Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REVISED

This Version Includes All Amendments Adopted on Second Reading in the Second House

LLS NO. 18-0358.01 Conrad Imel x2313

HOUSE BILL 18-1211

HOUSE SPONSORSHIP

Wist and Foote,

SENATE SPONSORSHIP

Smallwood and Aguilar,

House Committees
Judiciary

Senate Committees
Health & Human Services

A BILL FOR AN ACT

101 **CONCERNING CONTROLLING MEDICAID FRAUD.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill establishes the medicaid fraud control unit (unit) in the department of law. The unit is responsible for investigation and prosecution of medicaid fraud and waste, as well as patient abuse, neglect, and exploitation. The department of health care policy and financing is authorized to require medicaid providers to include information about reporting medicaid fraud to the unit in any explanation of benefits provided to a medicaid beneficiary.

The bill creates offenses related to making false statements on

SENATE
2nd Reading Unamended
April 4, 2018

HOUSE
3rd Reading Unamended
March 26, 2018

HOUSE
Amended 2nd Reading
March 23, 2018

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

applications, medicaid fraud, and credit and recovery of medicaid payments. The bill makes it unlawful to receive certain kickbacks, bribes, and rebates related to the administration of a medicaid service. Actions brought under the provisions of the bill must commence within 3 years after the discovery of the offense.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) The Colorado attorney general's office continues to prosecute
5 medicaid provider fraud and waste, as well as patient abuse, neglect, and
6 exploitation cases, both criminal and civil, pursuant to executive order
7 D1787 signed by Governor Roy Romer in March 1987 and 42 U.S.C. sec.
8 1396b (q); and

9 (b) The functions of the medicaid fraud control unit are important
10 to protect the integrity of Colorado's medicaid program, including federal
11 funding for that program, as well as to protect some of Colorado's most
12 vulnerable citizens from abuse, neglect, and exploitation.

13 (2) The general assembly finds, therefore, that the medicaid fraud
14 control unit should be recognized in statute and its authority to prosecute
15 medicaid provider fraud and waste, as well as patient abuse, neglect, and
16 exploitation cases, should be codified in order to provide clarity to
17 providers and others regarding what constitutes medicaid fraud and waste
18 under Colorado law, including that convictions for medicaid fraud and
19 waste are limited to providers who knowingly and willfully violate the
20 law.

21 **SECTION 2.** In Colorado Revised Statutes, **add** part 8 to article
22 31 of title 24 as follows:

23 PART 8

1 MEDICAID FRAUD CONTROL

2 **24-31-801. Definitions.** AS USED IN THIS PART 8, UNLESS THE
3 CONTEXT OTHERWISE REQUIRES:

4 (1) "ABUSE" MEANS WILLFUL INFLICTION OF INJURY,
5 UNREASONABLE CONFINEMENT, INTIMIDATION, OR PUNISHMENT WITH
6 RESULTING PHYSICAL OR FINANCIAL HARM OR PAIN OR MENTAL ANGUISH,
7 INCLUDING ANY ACTS OR OMISSIONS THAT CONSTITUTE A CRIMINAL
8 VIOLATION UNDER STATE LAW.

9 (2) "BENEFICIARY" MEANS ANY INDIVIDUAL WHO RECEIVES GOODS
10 OR SERVICES FROM A PROVIDER UNDER THE MEDICAID PROGRAM.

11 (3) "BENEFIT" MEANS ANY BENEFIT AUTHORIZED UNDER THE
12 "COLORADO MEDICAL ASSISTANCE ACT".

13 (4) "CLAIM" MEANS ANY COMMUNICATION SUBMITTED TO THE
14 MEDICAID PROGRAM OR TO A PERSON THAT HAS CONTRACTED WITH THE
15 MEDICAID PROGRAM, WHETHER ORAL, WRITTEN, ELECTRONIC, OR
16 MAGNETIC, THAT IDENTIFIES A GOOD, ITEM, OR SERVICE AS REIMBURSABLE
17 UNDER THE MEDICAID PROGRAM; IS USED TO AUTHORIZE THE PROVISION
18 OF SERVICES UNDER THE MEDICAID PROGRAM; SERVES AS AN INVOICE FOR
19 SERVICES PROVIDED UNDER CONTRACT WITH THE MEDICAID PROGRAM; OR
20 STATES INCOME OR EXPENSE AND IS OR MAY BE USED TO DETERMINE A
21 RATE OF PAYMENT UNDER THE MEDICAID PROGRAM.

22 (5) "COLORADO MEDICAL ASSISTANCE ACT" MEANS ARTICLES 4
23 TO 6 OF TITLE 25.5.

24 (6) "EXPLOITATION" MEANS THE WRONGFUL TAKING OR USE OF
25 FUNDS OR PROPERTY OF A PATIENT RESIDING IN A HEALTH CARE FACILITY
26 OR BOARD AND CARE FACILITY THAT CONSTITUTES A CRIMINAL VIOLATION
27 UNDER STATE LAW.

1 (7) "KNOWINGLY" AND "WILLFULLY" HAVE THE SAME MEANING AS
2 SET FORTH IN SECTION 18-1-501 (6).
3 (8) "MATERIAL INFORMATION" MEANS AN ASSERTION OR
4 INFORMATION DIRECTLY PERTAINING TO A CLAIM, RECORD, STATEMENT,
5 OR REPRESENTATION THAT A REASONABLE PERSON KNOWS OR SHOULD
6 KNOW WILL AFFECT THE ACTION, CONDUCT, OR DECISION OF THE PERSON
7 WHO RECEIVES OR IS INTENDED TO RECEIVE THE ASSERTED INFORMATION
8 IN A MANNER THAT WOULD DIRECTLY OR INDIRECTLY BENEFIT THE PERSON
9 MAKING THE ASSERTION.
10 (9) "MEDICAID FRAUD AND WASTE" MEANS ANY ACT, BY
11 COMMISSION OR OMISSION, AS DESCRIBED IN SECTION 24-31-808.
12 (10) "MEDICAID PROGRAM" MEANS THE MEDICAL ASSISTANCE
13 PROGRAM AUTHORIZED BY TITLE XIX OF THE FEDERAL "SOCIAL SECURITY
14 ACT" AND IMPLEMENTED BY THE "COLORADO MEDICAL ASSISTANCE
15 ACT".
16 (11) "NEGLECT" MEANS WILLFUL FAILURE TO PROVIDE GOODS AND
17 SERVICES NECESSARY TO AVOID PHYSICAL HARM, MENTAL ANGUISH, OR
18 MENTAL ILLNESS, INCLUDING ANY NEGLECT THAT CONSTITUTES A
19 CRIMINAL VIOLATION UNDER STATE LAW.
20 (12) "PERSON" MEANS AN INDIVIDUAL, PUBLIC OR PRIVATE
21 INSTITUTION, CORPORATION, PARTNERSHIP, ASSOCIATION, OR MANAGED
22 CARE ENTITY.
23 (13) "PROVIDER" MEANS ANY PERSON, EMPLOYEE, AGENT,
24 REPRESENTATIVE, CONTRACTOR, OR SUBCONTRACTOR OF A PERSON:
25 (a) WHO HAS ENTERED INTO A PROVIDER AGREEMENT WITH THE
26 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO PROVIDE GOODS
27 OR SERVICES PURSUANT TO THE MEDICAID PROGRAM;

1 (b) WHO HAS ENTERED INTO AN AGREEMENT WITH A PARTY TO
2 SUCH A PROVIDER AGREEMENT UNDER WHICH THE PERSON AGREES TO
3 PROVIDE GOODS OR SERVICES THAT ARE REIMBURSABLE UNDER THE
4 MEDICAID PROGRAM;
5 (c) WHO IS REIMBURSED OR RECEIVES COMPENSATION FOR
6 DELIVERING, PURPORTING TO DELIVER, OR ARRANGING FOR THE DELIVERY
7 OF HEALTH CARE GOODS OR SERVICES FROM THE MEDICAID PROGRAM;
8 (d) WHO IS DEFINED AS SUCH IN SECTION 25.5-4-103 (19); OR
9 (e) WHO IS DEFINED AS SUCH IN SECTION 25.5-4-416 (1).
10 (14) "RECORDS" MEANS ANY MEDICAL, PROFESSIONAL, OR
11 BUSINESS RECORDS RELATING TO THE TREATMENT OR CARE OF ANY
12 BENEFICIARY, TO GOODS OR SERVICES PROVIDED TO ANY BENEFICIARY, OR
13 TO RATES PAID FOR GOODS OR SERVICES PROVIDED TO ANY BENEFICIARY
14 AND ANY RECORDS THAT ARE REQUIRED TO BE KEPT BY THE RULES OF THE
15 MEDICAID PROGRAM.
16 (15) "STATEMENT OR REPRESENTATION" MEANS ANY ORAL,
17 WRITTEN, OR ELECTRONIC COMMUNICATION THAT IS USED TO IDENTIFY AN
18 ITEM OF GOODS OR A SERVICE FOR WHICH REIMBURSEMENT MAY BE MADE
19 UNDER THE MEDICAID PROGRAM OR THAT STATES INCOME AND EXPENSE
20 AND IS OR MAY BE USED TO DETERMINE A RATE OF REIMBURSEMENT
21 UNDER THE MEDICAID PROGRAM, THAT MAY SERVE AS THE BASIS FOR THE
22 CALCULATION OF A PAYMENT TO A PROVIDER, OR THAT MAY SERVE AS A
23 BASIS FOR RECEIVING PAYMENT.
24 (16) "UNIT" MEANS THE MEDICAID FRAUD CONTROL UNIT CREATED
25 IN SECTION 24-31-802.
26 **24-31-802. Medicaid fraud control unit - creation - duties.**
27 THERE IS CREATED WITHIN THE DEPARTMENT OF LAW AND UNDER THE

1 CONTROL OF THE OFFICE OF THE ATTORNEY GENERAL THE MEDICAID
2 FRAUD CONTROL UNIT. THE UNIT SHALL INVESTIGATE AND PROSECUTE
3 FRAUD, MISUSE, WASTE, AND ABUSE COMMITTED BY MEDICAID PROVIDERS
4 AND INVESTIGATE AND PROSECUTE CASES OF PATIENT ABUSE, NEGLECT,
5 AND EXPLOITATION.

6 **24-31-803. Medicaid fraud reporting.** THE DEPARTMENT OF
7 HEALTH CARE POLICY AND FINANCING; THE DEPARTMENT OF PUBLIC
8 HEALTH AND ENVIRONMENT; MANAGED CARE ENTITIES; AND THEIR FISCAL
9 AGENTS, CONTRACTORS, OR SUBCONTRACTORS, SHALL REFER ALL CASES
10 WHERE THE AGENCY OR ENTITY HAS REASONABLE CAUSE TO BELIEVE THAT
11 THERE IS SUSPECTED MEDICAID FRAUD AND WASTE AS WELL AS PATIENT
12 ABUSE, NEGLECT, AND EXPLOITATION TO THE UNIT FOR THE PURPOSE OF
13 INVESTIGATION, CIVIL ACTION, OR CRIMINAL ACTION. NOTHING
14 CONTAINED IN THIS PART 8 PROHIBITS THE ATTORNEY GENERAL FROM
15 PURSUING CASES OF SUSPECTED MEDICAID FRAUD AND WASTE OR PATIENT
16 ABUSE, NEGLECT, AND EXPLOITATION CASES ABSENT SUCH A REFERRAL.

17 **24-31-804. Medicaid fraud control unit - displayed**
18 **information.** THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING
19 MAY REQUIRE THAT A NOTIFICATION BE INCLUDED IN ANY EXPLANATION
20 OF BENEFITS PROVIDED TO A BENEFICIARY THAT EXPLAINS THE PROCESS
21 AND CONTACT INFORMATION FOR REPORTING TO THE UNIT SUSPECTED
22 MEDICAID FRAUD AND WASTE AS WELL AS PATIENT ABUSE, NEGLECT, AND
23 EXPLOITATION. ANY NOTIFICATION REQUIRED PURSUANT TO THIS SECTION
24 MUST BE PLACED IN A CONSPICUOUS LOCATION WITHIN THE EXPLANATION
25 OF BENEFITS AND MUST INCLUDE A STATEMENT THAT ALL REPORTS TO THE
26 UNIT MAY BE FILED ANONYMOUSLY BY PERSONS SUSPECTING FRAUDULENT
27 ACTIVITY.

1 **24-31-805. Medicaid fraud control unit authority and**
2 **responsibilities.** (1) IN CARRYING OUT THE RESPONSIBILITIES OF THIS
3 SECTION, THE UNIT HAS THE AUTHORITY TO:
4 (a) INVESTIGATE AND PROSECUTE CIVIL ACTIONS AND
5 PROCEEDINGS, PURSUANT TO SECTION 25.5-4-301 (2) OR SECTIONS
6 25.5-4-303.5 TO 25.5-4-310;
7 (b) INVESTIGATE AND PROSECUTE CRIMINAL MEDICAID FRAUD AND
8 WASTE PURSUANT TO THIS PART 8 AND TITLE 18;
9 (c) INVESTIGATE AND PROSECUTE PATIENT ABUSE, NEGLECT, OR
10 EXPLOITATION PROVIDED THAT PRIOR TO THE FILING OF ANY CRIMINAL
11 CHARGES INVOLVING PATIENT ABUSE, NEGLECT, OR EXPLOITATION BY
12 EITHER COMPLAINT OR GRAND JURY INDICTMENT THE UNIT SHALL FIRST
13 CONSULT WITH THE DISTRICT ATTORNEY OF THE JUDICIAL DISTRICT WHERE
14 THE PROSECUTION WOULD BE INITIATED. IF AFTER SUCH CONSULTATION,
15 THE DISTRICT ATTORNEY AGREES WITH THE FILING OF CHARGES, THE UNIT
16 SHALL CROSS-DESIGNATE THE DISTRICT ATTORNEY OR HIS OR HER
17 DESIGNATED ASSISTANT OR DEPUTY DISTRICT ATTORNEY AS A SPECIAL
18 ASSISTANT ATTORNEY GENERAL ON THE CASE. IF AFTER SUCH
19 CONSULTATION THE DISTRICT ATTORNEY DOES NOT AGREE WITH THE
20 FILING OF CHARGES, THE UNIT MAY FILE THE CASE INDEPENDENTLY;
21 (d) ISSUE OR CAUSE TO BE ISSUED CIVIL INVESTIGATIVE DEMANDS
22 AND SUBPOENAS OR OTHER PROCESS IN AID OF INVESTIGATIONS AND
23 PROSECUTIONS;
24 (e) ADMINISTER OATHS AND TAKE SWORN STATEMENTS UNDER
25 PENALTY OF PERJURY; AND
26 (f) SERVE AND EXECUTE, IN ANY COUNTY, SEARCH WARRANTS
27 THAT RELATE TO INVESTIGATIONS.

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2 **24-31-806. Civil investigative demands and subpoenas.**
3 (1) CIVIL INVESTIGATIVE DEMANDS ISSUED PURSUANT TO THIS PART 8
4 ARE SUBJECT TO THE REQUIREMENTS OF SECTION 25.5-4-309.
5 (2) SUBPOENAS ISSUED PURSUANT TO THIS PART 8 MUST
6 COMPLY WITH THE PROVISIONS OF ARTICLE 90 OF TITLE 13 AND ANY
7 COURT RULE.
8 (3) ANY TESTIMONY OBTAINED PURSUANT TO A CIVIL
9 INVESTIGATIVE DEMAND ISSUED PURSUANT TO THIS SECTION IS NOT
10 ADMISSIBLE IN EVIDENCE IN ANY CRIMINAL PROSECUTION AGAINST THE
11 PERSON COMPELLED TO TESTIFY PURSUANT TO THE CIVIL INVESTIGATIVE
12 DEMAND. THE PROVISIONS OF THIS SUBSECTION (3) DO NOT PREVENT THE
13 ATTORNEY GENERAL FROM INDEPENDENTLY PRODUCING OR OBTAINING
14 THE SAME OR SIMILAR FACTS, INFORMATION, OR EVIDENCE FOR USE IN ANY
15 CRIMINAL PROSECUTION.
16 **24-31-807. Provider applications - false statements - penalties.**
17 (1) EACH APPLICATION TO PARTICIPATE AS A PROVIDER IN THE MEDICAID
18 PROGRAM, INCLUDING AMENDMENTS, UPDATES, RENEWALS, OR
19 REVALIDATIONS THEREOF; EACH REPORT STATING INCOME OR EXPENSE
20 UPON WHICH RATES OF PAYMENT ARE OR MAY BE BASED; AND EACH
21 INVOICE FOR PAYMENT FOR A GOOD OR SERVICE PROVIDED TO A
22 BENEFICIARY MUST CONTAIN A STATEMENT THAT ALL MATTERS STATED
23 THEREIN ARE TRUE AND ACCURATE, AND THE STATEMENT MUST BE SIGNED
24 BY THE INDIVIDUAL AUTHORIZED BY THE PROVIDER.
25 (2) AN APPLICATION UNDER SUBSECTION (1) OF THIS SECTION IS A
26 PUBLIC RECORD OR INSTRUMENT AS DESCRIBED IN SECTION 18-5-102
27 (1)(d).

1 **24-31-808. Medicaid fraud and waste - penalties - definition.**
2 (1) A PERSON COMMITS MEDICAID FRAUD AND WASTE WHEN THAT PERSON
3 KNOWINGLY AND WILLFULLY:
4 (a) WITH INTENT TO DEFRAUD, MAKES A CLAIM, OR CAUSES A
5 CLAIM TO BE MADE, KNOWING THE CLAIM CONTAINS MATERIAL
6 INFORMATION THAT IS FALSE, IN WHOLE OR IN PART, BY COMMISSION OR
7 OMISSION;
8 (b) WITH INTENT TO DEFRAUD, MAKES A STATEMENT OR
9 REPRESENTATION, OR CAUSES A STATEMENT OR REPRESENTATION TO BE
10 MADE, FOR USE IN OBTAINING OR SEEKING TO OBTAIN AUTHORIZATION TO
11 PROVIDE A GOOD OR A SERVICE, KNOWING THE STATEMENT OR
12 REPRESENTATION CONTAINS MATERIAL INFORMATION THAT IS FALSE, IN
13 WHOLE OR IN PART, BY COMMISSION OR OMISSION;
14 (c) WITH INTENT TO DEFRAUD, MAKES A STATEMENT OR
15 REPRESENTATION, OR CAUSES A STATEMENT OR REPRESENTATION TO BE
16 MADE, FOR USE BY ANOTHER IN OBTAINING A GOOD OR A SERVICE UNDER
17 THE MEDICAID PROGRAM, KNOWING THE STATEMENT OR REPRESENTATION
18 CONTAINS MATERIAL INFORMATION THAT IS FALSE, IN WHOLE OR IN PART,
19 BY COMMISSION OR OMISSION;
20 (d) WITH INTENT TO DEFRAUD, MAKES A STATEMENT OR
21 REPRESENTATION, OR CAUSES A STATEMENT OR REPRESENTATION TO BE
22 MADE, FOR USE IN QUALIFYING AS A PROVIDER OF A GOOD OR SERVICE
23 UNDER THE MEDICAID PROGRAM, KNOWING THE STATEMENT OR
24 REPRESENTATION CONTAINS MATERIAL INFORMATION THAT IS FALSE, IN
25 WHOLE OR IN PART, BY COMMISSION OR OMISSION;
26 (e) WITH INTENT TO DEFRAUD, SIGNS OR SUBMITS, OR CAUSES TO
27 BE SIGNED OR SUBMITTED, A STATEMENT DESCRIBED IN SECTION

24-31-807 WITH THE KNOWLEDGE THAT THE APPLICATION, REPORT, CLAIM, OR INVOICE FOR SERVICES PROVIDED UNDER CONTRACT CONTAINS MATERIAL INFORMATION THAT IS FALSE, IN WHOLE OR IN PART, BY COMMISSION OR OMISSION;

(f) EXCEPT AS AUTHORIZED BY LAW, AND WITHOUT CONSENT OF THE BENEFICIARY, CHARGES ANY BENEFICIARY MONEY OR OTHER CONSIDERATION IN ADDITION TO OR IN EXCESS OF RATES OF REMUNERATION ESTABLISHED UNDER THE MEDICAID PROGRAM FOR THE SERVICES PROVIDED TO THE BENEFICIARY;

(g) HAVING SUBMITTED A CLAIM FOR OR RECEIVED PAYMENT FOR A GOOD OR A SERVICE UNDER THE MEDICAID PROGRAM:

(I) WITH THE INTENT TO PREVENT THEIR DISCLOSURE AND REVIEW BY REPRESENTATIVES OF THE STATE OR THEIR DESIGNEES, ALTERS, FALSIFIES, OR CONCEALS ANY RECORDS THAT ARE NECESSARY TO FULLY DISCLOSE THE NATURE OF ALL GOODS OR SERVICES FOR WHICH THE CLAIM WAS SUBMITTED, OR FOR WHICH REIMBURSEMENT WAS RECEIVED; DESTROYS OR REMOVES SUCH RECORDS; OR FAILS TO MAINTAIN SUCH RECORDS AS REQUIRED BY LAW OR THE RULES OF THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING FOR A PERIOD OF AT LEAST SIX YEARS FOLLOWING THE DATE ON WHICH PAYMENT WAS RECEIVED; OR

(II) ALTERS, FALSIFIES, OR CONCEALS ANY RECORDS THAT ARE NECESSARY TO DISCLOSE FULLY ALL INCOME AND EXPENDITURES UPON WHICH RATES OF REIMBURSEMENTS WERE BASED, OR DESTROYS OR REMOVES SUCH RECORDS WITH THE INTENT TO PREVENT THEIR REVIEW BY REPRESENTATIVES OF THE STATE OR THEIR DESIGNEES;

(h) MAKES OR CAUSES TO BE MADE A STATEMENT OR REPRESENTATION FOR USE IN QUALIFYING AS A PROVIDER OF A GOOD OR

1 SERVICE UNDER THE MEDICAID PROGRAM STATING THAT HE OR SHE IS IN
2 COMPLIANCE WITH ALL PROVISIONS OF SECTION 25.5-4-416, KNOWING
3 THAT THE STATEMENT OR REPRESENTATION CONTAINS MATERIAL
4 INFORMATION THAT IS FALSE, IN WHOLE OR IN PART, THROUGH
5 COMMISSION OR OMISSION; OR
6 (i) EXCEPT AS AUTHORIZED BY LAW, AND WITHOUT CONSENT OF
7 THE BENEFICIARY, RECOVERS OR ATTEMPTS TO RECOVER PAYMENT FROM
8 A BENEFICIARY UNDER THE MEDICAID PROGRAM OR FROM THE
9 BENEFICIARY'S FAMILY OR FAILS TO CREDIT THE STATE FOR PAYMENTS
10 RECEIVED FROM OTHER SOURCES.
11 (2) ABSENT KNOWING OR WILLFUL CONDUCT, A PROVIDER IS NOT
12 LIABLE FOR MEDICAID FRAUD AND WASTE COMMITTED BY A THIRD PARTY.
13 A PROVIDER DOES NOT KNOWINGLY AND WILLFULLY VIOLATE A
14 REQUIREMENT, STANDARD, OR DIRECTIVE CONTAINED IN WRITTEN
15 MATERIALS ISSUED BY THE DEPARTMENT OF HEALTH CARE POLICY AND
16 FINANCING THAT WAS NOT PROMULGATED IN ACCORDANCE WITH THE
17 "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24,
18 UNLESS THE PROVIDER HAS ACTUAL KNOWLEDGE OF SUCH REQUIREMENT,
19 STANDARD, OR DIRECTIVE AT THE TIME OF THE VIOLATION.
20 (3) MEDICAID FRAUD IN VIOLATION OF SUBSECTIONS (1)(a) TO
21 (1)(c) OR (1)(f) OF THIS SECTION IS:
22 (a) A CLASS 1 PETTY OFFENSE WHERE THE AGGREGATE AMOUNT OF
23 PAYMENTS ILLEGALLY CLAIMED OR RECEIVED IS LESS THAN FIFTY
24 DOLLARS;
25 (b) A CLASS 3 MISDEMEANOR WHERE THE AGGREGATE AMOUNT OF
26 PAYMENTS ILLEGALLY CLAIMED OR RECEIVED IS FIFTY DOLLARS OR MORE
27 BUT LESS THAN THREE HUNDRED DOLLARS;

1 (c) A CLASS 2 MISDEMEANOR WHERE THE AGGREGATE AMOUNT OF
2 PAYMENTS ILLEGALLY CLAIMED OR RECEIVED IS THREE HUNDRED
3 DOLLARS OR MORE BUT LESS THAN SEVEN HUNDRED FIFTY DOLLARS;
4 (d) A CLASS 1 MISDEMEANOR WHERE THE AGGREGATE AMOUNT OF
5 PAYMENTS ILLEGALLY CLAIMED OR RECEIVED IS SEVEN HUNDRED FIFTY
6 DOLLARS OR MORE BUT LESS THAN TWO THOUSAND DOLLARS;
7 (e) A CLASS 6 FELONY WHERE THE AGGREGATE AMOUNT OF
8 PAYMENTS ILLEGALLY CLAIMED OR RECEIVED IS TWO THOUSAND DOLLARS
9 OR MORE BUT LESS THAN FIVE THOUSAND DOLLARS;
10 (f) A CLASS 5 FELONY WHERE THE AGGREGATE AMOUNT OF
11 PAYMENTS ILLEGALLY CLAIMED OR RECEIVED IS FIVE THOUSAND DOLLARS
12 OR MORE BUT LESS THAN TWENTY THOUSAND DOLLARS;
13 (g) A CLASS 4 FELONY WHERE THE AGGREGATE AMOUNT OF
14 PAYMENTS ILLEGALLY CLAIMED OR RECEIVED IS TWENTY THOUSAND
15 DOLLARS OR MORE BUT LESS THAN ONE HUNDRED THOUSAND DOLLARS;
16 (h) A CLASS 3 FELONY WHERE THE AGGREGATE AMOUNT OF
17 PAYMENTS ILLEGALLY CLAIMED OR RECEIVED IS ONE HUNDRED THOUSAND
18 DOLLARS OR MORE BUT LESS THAN ONE MILLION DOLLARS; AND
19 (i) A CLASS 2 FELONY WHERE THE AGGREGATE AMOUNT OF
20 PAYMENTS ILLEGALLY CLAIMED OR RECEIVED IS ONE MILLION DOLLARS OR
21 MORE.
22 (4) MEDICAID FRAUD AS A VIOLATION OF SUBSECTION (1)(d),
23 (1)(e), (1)(g), (1)(h), OR (1)(i) OF THIS SECTION IS A CLASS 5 FELONY AND
24 SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-401.
25 (5) A PERSON MAY NOT BE CONVICTED OF MEDICAID FRAUD AND
26 WASTE IN ADDITION TO THEFT OR FORGERY WITH RESPECT TO THE SAME
27 TRANSACTION.

1 **24-31-809. Unlawful remuneration - penalties.** (1) EXCEPT AS
2 PROVIDED IN SUBSECTION (2) OF THIS SECTION, IT IS UNLAWFUL FOR ANY
3 PERSON TO KNOWINGLY OFFER, PAY, SOLICIT, OR RECEIVE ANY
4 REMUNERATION INCLUDING, BUT NOT LIMITED TO, ANY KICKBACK, BRIBE,
5 OR REBATE, DIRECTLY OR INDIRECTLY, OVERTLY OR COVERTLY, IN CASH
6 OR IN KIND:
7 (a) IN RETURN FOR THE REFERRAL OF AN INDIVIDUAL TO A PERSON
8 FOR THE FURNISHING OR ARRANGING OF ANY GOOD OR SERVICE FOR WHICH
9 PAYMENT MAY BE MADE IN WHOLE OR IN PART PURSUANT TO THE
10 "COLORADO MEDICAL ASSISTANCE ACT"; OR
11 (b) IN RETURN FOR PURCHASING, LEASING, ORDERING, OR
12 ARRANGING FOR OR RECOMMENDING THE PURCHASE, LEASE, OR ORDERING
13 OF ANY GOOD, FACILITY, SERVICE, OR ITEM FOR WHICH PAYMENT MAY BE
14 MADE IN WHOLE OR IN PART PURSUANT TO THE "COLORADO MEDICAL
15 ASSISTANCE ACT".
16 (2) IT SHALL NOT BE UNLAWFUL UNDER SUBSECTION (1) OF THIS
17 SECTION IF THE REMUNERATION OBTAINED BY THE PROVIDER OR OTHER
18 ENTITY IS:
19 (a) PERMITTED PURSUANT TO SECTION 25.5-4-414 OR ANY
20 STATUTORY EXCEPTIONS OR SAFE HARBOR REGULATIONS UNDER THE
21 FEDERAL "ANTI-KICKBACK STATUTE", 42 U.S.C. SEC. 1320a-7b (b), AS
22 AMENDED;
23 (b) PROPERLY DISCLOSED AND APPROPRIATELY REFLECTED IN THE
24 CLAIMS OR COST DOCUMENTS SUBMITTED UNDER THE "COLORADO
25 MEDICAL ASSISTANCE ACT";
26 (c) PAID BY AN EMPLOYER TO AN EMPLOYEE WHO HAS A BONA FIDE
27 EMPLOYMENT RELATIONSHIP WITH SUCH EMPLOYER FOR EMPLOYMENT IN

1 PROVIDING THE SERVICE; OR

2 (d) PAID BY A VENDOR OF GOODS OR SERVICES TO A PERSON
3 AUTHORIZED TO ACT AS A PURCHASING AGENT FOR A GROUP OF
4 PROVIDERS, AND:

5 (I) THE PERSON HAS A WRITTEN CONTRACT WITH THE PROVIDERS
6 THAT SPECIFIES THE AMOUNT TO BE PAID TO THE PERSON, WHICH AMOUNT
7 MAY BE A FIXED AMOUNT OR A FIXED PERCENTAGE OF THE VALUE OF THE
8 PURCHASE MADE BY THE PERSON; OR

9 (II) IN THE CASE OF A PROVIDER OF SERVICES, THE PERSON
10 DISCLOSES, IN SUCH FORM AND MANNER AS THE DEPARTMENT OF HEALTH
11 CARE POLICY AND FINANCING REQUIRES, TO THE PROVIDER AND, UPON
12 REQUEST, TO THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING
13 THE AMOUNT RECEIVED FROM EACH SUCH VENDOR WITH RESPECT TO
14 PURCHASES MADE BY OR ON BEHALF OF THE PROVIDER.

15 (3) A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR AND
16 SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-501.

17 **24-31-810. Other remedies available.** (1) THE PROVISIONS OF
18 THIS PART 8 ARE NOT INTENDED TO BE EXCLUSIVE REMEDIES AND DO NOT
19 PRECLUDE THE USE OF ANY OTHER CRIMINAL PROSECUTION DIRECTLY
20 RELATED TO CRIMINAL MEDICAID FRAUD AND WASTE, AS WELL AS
21 CRIMINAL PATIENT ABUSE, NEGLECT, AND EXPLOITATION, OR ANY OTHER
22 CIVIL REMEDY FOR ANY ACT THAT IS IN VIOLATION OF THIS PART 8.

23 (2) IN ADDITION TO ANY PENALTIES PROVIDED FOR IN THIS PART 8,
24 A CLAIM UNDER THE "COLORADO MEDICAL ASSISTANCE ACT" THAT
25 INCLUDES ITEMS OR SERVICES RESULTING FROM A VIOLATION OF THIS PART
26 8 OR THE FEDERAL "ANTI-KICKBACK STATUTE", 42 U.S.C. 1320a-7b (b),
27 AS AMENDED, CONSTITUTES A FALSE CLAIM FOR PURPOSES OF THE

1 "COLORADO MEDICAID FALSE CLAIMS ACT", SECTIONS 25.5-4-303.5 TO
2 25.5-4-310.
3 **24-31-811. Limitation of action - three years.** AN ACTION
4 BROUGHT UNDER THIS PART 8 MUST BE COMMENCED WITHIN THREE YEARS
5 AFTER THE DATE OF DISCOVERY OF THE COMMISSION OF THE OFFENSE, BUT
6 NO LATER THAN SIX YEARS AFTER THE DATE OF THE COMMISSION OF THE
7 OFFENSE. WHEN A VIOLATION OF THIS SECTION IS BASED ON A SERIES OF
8 ACTS PERFORMED AT DIFFERENT TIMES, THE LIMITATION PERIOD STARTS
9 AT THE TIME THE LAST ACT IN THE SERIES IS DISCOVERED.
10
11 **SECTION 3. Act subject to petition - effective date.** This act
12 takes effect January 1, 2019; except that, if a referendum petition is filed
13 pursuant to section 1 (3) of article V of the state constitution against this
14 act or an item, section, or part of this act within the ninety-day period
15 after final adjournment of the general assembly, then the act, item,
16 section, or part will not take effect unless approved by the people at the
17 general election to be held in November 2018 and, in such case, will take
18 effect on January 1, 2019, or on the date of the official declaration of the
19 vote thereon by the governor, whichever is later.