

**HEALTH CARE FRAUD FIFTH DEGREE**  
**Penal Law § 177.05**  
**(Committed on or after Nov. 1, 2006)**

The (*specify*) count is Health Care Fraud in the Fifth Degree.

Under our law, a person is guilty of Health Care Fraud in the Fifth Degree when, with intent to defraud a health plan, he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan for a health care item or service and, as a result of such information or omission, he or she or another person receives payment in an amount that he or she or such other person is not entitled to under the circumstances.

The following terms used in that definition have a special meaning:

A PERSON means any individual or entity, other than a recipient of a health care item or service under a health plan unless such recipient acts as an accessory to such an individual or entity.<sup>1</sup>

A HEALTH PLAN means any publicly or privately funded health insurance or managed care plan or contract, under which any health care item or service is provided, and through which payment may be made to the person who provided the health care item or service. The state's medical assistance program (Medicaid) shall be considered a single health plan.<sup>2</sup>

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<sup>1</sup> Penal Law § 177.00(2).

<sup>2</sup> Penal Law § 177.00(1). The statutory definition also provides the following, and, if applicable, the charge should be modified accordingly: "A payment made pursuant to the state's managed care program as defined in paragraph (c) of subdivision one of section three hundred sixty-four-j of the social services law shall be deemed a payment by the state's medical assistance program (Medicaid)."

INTENT means conscious objective or purpose. Thus, a person acts with intent to defraud a health plan when that person's conscious objective or purpose is to do so.<sup>3</sup>

A person KNOWINGLY provides materially false information or omits material information for the purpose of requesting payment from a health plan for a health care item or service when that person is aware that he or she is providing or omitting such information for that purpose.<sup>4</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove from all of the evidence in the case beyond a reasonable doubt each of the following three elements:

1. That on or about (*date[s]*) in the county of (*county*), the defendant (*defendant's name*) provided materially false information or omitted material information for the purpose of requesting payment from a health plan for a health care item or service;
2. The defendant did so knowingly, willfully and with intent to defraud a health plan; and
3. As a result of such information or omission, he or she or another person received payment in an amount that he, she or such other person was not entitled to under the circumstances.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

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<sup>3</sup> Penal Law § 15.05 (1).

<sup>4</sup> Penal Law § 15.05 (2).

*[NOTE: If the affirmative defense set forth in Penal Law § 177.30 applies, omit the final two paragraphs of the above charge, and substitute the appropriate charge at the end of this article.]*