SUMMARY—Revises provisions relating to Medicaid. (BDR 38-583)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.

Effect on the State: May have Fiscal Impact.

Effect on the State Highway Fund: No.

AN ACT relating to Medicaid; imposing civil liability on certain providers who commit or allow another person to abuse, neglect, exploit, isolate or abandon an older person or vulnerable person under certain circumstances; requiring a corporate defendant to appear by counsel in certain criminal actions; authorizing a court to enter a plea of guilty against such a defendant in certain circumstances; prohibiting a person from soliciting, offering, paying or transferring remuneration to a recipient of Medicaid under certain circumstances; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law makes it a felony or a gross misdemeanor, depending on the circumstances, to abuse, neglect, exploit, isolate or abandon an older person or vulnerable person. (NRS 200.5099) Existing law also authorizes the imposition of disciplinary action against an applicant for or holder of a license to operate certain health care facilities or related entities who: (1) is convicted of such

a crime; or (2) has engaged in conduct detrimental to recipients of services or employees. (NRS 449.160, 449.174, 449B.400, 449B.440)

Existing law imposes civil liability on a provider who receives a payment from Medicaid to which the provider is not entitled because of fraud or certain other improper conduct. (NRS 422.580) **Section 1** of this bill imposes civil liability on a provider of services under Medicaid who abuses, neglects, exploits, isolates or abandons or permits or allows another person to abuse, neglect, exploit, isolate or abandon an older person or vulnerable person, regardless of whether the older person or vulnerable person is a recipient of Medicaid. **Section 1** additionally: (1) provides that such a provider may be found civilly liable regardless of whether any criminal action is brought; and (2) requires the Attorney General to bring legal action on behalf of the State to impose such civil liability. **Sections 2 and 7** of this bill provide that certain penalties generally imposed for fraudulent actions relating to Medicaid and public assistance are not applicable to acts subject to civil liability pursuant to **section 1**. **Section 3** of this bill indicates the applicability of certain definitions to **section 1**. **Section 6** of this bill prescribes the statute of limitations for bringing an action pursuant to **section 1**. **Section 9** of this bill makes a conforming change to indicate that **section 1** will be administered in the same manner as other provisions relating to Medicaid, including existing law imposing civil liability for certain forms of Medicaid fraud.

Existing law requires a court to enter a plea of not guilty on behalf of a corporate criminal defendant that fails to appear. (NRS 174.035) Existing law prohibits a person, with an intent to defraud, from making certain false: (1) claims under Medicaid; (2) statements relating to obtaining authorization to provide specific goods or services under Medicaid; (3) statements relating to

obtaining goods and services under Medicaid; or (4) statements relating to qualifying as a provider under Medicaid. Existing law makes a violation of those provisions a misdemeanor or felony, depending on the value of the goods or services obtained or sought to be obtained through such false claims or statements. (NRS 422.540) If a criminal action is brought against a corporation for a violation of those provisions, **section 4** of this bill: (1) requires the corporate defendant to appear by counsel at all stages of the action; and (2) authorizes a court to enter a plea of guilty and impose a sentence on the corporate defendant if the defendant fails to appear at a proceeding where the defendant is required to appear to enter a plea. **Section 8** of this bill makes a conforming change to indicate that **section 4** is an exception to the requirement that a court enter a plea of not guilty on behalf of a defendant corporation that fails to appear.

Existing law prohibits a person from: (1) accepting or transferring anything of additional value in return for or in connection with the sale, purchase or lease of goods, services, materials or supplies for which payment is made pursuant to the State Plan for Medicaid; or (2) referring a person to a provider for which payment may be made pursuant to the Plan and soliciting or accepting anything of value in connection with the referral. (NRS 422.560) **Section 5** of this bill additionally prohibits a person from soliciting, offering, paying or transferring any remuneration to a recipient of Medicaid if such a person knows or should know that such an act is likely to induce the recipient to: (1) provide personal identifying information necessary for the submission of claims under the Plan; (2) order or receive from a particular provider, practitioner or supplier any good or service for which payment is made pursuant to the Plan; or (3) participate in certain other unlawful acts relating to Medicaid. **Section 5** also provides that this prohibition does not

apply to value-added services or benefits provided to a recipient by a Medicaid managed care organization for the purpose of inducing a recipient to order or receive goods or services from a particular provider, practitioner or supplier. A person who violates **section 5** would be guilty of a gross misdemeanor or a category D felony, depending on the value of the item unlawfully solicited, offered, paid for or transferred. (NRS 422.560)

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 422 of NRS is hereby amended by adding thereto a new section to read as follows:

***1. A provider who abuses, neglects, exploits, isolates or abandons, or permits or allows another person to abuse, neglect, exploit, isolate or abandon, an older person or vulnerable person, regardless of whether the older person or vulnerable person is a recipient, is liable for:***

***(a) A civil penalty in an amount equal to three times any amount billed to Medicaid for goods or services rendered to the older person or vulnerable person by the provider, if the abuse, neglect, exploitation, isolation or abandonment occurred during or incident to the provision of the goods or services;***

***(b) If the provisions of paragraph (a) do not apply, a civil penalty of not less than $25,000 for each instance of abuse, neglect, exploitation, isolation or abandonment;***

***(c) In addition to any penalty imposed pursuant to paragraph (a) or (b), if death results from the abuse, neglect, exploitation, isolation or abandonment, an additional civil penalty of not less than $50,000;***

***(d) In addition to any penalty imposed pursuant to paragraph (a) or (b), if the abuse, neglect, exploitation, isolation or abandonment occurs in a facility licensed pursuant to chapter 449 of NRS, a civil fine of not less than $5,000 for each day of the period beginning on the first day on which the abuse, neglect, exploitation, isolation or abandonment occurred and ending on the last day on which the abuse, neglect, exploitation, isolation or abandonment occurred; and***

***(e) An amount equal to three times the total of the reasonable expenses incurred by the State in enforcing this section.***

***2. A criminal action need not be brought against the provider before civil liability attaches under this section.***

***3. The Attorney General shall cause appropriate legal action to be taken on behalf of the State to enforce the provisions of this section.***

***4. Any penalty or repayment of money collected pursuant to this section is hereby appropriated to provide medical aid to the indigent through programs administered by the Authority.***

***5. As used in this section:***

***(a) "Abandonment" has the meaning ascribed to it in NRS 200.5092.***

***(b) "Abuse" has the meaning ascribed to it in NRS 200.5092.***

***(c) "Allow" means to take no action to prevent or stop the abuse, neglect, exploitation, isolation or abandonment of an older person or a vulnerable person if the person knows or has reason to know that the older person or vulnerable person is being abused, neglected, exploited, isolated or abandoned.***

***(d) "Exploitation" has the meaning ascribed to it in NRS 200.5092.***

***(e) "Isolation" has the meaning ascribed to it in NRS 200.5092.***

***(f) "Neglect" has the meaning ascribed to it in NRS 200.5092.***

***(g) "Older person" has the meaning ascribed to it in NRS 200.5092.***

***(h) "Permit" has the meaning ascribed to it in NRS 200.5099.***

***(i) "Vulnerable person" has the meaning ascribed to it in NRS 200.5092.***

**Sec. 2.** NRS 422.410 is hereby amended to read as follows:

422.410 Unless a different penalty is provided pursuant to NRS 422.361 to 422.369, inclusive, or 422.450 to 422.590, inclusive, ***and section 1 of this act,*** a person who knowingly and designedly, by any false pretense, false or misleading statement, impersonation, misrepresentation, or concealment, transfer, disposal or assignment of money or property obtains or attempts to obtain money, property, medical or remedial care or any other service provided pursuant to Medicaid or the Children's Health Insurance Program, having a value of $100 or more, whether by one act or a series of acts, with the intent to cheat, defraud or defeat the purposes of this chapter or to enable a person to meet or appear to meet any requirements of eligibility prescribed by state law or by rule or regulation adopted by the Authority for Medicaid or the Children's Health Insurance

Program is guilty of a category E felony and shall be punished as provided in NRS 193.130. In addition to any other penalty, the court shall order the person to pay restitution.

**Sec. 3.** NRS 422.450 is hereby amended to read as follows:

422.450 As used in NRS 422.450 to 422.590, inclusive, ***and section 1 of this act,*** unless the context otherwise requires, the words and terms defined in NRS 422.460 to 422.525, inclusive, have the meanings ascribed to them in those sections.

**Sec. 4.** NRS 422.540 is hereby amended to read as follows:

422.540 1. A person, with the intent to defraud, commits an offense if with respect to the Plan the person:

(a) Makes a claim or causes it to be made, knowing the claim to be false, in whole or in part, by commission or omission;

(b) Makes or causes to be made a statement or representation for use in obtaining or seeking to obtain authorization to provide specific goods or services, knowing the statement or representation to be false, in whole or in part, by commission or omission;

(c) Makes or causes to be made a statement or representation for use by another in obtaining goods or services pursuant to the Plan, knowing the statement or representation to be false, in whole or in part, by commission or omission; or

(d) Makes or causes to be made a statement or representation for use in qualifying as a provider, knowing the statement or representation to be false, in whole or in part, by commission or omission.

2. A person who commits an offense described in subsection 1 shall be punished for a:

(a) Category D felony, as provided in NRS 193.130, if the amount of the claim or the value of the goods or services obtained or sought to be obtained was greater than or equal to $650.

(b) Misdemeanor if the amount of the claim or the value of the goods or services obtained or sought to be obtained was less than $650.

➥ Amounts involved in separate violations of this section committed pursuant to a scheme or continuing course of conduct may be aggregated in determining the punishment.

3. In addition to any other penalty for a violation of the commission of an offense described in subsection 1, the court shall order the person to pay restitution.

***4. If a criminal action is brought pursuant to this section against a defendant that is a corporation:***

***(a) The defendant must appear by counsel at all stages of the action, from the commencement of the action to sentencing; and***

***(b) A court may enter a plea of guilty and impose a sentence if the defendant fails to appear at a proceeding that the defendant is required to enter a plea.***

**Sec. 5.** NRS 422.560 is hereby amended to read as follows:

422.560 1. Except as otherwise provided in subsection 2, a person shall not:

(a) While acting on behalf of a provider, purchase or lease goods, services, materials or supplies for which payment may be made, in whole or in part, pursuant to the Plan, and solicit or accept anything of additional value in return for or in connection with the purchase or lease;

(b) Sell or lease to or for the use of a provider goods, services, materials or supplies for which payment may be made, in whole or in part, pursuant to the Plan, and offer, transfer or pay anything of additional value in connection with or in return for the sale or lease; or

(c) Refer a person to a provider for goods or services for which payment may be made, in whole or in part, pursuant to the Plan, and solicit or accept anything of value in connection with the referral.

2. Paragraphs (a) and (b) of subsection 1 do not apply if the additional value transferred is:

(a) A refund or discount made in the ordinary course of business;

(b) Reflected by the books and records of the person transferring or receiving it; and

(c) Reflected in the billings submitted to the Plan.

3. A person shall not, while acting on behalf of a provider providing goods or services to a recipient pursuant to the Plan, charge, solicit, accept or receive anything of additional value in addition to the amount legally payable pursuant to the Plan in connection with the provision of the goods or services.

4. ***Except as otherwise provided in subsection 5, a person shall not solicit, offer, pay or transfer any remuneration, including, without limitation, a bribe, kickback, rebate or anything of value, to a recipient, either directly or indirectly, overtly or covertly, in cash or in kind, that such a person knows or should know is likely to influence or induce the recipient to:***

***(a) Provide personal identifying information necessary for the submission of a claim pursuant to the Plan, including, without limitation, the name, date of birth or social security***

***number of the recipient or the Medicaid identification number assigned to the recipient pursuant to 42 C.F.R. § 435.910(h);***

***(b) Order or receive from a particular provider, practitioner or supplier any good or service for which payment is made in whole or in part pursuant to the Plan; or***

***(c) Participate in any violation of NRS 422.540 to 422.570, inclusive, and section 1 of this act.***

***5. Paragraph (b) of subsection 4 does not apply to value-added services or benefits provided pursuant to the Plan by a Medicaid managed care organization.***

***6.*** A person who violates this section, if the value of the thing or any combination of things unlawfully solicited, accepted, offered, transferred, paid, charged or received:

(a) Is less than $650, is guilty of a gross misdemeanor.

(b) Is $650 or more, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

***7. As used in this section:***

***(a) "Personal identifying information" has the meaning ascribed to it in NRS 205.4617.***

***(b) "Value-added services or benefits" means services or benefits that:***

***(1) Are in addition to the services ordinarily covered by a Medicaid managed care plan offered by a Medicaid managed care organization; and***

***(2) Have the potential to improve the health status of recipients enrolled in the Medicaid managed care plan.***

**Sec. 6.** NRS 422.590 is hereby amended to read as follows:

422.590 An action brought pursuant to NRS 422.540 to 422.580, inclusive, ***and section 1 of this act*** must be commenced within 4 years, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting a violation of NRS 422.540 to 422.580, inclusive ~~.~~ ***, and section 1 of this act.***

**Sec. 7.** NRS 422A.700 is hereby amended to read as follows:

422A.700 1. Unless a different penalty is provided pursuant to NRS 422.361 to 422.369, inclusive, or 422.450 to 422.590, inclusive, ***and section 1 of this act,*** a person who knowingly and designedly, by any false pretense, false or misleading statement, impersonation or misrepresentation, obtains or attempts to obtain monetary or any other public assistance having a value of $100 or more, whether by one act or a series of acts, with the intent to cheat, defraud or defeat the purposes of this chapter or to enable a person to meet or appear to meet any requirements of eligibility prescribed by state law or by rule or regulation adopted by the Department for a grant or increase in a grant of any type of public assistance is guilty of a category E felony and shall be punished as provided in NRS 193.130. In addition to any other penalty, the court shall order the person to pay restitution.

2. For the purposes of subsection 1, whenever a recipient of Temporary Assistance for Needy Families pursuant to the provisions of this chapter receives an overpayment of benefits for the third time and the overpayments have resulted from a false statement or representation by the recipient or from the failure of the recipient to notify the Division of a change in circumstances which would affect the amount of assistance the recipient receives, a rebuttable presumption arises that the payment was fraudulently received.

**Sec. 8.** NRS 174.035 is hereby amended to read as follows:

174.035 1. A defendant may plead not guilty, guilty, guilty but mentally ill or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty or guilty but mentally ill.

2. If a plea of guilty or guilty but mentally ill is made in a written plea agreement, the agreement must be in substantially the form prescribed in NRS 174.063. If a plea of guilty or guilty but mentally ill is made orally, the court shall not accept such a plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and consequences of the plea.

3. With the consent of the court and the district attorney, a defendant may enter a conditional plea of guilty, guilty but mentally ill or nolo contendere, reserving in writing the right, on appeal from the judgment, to a review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal must be allowed to withdraw the plea.

4. Upon an unconditional waiver of a preliminary hearing, a defendant and the district attorney may enter into a written conditional plea agreement, subject to the court accepting the recommended sentence pursuant to the agreement.

5. A plea of guilty but mentally ill must be entered not less than 21 days before the date set for trial. A defendant who has entered a plea of guilty but mentally ill has the burden of establishing the defendant's mental illness by a preponderance of the evidence. Except as otherwise provided by specific statute, a defendant who enters such a plea is subject to the same criminal, civil and administrative penalties and procedures as a defendant who pleads guilty.

6. The defendant may, in the alternative or in addition to any one of the pleas permitted by subsection 1, plead not guilty by reason of insanity. A plea of not guilty by reason of insanity must be entered not less than 21 days before the date set for trial. A defendant who has not so pleaded may offer the defense of insanity during trial upon good cause shown. Under such a plea or defense, the burden of proof is upon the defendant to establish by a preponderance of the evidence that:

(a) Due to a disease or defect of the mind, the defendant was in a delusional state at the time of the alleged offense; and

(b) Due to the delusional state, the defendant either did not:

(1) Know or understand the nature and capacity of his or her act; or

(2) Appreciate that his or her conduct was wrong, meaning not authorized by law.

7. ~~[If]~~ ***Except as otherwise provided in NRS 422.540, if*** a defendant refuses to plead or if the court refuses to accept a plea of guilty or guilty but mentally ill or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

8. A defendant may not enter a plea of guilty or guilty but mentally ill pursuant to a plea bargain for an offense punishable as a felony for which:

(a) Probation is not allowed; or

(b) The maximum prison sentence is more than 10 years,

➥ unless the plea bargain is set forth in writing and signed by the defendant, the defendant's attorney, if the defendant is represented by counsel, and the prosecuting attorney.

9. If the court accepts a plea of guilty but mentally ill pursuant to this section, the court shall cause, within 5 business days after acceptance of the plea, on a form prescribed by the Department of Public Safety, a record of that plea to be transmitted to the Central Repository for Nevada Records of Criminal History along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

10. As used in this section:

(a) "Disease or defect of the mind" does not include a disease or defect which is caused solely by voluntary intoxication.

(b) "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

**Sec. 9.** NRS 232.4993 is hereby amended to read as follows:

232.4993 1. The Authority shall administer:

(a) The provisions of chapters 449, 449A, 634B, 640D, 640E, 652, 695I and 695K of NRS and NRS 232.4996 to 232.49969, inclusive, 287.0402 to 287.049, inclusive, and 422.001 to 422.410, inclusive, and 422.580, 439.258, 439.271 to 439.2794, inclusive, 439.581 to 439.597, inclusive, 439.800 to 439.918, inclusive, 439A.200 to 439A.290, inclusive, 439A.350 to 439A.398, inclusive, 439B.600 to 439B.695, inclusive, 439B.800 to 439B.875, inclusive, and 444.003 to 444.430, inclusive, ***and section 1 of this act*** and all other provisions of law relating to the functions of the divisions of the Authority; and

(b) Any state program for persons with developmental disabilities established pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 et seq.

2. The Governor may delegate functions to the Authority other than those described in NRS 232.49903 to 232.49945, inclusive.

**Sec. 10.** The amendatory provisions of sections 4 and 8 of this act do not apply to an action or proceeding that commenced before the effective date of this act.

**Sec. 11.** This act becomes effective upon passage and approval.