

Senate Bill 572

By: Senators Goggans of the 7th, Stephens of the 27th, Williams of the 19th, Douglas of the 17th, Pearson of the 51st and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated,
2 relating to medical assistance generally, so as to change certain provisions relating to
3 unlawful acts regarding Medicaid; to provide for inclusion of medical assistance managed
4 care fraud; to change certain provisions relating to administrative hearings and appeals; to
5 provide for hearings on disputed payments before an administrative law judge; to provide for
6 procedure related to such hearings, including assessment of costs; to provide for related
7 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to
11 medical assistance generally, is amended by striking subsections (a) and (b) of Code Section
12 49-4-146.1, relating to unlawful acts regarding Medicaid, and inserting in lieu thereof new
13 subsections (a) and (b) to read as follows:

14 "(a) As used in this Code section, the term:

15 (1) 'Agent' means any person who has been delegated the authority to obligate or act on
16 behalf of a provider.

17 (2) 'Convicted' means that a judgment of conviction has been entered by any federal,
18 state, or other court, regardless of whether an appeal from that judgment is pending.

19 (3) 'Indirect ownership interest' means any ownership interest in an entity that has an
20 ownership interest in the provider entity. The term includes an ownership interest in any
21 entity that has an indirect ownership interest in the provider entity.

22 (4) 'Managing employee' means a general manager, business manager, administrator,
23 director, or other individual who exercises operational or managerial control over, or who
24 directly or indirectly conducts, the day-to-day operation of the institution, organization,
25 or agency.

1 (4.1) 'Payment' includes a payment or approval for payment, any portion of which is paid
 2 by the Georgia Medicaid program, or by a contractor, subcontractor, or agent for the
 3 Georgia Medicaid program pursuant to a managed care program operated, funded, or
 4 reimbursed by the Georgia Medicaid program.

5 (5) 'Person' means any person, firm, corporation, partnership, or other entity.

6 (6) 'Person with an ownership or control interest' means a person who:

7 (A) Has ownership interest totaling 5 percent or more in a provider;

8 (B) Has an indirect ownership interest equal to 5 percent or more in a provider;

9 (C) Has a combination of direct and indirect ownership interests equal to 5 percent or
 10 more in a provider;

11 (D) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other
 12 obligation secured by the provider entity if that interest equals at least 5 percent of the
 13 value of the property or assets of the provider;

14 (E) Is an officer or director of a provider that is organized as a corporation; or

15 (F) Is a partner in a provider entity that is organized as a partnership.

16 (7) 'Provider' means an actual or prospective provider of medical assistance under this
 17 chapter. The term 'provider' shall also include any managed care organization
 18 providing services pursuant to a managed care program operated, funded, or reimbursed
 19 by the Georgia Medicaid program.

20 (b) It is shall be unlawful:

21 (1) For any person or provider to obtain, ~~or~~ attempt to obtain, or retain for himself,
 22 herself, or any other person any medical assistance or other benefits or payments under
 23 this article, or under a managed care program operated, funded, or reimbursed by the
 24 Georgia Medicaid program, to which the person or provider is not entitled, or in an
 25 amount greater than that to which the person or provider is entitled, when the assistance,
 26 benefit, or payment is obtained, ~~or~~ attempted to be obtained, or retained, by:

27 (A) Knowingly and willfully making a false statement or false representation;

28 (B) Deliberate concealment of any material fact; or

29 (C) Any fraudulent scheme or device; or

30 (2) For any person or provider knowingly and willfully to accept medical assistance
 31 payments to which he or she is not entitled or in an amount greater than that to which he
 32 or she is entitled, or knowingly and willfully to falsify any report or document required
 33 under this article."

34 SECTION 2.

35 Said article is further amended in Code Section 49-4-153, relating to administrative hearings
 36 and appeals, judicial review, and contested cases involving imposition of remedial or

1 punitive measures against a nursing facility, by striking subsection (b) and inserting in lieu
2 thereof the following:

3 "(b)(1) Any applicant for medical assistance whose application is denied or is not acted
4 upon with reasonable promptness and any recipient of medical assistance aggrieved by
5 the action or inaction of the Department of Community Health as to any medical or
6 remedial care or service which such recipient alleges should be reimbursed under the
7 terms of the state plan which was in effect on the date on which such care or service was
8 rendered or is sought to be rendered shall be entitled to a hearing upon his or her request
9 for such in writing and in accordance with the applicable rules and regulations of the
10 department and the Office of State Administrative Hearings. As a result of the written
11 request for hearing, a written recommendation shall be rendered in writing by the
12 administrative law judge assigned to hear the matter. Should a decision be adverse to a
13 party and should a party desire to appeal that decision, the party must file a request in
14 writing to the commissioner or the commissioner's designated representative within 30
15 days of his or her receipt of the hearing decision. The commissioner, or the
16 commissioner's designated representative, has ~~ten~~ 30 days from the receipt of the request
17 for appeal to affirm, modify, or reverse the decision appealed from. A final decision or
18 order adverse to a party, other than the agency, in a contested case shall be in writing or
19 stated in the record. A final decision shall include findings of fact and conclusions of law,
20 separately stated, and the effective date of the decision or order. Findings of fact shall be
21 accompanied by a concise and explicit statement of the underlying facts supporting the
22 findings. Each agency shall maintain a properly indexed file of all decisions in contested
23 cases, which file shall be open for public inspection except those expressly made
24 confidential or privileged by statute. If the commissioner fails to issue a decision, the
25 initial recommended decision shall become the final administrative decision of the
26 commissioner.

27 (2)(A) A provider of medical assistance may request a hearing on a decision of the
28 Department of Community Health with respect to a denial or nonpayment of or the
29 determination of the amount of reimbursement paid or payable to such provider on a
30 certain item of medical or remedial care or service rendered by such provider by filing
31 a written request for a hearing in accordance with Code Sections 50-13-13 and
32 50-13-15 with the Department of Community Health. The Department of Community
33 Health shall, within 15 business days of receiving the request for hearing from the
34 provider, transmit a copy of the provider's request for hearing to the Office of State
35 Administrative Hearings. The provider's request for hearing shall identify the issues
36 under appeal and specify the relief requested by the provider. The request for hearing
37 shall be filed no later than 15 business days after the provider of medical assistance

1 receives the decision of the Department of Community Health which is the basis for the
2 appeal.

3 (B) The Office of State Administrative Hearings shall assign an administrative law
4 judge to hear the dispute within 15 days after receiving the request. The hearing is
5 required to commence no later than 90 days after the assignment of the case to an
6 administrative law judge, and the administrative law judge shall issue a written decision
7 on the matter no later than 30 days after the close of the record except when it is
8 determined that the complexity of the issues and the length of the record require an
9 extension of these periods and an order is issued by an administrative law judge so
10 providing, but no longer than 30 days. Such time requirements can be extended by
11 written consent of all the parties. Failure of the administrative law judge to comply with
12 the above time deadlines shall not render the case moot.

13 (C) A request for hearing by a nursing home provider shall stay any recovery or
14 recoupment action.

15 (D) Should the decision of the administrative law judge be adverse to a party and
16 should a party desire to appeal that decision, the party must file a request therefor, in
17 writing, with the commissioner within ten days of his or her receipt of the hearing
18 decision. Such a request must enumerate all factual and legal errors alleged by the
19 party. The commissioner, or the commissioner's designated representative, may affirm,
20 modify, or reverse the decision appealed from.

21 (E) The provisions of this subsection shall not be available with respect to a denial or
22 nonpayment of or the determination of the amount of reimbursement paid or payable
23 to such provider on a certain item of medical or remedial care or service rendered by
24 such provider if the recipient of medical assistance is enrolled in a care management
25 program operated, funded, or reimbursed by the department and the challenged
26 determination was made by the care management organization.

27 (3) A person or institution who either has been refused enrollment as a provider in the
28 state plan or has been terminated as a provider by the Department of Community Health
29 shall be entitled to a hearing; provided, however, that no entitlement to a hearing before
30 the department shall lie for refusals or terminations based on the want of any license,
31 permit, certificate, approval, registration, charter, or other form of permission issued by
32 an entity other than the Department of Community Health, which form of permission is
33 required by law either to render care or to receive medical assistance in which federal
34 financial participation is available. The final determination (subject to judicial review, if
35 any) of such an entity denying issuance of such a form of permission shall be binding on
36 and unreviewable by the Department of Community Health. In cases where an
37 entitlement to a hearing before the Department of Community Health, pursuant to this

1 paragraph, lies, the Department of Community Health shall give written notice of either
 2 the denial of enrollment or termination from enrollment to the affected person or
 3 institution; and such notice shall include the reasons of the Department of Community
 4 Health for denial or termination. Should such a person or institution desire to contest the
 5 initial decision of the Department of Community Health, he or she must give written
 6 notice of his or her appeal to the commissioner of community health within ten days after
 7 the date on which the notice of denial or notice of termination was transmitted to him or
 8 her. A hearing shall be scheduled and commenced within 20 days after the date on which
 9 the commissioner receives the notice of appeal; and the commissioner or his or her
 10 designee or designees shall render a final administrative decision as soon as practicable
 11 thereafter."

12 SECTION 3.

13 Said article is further amended in Code Section 49-4-153, relating to administrative hearings
 14 and appeals, judicial review, and contested cases involving imposition of remedial or
 15 punitive measures against a nursing facility, by adding a new subsection (e) to read as
 16 follows:

17 "(e)(1) A provider of medical assistance may request a hearing on a decision of a care
 18 management organization with respect to a denial or nonpayment of or the determination
 19 of the amount of reimbursement paid or payable to such provider on a certain item of
 20 medical or remedial care of service rendered by such provider by filing a written request
 21 for a hearing in accordance with Code Sections 50-13-13 and 50-13-15 with the
 22 Department of Community Health. The Department of Community Health shall, within
 23 15 business days of receiving the request for hearing from the provider, transmit a copy
 24 of the provider's request for hearing to the Office of State Administrative Hearings, but
 25 shall not be a party to the proceedings. The provider's request for hearing shall identify
 26 the care management organization with which the provider has a dispute, the issues under
 27 appeal, and specify the relief requested by the provider. The request for hearing shall be
 28 filed no later than 15 business days after the provider of medical assistance receives the
 29 decision of the care management organization which is the basis for the appeal.

30 (2) The Office of State Administrative Hearings shall assign an administrative law judge
 31 to hear the dispute within 15 days after receiving the request. The hearing is required to
 32 commence no later than 90 days after the assignment of the case to an administrative law
 33 judge, and the administrative law judge shall issue a written decision on the matter no
 34 later than 30 days after the close of the record except when it is determined that the
 35 complexity of the issues and the length of the record require an extension of these periods
 36 and an order is issued by an administrative law judge so providing, but no longer than 30

1 days. Such time requirements can be extended by written consent of all the parties.
2 Failure of the administrative law judge to comply with the above time deadlines shall not
3 render the case moot.
4 (3) The decision of the administrative law judge shall be the final administrative remedy
5 available to the provider. The fees and expenses of the Office of State Administrative
6 Hearings may, at the court's discretion, be assessed against the party against whom the
7 administrative law judge enters his or her order."

8 **SECTION 4.**

9 This Act shall become effective on April 1, 2006, or upon its approval by the Governor,
10 whichever last occurs, or upon its becoming law without such approval.

11 **SECTION 5.**

12 All laws and parts of laws in conflict with this Act are repealed.