



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB6108

Introduced 2/11/2016, by Rep. Bill Mitchell

SYNOPSIS AS INTRODUCED:

305 ILCS 5/8A-2.5	
305 ILCS 5/8A-6	from Ch. 23, par. 8A-6
305 ILCS 5/8A-7	from Ch. 23, par. 8A-7
305 ILCS 5/8A-11	from Ch. 23, par. 8A-11
305 ILCS 5/8A-16	
305 ILCS 5/8A-17	

Amends the Public Assistance Fraud Article of the Illinois Public Aid Code. Increases the criminal and civil penalties for medical assistance fraud committed by individuals and corporations.

LRB099 16280 KTG 40610 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning public aid.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Public Aid Code is amended by
5 changing Sections 8A-2.5, 8A-6, 8A-7, 8A-11, 8A-16, and 8A-17
6 as follows:

7 (305 ILCS 5/8A-2.5)

8 Sec. 8A-2.5. Unauthorized use of medical assistance.

9 (a) Any person who knowingly uses, acquires, possesses, or
10 transfers a medical card in any manner not authorized by law or
11 by rules and regulations of the Illinois Department, or who
12 knowingly alters a medical card, or who knowingly uses,
13 acquires, possesses, or transfers an altered medical card, is
14 guilty of a violation of this Article and shall be punished as
15 provided in Section 8A-6.

16 (b) Any person who knowingly obtains unauthorized medical
17 benefits or causes to be obtained unauthorized medical benefits
18 with or without use of a medical card is guilty of a violation
19 of this Article and shall be punished as provided in Section
20 8A-6.

21 (b-5) Any vendor that knowingly assists a person in
22 committing a violation under subsection (a) or (b) of this
23 Section is guilty of a violation of this Article and shall be

1 punished as provided in Section 8A-6.

2 (b-6) Any person (including a vendor, organization,
3 agency, or other entity) that, in any matter related to the
4 medical assistance program, knowingly or willfully falsifies,
5 conceals, or omits by any trick, scheme, artifice, or device a
6 material fact, or makes any false, fictitious, or fraudulent
7 statement or representation, or makes or uses any false writing
8 or document, knowing the same to contain any false, fictitious,
9 or fraudulent statement or entry in connection with the
10 provision of health care or related services, is guilty of a
11 violation of this Article and shall be punished as provided in
12 Section 8A-6.

13 (c) The Department may seek to recover any and all State
14 and federal monies for which it has improperly and erroneously
15 paid benefits as a result of a fraudulent action and any civil
16 penalties authorized in this Section. Pursuant to Section
17 11-14.5 of this Code, the Department may determine the monetary
18 value of benefits improperly and erroneously received. The
19 Department may recover the monies paid for such benefits and
20 interest on that amount at the rate of 5% per annum for the
21 period from which payment was made to the date upon which
22 repayment is made to the State. Prior to the recovery of any
23 amount paid for benefits allegedly obtained by fraudulent
24 means, the recipient or payee of such benefits shall be
25 afforded an opportunity for a hearing after reasonable notice.
26 The notice shall be served personally or by certified or

1 registered mail or as otherwise provided by law upon the
2 parties or their agents appointed to receive service of process
3 and shall include the following:

4 (1) A statement of the time, place and nature of the
5 hearing.

6 (2) A statement of the legal authority and jurisdiction
7 under which the hearing is to be held.

8 (3) A reference to the particular Sections of the
9 substantive and procedural statutes and rules involved.

10 (4) Except where a more detailed statement is otherwise
11 provided for by law, a short and plain statement of the
12 matters asserted, the consequences of a failure to respond,
13 and the official file or other reference number.

14 (5) A statement of the monetary value of the benefits
15 fraudulently received by the person accused.

16 (6) A statement that, in addition to any other
17 penalties provided by law, a civil penalty in an amount not
18 to exceed \$4,000 ~~\$2,000~~ may be imposed for each fraudulent
19 claim for benefits or payments.

20 (7) A statement providing that the determination of the
21 monetary value may be contested by petitioning the
22 Department for an administrative hearing within 30 days
23 from the date of mailing the notice.

24 (8) The names and mailing addresses of the
25 administrative law judge, all parties, and all other
26 persons to whom the agency gives notice of the hearing

1 unless otherwise confidential by law.

2 An opportunity shall be afforded all parties to be
3 represented by legal counsel and to respond and present
4 evidence and argument.

5 Unless precluded by law, disposition may be made of any
6 contested case by stipulation, agreed settlement, consent
7 order, or default.

8 Any final order, decision, or other determination made,
9 issued or executed by the Director under the provisions of this
10 Article whereby any person is aggrieved shall be subject to
11 review in accordance with the provisions of the Administrative
12 Review Law, and the rules adopted pursuant thereto, which shall
13 apply to and govern all proceedings for the judicial review of
14 final administrative decisions of the Director.

15 Upon entry of a final administrative decision for repayment
16 of any benefits obtained by fraudulent means, or for any civil
17 penalties assessed, a lien shall attach to all property and
18 assets of such person, firm, corporation, association, agency,
19 institution, vendor, or other legal entity until the judgment
20 is satisfied.

21 Within 18 months of the effective date of this amendatory
22 Act of the 96th General Assembly, the Department of Healthcare
23 and Family Services will report to the General Assembly on the
24 number of fraud cases identified and pursued, and the fines
25 assessed and collected. The report will also include the
26 Department's analysis as to the use of private sector resources

1 to bring action, investigate, and collect monies owed.

2 (d) In subsections (a), (b), (b-5) and (b-6), "knowledge"
3 has the meaning ascribed to that term in Section 4-5 of the
4 Criminal Code of 2012. For any administrative action brought
5 under subsection (c) pursuant to a violation of this Section,
6 the Department shall define "knowing" by rule.

7 (Source: P.A. 97-23, eff. 1-1-12; 98-354, eff. 8-16-13.)

8 (305 ILCS 5/8A-6) (from Ch. 23, par. 8A-6)

9 Sec. 8A-6. Classification of violations.

10 (a) Any person, firm, corporation, association, agency,
11 institution or other legal entity that has been found by a
12 court to have engaged in an act, practice or course of conduct
13 declared unlawful under Sections 8A-2 through 8A-5 or Section
14 8A-13 or 8A-14 where:

15 (1) the total amount of money involved in the
16 violation, including the monetary value of federal food
17 stamps and the value of commodities, is less than \$150,
18 shall be guilty of a Class 4 felony ~~Class A misdemeanor~~;

19 (2) the total amount of money involved in the
20 violation, including the monetary value of federal food
21 stamps and the value of commodities, is \$150 or more but
22 less than \$1,000, shall be guilty of a Class 3 ~~Class 4~~
23 felony;

24 (3) the total amount of money involved in the
25 violation, including the monetary value of federal food

1 stamps and the value of commodities, is \$1,000 or more but
2 less than \$5,000, shall be guilty of a Class 2 ~~Class 3~~
3 felony;

4 (4) the total amount of money involved in the
5 violation, including the monetary value of federal food
6 stamps and the value of commodities, is \$5,000 or more but
7 less than \$10,000, shall be guilty of a Class 1 ~~Class 2~~
8 felony; or

9 (5) the total amount of money involved in the
10 violation, including the monetary value of federal food
11 stamps and the value of commodities, is \$10,000 or more,
12 shall be guilty of a Class X ~~Class 1~~ felony and,
13 notwithstanding the provisions of Section 8A-8 except for
14 Subsection (c) of Section 8A-8, shall be ineligible for
15 financial aid under this Article for a period of two years
16 following conviction or until the total amount of money,
17 including the value of federal food stamps, is repaid,
18 whichever first occurs.

19 (b) Any person, firm, corporation, association, agency,
20 institution or other legal entity that commits a subsequent
21 violation of any of the provisions of Sections 8A-2 through
22 8A-5 and:

23 (1) the total amount of money involved in the
24 subsequent violation, including the monetary value of
25 federal food stamps and the value of commodities, is less
26 than \$150, shall be guilty of a Class 3 ~~Class 4~~ felony;

1 (2) the total amount of money involved in the
2 subsequent violation, including the monetary value of
3 federal food stamps and the value of commodities, is \$150
4 or more but less than \$1,000, shall be guilty of a Class 2
5 ~~Class 3~~ felony;

6 (3) the total amount of money involved in the
7 subsequent violation, including the monetary value of
8 federal food stamps and the value of commodities, is \$1,000
9 or more but less than \$5,000, shall be guilty of a Class 1
10 ~~Class 2~~ felony;

11 (4) the total amount of money involved in the
12 subsequent violation, including the monetary value of
13 federal food stamps and the value of commodities, is \$5,000
14 or more but less than \$10,000, shall be guilty of a Class X
15 ~~Class 1~~ felony.

16 (c) For purposes of determining the classification of
17 offense under this Section, all of the money received as a
18 result of the unlawful act, practice or course of conduct can
19 be accumulated.

20 (Source: P.A. 90-538, eff. 12-1-97.)

21 (305 ILCS 5/8A-7) (from Ch. 23, par. 8A-7)

22 Sec. 8A-7. Civil Remedies. (a) A person who receives
23 financial aid by means of a false statement, willful
24 misrepresentation or by his failure to notify the county
25 department or local governmental unit, as the case may be, of a

1 change in his status as required by Sections 11-18 and 11-19,
2 for the purpose of preventing the denial, cancellation or
3 suspension of his grant, or a variation in the amount thereof,
4 or by other fraudulent device, or a person who knowingly aids
5 or abets any person in obtaining financial aid for which he is
6 not eligible, shall be answerable to the county department or
7 the local governmental unit, as the case may be, for refunding
8 the entire amount of aid received. If the refund is not made,
9 it shall be recoverable in a civil action from the person who
10 received the aid, or from anyone who willfully aided such
11 person to obtain the aid. If an act which would be unlawful
12 under Section 8A-2 is proven, the court may as a penalty assess
13 an additional sum of money, not to exceed the entire amount of
14 aid provided, against the recipient or against any person who
15 willfully aided the recipient. If assessed, the penalty shall
16 be included in any judgment entered for the aid received, and
17 paid to the county department or the local governmental unit,
18 as the case may be. Upon entry of the judgment a lien shall
19 attach to all property and assets of such person until the
20 judgment is satisfied.

21 (b) Any person, firm, corporation, association, agency,
22 institution or other legal entity, other than an individual
23 recipient, that willfully, by means of a false statement or
24 representation, or by concealment of any material fact or by
25 other fraudulent scheme or device on behalf of himself or
26 others, obtains or attempts to obtain benefits or payments

1 under this Code to which he or it is not entitled, or in a
2 greater amount than that to which he or it is entitled, shall
3 be liable for repayment of any excess benefits or payments
4 received and, in addition to any other penalties provided by
5 law, civil penalties consisting of (1) the interest on the
6 amount of excess benefits or payments at the maximum legal rate
7 in effect on the date the payment was made to such person,
8 firm, corporation, association, agency, institution or other
9 legal entity for the period from the date upon which payment
10 was made to the date upon which repayment is made to the State,
11 (2) an amount not to exceed 3 times the amount of such excess
12 benefits or payments, and (3) the sum of \$4,000 ~~\$2,000~~ for each
13 excessive claim for benefits or payments. Upon entry of a
14 judgment for repayment of any excess benefits or payments, or
15 for any civil penalties assessed by the court, a lien shall
16 attach to all property and assets of such person, firm,
17 corporation, association, agency, institution or other legal
18 entity until the judgment is satisfied.

19 (c) Civil recoveries provided for in this Section may be
20 recoverable in court proceedings initiated by the Attorney
21 General or, in actions involving a local governmental unit, by
22 the State's Attorney.

23 (d) Any person who commits the offense of vendor fraud or
24 recipient fraud as defined in Section 8A-2 and Section 8A-3 of
25 this Article shall forfeit, according to the provisions of this
26 subsection, any monies, profits or proceeds, and any interest

1 or property which the sentencing court determines he has
2 acquired or maintained, directly or indirectly, in whole or in
3 part as a result of such offense. Such person shall also
4 forfeit any interest in, securities of, claim against, or
5 contractual right of any kind which affords him a source of
6 influence over, any enterprise which he has established,
7 operated, controlled, conducted, or participated in
8 conducting, where his relationship to or connection with any
9 such thing or activity directly or indirectly, in whole or in
10 part, is traceable to any thing or benefit which he has
11 obtained or acquired through vendor fraud or recipient fraud.

12 Proceedings instituted pursuant to this subsection shall
13 be subject to and conducted in accordance with the following
14 procedures:

15 (1) The sentencing court shall, upon petition by the
16 Attorney General or State's Attorney at any time following
17 sentencing, conduct a hearing to determine whether any property
18 or property interest is subject to forfeiture under this
19 subsection. At the forfeiture hearing the People shall have the
20 burden of establishing, by a preponderance of the evidence,
21 that the property or property interests are subject to such
22 forfeiture.

23 (2) In any action brought by the People of the State of
24 Illinois under this Section, in which any restraining order,
25 injunction or prohibition or any other action in connection
26 with any property or interest subject to forfeiture under this

1 subsection is sought, the circuit court presiding over the
2 trial of the person charged with recipient fraud or vendor
3 fraud as defined in Sections 8A-2 or 8A-3 of this Article shall
4 first determine whether there is probable cause to believe that
5 the person so charged has committed the offense of recipient
6 fraud or vendor fraud and whether the property or interest is
7 subject to forfeiture under this subsection. To make such a
8 determination, prior to entering any such order, the court
9 shall conduct a hearing without a jury, at which the People
10 shall establish that there is (i) probable cause that the
11 person so charged has committed the offense of recipient fraud
12 or vendor fraud and (ii) probable cause that any property or
13 interest may be subject to forfeiture pursuant to this
14 subsection. Such hearing may be conducted simultaneously with a
15 preliminary hearing, if the prosecution is commenced by
16 information or complaint, or by motion of the People at any
17 stage in the proceedings. The court may accept a finding of
18 probable cause at a preliminary hearing following the filing of
19 an information charging the offense of recipient fraud or
20 vendor fraud as defined in Sections 8A-2 or 8A-3 or the return
21 of an indictment by a grand jury charging the offense of
22 recipient fraud or vendor fraud as defined in Sections 8A-2 or
23 8A-3 of this Article as sufficient evidence of probable cause
24 as provided in item (i) above. Upon such a finding, the circuit
25 court shall enter such restraining order, injunction or
26 prohibition, or shall take such other action in connection with

1 any such property or other interest subject to forfeiture under
2 this Act as is necessary to insure that such property is not
3 removed from the jurisdiction of the court, concealed,
4 destroyed or otherwise disposed of by the owner of that
5 property or interest prior to a forfeiture hearing under this
6 subsection. The Attorney General or State's Attorney shall file
7 a certified copy of such restraining order, injunction or other
8 prohibition with the recorder of deeds or registrar of titles
9 of each county where any such property of the defendant may be
10 located. No such injunction, restraining order or other
11 prohibition shall affect the rights of any bonafide purchaser,
12 mortgagee, judgement creditor or other lien holder arising
13 prior to the date of such filing. The court may, at any time,
14 upon verified petition by the defendant, conduct a hearing to
15 determine whether all or portions of any such property or
16 interest which the court previously determined to be subject to
17 forfeiture or subject to any restraining order, injunction, or
18 prohibition or other action, should be released. The court may
19 in its discretion release such property to the defendant for
20 good cause shown.

21 (3) Upon conviction of a person under this Article, the
22 court shall authorize the Director of the Illinois Department
23 of State Police to seize all property or other interest
24 declared forfeited under this subsection upon such terms and
25 conditions as the court shall deem proper.

26 (4) The Director of the Illinois Department of State Police

1 is authorized to sell all property forfeited and seized
2 pursuant to this subsection, unless such property is required
3 by law to be destroyed or is harmful to the public. After the
4 deduction of all requisite expenses of administration and sale,
5 the court shall order the Director to distribute to the
6 Illinois Department an amount from the proceeds of the
7 forfeited property, or monies forfeited or seized, which will
8 satisfy any unsatisfied court order of restitution entered
9 pursuant to a conviction under this Article. If the proceeds
10 are less than the amount necessary to satisfy the order of
11 restitution, the Director shall distribute to the Illinois
12 Department the entire amount of the remaining proceeds. The
13 Director shall distribute any remaining proceeds of such sale,
14 along with any monies forfeited or seized, in accordance with
15 the following schedules:

16 (a) 25% shall be distributed to the unit of local
17 government whose officers or employees conducted the
18 investigation into recipient fraud or vendor fraud and caused
19 the arrest or arrests and prosecution leading to the
20 forfeiture. Amounts distributed to units of local government
21 shall be used solely for enforcement matters relating to
22 detection, investigation or prosecution of recipient fraud or
23 vendor fraud as defined in Section 8A-2 or 8A-3 of this
24 Article. Where the investigation, arrest or arrests leading to
25 the prosecution and forfeiture is undertaken solely by the
26 Illinois Department of State Police, the portion provided

1 hereunder shall be paid into the Medicaid Fraud and Abuse
2 Prevention Fund, which is hereby created in the State treasury.
3 Monies from this fund shall be used by the Department of State
4 Police for the furtherance of enforcement matters relating to
5 detection, investigation or prosecution of recipient fraud or
6 vendor fraud. Monies directed to this fund shall be used in
7 addition to, and not as a substitute for, funds annually
8 appropriated to the Department of State Police for medicaid
9 fraud enforcement.

10 (b) 25% shall be distributed to the county in which the
11 prosecution and petition for forfeiture resulting in the
12 forfeiture was instituted, and deposited in a special fund in
13 the county treasury and appropriated to the State's Attorney
14 for use solely in enforcement matters relating to detection,
15 investigation or prosecution of recipient fraud or vendor
16 fraud; however, if the Attorney General brought the prosecution
17 resulting in the forfeiture, the portion provided hereunder
18 shall be paid into the Medicaid Fraud and Abuse Prevention
19 Fund, to be used by the Medicaid Fraud Control Unit of the
20 Illinois Department of State Police for enforcement matters
21 relating to detection, investigation or prosecution of
22 recipient fraud or vendor fraud. Where the Attorney General and
23 a State's Attorney have jointly participated in any portion of
24 the proceedings, 12.5% shall be distributed to the county in
25 which the prosecution resulting in the forfeiture was
26 instituted, and used as specified herein, and 12.5% shall be

1 paid into the Medicaid Fraud and Abuse Prevention Fund, and
2 used as specified herein.

3 (c) 50% shall be transmitted to the State Treasurer for
4 deposit in the General Revenue Fund.

5 (Source: P.A. 85-707.)

6 (305 ILCS 5/8A-11) (from Ch. 23, par. 8A-11)

7 Sec. 8A-11. (a) No person shall:

8 (1) Knowingly charge a resident of a nursing home for
9 any services provided pursuant to Article V of the Illinois
10 Public Aid Code, money or other consideration at a rate in
11 excess of the rates established for covered services by the
12 Illinois Department pursuant to Article V of the Illinois
13 Public Aid Code; or

14 (2) Knowingly charge, solicit, accept or receive, in
15 addition to any amount otherwise authorized or required to
16 be paid pursuant to Article V of the Illinois Public Aid
17 Code, any gift, money, donation or other consideration:

18 (i) As a precondition to admitting or expediting
19 the admission of a recipient or applicant, pursuant to
20 Article V of the Illinois Public Aid Code, to a
21 long-term care facility as defined in Section 1-113 of
22 the Nursing Home Care Act or a facility as defined in
23 Section 1-113 of the ID/DD Community Care Act, Section
24 1-113 of the MC/DD Act, or Section 1-102 of the
25 Specialized Mental Health Rehabilitation Act of 2013;

1 and

2 (ii) As a requirement for the recipient's or
3 applicant's continued stay in such facility when the
4 cost of the services provided therein to the recipient
5 is paid for, in whole or in part, pursuant to Article V
6 of the Illinois Public Aid Code.

7 (b) Nothing herein shall prohibit a person from making a
8 voluntary contribution, gift or donation to a long-term care
9 facility.

10 (c) This paragraph shall not apply to agreements to provide
11 continuing care or life care between a life care facility as
12 defined by the Life Care Facilities Act, and a person
13 financially eligible for benefits pursuant to Article V of the
14 Illinois Public Aid Code.

15 (d) Any person who violates this Section shall be guilty of
16 a business offense and fined not less than \$10,000 ~~\$5,000~~ nor
17 more than \$50,000 ~~\$25,000~~.

18 (e) "Person", as used in this Section, means an individual,
19 corporation, partnership, or unincorporated association.

20 (f) The State's Attorney of the county in which the
21 facility is located and the Attorney General shall be notified
22 by the Illinois Department of any alleged violations of this
23 Section known to the Department.

24 (g) The Illinois Department shall adopt rules and
25 regulations to carry out the provisions of this Section.

26 (Source: P.A. 98-104, eff. 7-22-13; 99-180, eff. 7-29-15.)

1 (305 ILCS 5/8A-16)

2 Sec. 8A-16. Unfair or deceptive marketing practices.

3 (a) As used in this Section, "health plan" has the meaning
4 attributed to that term in Section 8A-13.

5 (b) It is unlawful to knowingly and willfully engage in any
6 unfair or deceptive marketing practice in connection with
7 proposing, offering, selling, soliciting, or providing any
8 health care service or any health plan. Unfair or deceptive
9 marketing practices include the following:

10 (1) Making a false and misleading oral or written
11 statement, visual description, advertisement, or other
12 representation of any kind that has the capacity, tendency,
13 or effect of deceiving or misleading health care consumers
14 with respect to any health care service, health plan, or
15 health care provider.

16 (2) Making a representation that a health care plan or
17 a health care provider offers any service, benefit, access
18 to care, or choice that it does not in fact offer.

19 (3) Making a representation that a health plan or
20 health care provider has any status, certification,
21 qualification, sponsorship, affiliation, or licensure that
22 it does not have.

23 (4) A failure to state a material fact if the failure
24 deceives or tends to deceive.

25 (5) Offering any kickback, bribe, reward, or benefit to

1 any person as an inducement to select or to refrain from
2 selecting any health care service, health plan, or health
3 care provider, unless the benefit offered is medically
4 necessary health care or is permitted by the Illinois
5 Department.

6 (6) The use of health care consumer or other
7 information that is confidential or privileged or that
8 cannot be disclosed to or obtained by the user without
9 violating a State or federal confidentiality law,
10 including:

11 (A) medical records information; and

12 (B) information that identifies the health care
13 consumer or any member of his or her group as a
14 recipient of any government sponsored or mandated
15 welfare program.

16 (7) The use of any device or artifice in advertising a
17 health plan or soliciting a health care consumer that
18 misrepresents the solicitor's profession, status,
19 affiliation, or mission.

20 (c) Any person who commits a first violation of this
21 Section is guilty of a Class 4 felony ~~A misdemeanor~~ and is
22 subject to a fine of not more than \$10,000 ~~\$5,000~~. Any person
23 who commits a second or subsequent violation of this Section is
24 guilty of a Class 3 ~~4~~ felony and is subject to a fine of not
25 more than \$50,000 ~~\$25,000~~.

26 (Source: P.A. 90-538, eff. 12-1-97.)

1 (305 ILCS 5/8A-17)

2 Sec. 8A-17. Penalties enhanced for persons other than
3 individuals. If a person who violates Section 8A-13, 8A-14,
4 8A-15, or 8A-16 is any person other than an individual, then
5 that person is subject to a fine of not more than \$100,000
6 ~~\$50,000~~ if the violation is a Class 1, 2, 3, or 4 felony
7 ~~misdemeanor~~ and a fine of not more than \$500,000 ~~\$250,000~~ if
8 the violation is a Class X felony ~~a felony~~.

9 (Source: P.A. 90-538, eff. 12-1-97.)