

Senate Bill 401

By: Senators Staton of the 18th, Carter of the 13th, Chance of the 16th, Rogers of the 21st,
Grant of the 25th and others

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 provide that agency interpretations of rules
3 and regulations and policies shall prevail in the investigation of improper payment of claims
4 by health care providers; to provide for a method of review of such interpretations; to provide
5 for certain notices of investigations and possible prosecutions; to provide an exception; to
6 provide for a review of denied claims for the period under investigation; to provide for
7 advisory opinions under certain circumstances; to provide for related matters; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to
12 medical assistance generally, is amended by adding new Code sections to read as follows:
13 "49-4-146.4.

14 (a)(1) In any investigation, prosecution, or action brought under this article, the
15 interpretations of the rules and regulations and policies concerning the payments of
16 claims by the agency that is responsible for promulgating the rules and regulations or
17 policies shall prevail and be given effect. No interpretation of the rules and regulations
18 or policies concerning the payments of claims that differs from the interpretation by the
19 agency that is responsible for promulgating the rules and regulations or policies shall be
20 used as a basis for an investigation, prosecution, or other action under this article.

21 (2) During the course of an investigation of a health care provider under Code Section
22 49-4-146.3, the health care provider shall have the right to petition the agency responsible
23 for paying the claims in dispute or under investigation for a hearing as to whether the
24 claims were paid correctly by the agency. Such hearing shall be conducted under the
25 provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' If, after
26 the hearing, the agency finds that the claims were properly paid or were correctly

1 submitted under the interpretations of the rules and regulations or policies in effect at the
2 time that the claims were submitted for payment, such claims shall no longer be the basis
3 of any further investigation, prosecution, or other action under this article. Appeals from
4 the decision of the agency may be taken in accordance with Chapter 13 of Title 50.

5 (b) In any investigation or possible prosecution under this article, the health care provider
6 shall be notified in writing prior to any other member of the public being notified of such
7 investigation or possible prosecution that an investigation or possible prosecution has been
8 opened against the health care provider, and such notification shall provide a full
9 description of the matters under investigation or subject to possible prosecution. This
10 notice may be waived upon application to a judge of superior court of the county of the
11 health care provider's main business location upon a good faith showing that there would
12 be a substantial likelihood that the providing of such notice would result in the destruction
13 of evidence, tampering with evidence or witnesses, or the substantial impairment of the
14 investigation or possible prosecution.

15 (c) If a person initiates an investigation of the alleged improper payment of claims under
16 this article, such person shall specify the time frame covered by the investigation in the
17 initial notice to the health care provider under subsection (b) of this Code section.
18 Notwithstanding any provision of law to the contrary, the health care provider shall be able
19 to have any claims denied during such time period reviewed by the agency that denied such
20 claims and, if such claims are found to have been improperly denied, such claims shall be
21 considered timely filed and shall be paid by the agency.

22 49-4-146.5

23 (a) Beginning on January 1, 2009, any agency that is responsible for implementing this
24 article or that promulgates rules and regulations or policies to implement this article shall
25 issue written advisory opinions as provided in this Code section.

26 (b) The agency shall issue advisory opinions as to the following matters:

27 (1) Clarification of sections of the agency's policy manual for which clarification is
28 requested by a health care provider; and

29 (2) Clarification of any processes or procedures required for the filing or managing of
30 claims for which clarification is requested by a health care provider.

31 (c) Each advisory opinion issued by an agency shall be binding as to the agency and the
32 party or parties requesting the opinion. The failure of a party to seek an advisory opinion
33 shall not be introduced into evidence to prove that the party intended to violate any
34 provision of this article.

1 (d) Not later than January 1, 2009, each agency subject to the advisory opinion
2 requirements of this Code section shall issue rules and regulations to carry out this Code
3 section. Such regulations shall provide for:

4 (1) The procedure to be followed by a party applying for an advisory opinion;

5 (2) The procedure to be followed by the agency in responding to a request for an
6 advisory opinion;

7 (3) The interval in which the agency shall respond;

8 (4) The reasonable fee to be charged to the party requesting an advisory opinion; and

9 (5) The manner in which advisory opinions shall be made available to the public.

10 If an agency does not respond to a request for an advisory opinion in a timely manner, the
11 health care provider requesting such opinion shall not be held liable in any investigation
12 relating to the subject matter of the requested advisory opinion.

13 (e) Under the rules and regulations promulgated pursuant to subsection (d) of this Code
14 section:

15 (1) The agency shall be required to issue an advisory opinion to a party requesting such
16 advisory opinion not later than 60 days after the request is received; and

17 (2) The fee charged to the party requesting an advisory opinion shall be equal to the costs
18 incurred by the agency in responding to the request."

19 **SECTION 2.**

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