

**HEALTH CARE FRAUD  
(Committed on or after Nov. 1, 2006)**

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**HEALTH CARE FRAUD FOURTH DEGREE  
(Aggregate payment exceeds \$3000)  
Penal Law § 177.10**

**HEALTH CARE FRAUD THIRD DEGREE  
(Aggregate payment exceeds \$10,000)  
Penal Law § 177.15**

**HEALTH CARE FRAUD SECOND DEGREE  
(Aggregate payment exceeds \$50,000)  
Penal Law § 177.20**

**HEALTH CARE FRAUD FIRST DEGREE  
(Aggregate payment exceeds \$1,000,000)  
Penal Law § 177.25**

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

Under our law, a person is guilty of Health Care Fraud in the (*specify*) Degree when, on one or more occasions, 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, she or such other person is not entitled to under the circumstances, and the payment, or portion of the payment wrongfully received, as the case may be, from a single health plan, in a period of not more than one year, exceeds (*specify the statutory amount*) in the aggregate.

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>

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 four elements:

1. That on or about (date[s]) in the county of (county), the defendant (defendant's name), on one or more occasions, knowingly and willfully

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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)."

<sup>3</sup> Penal Law § 15.05 (1).

<sup>4</sup> Penal Law § 15.05 (2).

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. That the defendant did so with intent to defraud a health plan;
3. That as a result of such false information or omitted material information, he/she [or another person] received payment in an amount that he/she [or such other person] was not entitled to under the circumstances; and
4. That the payment or portion of the payment wrongfully received from a single health plan, in a period of not more than one year, exceeds (*specify the statutory amount*) in the aggregate.

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.

*[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.]*