

1 SB85
2 173333-1
3 By Senators Pittman, Waggoner, Williams, Scofield, Orr,
4 Livingston, Albritton, Allen, Glover, Marsh, Reed, Stutts,
5 McClendon and Shelnuttt
6 RFD: Finance and Taxation General Fund
7 First Read: 07-FEB-17

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8 SYNOPSIS: Under existing law, criminal penalties are
9 provided for receiving certain remuneration for
10 certain referrals for Medicaid payments or in
11 return for purchasing, leasing, ordering, or
12 arranging certain goods or services to be paid by
13 Medicaid.

14 This bill would provide that a person must
15 knowingly engage in the prohibited conduct in order
16 to be subject to the criminal penalties, would
17 provide that the criminal penalties do not apply to
18 certain safe harbor exceptions included in federal
19 law, would define a person to include a corporation
20 or other business entity, and would provide for a
21 six-year statute of limitations for prosecution of
22 the offenses.

23 Amendment 621 of the Constitution of Alabama
24 of 1901, now appearing as Section 111.05 of the
25 Official Recompilation of the Constitution of
26 Alabama of 1901, as amended, prohibits a general
27 law whose purpose or effect would be to require a

1 new or increased expenditure of local funds from
2 becoming effective with regard to a local
3 governmental entity without enactment by a 2/3 vote
4 unless: it comes within one of a number of
5 specified exceptions; it is approved by the
6 affected entity; or the Legislature appropriates
7 funds, or provides a local source of revenue, to
8 the entity for the purpose.

9 The purpose or effect of this bill would be
10 to require a new or increased expenditure of local
11 funds within the meaning of the amendment. However,
12 the bill does not require approval of a local
13 governmental entity or enactment by a 2/3 vote to
14 become effective because it comes within one of the
15 specified exceptions contained in the amendment.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
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21 To amend Section 22-1-11, Code of Alabama 1975,
22 relating to false statements or claims on applications for
23 payment of medical benefits from the Medicaid Agency, to
24 provide that a person must knowingly engage in the conduct in
25 order to be subject to the criminal penalties; to provide that
26 the criminal penalties do not apply to certain activity
27 excepted by federal law; to provide for a six-year statute of

1 limitations; and to define person to include business
2 entities; and in connection therewith would have as its
3 purpose or effect the requirement of a new or increased
4 expenditure of local funds within the meaning of Amendment 621
5 of the Constitution of Alabama of 1901, now appearing as
6 Section 111.05 of the Official ReCompilation of the
7 Constitution of Alabama of 1901, as amended.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Section 22-1-11, Code of Alabama 1975, is
10 amended to read as follows:

11 "§22-1-11.

12 "(a) Any person who, with intent to defraud or
13 deceive, makes, or causes to be made or assists in the
14 preparation of any false statement, representation, or
15 omission of a material fact in any claim or application for
16 any payment, regardless of amount, from the Medicaid Agency,
17 knowing the same to be false; or with intent to defraud or
18 deceive, makes, or causes to be made, or assists in the
19 preparation of any false statement, representation, or
20 omission of a material fact in any claim or application for
21 medical benefits from the Medicaid Agency, knowing the same to
22 be false; shall be guilty of a Class C felony ~~and upon~~
23 ~~conviction thereof shall be fined not more than ten thousand~~
24 ~~dollars (\$10,000) or imprisoned for not less than one nor more~~
25 ~~than five years, or both.~~ The offense set out herein shall not
26 be complete until the claim or application is received by the

1 Medicaid Agency or the contractor with the Medicaid Agency or
2 its successor.

3 "(b) Any person who knowingly solicits or receives
4 any remuneration, including any kickback, bribe, or rebate,
5 directly or indirectly, overtly or covertly, in cash or in
6 kind:

7 "(1) In return for referring an individual to a
8 person for the furnishing or arranging for the furnishing of
9 any item or service for which payment may be made in whole or
10 in part by the Medicaid Agency or its agents, or

11 "(2) In return for purchasing, leasing, ordering, or
12 arranging for or recommending purchasing, leasing, or ordering
13 any good, facility, service, or item for which payment may be
14 made in whole or in part by the Medicaid Agency, or its agents
15 shall be guilty of a Class C felony ~~and upon conviction~~
16 ~~thereof, shall be fined not more than ten thousand dollars~~
17 ~~(\$10,000) or imprisoned for not less than one nor more than~~
18 ~~five years, or both.~~

19 "(c) Any person who knowingly offers or pays any
20 remuneration including any kickback, bribe, or rebate directly
21 or indirectly, overtly or covertly, in cash or in kind to any
22 person to induce a person to refer an individual to a person
23 for the furnishing or arranging for the furnishing of any item
24 or service for which payment may be made in whole or in part
25 by the Medicaid Agency or its agents, or to purchase, lease,
26 order, or arrange for or recommend purchasing, leasing, or
27 ordering any good, facility, service, or item for which

1 payment may be made in whole or in part by the Medicaid
2 Agency, or its agents, shall be guilty of a Class C felony ~~and~~
3 ~~upon conviction thereof shall be fined not more than ten~~
4 ~~thousand dollars (\$10,000) or imprisoned for not less than one~~
5 ~~nor more than five years, or both.~~

6 "(d) (1) Subsections (b) and (c) of this section
7 shall not apply to a discount or other reduction in price
8 obtained by a provider of services or other entity under
9 Medicaid if the reduction in price is properly disclosed and
10 appropriately reflected in costs claimed or charges made by
11 the provider or entity to the Medicaid Agency or its agents,
12 or any amount paid by an employer to an employee who has a
13 bona fide employment relationship with employer for employment
14 in the provision of covered items or services.

15 "(2) Subsections (b) and (c) shall not apply to any
16 payment practice identified as an exception enumerated in 42
17 C.F.R. 1001.952.

18 "(e) Any two or more offenses in violation of this
19 section may be charged in the same indictment in separate
20 counts for each offense and the offense shall be tried
21 together, with separate sentences being imposed for each
22 offense for which the defendant is found guilty.

23 "(f) No prosecution under this section may be
24 commenced after six years from the date of the completion of
25 the offense.

1 "(g) For the purposes of this section, the term
2 "person" includes any individual, partnership, corporation, or
3 association."

4 Section 2. Although this bill would have as its
5 purpose or effect the requirement of a new or increased
6 expenditure of local funds, the bill is excluded from further
7 requirements and application under Amendment 621, now
8 appearing as Section 111.05 of the Official Recompilation of
9 the Constitution of Alabama of 1901, as amended, because the
10 bill defines a new crime or amends the definition of an
11 existing crime.

12 Section 3. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.