

CHAPTER 32

AN ACT concerning insurance fraud, amending the title and body of P.L.1983, c.320, and amending P.L.1998, c.21 and P.L.2005, c.82.

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

1. The title of P.L.1983, c.320 is amended to read as follows:

TITLE AMENDED.

AN ACT concerning insurance fraud, establishing a certain fund, defining certain civil offenses, establishing a Bureau of Fraud Deterrence in the Department of Banking and Insurance and making an appropriation therefor.

2. Section 3 of P.L.1983, c.320 (C.17:33A-3) is amended to read as follows:

C.17:33A-3 Definitions.

3. As used in this act:

"Attorney General" means the Attorney General of New Jersey or his designated representatives.

"Bureau" means the Bureau of Fraud Deterrence established by section 8 of P.L.1983, c.320 (C.17:33A-8).

"Commissioner" means the Commissioner of Banking and Insurance.

"Hospital" means any general hospital, mental hospital, convalescent home, nursing home or any other institution, whether operated for profit or not, which maintains or operates facilities for health care.

"Insurance company" means:

- a. Any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.), or Subtitle 3 of Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.);

- b. Any medical service corporation operating pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.);

- c. Any hospital service corporation operating pursuant to P.L.1938, c.366 (C.17:48-1 et seq.);

- d. Any health service corporation operating pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.);

- e. Any dental service corporation operating pursuant to P.L.1968, c.305 (C.17:48C-1 et seq.);

- f. Any dental plan organization operating pursuant to P.L.1979, c.478 (C.17:48D-1 et seq.);

- g. Any insurance plan operating pursuant to P.L.1970, c.215 (C.17:29D-1);

- h. The New Jersey Insurance Underwriting Association operating pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.); and

- i. (Deleted by amendment, P.L.2010, c.32)

- j. Any risk retention group or purchasing group operating pursuant to the "Liability Risk Retention Act of 1986," 15 U.S.C.s.3901 et seq.

"Pattern" means five or more related violations of P.L.1983, c.320 (C.17:33A-1 et seq.). Violations are related if they involve either the same victim, or same or similar actions on the

part of the person or practitioner charged with violating P.L.1983, c.320 (C.17:33A-1 et seq.).

"Person" means a person as defined in R.S.1:1-2, and shall include, unless the context otherwise requires, a practitioner.

"Principal residence" means that residence at which a person spends the majority of his time. Principal residence may be an abode separate and distinct from a person's domicile. Mere seasonal or weekend residence within this State does not constitute principal residence within this State.

"Practitioner" means a licensee of this State authorized to practice medicine and surgery, psychology, chiropractic, or law or any other licensee of this State whose services are compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other states and nations or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.

"Producer" means an insurance producer as defined in section 3 of P.L.2001, c.210 (C.17:22A-28), licensed to transact the business of insurance in this State pursuant to the provisions of the "New Jersey Insurance Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et seq.).

"Statement" includes, but is not limited to, any application, writing, notice, expression, statement, proof of loss, bill of lading, receipt, invoice, account, estimate of property damage, bill for services, diagnosis, prescription, hospital or physician record, X-ray, test result or other evidence of loss, injury or expense.

3. Section 8 of P.L.1983, c.320 (C.17:33A-8) is amended to read as follows:

C.17:33A-8 Bureau of Fraud Deterrence.

8. a. (1) There is established in the Department of Banking and Insurance the Bureau of Fraud Deterrence. The bureau shall assist the commissioner in administratively investigating allegations of insurance fraud in consultation with the Office of the Insurance Fraud Prosecutor in accordance with subsection a. of section 9 of P.L.1983, c.320 (C.17:33A-9), and implementing programs to prevent insurance fraud and abuse. When so required by the commissioner and the Attorney General, the bureau shall cooperate with the Attorney General in the investigation and prosecution of criminal violations.

(2) In order to achieve administrative efficiencies, and notwithstanding the provisions of section 33 of P.L.1998, c.21 (C.17:33A-17), all civil investigators in the Office of the Insurance Fraud Prosecutor, other than those assigned to the Case Screening, Litigation and Analytical Support Unit, and those additional administrative and clerical support personnel as may be mutually agreed to by the commissioner and the Attorney General, shall be transferred to the Bureau of Fraud Deterrence in the Department of Banking and Insurance. Personnel transferred from the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety to the Department of Banking and Insurance pursuant to this paragraph shall be transferred with all tenure rights and any rights or protections provided by Title 11A of the New Jersey Statutes or other applicable statute, and any pension law or retirement system, as provided in the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

b. The commissioner shall appoint the full-time supervisory and investigative personnel of the bureau, including the assistant commissioner, who, except as provided in subsections a. and d. of this section, shall hold their employment at the pleasure of the commissioner without regard to the provisions of Title 11A of the New Jersey Statutes and shall receive

such salaries as the commissioner from time to time designates, and who shall be qualified by training and experience to perform the duties of their position.

c. When so requested by the commissioner, the Attorney General may assign one or more deputy attorneys general to assist the bureau in the performance of its duties.

d. The commissioner shall also appoint the clerical and other staff necessary for the bureau to fulfill its responsibilities under this act. The personnel shall be employed subject to the provisions of Title 11A of the New Jersey Statutes, and other applicable statutes.

e. The commissioner shall appoint an insurance fraud advisory board consisting of eight representatives from insurers doing business in this State. The members of the board shall serve for two year terms and until their successors are appointed and qualified. The members of the board shall receive no compensation. The board shall advise the commissioner with respect to the implementation of this act, when so requested by the commissioner.

f. The Director of the Division of Budget and Accounting in the Department of the Treasury shall, on or before September 1 in each year, ascertain and certify to the commissioner the total amount of expenses incurred by the State in connection with the administration of this act during the preceding fiscal year, which expenses shall include, in addition to the direct cost of personal service, the cost of maintenance and operation, the cost of retirement contributions made and the workers' compensation paid for and on account of personnel, rentals for space occupied in State owned or State leased buildings and all other direct and indirect costs of the administration thereof.

g. The commissioner shall, on or before October 15 in each year, apportion the amount so certified to him among all of the companies writing the class or classes of insurance described in Subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.), and Subtitle 3 of Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.), within this State in the proportion that the net premiums received by each of them for such insurance written or renewed on risks within this State during the calendar year immediately preceding, as reported to him, bears to the sum total of all such net premiums received by all companies writing that insurance within the State during the year, as reported, except that no one company shall be assessed for more than 5% of the amount apportioned. The commissioner shall certify the sum apportioned to each company on or before November 15 next ensuing. Each company shall pay the amount so certified as apportioned to it to the Department of Banking and Insurance on or before December 31 next ensuing, and the sum paid shall be paid into the State Treasury in reimbursement to the State for the expenses paid.

"Net premiums received" means gross premiums written, less return premiums thereon and dividends credited or paid to policyholders.

h. (Deleted by amendment, P.L.2010, c.32)

4. Section 9 of P.L.1983, c.320 (C.17:33A-9) is amended to read as follows:

C.17:33A-9 Alleged violations; civil liability; referrals; records.

9. a. (1) Any person who believes that a violation of this act has been or is being made shall notify the bureau and the Office of the Insurance Fraud Prosecutor immediately after discovery of the alleged violation of this act and shall send to the bureau and office, on a form and in a manner jointly prescribed by the commissioner and the Insurance Fraud Prosecutor, the information requested and such additional information relative to the alleged violation as the bureau or office may require. The bureau and the office shall jointly review the reports and select those alleged violations as may require further investigation by the office for possible criminal prosecution, and those that may warrant investigation and

possible civil action or enforcement proceeding by the bureau in lieu of or in addition to criminal prosecution. The Insurance Fraud Prosecutor and the assistant commissioner shall meet monthly to ensure that reports are handled in an expedited fashion.

(2) Whenever the Bureau of Fraud Deterrence or any employee of the bureau obtains information or evidence of a reasonable possibility of criminal wrongdoing not previously known or disclosed to the Office of the Insurance Fraud Prosecutor, the bureau shall immediately refer that information or evidence to that office. In determining whether a referral to the office is appropriate, the bureau shall utilize appropriate levels of internal review, which shall include but not be limited to approval at the assistant commissioner level. Upon referral, the bureau shall provide the office with all documents related to the referral consistent with section 39 of P.L.1998, c.21 (C.17:33A-23).

b. No person shall be subject to civil liability for libel, violation of privacy or otherwise by virtue of the filing of reports or furnishing of other information, in good faith and without malice, required by this section or required by the bureau or the Office of the Insurance Fraud Prosecutor as a result of the authority conferred upon it by law.

c. The commissioner may, by regulation, require insurance companies licensed to do business in this State to keep such records and other information as he deems necessary for the effective enforcement of this act.

5. Section 10 of P.L.1983, c.320 (C.17:33A-10) is amended to read as follows.

C.17:33A-10 Subpena powers; violations by persons licensed by State.

10. a. If the bureau has reason to believe that a person has engaged in, or is engaging in, an act or practice which violates this act, or any other relevant statute or regulation, the commissioner or his designee, after consulting with the Insurance Fraud Prosecutor or his designee, may administer oaths and affirmations, request or compel the attendance of witnesses or the production of documents. The commissioner, after consulting with the Insurance Fraud Prosecutor or his designee, may issue, or designate another to issue, subpoenas to compel the attendance of witnesses and the production of books, records, accounts, papers and documents. Witnesses who are not licensees of the Department of Banking and Insurance shall be entitled to receive the same fees and mileage as persons summoned to testify in the courts of the State.

If a person subpoenaed pursuant to this section shall neglect or refuse to obey the command of the subpoena, a judge of the Superior Court may, on proof by affidavit of service of the subpoena, of payment or tender of the fees required and of refusal or neglect by the person to obey the command of the subpoena, issue a warrant for the arrest of said person to bring him before the judge, who is authorized to proceed against the person as for a contempt of court.

b. If matter that the bureau or Office of the Insurance Fraud Prosecutor seeks to obtain by request is located outside the State, the person so required may make it available to the bureau or office, as the case may be, or its representative to examine the matter at the place where it is located. The bureau or office may designate representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf, and it may respond to similar requests from officials of other states.

c. If (1) a practitioner, (2) an owner, administrator or employee of any hospital, (3) an insurance company, agent, broker, solicitor or adjuster, or (4) any other person licensed by a licensing authority of this State, or an agent, representative or employee of any of them is found to have violated any provision of this act, the commissioner or the Attorney General shall notify the appropriate licensing authority of the violation so that the licensing authority

may take appropriate administrative action. The licensing authority shall report quarterly to the commissioner through the Bureau of Fraud Deterrence about the status of all pending referrals.

6. Section 46 of P.L.1998, c.21 (C.17:33A-30) is amended to read as follows:

C.17:33A-30 Certification of amount allocable to office expenses.

46. The Attorney General shall annually, on or before October 1, certify to the Commissioner of Banking and Insurance an amount allocable to the expenses of the Office of the Insurance Fraud Prosecutor for the preceding fiscal year, which amount shall be transferred to the Department of Law and Public Safety by the Commissioner of Banking and Insurance from the amounts assessed and collected pursuant to section 8 of P.L.1983, c.320 (C.17:33A-8).

7. Section 1 of P.L.2005, c.82 (C.45:11-24.10) is amended to read as follows:

C.45:11-24.10 Alternative to Discipline Program for nurses; definitions.

1. a. The New Jersey Board of Nursing shall establish an Alternative to Discipline Program for board licensees who are suffering from a chemical dependency or other impairment.

The program shall permit these licensees to disclose their dependency or impairment status to an intervention program designated by the board, which shall provide confidential oversight of the licensee during the period that the licensee seeks treatment for, and follows a plan for recovery from, the dependency or impairment.

b. The board shall designate at least one intervention program to provide services under this act and shall delineate, in a formal agreement, the responsibilities of the intervention program and its relationship to the board.

c. The board shall establish a five-member Alternative to Discipline Committee to review matters involving licensees suffering from chemical dependencies or other impairments.

(1) The committee shall be comprised of two members of the board who are appointed by the president of the board, at least one of whom is a registered professional nurse; two registered professional nurses with expertise in addiction recommended by the New Jersey State Nurses Association who represent a designated intervention program; and one individual designated by the Commissioner of Health and Senior Services.

(2) The committee shall meet on a regular basis. The executive director of the board and the director of the designated intervention program shall serve as staff to the committee and shall be available to assist the committee at its meetings.

(3) The committee shall perform the following duties, as well as such others as the board may require:

(a) accept from licensees, and from other members of the public, reports, which include the individual's identity, concerning licensees who may be suffering from chemical dependencies or other impairments;

(b) accept referrals, which include the individual's identity, from the board;

(c) accept coded summary reports from the designated intervention program, without any information from which the licensee's identity can be discerned;

(d) promptly review each referral to determine if participation in the program is appropriate, giving due consideration to factors for participation, as specified by regulation of the board;

(e) accept confidential reports from the intervention program regarding participating licensees and ensure that the identity of the licensee is maintained in a limited-access file of the committee with disclosure provided only to those persons whom the committee determines have a need to know the licensee's identity;

(f) require the program to conduct such supplemental inquiry concerning a licensee as may be directed by the committee, and authorize the program to request, through the committee, that further investigation be conducted by committee staff, investigative personnel or the Attorney General, as appropriate;

(g) require the program to immediately disclose to the committee the identity of a participating licensee in the event of noncompliance by the licensee with the conditions for participation or any other change in circumstances that may render the licensee inappropriate for participation in the program, as specified by regulation of the board; and

(h) transmit such reports as required by the board.

d. The executive director of the board shall advise the committee of any information concerning a concurrent investigation or consumer complaints, as may be necessary to enable the committee to assess whether participation of a licensee in the program is appropriate.

e. Upon receipt of disclosure of the identity of a participating licensee pursuant to subparagraph (g) of paragraph (3) of subsection c. of this section, the committee shall notify the board of the identity of the licensee.

f. Any information concerning the conduct of a licensee provided to the board pursuant to this act, is confidential and shall not be considered a public or government record under P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.), pending final disposition of the inquiry or investigation by the board, except for information required to be shared with the Bureau of Fraud Deterrence in the Department of Banking and Insurance and the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety to comply with the provisions of section 9 of P.L.1983, c.320 (C.17:33A-9) or with any other law enforcement agency.

If the result of the inquiry or investigation is a finding of no basis for disciplinary action by the board, the information shall remain confidential and shall not be considered a public or government record under P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.), except that the board may release the information to a government agency, for good cause shown, upon an order of the Superior Court after notice to the licensee who is the subject of the information and an opportunity to be heard. The application for the court order shall be placed under seal.

g. A licensee who files a report with the committee pursuant to subparagraph (a) of paragraph (3) of subsection c. of this section, shall be deemed to have discharged his duty to report an impairment to the board or division pursuant to regulation or law.

h. As used in this section:

"Chemical dependency" means a condition involving the continued misuse of chemical substances.

"Chemical substances" is to be construed to include alcohol, drugs or medications, including those taken pursuant to a valid prescription for legitimate medical purposes and in accordance with the prescriber's direction, as well as those used illegally.

"Impairment" means an inability to function at an acceptable level of competency, or an incapacity to continue to practice with the requisite skill, safety and judgment, as a result of

alcohol or chemical dependency, a psychiatric or emotional disorder, senility or a disabling physical disorder.

"Licensee" means a registered professional nurse, licensed practical nurse or other professional subject to regulation by the board.

8. This act shall take effect immediately. General implementation shall be completed no later than 45 days following enactment.

Approved June 29, 2010.