

CHAPTER NO. 853

SENATE BILL NO. 2910

**By Clabough, Crowe, Williams, Atchley, Blackburn, Burchett, Burks, Carter, Cohen, Cooper, Crutchfield, Davis, Elsea, Ford, Fowler, Graves, Haun, Haynes, Herron, Kurita, Kyle, Leatherwood, McNally, Miller, Person, Ramsey, J. Springer, Mr. Speaker Wilder**

Substituted for: House Bill No. 2471

By Wood, Walker, Sharp, Bittle, Scroggs, Sargent, Mumpower, Hagood, Godsey, Beavers, David Davis, Pleasant, Dunn, Montgomery, Hargett, Buttry, Newton, Patton, Bunch, Goins, Baird, Boyer, Black, Todd, Eckles, Ford, McDaniel, McCord, Hood, Williams, Odom, Bone, Givens, White, Maddox, Fitzhugh, Hargrove, Mr. Speaker Naifeh

AN ACT To amend Tennessee Code Annotated, Title 71, Chapter 5, Part 1, relative to the TennCare program.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 71-5-118, is amended by deleting subsections (b) and (c), by adding the following as new subsections and by renumbering the remaining subsections accordingly:

(b)(1)(A) A person, including an enrollee, recipient or applicant, commits an offense who, knowingly, obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement, representation, or impersonation, or by concealment of any material fact, or by any other fraudulent means, or in any manner not authorized by this part or by the regulations or procedures issued or implemented by the department pursuant to this part, medical assistance benefits or any assistance provided pursuant to this part to which such person is not entitled, or of a greater value than that to which such person is authorized.

(B) An offense under this subdivision is a Class E felony.

(2)(A) A person, firm, corporation, partnership or any other entity, including a vendor, other than an enrollee, recipient, or applicant, commits an offense who, knowingly, obtains, or attempts to obtain, or aids or abets any person or entity to obtain, by means of a willfully false statement, report, representation, claim or impersonation, or by concealment of any material fact, or by any other fraudulent means, or in any manner not authorized by this part or by the regulations or procedures issued or implemented by the department pursuant to this part, medical assistance payments pursuant to this part to which such person or entity is not entitled, or of a greater value than that to which such person or entity is authorized. For purposes of this subsection, "attempts to obtain" includes making or presenting to any person a claim for any payment under this part, knowing such claim to be false, fictitious or fraudulent.

(B) An offense under this subdivision is a Class D felony unless the value of the property or services obtained meets the threshold set for a Class B or Class C offense under Section 39-14-105, in which case the appropriate higher class shall apply. In addition to any other penalty, a sentence that includes a fine, when imposed upon an entity or upon a person for actions benefiting an entity, shall include the corporation fine specified in Section 40-35-111.

(3)(A) A person, firm, corporation, partnership or any other entity commits an offense who provides a willfully false statement regarding another's medical condition or eligibility for insurance, to aid or abet another in obtaining or attempting to obtain medical assistance payments, medical assistance benefits or any assistance provided under this part to which the person is not entitled or to a greater value than that to which such person is authorized. For purposes of this subsection, "attempting to obtain" includes making or presenting to any person a claim for any payment under this part, knowing such claim to be false, fictitious or fraudulent.

(B) An offense under this subdivision is a Class D felony unless the value of the property or services obtained meets the threshold set for a Class B or Class C offense under Section 39-14-105, in which case the appropriate higher class shall apply. In addition to any other penalty, a sentence that includes a fine, when imposed upon an entity or upon a person for actions benefiting an entity, shall include the corporation fine specified in Section 40-35-111.

(c)(1) In addition to any other penalties provided for any person, firm, corporation, partnership or other entity under subsection (b), the court shall also:

(A) order restitution to the department in the greater of the total amount of all medical assistance payments made to all providers, or the total amount of all payments to a managed care entity, related to the services underlying the offense; and

(B) report the person or entity to the appropriate professional licensure board or the Department of Commerce and Insurance for disciplinary action.

(2) In addition to any other penalties provided under this section, the court may also, to the full extent permitted by federal law and the TennCare waiver as interpreted by the Health Care Financing Administration, order any such person or entity disqualified from participation in the medical assistance program for a period of twelve (12) months for a first offense, twenty-four (24) months for a second offense, and permanently for a subsequent offense.

(3) A subsequent denial of eligibility or denial of a claim for payment does not, of itself, establish proof of falsity of a statement, representation, report or claim for payment under subsection (b).

(d) Nothing in this section shall be construed as prohibiting a person or entity who violates the provisions of this section from being prosecuted for theft of property or services under Title 39, Part 14.

(e) In addition to any other remedy available, including those provided in this section, the state may recover from any person or their estate, or from a firm, corporation, partnership or other entity, including a vendor, the amount of medical assistance benefits or payments improperly paid as a result of fraudulent means or actions not authorized by this part.

SECTION 2. Tennessee Code Annotated, Section 71-5-186, is deleted in its entirety.

SECTION 3. Tennessee Code Annotated, Section 71-5-110, is amended by adding the following as an appropriately designated subsection:

(-)(1) Unless expressly exempted by rule of the department from reporting under this section, each enrollee in and applicant for TennCare uninsured or uninsurable coverage, including a person who applies on behalf of a family member, shall notify the bureau of any material change affecting any information given to the bureau or the bureau's designee on or with the person's TennCare application. The enrollee or applicant shall be responsible for mailing documentation of any such change within two (2) months of any change. The bureau shall update the person's file to reflect such changes. An enrollee or applicant, including a person who applies on behalf of a family member, commits the offense of theft of services under Title 39, Part 14, who intentionally fails to so notify the bureau of any material change that would, if properly reported, result in ineligibility or an increase in the amount of any premium or cost sharing.

(2) The department shall ensure that application forms for TennCare uninsured or uninsurable coverage under this part used after the effective date of this act apprise applicants of the requirements of this act.

SECTION 4. This act shall not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.


SECTION 5. No later than October 1, 2000, the department shall report to the TennCare Oversight Committee of the General Assembly recommendations for establishing duties of Medicaid applicants and enrollees to report material changes affecting eligibility. Such recommendations shall identify any categories of persons for whom, based upon program requirements, reporting should not be required; shall specify procedures for reporting; shall identify to whom such reporting should occur; and shall recommend criminal sanctions for noncompliance that constitutes theft of services.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.


SECTION 7. This act shall take effect upon July 1, 2000, the public welfare requiring it.

PASSED: May 25, 2000

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 31<sup>st</sup> day of May 2000

  
DON SUNDQUIST, GOVERNOR