

§7107. Unauthorized services

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Billing agent" means a telephone utility that includes in a bill it sends to a customer a charge for a product or service offered by a service provider. [PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

B. "Billing aggregator" means any person, other than a service provider, who forwards the charge for a product or service offered by a service provider to a billing agent. [PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

C. "Service provider" means any person, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent. [PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

D. "Unauthorized service" means the provision of any service or product by a service provider from whom a billing agent has not obtained sufficient evidence of customer authorization and for which a charge appears on the customer's telephone bill. For the purposes of this section, a charge for a collect call is deemed to be authorized by the customer receiving the call. [PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

[PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

2. Registration requirements. The following acts are prohibited.

A. A service provider may not offer a product or service to a customer, the charge for which appears on the bill of a billing agent, unless the service provider is properly registered with the commission. [PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

B. A billing aggregator may not forward to a billing agent charges for a service or product offered by a service provider unless the billing aggregator is properly registered with the commission. [PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

C. A billing aggregator may not forward charges to a billing agent from a service provider who is required to be registered under this subsection and who is not properly registered under this subsection. [PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

D. A billing agent may not knowingly bill on behalf of a service provider who is required to be registered under this subsection and who is not properly registered under this subsection. [PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

A telephone utility that is authorized by the commission or by law to provide telephone services in this State is not required to be registered under this subsection.

The commission by rule may establish the manner and form of the registration. A registration properly filed with the commission takes effect 14 days after the filing date unless the commission objects to the registration and provides notice of its objection to the registrant within the 14 days. If the commission objects to the registration, the registration does not become effective unless expressly approved by the commission. The commission shall offer a person whose registration has been rejected an opportunity for a hearing. A registration, once effective, remains effective until revoked by the commission or surrendered by the service provider or billing aggregator.

[PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

3. Revocation of registration; notice.

[PL 2003, c. 505, §43 (RP).]

3-A. Denial or revocation of registration; notice. The commission may by order, after notice and opportunity for hearing, deny, suspend or revoke an application for registration as, or the registration of, a service provider or billing aggregator if the commission finds that the order is in the public interest and that the applicant or registrant, or a principal of the applicant or registrant:

A. Has knowingly misrepresented or omitted a material fact on the application for registration as a service provider or billing aggregator or has filed an incomplete application and does not take reasonable steps to provide the missing information; [PL 2003, c. 505, §44 (NEW).]

B. Has, in the case of a service provider, knowingly or repeatedly billed one or more customers for unauthorized service or, in the case of a billing aggregator, knowingly or repeatedly forwarded the charge for a service or product to a billing agent on behalf of a service provider who was required to be registered with the commission under subsection 2 and was not properly registered; [PL 2003, c. 505, §44 (NEW).]

C. Has engaged in any other false or deceptive billing practices prohibited by commission rule; [PL 2003, c. 505, §44 (NEW).]

D. Has acted as a service provider or billing aggregator in the State without being licensed to do so; [PL 2003, c. 505, §44 (NEW).]

E. Is then permanently or temporarily enjoined by any court of competent jurisdiction from violating any law governing the conduct of billing aggregators or service providers or from engaging in, or continuing, any conduct or practice indicating a lack of fitness to engage in the business of a billing aggregator or service provider; [PL 2003, c. 505, §44 (NEW).]

F. Has, within the last 10 years, pleaded guilty or nolo contendere to, or been convicted of, any crime indicating a lack of fitness to engage in the business of a billing aggregator or service provider; [PL 2003, c. 505, §44 (NEW).]

G. Is the subject of any of the following orders currently effective that were issued within the last 5 years:

(1) An order by a state or federal agency, entered after notice and opportunity for hearing, denying, suspending or revoking the person's license or registration as a service provider or billing aggregator, or the substantial equivalent of those terms, as defined in this section;

(2) A cease and desist order issued by any state or federal agency with general authority to enforce laws prohibiting unfair or deceptive acts or practices in a trade or business or with specific authority to regulate billing aggregators or service providers; or

(3) An order entered by a court of competent jurisdiction or entered after notice and an opportunity for hearing by any state or federal occupational licensing agency denying, suspending, revoking or restricting the person's occupational license as a result of allegations of misconduct. This subparagraph also applies when the denial, suspension, revocation or restriction of the license is pursuant to a consent agreement between the person and the licensing agency, whether or not the agency also issued an order; or [PL 2003, c. 505, §44 (NEW).]

H. Has, within the last 5 years, entered into a consent agreement with a state or federal enforcement or regulatory agency in which the person agreed to discontinue engaging in one or more practices alleged by the agency to have been an unfair or deceptive act or practice. [PL 2003, c. 505, §44 (NEW).]

[PL 2003, c. 505, §44 (NEW).]

4. Procedure upon complaint. If a customer of a billing agent notifies the billing agent that a charge for an unauthorized service has been included in the customer's telephone bill, the billing agent shall:

A. Immediately suspend collection efforts on that portion of the customer's bill; and [PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

B. Either cease collection efforts entirely with regard to the disputed charge or request evidence from the service provider that the customer authorized the service for which payment is sought. If the billing agent ceases collection efforts or sufficient evidence of customer authorization is not presented to the billing agent within a reasonable time, as defined by the commission by rule, the billing agent shall:

(1) Immediately remove any charges associated with the unauthorized service from the customer's bill; and

(2) Refund to the customer any amounts paid for the unauthorized service that were billed by the billing agent during the 6 months prior to the customer's complaint or during any longer period in which the customer can prove the customer was billed by the billing agent for unauthorized services.

If sufficient evidence of customer authorization is provided to the billing agent, the billing agent may restore the charges on the customer's bill and reinstitute collection efforts. The customer or the service provider may appeal the billing agent's determination to the commission. [PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

[PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

5. Enforcement authority. In addition to any authority the commission may have pursuant to other law, the commission may enforce this section in accordance with this subsection.

A. In an adjudicatory proceeding, the commission may impose an administrative penalty upon the following entities for the following violations:

(1) A service provider who provides or charges for an unauthorized service;

(2) A service provider or billing aggregator who is required to be registered under subsection 2 and who is not properly registered pursuant to that subsection;

(3) A billing agent who knowingly bills on behalf of a service provider who is required to be registered under subsection 2 and who is not properly registered pursuant to that subsection at the time the billing agent's bill is generated; and

(4) A billing agent that fails to comply with any of the requirements of subsection 4. [PL 1999, c. 59, §1 (NEW); PL 1999, c. 59, §3 (AFF).]

B. The amount of any administrative penalty imposed under paragraph A may not exceed \$1,400 per violator for violations arising out of the same incident or complaint and must be based on:

(1) The severity of the violation, including the intent of the violator, the nature, circumstances, extent and gravity of any prohibited acts;

(2) The history of previous violations;

(3) The amount necessary to deter future violations;

(4) Good faith attempts to comply after notification of a violation; and

(5) Such other matters as justice requires. [PL 2021, c. 318, §21 (AMD).]

[PL 2021, c. 318, §21 (AMD).]

6. Rulemaking. The commission shall adopt rules to implement this section. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

A. [PL 2011, c. 623, Pt. B, §27 (RP).]

B. [PL 2011, c. 623, Pt. B, §27 (RP).]

C. [PL 2011, c. 623, Pt. B, §27 (RP).]

The commission may not adopt any rule that requires any 3rd-party verification of customer authorization of the provision of any service or product by a service provider that is an affiliate of the billing agent, as defined by the commission by rule.

[PL 2011, c. 623, Pt. B, §27 (AMD).]

SECTION HISTORY

PL 1999, c. 59, §1 (NEW). PL 1999, c. 59, §3 (AFF). PL 2001, c. 71, §3 (AMD). RR 2003, c. 2, §113 (COR). PL 2003, c. 505, §§43-45 (AMD). PL 2011, c. 623, Pt. B, §27 (AMD). PL 2021, c. 318, §21 (AMD).

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