

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-338
SENATE BILL 943

AN ACT TO ENACT THE MEDICAL ASSISTANCE PROVIDER FALSE CLAIMS
ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 108A of the General Statutes is amended by adding the following new Part to read:

"Part 7. Medical Assistance Provider False Claims Act.

"§ 108A-70.10. Short title.

This Part may be cited as the Medical Assistance Provider False Claims Act.

"§ 108A-70.11. Definitions.

Definitions. – As used in this Part:

- (1) 'Attorney General' means the Attorney General or any Deputy, Assistant, or Associate Attorney General.
- (2) 'Claim' means an application for payment or approval or for use in determining entitlement to payment presented to the Medical Assistance Program in any form, including written, electronic, or magnetic, which identifies a service, good, or accommodation as reimbursable under the Medical Assistance Program.
- (3) 'Damages' means the difference between what the Medical Assistance Program paid a provider and the amount it would have paid the provider in the absence of a violation of this section and may be established by statistical sampling methods.
- (4) 'Knowingly' means that a provider, with respect to the information:
 - a. Has actual knowledge of the information;
 - b. Acts in deliberate ignorance of the truth or falsity of the information; or
 - c. Acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.
- (5) 'Medical Assistance Program' means the North Carolina Division of Medical Assistance and its fiscal agent.

"§ 108A-70.12. Liability for certain acts; damages; effect of repayment.

(a) Liability for Certain Acts. – It shall be unlawful for any provider of medical assistance under the Medical Assistance Program to:

- (1) Knowingly present, or cause to be presented to the Medical Assistance Program a false or fraudulent claim for payment or approval; or

- (2) Knowingly make, use, or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Medical Assistance Program.

Each claim presented or caused to be presented in violation of this section is a separate violation.

(b) Damages. –

- (1) Except as provided in subdivision (2) of this subsection, a court shall assess against any provider of medical assistance under the Medical Assistance Program who violates this section a civil penalty of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000) plus three times the amount of damages which the Medicaid Assistance Program sustained because of the act of the provider.
- (2) A court may assess a penalty of not less than two times the amount of damages which the Medical Assistance Program sustains because of the act of the provider if a court finds that:
 - a. The provider committing a violation of this section furnished officials of the State responsible for investigating false claims violations with all information known to the provider about the violation within 30 days after the date the provider first obtained the information;
 - b. The provider fully cooperated with any State investigation of the violation; and
 - c. At the time the provider furnished the State with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the provider did not have actual knowledge of the existence of an investigation into the violation.
- (3) In addition to the damages and penalty assessed by the court pursuant to subdivision (1) or (2) of this subsection, a provider violating this section shall also be liable for the costs of a civil action brought to recover any penalty or damages, interest on the damages at the maximum legal rate in effect on the date the payment was made to the provider for the period from the date upon which payment was made to the provider to the date upon which repayment is made by the provider to the Medical Assistance Program, and the costs of the investigation.
- (4) As applied to providers that are subject to certification review by the Division of Facility Services, a violation of Medicaid provider certification standards in providing a service, good, or accommodation shall not be considered an independent basis for liability under this Act. However, liability may be imposed if a false or fraudulent claim is presented as set forth in subsection (a) of this section in connection with that service, good, or accommodation.

(c) Effect of Repayment. – Intent to repay or repayment of any amounts obtained by a provider as a result of any acts described in subsection (a) of this section shall not be a defense to or grounds for dismissal of an action brought pursuant to this section. However, a court may consider any repayment in mitigation of the amount of any penalties assessed.

"§ 108A-70.13. False claims procedure.

(a) The Attorney General shall have the authority to investigate, institute proceedings, compromise and settle any investigation or action, and perform all duties in connection with any civil action to enforce G.S. 108A-70.12.

(b) A civil action under G.S. 108A-70.12 may not be brought more than six years after the date the violation of G.S. 108A-70.12 is committed, or more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State of North Carolina charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under G.S. 108A-70.12, the State shall be required to prove all essential elements of the cause of action, including damages, by the greater weight of the evidence.

(d) Notwithstanding any other provision of law or rule, a final judgment rendered in favor of the State in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under G.S. 108A-70.12.

(e) No criminal or administrative action need be brought against any provider as a condition for establishing civil liability under G.S. 108A-70.12. The civil liability under G.S. 108A-70.12 is in addition to any other criminal, civil, and administrative liabilities or penalties that may be prescribed by law. However, treble and double damages and civil penalties provided by G.S. 108A-70.12 shall not be assessed against a provider if treble or double damages or civil penalties have been previously assessed against the provider for the same claims under the federal False Claims Act, 31 U.S.C. § 3729, et seq., or the federal Civil Monetary Penalty Law, 42 U.S.C. § 1320a-7a. In the event that any provider is found liable under the provisions of this Act and is subsequently found liable for the same claim under the federal False Claims Act, or the appropriate sections of the federal Civil Monetary Penalty Law, the State and the Medical Assistance Program shall pay to the federal government on behalf of the provider any amounts, other than restitution, recovered or otherwise obtained by the State under this Act, not to exceed the amount of the federal damages and penalties.

(f) The amount of damages and number of violations of G.S. 108A-70.12 shall be established by the trial judge or, in the event of a jury trial, by jury verdict. The amount of penalties, treble or double damages, interest, cost of the investigation, and cost of the civil action shall be determined by the trial judge as prescribed in G.S. 108A-70.12(b).

(g) Venue for any action brought pursuant to G.S. 108A-70.12 shall be in either Wake County or in any county in which claim originated, or in which any statement or record was made, or acts done, or services, goods, or accommodations rendered in connection with any act constituting part of the violation of G.S. 108A-70.12.

"§ 108A-70.14. Civil investigative demand.

(a) If the Attorney General has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation or that would lead to the discovery of relevant information in an investigation of a violation of G.S. 108A-70.12, the Attorney General may serve upon the person, before bringing an action under G.S. 108A-70.12 or other false claims law, a civil investigative demand to appear and be examined under oath, to answer written interrogatories under oath, and to produce any documents or objects for their inspection and copying.

(b) The civil investigative demand shall:

- (1) Be served upon the person in the manner required for service of process in civil actions and may be served by the Attorney General or investigator assigned to the North Carolina Department of Justice;
- (2) Describe the nature of the conduct constituting the violation under investigation;
- (3) Describe the class or classes of any documents or objects to be produced with sufficient definiteness to permit them to be fairly identified;
- (4) Contain a copy of any written interrogatories to be answered;
- (5) Prescribe a reasonable date and time at which the person shall appear to testify, answer any written interrogatories, or produce any document or object;
- (6) Advise the person that objections to or reasons for not complying with the demand may be filed with the Attorney General on or before that date and time;
- (7) Specify a place for the taking of testimony;
- (8) Designate a person to whom answers to written interrogatories shall be submitted and to whom any document or object shall be produced; and
- (9) Contain a copy of subsections (b) and (c) of this section.

(c) The date within which to answer any written interrogatories and within which any document or object must be produced shall be more than 30 days after the civil investigative demand has been served upon the person. The date within which a person must appear to testify shall be more than 15 days after the demand has been served upon a person who resides out-of-state or more than 10 days after the demand has been served upon a person who resides in-state.

(d) The person before whom the oral examination is to be taken shall put the person to be examined on oath and shall personally, or by someone acting under the person's direction and in the person's presence, record the testimony of the person to be examined. The Attorney General may exclude from the place where the examination is held all persons except the person giving the testimony, the attorney or other

representative of the person giving the testimony, the Attorney General conducting the examination, the investigator assisting the Attorney General, the stenographer, and any other person agreed upon by the Attorney General and the person giving the testimony. When the testimony is transcribed, the person shall have a reasonable opportunity to examine and read the transcript, unless an examination and reading are waived by the person. Any changes in form or substance which the person desires to make shall be entered and identified upon the transcript by the person. The transcript shall then be signed by the person, unless the person in writing waives the signing, is ill, cannot be found, or refuses to sign.

(e) Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under sworn certificate by the person to whom the demand is directed, or in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. If a person objects to any interrogatory, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(f) The production of documents and objects in response to a civil investigative demand served under this section shall be made under a sworn certificate by the person to whom the demand is directed, or in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available. Upon written agreement between the person served with the civil investigative demand and the Attorney General, the person may substitute copies for originals of all or any part of the documents requested.

(g) No person shall be excused from testifying, answering interrogatories, or producing documents or objects in response to a civil investigative demand on the ground that the testimony, answers, documents, or objects required of the person may tend to incriminate the person. However, no testimony, answers, documents, or objects compelled pursuant to G.S. 108A-70.14 may be used against the person in a criminal action, except a prosecution for perjury or for contempt arising from a failure to comply with an order of the court.

(h) Any person appearing for oral testimony under a civil investigative demand issued pursuant to this section shall be entitled to the same fees and allowances paid to witnesses in the General Court of Justice of the State of North Carolina.

(i) If a person objects to or otherwise fails to comply with a civil investigative demand served upon the person under subsection (a) of this section, the Attorney General may file an action in superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in either Wake County or the county in

which the person resides. Notice of a hearing on the action to enforce the demand and a copy of the action shall be served upon the person in the same manner as prescribed in the Rules for Civil Procedure. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been a violation of G.S. 108A-70.12, and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe.

(j) If the person fails to comply with an order entered pursuant to subsection (i) of this section, the court may:

- (1) Adjudge the person to be in contempt of court;
- (2) Grant injunctive relief against the person to whom the demand is issued to restrain the conduct which is the subject of the investigation;
or
- (3) Grant any other relief as the court may deem proper.

(k) Any transcript of oral testimony, answers to written interrogatories, and documents and objects produced pursuant to this section may be used in connection with any civil action brought under G.S. 108A-70.12.

(l) The North Carolina Rules of Civil Procedure shall apply to this section to the extent that the rules are not inconsistent with the provisions of this section.

"§ 108A-70.15. Employee remedies.

(a) In the absence of fraud or malice, no person who furnishes information to officials of the State responsible for investigating false claims violations shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply information required pursuant to this Part.

(b) Any employee of a provider who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under G.S. 108A-70.12, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under G.S. 108A-70.12, shall be entitled to all relief necessary to make the employee whole. Relief shall include reinstatement with the same seniority status as the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court for the relief provided in this section.

"§ 108A-70.16. Uniformity of interpretation.

This Part shall be so interpreted and construed as to be consistent with the federal False Claims Act, 31 U.S.C. § 3729, et seq., and any subsequent amendments to that act."

Section 2. This act becomes effective December 1, 1997, and applies to violations committed on or after that date.

In the General Assembly read three times and ratified this the 17th day of July, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 2:15 p.m. this 25th day of July, 1997