

SUBSTITUTE FOR
SENATE BILL NO. 1622

A bill to amend 1977 PA 72, entitled
"The medicaid false claim act,"
by amending sections 2, 7, 10a, 10c, 11, and 12 (MCL 400.602,
400.607, 400.610a, 400.610c, 400.611, and 400.612), sections 2 and
7 as amended by 1984 PA 333 and sections 10a and 10c as added and
section 11 as amended by 2005 PA 337, and by adding sections 14 and
15.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Benefit" means the receipt of money, goods, or anything
3 of pecuniary value.

4 (b) "Claim" means any attempt to cause the department of
5 ~~social services~~ **COMMUNITY HEALTH** to pay out sums of money under the
6 social welfare act. ~~, Act No. 280 of the Public Acts of 1939, being~~

~~sections 400.1 to 400.121 of the Michigan Compiled Laws.~~

(c) "Deceptive" means making a claim or causing a claim to be made under the social welfare act ~~, Act No. 280 of the Public Acts of 1939, which~~ **THAT** contains a statement of fact or ~~which~~ **THAT** fails to reveal a material fact, which statement or failure leads the department to believe the represented or suggested state of affair to be other than it actually is.

(d) "False" means wholly or partially untrue or deceptive.

(e) "Health facility or agency" means a health facility or agency, as defined in section 20106 of the public health code, ~~Act No. 368 of the Public Acts of 1978, being section 333.20106 of the Michigan Compiled Laws 1978 PA 368, MCL 333.20106.~~

(f) "Knowing" and "knowingly" means that a person is in possession of **OPERATIVE** facts under which he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a medicaid benefit. Knowing or knowingly ~~does not include conduct which is an error or mistake unless the person's course of conduct indicates a systematic or persistent tendency to cause inaccuracies to be present~~ **INCLUDES ACTING IN DELIBERATE IGNORANCE OF THE TRUTH OR FALSITY OF OPERATIVE FACTS OR ACTING IN RECKLESS DISREGARD OF THE TRUTH OR FALSITY OF OPERATIVE FACTS. PROOF OF SPECIFIC INTENT TO DEFRAUD IS NOT REQUIRED.**

(g) "Medicaid benefit" means a benefit paid or payable under a program for medical assistance for the medically indigent in accordance with the social welfare act. ~~, Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.121 of the~~

1 ~~Michigan Compiled Laws.~~

2 (h) "Person" means an individual, corporation, association,
3 partnership, or other legal entity.

4 (I) "SOCIAL WELFARE ACT" MEANS THE SOCIAL WELFARE ACT, 1939 PA
5 280, MCL 400.1 TO 400.119B.

6 Sec. 7. (1) A person shall not make or present or cause to be
7 made or presented to an employee or officer of this state a claim
8 under the social welfare act, ~~Act No. 280 of the Public Acts of~~
9 ~~1939, as amended, being sections 400.1 to 400.121 of the Michigan~~
10 ~~Compiled Laws 1939 PA 280, MCL 400.1 TO 400.119B,~~ upon or against
11 the state, knowing the claim to be false.

12 (2) A person shall not make or present or cause to be made or
13 presented a claim under the social welfare act, ~~Act No. 280 of the~~
14 ~~Public Acts of 1939, which 1939 PA 280, MCL 400.1 TO 400.119B, THAT~~
15 he or she knows falsely represents that the goods or services for
16 which the claim is made were medically necessary in accordance with
17 professionally accepted standards. Each claim violating this
18 subsection ~~shall constitute~~ IS a separate offense. A health
19 facility or agency ~~shall~~ IS not be liable under this subsection
20 unless the health facility or agency, ~~pursuant~~ ACCORDING to a
21 conspiracy, combination, or collusion with a physician or other
22 provider, falsely represents the medical necessity of the
23 particular goods or services for which the claim was made.

24 (3) A PERSON SHALL NOT KNOWINGLY MAKE, USE, OR CAUSE TO BE
25 MADE OR USED A FALSE RECORD OR STATEMENT TO CONCEAL, AVOID, OR
26 DECREASE AN OBLIGATION TO PAY OR TRANSMIT MONEY OR PROPERTY TO THE
27 STATE PERTAINING TO A CLAIM PRESENTED UNDER THE SOCIAL WELFARE ACT.

1 (4) ~~(3)~~—A person who violates this section is guilty of a
2 felony ~~—~~punishable by imprisonment for not more than 4 years ~~—~~or
3 ~~by~~a fine of not more than \$50,000.00, or both.

4 Sec. 10a. (1) Any person may bring a civil action in the name
5 of this state under this section to recover losses that this state
6 suffers from a violation of this act. A suit filed under this
7 section shall not be dismissed unless the attorney general has been
8 notified and had an opportunity to appear and oppose the dismissal.
9 The attorney general waives the opportunity to oppose the dismissal
10 if it is not exercised within 28 days of receiving notice.

11 (2) If a person other than the attorney general initiates an
12 action under this section, the complaint shall remain under seal
13 and the clerk shall not issue the summons for service on the
14 defendant until after the time for the attorney general's election
15 under subsection (3) expires. At the time of filing the complaint,
16 the person shall serve a copy of the complaint on the attorney
17 general and shall disclose, in writing, substantially all material
18 evidence and information in the person's possession supporting the
19 complaint to the attorney general.

20 (3) The attorney general may elect to intervene in an action
21 under this section. Before the expiration of the later of 90 days
22 after service of the complaint and related materials or any
23 extension of the 90 days that is requested by the attorney general
24 and granted by the court, the attorney general shall notify the
25 court and the person initiating the action of 1 of the following:

26 (a) That the attorney general will proceed with the action for
27 this state and have primary responsibility for proceeding with the

1 action.

2 (b) That the attorney general declines to take over the action
3 and the person initiating the action has the right to proceed with
4 the action.

5 (4) If an action is filed under this section, a person other
6 than the attorney general shall not intervene in the action or
7 bring another action on behalf of this state based on the facts
8 underlying the action.

9 (5) If the attorney general elects to proceed with the action
10 under subsection (3) or (6), the attorney general has primary
11 responsibility for prosecuting the action and may do all of the
12 following:

13 (a) Agree to dismiss the action, notwithstanding the objection
14 of the person initiating the action, but only if that person has
15 been notified of and offered the opportunity to participate in a
16 hearing on the motion to dismiss.

17 (b) Settle the action, notwithstanding the objection of the
18 person initiating the action, but only if that person has been
19 notified of and offered the opportunity to participate in a hearing
20 on the settlement and if the court determines that the settlement
21 is fair, adequate, and reasonable under the circumstances. Upon a
22 showing of good cause, the settlement hearing may be held in
23 camera.

24 (c) Request the court to limit the participation of the person
25 initiating the action. If the attorney general demonstrates that
26 unrestricted participation by the person initiating the action
27 during the litigation would interfere with or unduly delay the

1 attorney general's prosecution of the case or would be repetitious,
2 irrelevant, or unduly harassing, the court may do any of the
3 following:

4 (i) Limit the number of the person's witnesses.

5 (ii) Limit the length of the testimony of the person's
6 witnesses.

7 (iii) Limit the person's cross-examination of witnesses.

8 (iv) Otherwise limit the person's participation in the
9 litigation.

10 (6) If the attorney general notifies the court that he or she
11 declines to take over the action under subsection (3), the person
12 who initiated the action may proceed with the action. At the
13 attorney general's request and expense, the attorney general shall
14 be provided with copies of all pleadings filed in the action and
15 copies of all deposition transcripts. Notwithstanding the attorney
16 general's election not to take over the action, the court may
17 permit the attorney general to intervene in the action at any time
18 upon a showing of good cause and, subject to subsection (7),
19 without affecting the rights or status of the person initiating the
20 action.

21 (7) Upon a showing, conducted in camera, that actions of the
22 person initiating the action during discovery would interfere with
23 the attorney general's investigation or prosecution of a criminal
24 or civil matter, the court may stay the discovery for not more than
25 90 days. The court may extend the stay upon a further showing that
26 the attorney general is pursuing the investigation or proceeding
27 with reasonable diligence and the discovery would interfere with

1 the ongoing investigation or proceeding.

2 (8) As an alternative to an action permitted under this
3 section, the attorney general may pursue a violation of this act
4 through any alternate remedy available to this state, including an
5 administrative proceeding. If the attorney general pursues an
6 alternate remedy, a person who initiated an action under this
7 section shall have equivalent rights in that proceeding to the
8 rights that the person would have had if the action had continued
9 under this section to the extent consistent with the law governing
10 that proceeding. Findings of fact and conclusions of law that
11 become final in an alternative proceeding shall be conclusive on
12 the parties to an action under this section. For purposes of this
13 subsection, a finding or conclusion is final if it has been finally
14 determined on appeal to the appropriate court, if the time for
15 filing an appeal with respect to the finding or conclusion has
16 expired, or if the finding or conclusion is not subject to judicial
17 review.

18 (9) Subject to subsections (10) and (11), if a person other
19 than the attorney general prevails in an action that the person
20 initiates under this section, the court shall award the person
21 necessary expenses, costs, reasonable attorney fees, and, based on
22 the amount of effort involved, the following percentage of the
23 monetary proceeds resulting from the action or any settlement of
24 the claim:

25 (a) If the attorney general intervenes, 15% to 25%.

26 (b) If the attorney general does not intervene, 25% to 30%.

27 (10) If the court finds an action under this section to be

1 based primarily on disclosure of specific information that was not
2 provided by the person bringing the action, such as information
3 from a criminal, civil, or administrative hearing in a state or
4 federal department or agency, a legislative report, hearing, audit,
5 or investigation, or the news media, and the attorney general
6 proceeds with the action, the court shall award the person bringing
7 the action no more than 10% of the monetary recovery in addition to
8 reasonable attorney fees, necessary expenses, and costs.

9 (11) If the court finds that the person bringing an action
10 under this section planned, initiated, or **KNOWINGLY** participated in
11 the conduct upon which the action is brought, then the court may
12 reduce or eliminate, as it considers appropriate, the share of the
13 proceeds of the action that the person would otherwise be entitled
14 to receive. A person who is convicted of criminal conduct arising
15 from a violation of this act shall not initiate or remain a party
16 to an action under this section and is not entitled to share in the
17 monetary proceeds resulting from the action or any settlement under
18 this section.

19 (12) A person other than the attorney general shall not bring
20 an action under this section that is based on allegations or
21 transactions that are ~~already~~ the subject of a civil suit, a
22 criminal ~~investigation or~~ prosecution, or an administrative
23 ~~investigation or proceeding~~ **ALLOWING IMPOSITION OF A MONETARY**
24 **PENALTY** to which this state or the federal government is already a
25 party. The court shall dismiss an action brought in violation of
26 this section.

27 (13) Unless the person is the original source of the

1 information, a person, other than the attorney general, shall not
2 initiate an action under this section based upon the public
3 disclosure of allegations or transactions in a criminal, civil, or
4 administrative hearing, in a state or federal legislative,
5 investigative, or administrative report, hearing, audit, or
6 investigation, or from the news media. The person is the original
7 source if he or she had direct and independent knowledge of the
8 information on which the allegations are based and voluntarily
9 provided the information to the attorney general before filing an
10 action based on that information under this section.

11 (14) This state and the attorney general are not liable for
12 any expenses, costs, or attorney fees that a person incurs in
13 bringing an action under this section. Any amount awarded to a
14 person initiating an action to enforce this act is payable solely
15 from the proceeds of the action or settlement.

16 (15) If a person proceeds with an action under this section
17 after being notified that the attorney general has declined to
18 intervene and the court finds that the claim was frivolous, as
19 defined in section 2591 of the revised judicature act of 1961, 1961
20 PA 236, MCL 600.2591, the court shall award the prevailing
21 defendant actual and reasonable attorney fees and expenses and, in
22 addition, shall impose a civil fine of not more than \$10,000.00.
23 The civil fine shall be deposited into the Michigan medicaid
24 benefits trust fund established in section 5 of the Michigan trust
25 fund act, 2000 PA 489, MCL 12.255.

26 Sec. 10c. (1) An employer shall not discharge, demote,
27 suspend, threaten, harass, or ~~otherwise~~ **IN ANY OTHER MANNER,**

1 discriminate against an employee in the terms and conditions of
 2 employment because the employee ~~initiates, assists in, or~~
 3 ~~participates~~ **ENGAGED IN LAWFUL ACTS, INCLUDING INITIATING,**
 4 **ASSISTING IN, OR PARTICIPATING** in a ~~proceeding or court~~ **THE**
 5 **FURTHERANCE OF AN** action under this act or because the employee
 6 cooperates with or assists in an investigation under this act. This
 7 prohibition does not apply to an employment action against an
 8 employee who the court finds brought a frivolous claim, as defined
 9 in section 2591 of the revised judicature act of 1961, 1961 PA 236,
 10 MCL 600.2591; the court finds to have planned ~~—OR initiated —or~~
 11 ~~participated in~~ the conduct upon which the action is brought; **THE**
 12 **COURT FINDS TO HAVE KNOWINGLY PARTICIPATED IN THE CONDUCT UPON**
 13 **WHICH THE ACTION BROUGHT IF THE ADVERSE EMPLOYMENT ACTION IS BASED**
 14 **ON THE EMPLOYEE'S ILLEGAL CONDUCT AND NOT HIS OR HER LAWFUL ACTS;**
 15 or is convicted of criminal conduct arising from a violation of
 16 this act.

17 (2) An employer who violates this section is liable to the
 18 employee for all of the following:

19 (a) Reinstatement to the employee's position without loss of
 20 seniority.

21 (b) Two times the amount of lost back pay.

22 (c) Interest on the back pay.

23 (d) Compensation for any special damages.

24 (e) Any other relief necessary to make the employee whole.

25 Sec. 11. (1) ~~Except as provided in subsection (2), an~~ **AN**
 26 action brought ~~in connection with a medicaid matter~~ **BY THE ATTORNEY**
 27 **GENERAL** under this act ~~shall~~ **MAY** be filed in Ingham county and may

1 be prosecuted to final judgment in satisfaction there.

2 (2) A person may bring a civil action under section 10a in any
3 county in which venue is proper. If the attorney general elects to
4 intervene under section 10a(3) or (6) and the court grants the
5 request, upon motion by the attorney general, the court shall
6 transfer the action to the circuit court in Ingham county.

7 (3) Process issued by a court in which an action is filed may
8 be served anywhere in the state.

9 Sec. 12. (1) A person who receives a benefit ~~which~~**THAT** the
10 person is not entitled to receive by reason of fraud or making a
11 fraudulent statement or knowingly concealing a material fact, **OR**
12 **WHO ENGAGES IN ANY CONDUCT PROHIBITED BY THIS STATUTE**, shall
13 forfeit and pay to the state ~~a civil penalty equal to the full~~
14 **amount received, AND FOR EACH CLAIM A CIVIL PENALTY OF NOT LESS**
15 **THAN \$5,000.00 OR MORE THAN \$10,000.00** plus triple the amount of
16 damages suffered by the state as a result of the conduct by the
17 person.

18 (2) A criminal action need not be brought against the person
19 for that person to be civilly liable under this section.

20 **SEC. 14. A PERSON SHALL NOT BRING A CIVIL ACTION UNDER SECTION**
21 **10A AFTER THE LATER OF THE FOLLOWING:**

22 (A) MORE THAN 6 YEARS AFTER THE DATE ON WHICH THE VIOLATION
23 DESCRIBED IN SECTION 10A WAS COMMITTED.

24 (B) MORE THAN 3 YEARS AFTER THE DATE WHEN FACTS MATERIAL TO
25 THE RIGHT OF ACTION ARE KNOWN OR REASONABLY SHOULD HAVE BEEN KNOWN
26 BY THE OFFICIAL OF THE STATE OF MICHIGAN CHARGED WITH
27 RESPONSIBILITY TO ACT IN THE CIRCUMSTANCES, BUT IN NO EVENT MORE

1 THAN 10 YEARS AFTER THE DATE ON WHICH THE VIOLATION WAS COMMITTED.
 2 SEC. 15. A PERSON BRINGING A CIVIL ACTION UNDER THIS ACT IS
 3 REQUIRED TO PROVE ALL ESSENTIAL ELEMENTS OF THE CAUSE OF ACTION,
 4 INCLUDING DAMAGES, BY A PREPONDERANCE OF THE EVIDENCE.