

2023 HOUSE HUMAN SERVICES

HB 1435

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1435
1/31/2023

Relating to Medicaid fraud retention of records requirements; and to provide a penalty.

Chairman Weisz called the meeting to order at 3:01 PM

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, and Gretchen Dobervich present. Rep. Jayme Davis not present.

Discussion Topics:

- Ability to audit.
- New criminal statute
- Felonies committed by corporations.

Representative Beltz introduced HB 1435 with verbal supportive testimony.

Marina Spahr, Assistant Attorney General and Director of the Medicaid Fraud Control Unit with the Office of the Attorney General, testimony in support of bill. (#17904)

Chairman Weisz adjourned the meeting at 3:24 PM.

Phillip Jacobs, Committee Clerk By: Leah Kuball

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1435
2/8/2023

Relating to Medicaid fraud retention of records requirements; and to provide a penalty.

Chairman Weisz called the meeting to order at 3:10 PM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich. All present.

Discussion Topics:

- Committee work
- Medicaid investigations
- Medicare fraud
- Audits

Vice Chairman Ruby moved a DO NOT PASS on HB 1435

Representative Prichard seconded motion.

Roll call vote:

Representatives	Vote
Representative Robin Weisz	N
Representative Matthew Ruby	Y
Representative Karen A. Anderson	N
Representative Mike Beltz	N
Representative Jayme Davis	N
Representative Gretchen Dobervich	N
Representative Clayton Fegley	N
Representative Kathy Frelich	N
Representative Dawson Holle	Y
Representative Dwight Kiefert	N
Representative Carrie McLeod	N
Representative Todd Porter	N
Representative Brandon Prichard	Y
Representative Karen M. Rohr	N

Motion fails: 3-11-0

Chairman Weisz adjourned the meeting at 3:34 PM.

Phillip Jacobs, Committee Clerk By: Leah Kuball

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1435
2/13/2023

Relating to Medicaid fraud retention of records requirements; and to provide a penalty.

Chairman Weisz called the meeting to order at 3:50 PM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich. All present.

Discussion Topics:

- Committee work
- Proposed amendments. (23.0948.02001)
- Retention time-frame

Representative Porter moved to adopt amendment (23.0948.02001).

Seconded by Representative Beltz.

Voice vote: Motion carries

Representative Beltz moved a DO PASS as amended on HB 1435. (23.0948.02001)

Seconded by Representative Anderson.

Roll Call Vote:

Representatives	Vote
Representative Robin Weisz	Y
Representative Matthew Ruby	Y
Representative Karen A. Anderson	Y
Representative Mike Beltz	Y
Representative Jayme Davis	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y
Representative Kathy Frelich	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Carrie McLeod	Y
Representative Todd Porter	Y
Representative Brandon Prichard	Y
Representative Karen M. Rohr	Y

House Human Services Committee

HB 1435

2/13/2023

Page 2

Motion carries: 14-0-0.

Bill carrier: Representative Beltz.

Chairman Weisz adjourned the meeting at 3:56 PM.

Phillip Jacobs, Committee Clerk By: Leah Kuball

February 13, 2023

JA
2-13-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1435

Page 1, line 12, remove "a period of at least seven"

Page 1, remove line 13

Page 1, line 14, replace "received, whichever date is later," with "the length of time stated in the most current provider agreement applicable to that provider,"

Page 1, line 15, remove "within the seven years"

Page 1, remove line 16

Page 1, line 17, replace "whichever date is later," with "in a manner inconsistent with the most current provider agreement applicable to that provider,"

Page 1, line 17, remove the underscored colon

Page 1, line 18, replace "a. A" with "a"

Page 1, line 20, replace "one" with "ten"

Page 1, line 21, after "dollars" insert "and a class C felony if the value is greater than ten thousand dollars"

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 9

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1435: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1435 was placed on the Sixth order on the calendar.

Page 1, line 12, remove "a period of at least seven"

Page 1, remove line 13

Page 1, line 14, replace "received, whichever date is later." with "the length of time stated in the most current provider agreement applicable to that provider."

Page 1, line 15, remove "within the seven years"

Page 1, remove line 16

Page 1, line 17, replace "whichever date is later." with "in a manner inconsistent with the most current provider agreement applicable to that provider."

Page 1, line 17, remove the underscored colon

Page 1, line 18, replace "a. A" with "a"

Page 1, line 20, replace "one" with "ten"

Page 1, line 21, after "dollars" insert "and a class C felony if the value is greater than ten thousand dollars"

Page 1, remove lines 22 and 23

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Renumber accordingly

2023 SENATE HUMAN SERVICES

HB 1435

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1435
3/13/2023

Relating to Medicaid fraud retention of records requirements; and to provide a penalty.

3:23 PM **Madam Chair Lee** called the hearing to order. **Senators Lee, Cleary, Clemens, K. Roers, Weston, and Hogan** were present.

Discussion Topics:

- Applicable to service
- Penalty
- Violation
- Medicaid fraud
- Case investigations
- Consequences
- Criminal statute

3:23 PM **Representative Mike Belk, District 20**, introduced HB1435 in favor verbally.

3:25 PM **Marina Spahr, Assistant Attorney, General Director Medicaid Fraud Control Unit, State of North Dakota Office of Attorney General**, testified in favor. #23972, #24522.

3:26 PM **Marina Spahr** provided additional information.

3:46 PM **Madam Chair Lee** adjourned the hearing.

Patricia Lahr, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1435
3/14/2023

Relating to Medicaid fraud retention of records requirements; and to provide a penalty.

9:23 AM **Madam Chair Lee** called the meeting to order. **Senators Lee, Cleary, Clemens, Weston**, are present. **Hogan, K. Roers** were absent.

Discussion Topics

- Violation
- Medicaid fraud

Senator Lee calls for discussion.

Senator Cleary moved **DO PASS**.

Senator Weston seconded the motion.

Roll call vote.

Senators	Vote
Senator Judy Lee	Y
Senator Sean Cleary	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	AB
Senator Kristin Roers	AB
Senator Kent Weston	Y

Motion passed 4-0-2.

Senator Cleary will carry HB 1435.

9:24 **Madam Chair Lee** adjourned the meeting.

Patricia Lahr, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1435, as engrossed: Human Services Committee (Sen. Lee, Chairman)
recommends **DO PASS** (4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed HB 1435 was placed on the Fourteenth order on the calendar. This bill
does not affect workforce development.

TESTIMONY

HB 1435

MEDICAID FRAUD CONTROL UNIT

OFFICE OF ATTORNEY GENERAL

EST. AUGUST 2019

LAW ENFORCEMENT
AGENCY

HEALTH OVERSIGHT
AGENCY

PROVIDER

NOT RECIPIENT

When MFCU can investigate a case:

- When there is billing fraud by a Medicaid provider
- If a Medicaid recipient is abused, neglected, or exploited financially AND there is a Medicaid nexus – Medicaid application, facility that accepts Medicaid
- If a provider, that accepts Medicaid payments, abuses, neglects, exploits, or harms a patient, whether that patient receives Medicaid or not

Medicaid ~~Medicare~~

Medicaid is health care coverage for low income families & individuals

ND spent \$648 million on Medicaid in 2020 – roughly \$1.3 billion a biennium

10-14% of ND population covered by Medicaid – 70,000 households & 125,000 individuals

More than 29,000 providers in ND

Fraud per year nationally 1%-2% of the Medicaid expenditures - or 6.5 million per year in ND (1%)

TYPES OF INVESTIGATIONS

- Billing for services/medication not provided
- Billing for more than 24 hours in a day
- Not having documents/records to support the billing
- Billing while on vacation
- Billing a more expensive service than actually provided
- Billing for unlicensed professional care
- Billing for valueless services
- Abuse or neglect of patients (assaults, homicides, GSI, theft)
- Drug Diversion – Opioid Overprescribing

HB 1435

new criminal statute

- This statute creates a new crime. This new crime addresses situations that the MFCU sees very often when investigating cases. MFCU has experienced several providers who do not have or have failed to provide records or documentation to support the Medicaid dollars they billed and were paid.
- Another way of saying this is that some providers are receiving money from the state Medicaid program without actually documenting that the purported services were provided or providing proof that the services were provided.
- That's a big problem because it stops MFCU's and DHHS's ability to audit or investigate fraud. If records are not provided, then no one can see that fraud is occurring. This benefits fraudulent providers. The new crime detailed in HB 1435 would remedy that.

HB 1435

new criminal statute

- All responsibilities required in HB 1435 are already required by DHHS. This bill does **not** add requirements it only penalizes those providers that do not comply with the requirements already in place.
- Providers when they agree to provide services and get paid by Medicaid are already required by a DHHS provider agreement to create records at the time the services are provided, maintain those records for 7 years and provide those records to DHHS when asked to do so.
- This bill uses the same criminal offense grading system that is already used for the other Medicaid fraud crimes in NDCC 50-24.8-11 and other crimes of theft.
- Consequences of subsections 6 and 7 are also already codified and used for the other Medicaid fraud crimes.
- MFCU wanted to be fair to those providers who for good reason no longer had records due to a natural disaster or because of an act that they had no control over, so an affirmative defense was added.



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

MARINA SPAHR
ASSISTANT ATTORNEY GENERAL
DIRECTOR MFCU

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MEDICAID FRAUD CONTROL UNIT

OFFICE OF ATTORNEY GENERAL

EST. AUGUST 2019

LAW ENFORCEMENT
AGENCY

HEALTH OVERSIGHT
AGENCY

PROVIDER

NOT RECIPIENT

Medicaid ~~Medicare~~

Medicaid is health care coverage for low income families & individuals

ND spends approximately \$3 billion a biennium on Medicaid Program

10-14% of ND population covered by Medicaid – 70,000 households & 125,000 individuals

More than 29,000 providers in ND

Fraud per year nationally 1%-2% of Medicaid expenditures - or \$15 million per year in ND (1%)

When MFCU can investigate a case:

- When there is billing fraud by a Medicaid provider
- If a Medicaid recipient is abused, neglected, or exploited financially, by a provider
- If a provider, that accepts Medicaid payments, abuses, neglects, exploits, or harms a patient, whether that patient receives Medicaid or not

TYPES OF INVESTIGATIONS

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HB 1435

new criminal statute

- This statute creates a new crime. This new crime addresses situations that the MFCU sees very often when investigating cases. MFCU has experienced several providers who do not have or have failed to provide records or documentation to support the Medicaid dollars they billed and were paid.
- Another way of saying this is that some providers are receiving money from the state Medicaid program without actually documenting that the purported services were provided or providing proof that the services were provided.
- That's a big problem because it stops MFCU's and DHHS's ability to audit or investigate fraud. If records are not provided, then no one can see that fraud is occurring. This benefits fraudulent providers. The new crime detailed in HB 1435 would remedy that.

HB 1435

new criminal statute

- All responsibilities required in HB 1435 are already required by DHHS. This bill does **not** add requirements it only penalizes those providers that do not comply with the requirements already in place.
- Providers when they agree to provide services and get paid by Medicaid are already required by a DHHS provider agreement to create records at the time the services are provided, maintain those records and provide those records to DHHS when asked to do so.
- The penalty section was amended in the House Human Services Committee. They preferred a misdemeanor and C Felony consequence.
- Consequences of subsections 6 and 7 are also already codified and used for the other Medicaid fraud crimes.
- MFCU wanted to be fair to those providers who for good reason no longer had records due to a natural disaster or because of an act that they had no control over, so an affirmative defense was added.



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50-24.8-11. Medicaid fraud - Criminal penalty.

1. A person commits a criminal offense under this section if the person knowingly:
 - a. Presents for allowance, for payment, or for the purpose of concealing, avoiding, or decreasing an obligation to pay a false or fraudulent medical assistance claim, bill, account, voucher, or writing to a public agency, public servant, or contractor authorized to allow or pay medical assistance claims;
 - b. Solicits, accepts, offers, or provides any remuneration, including a kickback, bribe, or rebate in exchange for purchasing, leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or items from a provider for which payment may be made under the Medicaid program;
 - c. Solicits, accepts, offers, or provides any remuneration, including a kickback, bribe, or rebate in exchange for a fee for referring a recipient to another provider or arranging for the furnishing of services or items for which payment may be made under the Medicaid program;
 - d. Fails or refuses to provide covered medically necessary services to eligible recipients as required with respect to a managed care contract, health maintenance organization contract, or similar contract or subcontract under the Medicaid program; or
 - e. Conspires with another person to commit a violation of this section.
2. Conduct or activity that does not violate or which is protected under the provisions of, or federal regulations adopted under 42 U.S.C. 1395nn and 42 U.S.C. 1320a-7b(b), is not considered an offense under subdivision b of subsection 1, and the conduct or activity must be accorded the same protections allowed under federal laws and regulations.
3. A person convicted of this offense involving payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims not exceeding one thousand dollars in value is guilty of a class A misdemeanor.
4. Notwithstanding subsection 3, if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims of the Medicaid fraud were part of a common scheme and exceed one thousand dollars in value, a violation of this chapter is a class C felony.
5. Notwithstanding subsection 3, if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims of the Medicaid fraud were part of a common scheme and exceed ten thousand dollars in value but do not exceed fifty thousand dollars, a violation of this chapter is a class B felony.
6. Notwithstanding subsection 3, if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims of the Medicaid fraud were part of a common scheme and exceed fifty thousand dollars in value, a violation of this chapter is a class A felony.
 - a. For purposes of imposing sentence for a conviction under this chapter, the value of payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims involved is the greater of the value of Medicaid payments or benefits received as a result of the illegal conduct or activity or the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claim involved.
 - b. Amounts involved in Medicaid fraud committed pursuant to a common scheme or the same transaction may be aggregated in determining the value involved.
 - c. A person convicted of the offense of Medicaid fraud must be suspended from participation in the Medicaid program:
 - (1) For any period of time not less than one year for a first offense or the person may be permanently terminated from participation in the medical assistance program;
 - (2) For any period of time not less than three years for a second offense, or the person may be permanently terminated from participation in the medical assistance program; or
 - (3) Permanently for a third offense.
7. In addition to any other penalty provided by law, a person convicted of Medicaid fraud is not entitled to bill or collect from the recipient, the Medicaid program, or any other third-party payer for the services or items involved and shall repay to the Medicaid program any payments or benefits obtained by any person for the services or items involved.