



Senate

General Assembly

File No. 732

January Session, 2011

Substitute Senate Bill No. 1165

Senate, May 3, 2011

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING MEDICARE AND MEDICAID FRAUD.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2011*) (a) For the purposes of
2 this section:

3 (1) "Medicare or Medicaid fraud" means a crime involving fraud in
4 the Medicare program or the Medicaid program, including, but not
5 limited to, vendor fraud, as defined in section 53a-290 of the general
6 statutes, related to the Medicare program or the Medicaid program;

7 (2) "Person" means "person", as defined in section 53a-3 of the
8 general statutes; and

9 (3) "This state" includes the land and water, and the air space above
10 such land and water, with respect to which the General Assembly has
11 jurisdiction to enact legislation.

12 (b) With respect to Medicare or Medicaid fraud, a person shall be

13 criminally liable as provided in section 53a-11 of the general statutes or
14 section 2 of this act, or shall be criminally liable for conduct performed
15 in such person's own name or on such person's behalf, if:

16 (1) (A) The conduct which is an element of the Medicare or
17 Medicaid fraud occurs within this state, or (B) the result which is an
18 element of the Medicare or Medicaid fraud occurs within this state,
19 except that this subparagraph shall not apply when the result within
20 this state is caused by conduct occurring outside this state which
21 would not constitute Medicare or Medicaid fraud where the conduct
22 occurred, unless the person intentionally or knowingly caused the
23 Medicare or Medicaid fraud within this state;

24 (2) Conduct occurring outside this state is sufficient under the laws
25 of this state to constitute an attempt to commit Medicare or Medicaid
26 fraud within this state;

27 (3) Conduct occurring outside this state is sufficient under the laws
28 of this state to constitute conspiracy to commit Medicare or Medicaid
29 fraud within this state, and an overt act in pursuance of such
30 conspiracy occurs within this state;

31 (4) Conduct occurring within this state establishes the element
32 under subsection (a) of section 53a-8 of the general statutes of
33 soliciting, requesting, commanding, importuning or intentionally
34 aiding another person to engage in conduct which constitutes
35 Medicare or Medicaid fraud in another jurisdiction and which is also a
36 crime in this state;

37 (5) The Medicare or Medicaid fraud consists of the omission to
38 perform a duty imposed by the laws of this state with respect to
39 domicile in this state, residence in this state, or the relationship to a
40 person, thing or transaction in this state; or

41 (6) The Medicare or Medicaid fraud is based on a provision of the
42 general statutes which expressly prohibits conduct outside this state
43 when such conduct bears a reasonable relationship to a legitimate

44 interest of this state and the person knew or should have known that
45 the person's conduct was likely to affect such interest of this state.

46 Sec. 2. (NEW) (*Effective October 1, 2011*) (a) As used in this section:

47 (1) "Agent" means a director, officer, employee or other person
48 authorized to act on behalf of a corporation, a member of an
49 unincorporated association or a partner in a partnership;

50 (2) "Corporation" means a public or private corporation, a limited
51 liability company, an unincorporated association or a partnership.
52 "Corporation" does not include a government or a governmental
53 instrumentality;

54 (3) "High managerial agent" means an agent of a corporation having
55 duties of such responsibility that the agent's conduct may fairly be
56 assumed to represent the policy of the corporation; and

57 (4) "Medicare or Medicaid fraud" means a crime involving fraud in
58 the Medicare program or the Medicaid program, including, but not
59 limited to, vendor fraud, as defined in section 53a-290 of the general
60 statutes, provided such vendor fraud is related to the Medicare
61 program or Medicaid program.

62 (b) A corporation may be convicted of Medicare or Medicaid fraud
63 if:

64 (1) The crime is established in the general statutes and consists of
65 Medicare or Medicaid fraud and (A) the court determines that the
66 legislative intent of the crime is to impose liability on a corporation for
67 Medicare or Medicaid fraud, or (B) the statute designates the agents for
68 whose conduct the corporation is accountable or the circumstances
69 under which the corporation is accountable;

70 (2) The Medicare or Medicaid fraud is performed by an agent of the
71 corporation on behalf of the corporation, within the scope of the
72 agent's office or employment;

73 (3) The commission of the Medicare or Medicaid fraud consists of an
74 omission to discharge a specific duty to perform imposed on the
75 corporation by law; or

76 (4) The commission of the Medicare or Medicaid fraud was
77 authorized, requested, commanded, performed or recklessly tolerated
78 by the board of directors of the corporation, or by a high managerial
79 agent acting on behalf of the corporation within the scope of the high
80 managerial agent's office or employment.

81 (c) Whenever a duty to act is imposed by law on a corporation with
82 respect to Medicare or Medicaid fraud, any agent of the corporation
83 having primary responsibility for the discharge of such duty shall be
84 criminally liable for a reckless omission to act to the same extent as if
85 such duty were imposed by law directly on such agent.

86 (d) In any prosecution under this section, it shall be an affirmative
87 defense that the defendant exercised due diligence to prevent the
88 commission of the crime.

89 (e) Any agent, high managerial agent or corporation convicted of
90 Medicare or Medicaid fraud pursuant to this section shall be subject to
91 the penalty applicable when an individual commits such Medicare or
92 Medicaid fraud in such individual's capacity.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	New section
Sec. 2	October 1, 2011	New section

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Criminal Justice, Div.	GF - Potential Revenue Gain	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill clarifies conduct that could be considered Medicare or Medicaid fraud by an individual or corporation. To the extent these clarifications result in additional recoveries by the Medicaid Fraud Control Unit (MFCU), a revenue gain to the General Fund would result. In 2010, the MFCU recovered \$37.9 million in civil monetary penalties, identified and reported \$10.5 million in overpayments and collected \$1.1 million in criminal fines and penalties.

The Out Years

The annualized ongoing revenue identified above would vary depending on the number of penalties, fines and overpayments collected and would continue into the future subject to inflation.

Sources: Division of Criminal Justice

OLR Bill Analysis**sSB 1165*****AN ACT CONCERNING MEDICARE AND MEDICAID FRAUD.*****SUMMARY:**

This bill expands criminal liability for Medicare or Medicaid fraud, including vendor fraud, by:

1. expanding the circumstances in which a corporation, limited liability company, unincorporated association, or partnership (hereafter business entities) can be convicted of fraud;
2. making a business entity's agent who is responsible for discharging a legally imposed duty regarding the fraud criminally liable for recklessly omitting to act; and
3. expanding the circumstances in which a person (it is unclear whether this also applies to the government and business entities) can be criminally liable for fraud.

The bill does not create new crimes but specifies circumstances under which a person or business entity can be charged under existing crimes related to Medicare or Medicaid fraud, including vendor fraud (see BACKGROUND).

EFFECTIVE DATE: October 1, 2011

LIABILITY OF CERTAIN BUSINESS ENTITIES AND AGENTS

By law, a person can be criminally liable for conduct he or she (1) performs on his or her own behalf or (2) performs or causes to be performed in the name of or on behalf of a corporation or limited liability company. Under the penal code, a "person" is a human being and, where appropriate, a corporation, limited liability company, unincorporated association, partnership, government, or government

instrumentality. Thus, the law allows a business entity and someone acting on its behalf to be criminally liable under certain circumstances.

The bill expands the circumstances in which a business entity, other than a government or government instrumentality, can be convicted of Medicare or Medicaid fraud, including vendor fraud, to include when the:

1. statutory crime consists of Medicare or Medicaid fraud and the (a) court determines the crime's legislative intent is to impose liability on business entities or (b) statute designates the agents for whose conduct the entity is accountable or the circumstances of its accountability;
2. fraud is performed by a business entity's agent (see definition below) acting within the scope of his or her office or employment and on the entity's behalf;
3. fraud consists of failure to perform a specific legal duty imposed on the entity; or
4. fraud was authorized, requested, commanded, performed, or recklessly tolerated by (a) the entity's board or (b) a high managerial agent (see definition below) acting on the entity's behalf and within the scope of the agent's office or employment.

When the law imposes on a business entity a duty to act regarding Medicare or Medicaid fraud, the bill makes the entity's agent who is primarily responsible for discharging the duty criminally liable if he or she recklessly fails to act, as if the legal duty was directly imposed on the agent.

The bill defines an "agent" as a director, officer, employee, or other person authorized to act on the entity's behalf; a member of an unincorporated association; or a partner in a partnership. It defines a "high managerial agent" as an entity's agent whose conduct may fairly be assumed to represent the corporation's policy.

Affirmative Defense

The bill makes it an affirmative defense to a business entity's or agent's liability, but not an individual acting on his or her own behalf, that the defendant used due diligence to prevent committing the crime.

Punishment

The bill subjects an agent, high managerial agent, or entity convicted of Medicare or Medicaid fraud to the same penalty as that for an individual who commits Medicare or Medicaid fraud in the individual's capacity.

PERSON'S LIABILITY

The bill expands the circumstances under which a person acting on his or her own behalf or on behalf of a corporation or limited liability company is criminally liable for Medicare or Medicaid fraud, including vendor fraud. For this purpose, a "person" is a human being and, where appropriate, a corporation, limited liability company, unincorporated association, partnership, government, or government instrumentality. The bill expands criminal liability to include when the:

1. conduct or result that is an element of the fraud occurs in Connecticut (if the result is caused by conduct outside Connecticut and it would not be Medicare or Medicaid fraud there, the person must have intentionally or knowingly caused the fraud in Connecticut);
2. conduct outside Connecticut is sufficient under Connecticut law to be (a) an attempt to commit Medicare or Medicaid fraud in Connecticut or (b) conspiracy to commit it when there is an overt act under the conspiracy in Connecticut;
3. conduct in Connecticut establishes soliciting, requesting, commanding, importuning, or intentionally aiding another to engage in conduct that is Medicare or Medicaid fraud in another jurisdiction that is also a Connecticut crime;

4. fraud is omitting to perform a legal duty imposed by Connecticut law with respect to domicile or residence in Connecticut or the relationship to a Connecticut person, thing, or transaction; or
5. fraud is based on a statute expressly prohibiting the conduct outside Connecticut and the conduct bears a reasonable relationship to a legitimate interest in Connecticut and the person knew or should have known that the conduct was likely to affect that interest.

BACKGROUND

Crimes

A person committing Medicare or Medicaid fraud could be charged with various crimes.

A person commits vendor fraud when, with intent to defraud and acting on his or her or an entity's behalf, provides goods or services to public assistance (which includes Medicaid but not Medicare) beneficiaries and commits any of five fraudulent acts related to payment. The penalty for vendor fraud varies, depending on the amount of goods or services involved, from a class C misdemeanor (punishable by up to three months in prison, a fine of up to \$500, or both) to a class B felony (punishable by up to 20 years in prison, a fine of up to \$15,000, or both) (CGS § 53a-290 *et seq.*).

One way a person commits larceny, which is wrongfully obtaining property with intent to deprive another person of it, is defrauding a public community. Defrauding a public community includes (1) authorizing, certifying, attesting, or filing a benefit or reimbursement claim with a government agency knowing it is false or (2) knowingly accepting benefits from a claim he or she knows is false. The penalty for larceny varies, generally depending on the value of the property taken, from a class C misdemeanor to a class B felony (CGS § 53a-118 *et seq.*).

A person might also be charged with a class D felony (punishable

by up to five years in prison, a fine of up to \$5,000, or both) for receiving or paying a kickback (CGS §§ 53a-161c and -161d).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 45 Nay 0 (04/15/2011)