Unless the preponderance of mitigating factors set forth in subsection b. weighs in favor of a lower term within the limits authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a presumptive term of life imprisonment. Unless the preponderance of aggravating and mitigating factors set forth in subsections a. and b. weighs in favor of a higher or lower term within the limits authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive term of 50 years' imprisonment; sentences imposed pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment; and sentences imposed pursuant to 2C:43-7a.(4) shall have a presumptive term of seven years' imprisonment.

In imposing a minimum term pursuant to 2C:43-7b., the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

(2) In cases of convictions for crimes of the first or second degree where the court is clearly convinced that the mitigating factors substantially outweigh the aggravating factors and where the interest of justice demands, the court may sentence the defendant to a term appropriate to a crime of one degree lower than that of the crime for which he was convicted. If the court does impose sentence pursuant to this paragraph, or if the court imposes a

noncustodial or probationary sentence upon conviction for a crime of the first or second degree, such sentence shall not become final for 10 days in order to permit the appeal of such sentence by the prosecution.

g. Imposition of Noncustodial Sentences in Certain Cases. If the court, in considering the aggravating factors set forth in subsection a., finds the aggravating factor in paragraph a.(2), a.(5), a.(10), or a.(12) and does not impose a custodial sentence, the court shall specifically place on the record the mitigating factors which justify the imposition of a noncustodial sentence.

h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-11), the presumption of imprisonment as provided in subsection d. of this section shall not preclude the admission of a person to the Intensive Supervision Program, established pursuant to the Rules Governing the Courts of the State of New Jersey.

2. Section 17 of P.L.1968, c.413 (C.30:4D-17) is amended to read as follows:

C.30:4D-17 Penalty.

17. (a) Any person who willfully obtains benefits under this act to which he is not entitled or in a greater amount than that to which he is entitled and any provider who willfully receives medical assistance payments to which he is not entitled or in a greater amount than that to which he is entitled is guilty of a crime of the third degree, provided, however, that the presumption of nonimprisonment set forth in subsection e. of N.J.S.2C:44-1 for persons who have not previously been convicted of an offense shall not apply to a person who is convicted under the provisions of this subsection.

(b) Any provider, or any person, firm, partnership, corporation or entity, who:

(1) Knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any cost study, claim form, or any document necessary to apply for or receive any benefit or payment under this act; or

(2) At any time knowingly and willfully makes or causes to be made any false statement, written or oral, of a material fact for use in determining rights to such benefit or payment under this act; or

(3) Conceals or fails to disclose the occurrence of an event which

(i) affects his initial or continued right to any such benefit or payment, or

(ii) affects the initial or continued right to any such benefit or payment of any provider or any person, firm, partnership, corporation or other entity in whose behalf he has applied for or is receiving such benefit or payment

with an intent to fraudulently secure benefits or payments not authorized under this act or in a greater amount than that which is authorized under this act; or

(4) Knowingly and willfully converts benefits or payments or any part thereof received for the use and benefit of any provider or any person, firm, partnership, corporation or other entity to a use other than the use and benefit of such provider or such person, firm, partnership, corporation or entity; is guilty of a crime of the third degree, provided, however, that the presumption of nonimprisonment set forth in subsection e. of N.J.S.2C:44-1 for persons who have not previously been convicted of an offense shall not apply to a person who is convicted under the provisions of this subsection.

(c) Any provider, or any person, firm, partnership, corporation or entity who solicits, offers, or receives any kickback, rebate or bribe in connection with:

(1) The furnishing of items or services for which payment is or may be made in whole or in part under this act; or

(2) The furnishing of items or services whose cost is or may be reported in whole or in part in order to obtain benefits or payments under this act; or

(3) The receipt of any benefit or payment under this act, is guilty of a crime of the third degree, provided, however, that the presumption of nonimprisonment set forth in subsection e. of N.J.S.2C:44-1 for persons who have not previously been convicted of an offense shall not apply to a person who is convicted under the provisions of this subsection.

This subsection shall not apply to (A) a discount or other reduction in price under this act if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made under this act; and (B) any amount paid by an employer to an employee who has a bona fide employment relationship with such employer for employment in the provision of covered items or services.

(d) Whoever knowingly and willfully makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact with respect to the conditions or operations of any institution or facility in order that such institution or facility may qualify either upon initial certification or recertification as a hospital, skilled nursing facility, intermediate care facility, or health agency, thereby entitling them to receive payments under this act, shall be guilty of a crime of the fourth degree.

(e) Any person, firm, corporation, partnership, or other legal entity who violates the provisions of any of the foregoing subsections of this section or any provisions of section 3 of P.L.2007, c.265 (C.2A:32C-3), shall, in addition to any other penalties provided by law, be liable to civil penalties of (1) payment of interest on the amount of the excess benefits or payments at the maximum legal rate in effect on the date the payment was made to said person, firm, corporation, partnership or other legal entity for the period from the date upon which payment was made to the date upon which repayment is made to the State, (2) payment of an amount not to exceed three-fold the amount of such excess benefits or payments, and (3) payment in the sum of not less than and not more than the civil penalty allowed under the federal False Claims Act (31 U.S.C. s.3729 et seq.), as it may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub.L.101-410 for each excessive claim for assistance, benefits or payments.

(f) Any person, firm, corporation, partnership or other legal entity, other than an individual recipient of medical services reimbursable by the Division of Medical Assistance and Health Services, who, without intent to violate this act, obtains medical assistance or other benefits or payments under this act in excess of the amount to which he is entitled, shall be liable to a civil penalty of payment of interest on the amount of the excess benefits or payments at the maximum legal rate in effect on the date the benefit or payment was made to said person, firm, corporation, partnership, or other legal entity for the period from September 15, 1976 or the date upon which payment was made, whichever is later, to the date upon which repayment is made to the State, provided, however, that no such person, firm, corporation, partnership or other legal entity shall be liable to such civil penalty when excess medical assistance or other benefits or payments under this act are obtained by such person, firm, corporation, partnership or other legal entity as a result of error made by the Division of Medical Assistance and Health Services, as determined by said division; provided, further, that if preliminary notification of an overpayment is not given to a provider by the division within 180 days after completion of the field audit as defined by regulation, no interest shall accrue during the period beginning 180 days after completion of the field audit and ending on the date preliminary notification is given to the provider.

(g) All interest and civil penalties provided for in this act and all medical assistance and other benefits to which a person, firm, corporation, partnership, or other legal entity was not

entitled 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.), except that recovery actions against minors or incompetents shall be initiated in a court of competent jurisdiction.

(h) Upon the failure of any person, firm, corporation, partnership or other legal entity to comply within 10 days after service of any order of the director or his designee directing payment of any amount found to be due pursuant to subsection (g) of this section, or at any time prior to any final agency adjudication not involving a recipient or former recipient of benefits under this act, the director may issue a certificate to the clerk of the Superior Court that such person, firm, corporation, partnership or other legal entity is indebted to the State for the payment of such amount. A copy of such certificate shall be served upon the person, firm, corporation, partnership or other legal entity against whom the order was entered. Thereupon the clerk shall immediately enter upon his record of docketed judgments the name of the person, firm, corporation, partnership or other legal entity so indebted, and of the State, a designation of the statute under which such amount is found to be due, the amount due, and the date of the certification. Such entry shall have the same force and effect as the entry of a docketed judgment in the Superior Court. Such entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the final order of the director or his designee.

(i) In order to satisfy any recovery claim asserted against a provider under this section, whether or not that claim has been the subject of final agency adjudication, the division or its fiscal agents is authorized to withhold funds otherwise payable under this act to the provider.

(j) The Attorney General may, when requested by the commissioner or his agent, apply ex parte to the Superior Court to compel any party to comply forthwith with a subpoena issued under this act. Any party who, having been served with a subpoena issued pursuant to the provisions of this act, fails either to attend any hearing, or to appear or be examined, to answer any question or to produce any books, records, accounts, papers or documents, shall be liable to a penalty of \$500.00 for each such failure, to be recovered in the name of the State in a summary civil proceeding to be initiated in the Superior Court. The Attorney General shall prosecute the actions for the recovery of the penalty prescribed in this section when requested to do so by the commissioner or his agent and when, in the judgment of the Attorney General, the facts and law warrant such prosecution. Such failure on the part of the party shall be punishable as contempt of court by the court in the same manner as like failure is punishable in an action pending in the court when the matter is brought before the court by motion filed by the Attorney General and supported by affidavit stating the circumstances.

(k) Notwithstanding the provisions of N.J.S.2C:43-3 to the contrary, but in addition to any other penalty or disposition that may be imposed by law:

(1) a person who violates the provisions of subsection (a), (b), or (c) of this section shall be liable to a penalty of not less than \$15,000 and not more than \$25,000 for each violation; and

(2) a person who violates the provisions of subsection (d) of this section shall be liable to a penalty of not less than \$10,000 and not more than \$25,000 for each violation.

(l) A person who violates the provisions of subsection (a), (b), or (c) of this section under circumstances in which the aggregate amount obtained or sought to be obtained is \$1,000 or more, who has previously been convicted of a violation of the provisions of subsection (a), (b), or (c) of this section within 10 years of the current violation, under circumstances where the aggregate amount obtained or sought to be obtained was \$1,000 or more, is guilty of a crime of the second degree and, in addition to any other penalty or disposition authorized by law and notwithstanding the provisions of N.J.S.2C:43-3 to the

contrary, shall be liable to a penalty of not less than \$25,000 and not more than \$150,000 for each such repeat violation.

C.30:4D-17a Additional action by Attorney General.

3. In addition to any other action authorized or required by law, the Attorney General shall refer any matter regarding a person who is licensed or otherwise authorized to practice a health care profession in this State pursuant to Title 45 or Title 52 of the Revised Statutes and has been convicted of an offense under the provisions of section 17 of P.L.1968, c.413 (C.30:4D-17), to the appropriate professional and occupational licensing board within the Division of Consumer Affairs in the Department of Law and Public Safety or the Director of the Division of Consumer Affairs, as applicable, for such action as they determine appropriate regarding that person's license or other authorization to practice as a health care professional.

C.30:4D-17b Construction of act.

4. Nothing in section 17 of P.L.1968, c.413 (C.30:4D-17) or in section 3 of P.L.2010, c.30 (C.30:4D-17a) shall be construed to preclude the indictment or conviction for any other offense defined by law, or to impair or limit the discretion and authority of the State regarding any civil action, criminal prosecution, or other action authorized by law.

5. This act shall take effect immediately.

Approved June 29, 2010.