

overpayment where the recovery would be against equity and good conscience.

NEW SECTION. Sec. 2. There is added to chapter 51.32 RCW a new section to read as follows:

Notwithstanding any other provisions of law, any overpayments previously recovered under the provisions of RCW 51.32.220 as now or hereafter amended shall be limited to six months' overpayments. Where greater recovery has already been made, the director, in his discretion, may make restitution in those cases where an extraordinary hardship has been created.

NEW SECTION. Sec. 3. This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after the effective date of this 1979 act, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively.

NEW SECTION. Sec. 4. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 5. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 28, 1979.

Passed the House April 9, 1979.

Approved by the Governor May 10, 1979.

Filed in Office of Secretary of State May 10, 1979.

---

## CHAPTER 152

[Engrossed Substitute Senate Bill No. 2337]

### PUBLIC ASSISTANCE, MEDICAL CARE SERVICES—IMPROPER, ILLEGAL RECEIPT OF BENEFIT PAYMENTS—CIVIL, CRIMINAL PENALTIES

AN ACT Relating to medical care; adding new sections to chapter 74.09 RCW; defining crimes; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to chapter 74.09 RCW a new section to read as follows:

The legislature finds and declares it to be in the public interest and for the protection of the health and welfare of the residents of the state of Washington that a proper regulatory and inspection program be instituted in connection with the providing of medical, dental, and other health services to recipients of public assistance and medically indigent persons. In

order to effectively accomplish such purpose and to assure that the recipient of such services receives such services as are paid for by the state of Washington, the acceptance by the recipient of such services, and by practitioners of reimbursement for performing such services, shall authorize the secretary of the department of social and health services or his designee, to inspect and audit all records in connection with the providing of such services.

NEW SECTION. Sec. 2. There is added to chapter 74.09 RCW a new section to read as follows:

(1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an individual public assistance recipient of health care, shall, on behalf of himself or others, obtain or attempt to obtain benefits or payments under this chapter in a greater amount than that to which entitled by means of:

(a) A wilful false statement;

(b) By wilful misrepresentation, or by concealment of any material facts; or

(c) By other fraudulent scheme or device, including, but not limited to:

(i) Billing for services, drugs, supplies, or equipment that were unfurnished, of lower quality, or a substitution or misrepresentation of items billed; or

(ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person or entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess benefits or payments received, plus interest on the amount of the excess benefits or payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The secretary of social and health services may assess civil penalties in an amount not to exceed three times the amount of such excess benefits or payments: PROVIDED, That these civil penalties shall not apply to any acts or omissions occurring prior to the effective date of this act.

(3) All orders of the department assessing civil penalties shall become final twenty days after the same have been served unless a hearing is requested.

(4) A criminal action need not be brought against a person for that person to be civilly liable under this section.

(5) In all proceedings under this section, service, hearings, and judicial review of such determinations shall be in accordance with chapter 34.04 RCW.

(6) Civil penalties shall be deposited in the general fund upon their receipt.

NEW SECTION. Sec. 3. There is added to chapter 74.09 RCW a new section to read as follows:

Any person, firm, corporation, partnership, association, agency, institution or other legal entity, but not including an individual public assistance recipient of health care, that, without intent to violate this chapter, obtains benefits or payments under this code to which such person or entity is not entitled, or in a greater amount than that to which entitled, shall be liable for (1) any excess benefits or payments received, and (2) interest on the amount of the excess benefits or payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state: **PROVIDED**, That no person, firm, corporation, partnership, association, agency, institution, or other legal entity shall be liable for payment of interest when excess benefits or payments were obtained as a result of errors made by the department of social and health services. Whenever a penalty or interest is due under section 2 or 3 of this act, such penalty or interest shall not be reimbursable by the state as an allowable cost under any of the provisions of this chapter.

NEW SECTION. Sec. 4. There is added to chapter 74.09 RCW a new section to read as follows:

Any person, including any corporation, that

(1) knowingly makes or causes to be made any false statement or representation of a material fact in any application for any payment under any medical care program authorized under this chapter, or

(2) at any time knowingly makes or causes to be made any false statement or representation of a material fact for use in determining rights to such payment, or knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact in connection with such application or payment, or

(3) having knowledge of the occurrence of any event affecting (a) the initial or continued right to any payment, or (b) the initial or continued right to any such payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount or quantity than is due or when no such payment is authorized, shall be guilty of a class C felony: **PROVIDED**, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

NEW SECTION. Sec. 5. There is added to chapter 74.09 RCW a new section to read as follows:

(1) Any person, including any corporation, that solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind

(a) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter, or

(b) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter,

shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(2) Any person, including any corporation, that offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person

(a) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter, or

(b) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter,

shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(3) Subsections (1) and (2) of this section shall not apply to

(a) a discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter, and

(b) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(4) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW.

NEW SECTION. Sec. 6. There is added to chapter 74.09 RCW a new section to read as follows:

Any person, including any corporation, that knowingly makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operations of any institution or facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, skilled nursing facility, intermediate care facility, or home health agency, shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than five thousand dollars.

NEW SECTION. Sec. 7. There is added to chapter 74.09 RCW a new section to read as follows:

Any person, including any corporation, that knowingly

(1) charges, for any service provided to a patient under any medical care plan authorized under this chapter, money or other consideration at a rate in excess of the rates established by the department of social and health services, or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under such plan any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)

(a) as a precondition of admitting a patient to a hospital, skilled nursing facility, or intermediate care facility, or

(b) as a requirement for the patient's continued stay in such facility, when the cost of the services provided therein to the patient is paid for, in whole or in part, under such plan, shall be guilty of a class C felony: **PROVIDED**, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

NEW SECTION. Sec. 8. There is added to chapter 74.09 RCW a new section to read as follows:

(1) Any person having any patient trust funds in his possession, custody, or control, who, knowing that he is violating any statute, regulation, or agreement, deliberately fails to deposit, transfer, or maintain said funds in a separate, designated, trust bank account as required by such statute, regulation, or agreement shall be guilty of a gross misdemeanor and shall be punished by imprisonment for not more than one year in the county jail, or by a fine of not more than ten thousand dollars or as authorized by RCW 9A.20.030, or by both such fine and imprisonment.

(2) "Patient trust funds" are funds received by any health care facility which belong to patients and are required by any state or federal statute, regulation, or by agreement to be kept in a separate trust bank account for the benefit of such patients.

(3) This section shall not be construed to prevent a prosecution for theft.

NEW SECTION. Sec. 9. There is added to chapter 74.09 RCW a new section to read as follows:

The secretary of social and health services may by rule require that any application, statement, or form filled out by suppliers of medical care under this chapter shall contain or be verified by a written statement that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each such paper shall in such event so state. The making or subscribing of any such papers or forms containing any false or misleading information may be prosecuted and punished under chapter 9A.72 RCW.

NEW SECTION. Sec. 10. There is added to chapter 74.09 RCW a new section to read as follows:

The secretary of the department of social and health services or his authorized representative shall have the authority to:

(1) Conduct audits and investigations of providers of medical and other services furnished pursuant to this chapter, except that the Washington state medical disciplinary board shall generally serve in an advisory capacity to the secretary in the conduct of audits or investigations of physicians. In the conduct of such audits or investigations, the secretary may examine only those records or portions thereof, including patient records, for which services were rendered by a health care provider and reimbursed by the department, notwithstanding the provisions of RCW 5.60.060, 18.53.200, 18.83.110, or any other statute which may make or purport to make such records privileged or confidential: **PROVIDED**, That no original patient records shall be removed from the premises of the health care provider, and that the disclosure of any records or information by the department of social and health services is prohibited and constitutes a violation of RCW 42.22.040, unless such disclosure is directly connected to the official purpose for which the records or information were obtained: **PROVIDED FURTHER**, That the disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationship between the provider and the patient, but no evidence resulting from such disclosure may be used in any civil, administrative, or criminal proceeding against the patient unless a waiver of the applicable evidentiary privilege is obtained: **PROVIDED FURTHER**, That the secretary shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation or proceedings;

(2) Issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the state of Washington as now provided by law, and compel the production of pertinent books, payrolls, accounts, papers, records, documents, and testimony relevant to such investigation. If a person in attendance before such secretary or his authorized representative refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper or other evidence when ordered to do so by the secretary or his authorized representative, said secretary or his authorized representative may apply to the judge of the superior court of the county where such person is in attendance, upon affidavit, for an order returnable in not less than two nor more than five days, directing such person to show cause before such judge, or any other judge of such county, why he should not produce such records. Upon the hearing of such order, if the judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or to answer a legal or pertinent question, or to produce a book or

paper which he was ordered to bring or produce, he may forthwith punish the offender for contempt of court. Subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the superior courts of this state;

(3) Approve or deny applications to participate as a provider of services furnished pursuant to this chapter;

(4) Terminate or suspend eligibility to participate as a provider of services furnished pursuant to this chapter; and

(5) Adopt, promulgate, amend, and rescind administrative rules and regulations, in accordance with the administrative procedure act, chapter 34.04 RCW, to carry out the policies and purposes of sections 1 through 10 of this act.

NEW SECTION. Sec. 11. There is added to chapter 74.09 RCW a new section to read as follows:

Whenever the secretary of the department of social and health services imposes a civil penalty under section 2 of this act, or terminates or suspends a provider's eligibility under section 10 of this act, he shall, if the provider is licensed pursuant to Titles 18, 70, or 71 RCW, give written notice of such imposition, termination, or suspension to the appropriate licensing agency or disciplinary board.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 30, 1979.

Passed the House April 27, 1979.

Approved by the Governor May 10, 1979.

Filed in Office of Secretary of State May 10, 1979.

---

## CHAPTER 153

[Substitute Senate Bill No. 2375]

### CIVIL SERVICE FOR SHERIFFS' OFFICES

AN ACT Relating to civil service for sheriffs' offices; amending section 5, chapter 1, Laws of 1959 and RCW 41.14.050; amending section 6, chapter 1, Laws of 1959 and RCW 41.14.060; amending section 7, chapter 1, Laws of 1959 as amended by section 1, chapter 186, Laws of 1975 1st ex. sess. and RCW 41.14.070; amending section 13, chapter 1, Laws of 1959 and RCW 41.14.130; adding a new section to chapter 36.28 RCW; and adding a new section to chapter 41.14 RCW.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 5, chapter 1, Laws of 1959 and RCW 41.14.050 are each amended to read as follows:

Immediately after appointment the commission shall organize by electing one of its members chairman and shall hold regular meetings at least