
Minnesota Sentencing Guidelines Commission

Clarify Severity Level Ranking for Medical Assistance Fraud over \$35,000

April 17, 2014

Overview: MSGC staff was contacted by a probation agent preparing a sentencing guidelines worksheet for medical assistance fraud that exceeded \$35,000. Probation was seeking clarification on the severity level ranking. The prosecutor intended for the crime to be ranked at Severity Level 6; however, the Guidelines explicitly rank only five theft offenses that exceed \$35,000, at severity levels higher than Severity Level 3; medical assistance fraud is not one of them. The offenses that exceed \$35,000, that are ranked higher than Severity Level 3 are noted in Minn. Stat. § [609.52, Subd. 3\(1\)](#), have a higher statutory maximum than other theft crimes (20 years), and must be for a conviction of: theft by check or false representation (Severity Level 6); theft by swindle or trick (Severity Level 6); theft by diversion of corporate property (Severity Level 6); and financial exploitation of a vulnerable adult (Severity Level 7).

Guidelines Consideration: The Guidelines rank medical assistance fraud (Minn. Stat. § [609.466](#)) of \$5,000 or less at Severity Level 2; and over \$5,000 at Severity Level 3. An argument could be made that a higher severity level applies because the statute does not provide a statutory maximum nor direct the reader to a specific penalty provision; instead, it indicates that a person “is guilty of an attempt to commit theft of public funds and may be sentenced accordingly.” It reads:

609.466 Medical Assistance Fraud.

Any person who, with the intent to defraud, presents a claim for reimbursement, a cost report or a rate application, relating to the payment of medical assistance funds pursuant to chapter 256B, to the state agency, which is false in whole or in part, is guilty of an attempt to commit theft of public funds and may be sentenced accordingly.

“Theft of public funds” is mentioned in the general theft statute under Minn. Stat. § [609.52, Subd. 3\(3\)\(d\)\(iv\)](#), and refers to offenses under \$1,000. Since public funds are not explicitly mentioned elsewhere in the statute, it is assumed that public funds may fall under the general definition of property. If true, then potentially any of the penalties in the theft statute could apply.

It is possible that the Attorney General’s Office was relying on Minn. Stat. § 609.52, subd. 3(1), as the penalty provision and referencing the act of “false representation” under Minn. Stat. § 609.52, subd. 2(a)(3), when it arrived at its Severity Level 6, ranking:

609.52, Subd. 2(a)(3) obtains for the actor or another the possession, custody, or title to property of or performance of services by a third person by intentionally deceiving the third person with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes without limitation:

(iii) the preparation or filing of a claim for reimbursement, a rate application, or a cost report used to establish a rate or claim for payment for medical care provided to a recipient of medical assistance under chapter 256B, which intentionally and falsely states the costs of or actual services provided by a vendor of medical care; or

609.52, Subd. 3. Sentence. Whoever commits theft may be sentenced as follows: (1) to imprisonment for not more than 20 years or to payment of a fine of not more than \$100,000, or both, if the property is a firearm, or the value of the property or services stolen is more than \$35,000 and the conviction is for a violation of subdivision 2, clause (3), (4), (15), or (16), or section [609.2335, subdivision 1](#), clause (1) or (2), item (i); or

While that provision clearly applies to theft by false representation (Minn. Stat. § [609.52, Subd. 2\(3\)](#)) it does not reference medical assistance fraud. The issue is whether the sentencing provision of 609.52 subd. 3(1) can be applied to an offense not explicitly listed there. If not, can the Commission rank theft of medical assistance fraud over \$35,000 at severity level 6 without reference to 609.52 subd. 3(1).

Questions for the Commission:

1. Should medical assistance fraud over \$35,000, be ranked higher than Severity Level 3? If so, at which severity level?
2. Should the Commission contact the Revisor of Statutes to request that the Legislature consider amending Minn. Stat. § [609.466](#), to reference Minn. Stat. § [609.52](#), subd. 3, rather than reading, "may be sentenced accordingly." This would be consistent with other statutes, for example, wrongfully obtaining assistance under Minn. Stat. § [256.98](#), in which there is a reference to Minn. Stat. § [609.52, Subd. 3](#). This approach would not necessary resolve the severity-level ranking issue unless the Legislature added medical assistance fraud to the list of offenses noted in Minn. Stat. § [609.52, subd. 3\(1\)](#).

Possible Language Modification, Guidelines § 5:

5.A. Offense Severity Reference Table

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Severity Level	Office Title	Statute Number
<u>6</u>	<u>Medical Assistance Fraud (Over \$35,000)</u>	<u>609.466</u>
3	Medical Assistance Fraud (Over \$5,000)	609.466
2	Medical Assistance Fraud (\$5,000 or Less)	609.466

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5.B. Severity Level by Statutory Citation

Statute Number	Offense Title	Severity Level
<u>609.466</u>	<u>Medical Assistance Fraud (Over \$35,000)</u>	<u>6</u>
609.466	Medical Assistance Fraud (Over \$5,000)	3
609.466	Medical Assistance Fraud (\$5,000 or Less)	2

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