

Introduced by

Representatives Hogan, K. Koppelman, Maragos, Olson

Senators Bekkedahl, Poolman, Unruh

1 A BILL for an Act to provide for liability for false medical assistance claims to the state; and to  
2 provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.**

5 **Definitions.**

6 As used in this Act, unless the context otherwise requires:

7 1. a. "Claim" means a request or demand, whether under a contract or otherwise, for  
8 money or property, regardless of whether the state has title to that money or  
9 property, which is presented to an employee, officer, or agent of the state or is  
10 made to a contractor, grantee, or other recipient, if the money or property is to be  
11 spent or used on behalf of the state or to advance a state program or interest,  
12 and if the state:

13 (1) Provides or has provided any portion of the money or property requested or  
14 demanded; or

15 (2) Will reimburse such contractor, grantee, or other recipient for any portion of  
16 the money or property that is requested or demanded.

17 b. The term does not include a request or demand for money or property the state  
18 has paid to an individual as compensation for state employment or as an income  
19 subsidy with no restrictions on that individual's use of the money or property.

20 2. "Knowingly" or "knowing" means an individual who, regardless of whether that  
21 individual has an intent to defraud, has actual knowledge of information, acts in  
22 deliberate ignorance of the truth or falsity of the information, or acts in reckless  
23 disregard of the truth or falsity of the information.

1       3. "Material" means having a natural tendency to influence, or be capable of influencing,  
2       the payment or receipt of money or property.

3       4. "Obligation" means an established duty, regardless of whether fixed, arising from an  
4       express or implied contractual, grantor-grantee, or licensor-licensee relationship, from  
5       a fee-based or similar relationship, from statute or regulation, or from the retention of  
6       any overpayment.

7       5. "Original source" means an individual, who before a public disclosure, voluntarily  
8       disclosed to the state the information on which allegations or transactions in the claim  
9       are based, or who has knowledge that is independent of and materially adds to the  
10      publicly disclosed allegations or transactions, and who has voluntarily provided the  
11      information to the state before filing an action under this Act.

## 12      **SECTION 2.**

### 13      **Liability for certain acts - Penalty.**

14      1. Except as provided in subsection 2, a person is liable to the state for a civil penalty of  
15      not less than five thousand five hundred dollars and not more than eleven thousand  
16      dollars for each act specified in this section, three times the amount of damages the  
17      state sustains because of the person's act, and expenses, costs, and attorney's fees, if  
18      the person:

19      a. Knowingly presents or causes to be presented a false or fraudulent medical  
20      assistance claim for payment or approval;

21      b. Knowingly makes, uses, or causes to be made or used a false record or  
22      statement material to a false or fraudulent medical assistance claim paid or  
23      approved by the state;

24      c. Conspires to commit a violation of this subsection;

25      d. Has possession, custody, or control of public property or money used or to be  
26      used by the state to provide medical assistance and knowingly delivers or causes  
27      to be delivered less than all that property or money;

28      e. Is authorized to make or deliver a document certifying receipt of property used or  
29      to be used by the state and, with the intent to defraud the state, makes or  
30      delivers a receipt without completely knowing the information on the receipt is  
31      true;

- 1           f. Knowingly conceals or knowingly and improperly avoids or decreases an  
2           obligation to pay or transmit money or property to the state; or
- 3           g. Knowingly makes, uses, or causes to be made or used a false record or  
4           statement material to an obligation to pay or transmit money or property to the  
5           state.
- 6        2. In a civil action brought under this section, a court shall assess a civil penalty of not  
7        less than five thousand five hundred dollars and not more than eleven thousand  
8        dollars for each act specified in this section, and not less than two times and not more  
9        than three times the amount of damages the state sustains because of the person's  
10       act. However, the court may assess not less than two times the amount of damages  
11       the state sustains as a result of the act of the person and the person is liable to the  
12       state for the costs of the civil action brought to recover any such penalty or damages if  
13       the court finds all of the following:
- 14        a. The person committing the act furnished the attorney general with all information  
15        known to that person about the act within thirty days after the date on which the  
16        person first obtained the information.
- 17        b. The person fully cooperated with any investigation of the act by the attorney  
18        general.
- 19        c. At the time the person furnished the attorney general with information about the  
20        act, a criminal prosecution, civil action, or administrative action had not been  
21        commenced with respect to the act and the person did not have actual  
22        knowledge of the existence of an investigation into the act.
- 23        3. A person that violates the provisions of this section also is liable to the state for the  
24        expenses, costs, and attorney's fees of the civil action brought to recover the penalty  
25        or damages.
- 26        4. Liability under this section is joint and several for any act committed by two or more  
27        persons.
- 28        5. The attorney general may adopt rules to increase the minimum amount of civil  
29        penalties under this section to address inflation. The attorney may base this increase  
30        on the Federal Civil Penalties Inflation Adjustment Act of 1990 [Pub. L. 101-410; 28  
31        U.S.C. 2461].

1       **SECTION 3.**

2       **Filing prohibited.**

3       Notwithstanding the provisions of chapter 32-12.1 and 32-12.2, unless opposed by the  
4 state, a court shall dismiss an action or a claim brought under this Act if substantially the same  
5 allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal,  
6 civil, or administrative hearing in which the state or the state's agent is a party; in a legislative,  
7 state auditor, or other state report, hearing, audit, or investigation; or from the news media,  
8 unless the action is brought by the attorney general, or the person bringing the action is an  
9 original source of the information.

10       **SECTION 4.**

11       **Limitation of actions.**

- 12       1. A complaint or civil action filed under this section must be brought by the later of:  
13           a. Six years after the date on which the violation was committed; or  
14           b. Three years after the date facts material to the right of action are known or  
15                 reasonably should have been known by the official of the state charged with  
16                 responsibility to act in the circumstances.
- 17       2. An action may not be brought pursuant to subdivision b of subsection 1 more than ten  
18       years after the date on which the violation was committed.

19       **SECTION 5.**

20       **Investigation and action by attorney general.**

21       The attorney general shall investigate an alleged violation of this Act and may file a civil  
22 action, a criminal action, or both against any person that violated or is violating this Act.

23       **SECTION 6.**

24       **Complaint by person - Civil action.**

- 25       1. A person may bring a civil action for a violation of this Act on behalf of the person and  
26       the state. The action must be brought in the name of the state. The action may be  
27       dismissed only if the court and the attorney general give written consent to the  
28       dismissal and provide the reasons for consenting to the dismissal.
- 29       2. A copy of the complaint and written disclosure of substantially all material evidence  
30       and information the person possesses must be served on the attorney general  
31       pursuant to rule 5 of the North Dakota Rules of Civil Procedure. The complaint must

- 1           be filed under seal and must remain under seal for at least sixty days. The complaint  
2           may not be served upon the defendant until the court orders that it be served.
- 3        3. Within sixty days after receiving the complaint and the material evidence and  
4           information, the attorney general may elect to intervene and proceed with the action or  
5           to notify the court the attorney general declines to take over the action. If the attorney  
6           general declines to intervene or take over the action, the person bringing the action  
7           may conduct the action. For good cause shown, the attorney general may move the  
8           court for extensions of the time during which the complaint remains under seal.
- 9        4. The defendant may not be required to respond to any complaint until twenty days after  
10           the complaint is unsealed and served upon the defendant pursuant to rule 5 of the  
11           North Dakota Rules of Civil Procedure.
- 12        5. If the attorney general proceeds with the action, the attorney general has the primary  
13           responsibility for prosecuting the action and is not bound by an act of the person  
14           bringing the action. The person bringing the action has the right to continue as a party  
15           to the action subject to the limitations set forth in this chapter.
- 16        6. If the attorney general elects not to proceed with the action and the person that  
17           initiated the action conducts the action:
- 18           a. Upon the attorney general's request, the person that initiated the action shall  
19           serve the attorney general with copies of all pleadings filed in the action and shall  
20           supply the attorney general with copies of all deposition transcripts at the  
21           attorney general's expense; or
- 22           b. The court, without limiting the status and rights of the person initiating the action,  
23           may permit the attorney general to intervene at a later date upon a showing of  
24           good cause.
- 25        7. If a person files a civil action under this section, no person other than the attorney  
26           general may intervene or bring a related action based on the facts underlying the  
27           pending action.
- 28        8. Upon a showing by the attorney general unrestricted participation during the course of  
29           the litigation by the person initiating the action would interfere with or unduly delay the  
30           attorney general's prosecution of the case or would be repetitious, irrelevant, or for

- 1           purposes of harassment, the court may impose limitations on the person's  
2           participation, including:
- 3           a.   Limiting the number of witnesses the person may call;  
4           b.   Limiting the length of testimony of witnesses called by the person;  
5           c.   Limiting the person's cross-examination of witnesses; or  
6           d.   Otherwise limiting the participation of the person in the litigation.
- 7           9.   Regardless of whether the attorney general proceeds with the action, upon an  
8           in-camera showing by the attorney general that actions of discovery by the person  
9           initiating the action would interfere with the attorney general's investigation or  
10           prosecution of a criminal or civil matter arising out of the same facts, the court may  
11           extend the sixty-day period upon a further in-camera showing that the attorney general  
12           has pursued the criminal or civil investigation with reasonable diligence and any  
13           discovery in the civil action will interfere with the ongoing investigation or proceedings.
- 14          10. The attorney general may elect to pursue the claim through any alternate remedy  
15           available, including administrative proceedings to determine a civil penalty. If an  
16           alternate remedy is pursued, the person initiating the action has the same rights in  
17           such proceeding as the person would in proceeding under this section. A finding of fact  
18           or conclusion of law made in such other proceeding which has become final is  
19           conclusive on all parties to an action under this section. A finding or conclusion is final  
20           if the finding or conclusion has been determined on appeal to the appropriate court, if  
21           time for filing such an appeal has expired, or if the finding or conclusion is not subject  
22           to judicial review.
- 23          11. If the attorney general elects to intervene and proceed with an action, the attorney  
24           general may file a complaint or amend the complaint of a person that brought an  
25           action to clarify or add detail to the claim in which the attorney general is intervening  
26           and to add additional claims with which the attorney general contends the attorney  
27           general is entitled to relief. For statute of limitations purposes, any such pleading must  
28           relate back to the filing date of the complaint of the person that originally brought the  
29           action to the extent the attorney general's claim arises out of the conduct,  
30           transactions, or occurrences set forth, or attempted to be set forth, in the earlier  
31           complaint of that person.

1       **SECTION 7.**

2       **Dismissal of civil action.**

3       On motion of the attorney general, the court may dismiss a civil action notwithstanding the  
4 objection of the person that initiated the action if the attorney general notified the person of the  
5 filing of the motion to dismiss and the court has given the person an opportunity to oppose the  
6 motion and present evidence at a hearing.

7       **SECTION 8.**

8       **Burden of proof.**

9       The standard of proof in civil actions brought under this section is the preponderance of the  
10 evidence.

11       **SECTION 9.**

12       **Distribution of damages and civil penalty.**

- 13       1. Except as provided in subsection 2, if the attorney general proceeds with an action  
14 brought by a person pursuant to section 6 of this Act, the person is entitled to receive  
15 at least fifteen percent, but not more than twenty-five percent, of the proceeds  
16 recovered and collected in the action or in settlement of the claim, depending on the  
17 extent to which the person substantially contributed to the prosecution of the action.
- 18       2. The court may award an amount the court considers appropriate, but in no case more  
19 than ten percent of the proceeds in an action the court finds to be based primarily on  
20 disclosures of specific information, other than information provided by the person  
21 bringing the action, relating to allegations or transactions disclosed through a criminal,  
22 civil, or administrative hearing; a legislative, administrative, or auditor report, hearing,  
23 audit, or investigation; or the news media. In determining the award, the court shall  
24 take into account the significance of the information and the role of the person bringing  
25 the action in advancing the case to litigation.
- 26       3. A payment to a person bringing an action pursuant to this section may be made only  
27 from the proceeds recovered and collected in the action or in settlement of the claim.  
28 In addition, the person is entitled to receive an amount for reasonable expenses the  
29 court finds to have been necessarily incurred, and reasonable attorney's fees and  
30 costs. The expenses, fees, and costs must be awarded against the defendant.

- 1       4. If the attorney general does not proceed with an action pursuant to section 6 of this  
2       Act, the person bringing the action or settling the claim is entitled to receive an amount  
3       the court decides is reasonable for collecting the civil penalty and damages on behalf  
4       of the attorney general. The amount may not be less than twenty-five percent nor  
5       more than thirty percent of the proceeds recovered and collected in the action or  
6       settlement of the claim and must be paid out of the proceeds. In addition, the person is  
7       entitled to receive an amount for reasonable expenses the court finds were  
8       necessarily incurred, plus reasonable attorney fees and costs. All expenses, fees, and  
9       costs must be awarded against the defendant.
- 10      5. Whether the attorney general proceeds with the action, if the court finds the action was  
11      brought by a person that planned or initiated the violation of section 3 of this Act, the  
12      court may reduce or eliminate the share of the proceeds of the action the person  
13      would otherwise receive pursuant to subsections 1, 2, 3, and 4, taking into account the  
14      role of the person in advancing the case to litigation and any relevant circumstances  
15      pertaining to the violation. If the person bringing the action is convicted of criminal  
16      conduct arising from the person's role in the violation of this section, the person must  
17      be dismissed from the civil action and may not receive any share of the proceeds of  
18      the action. The dismissal does not prejudice the right of the attorney general to  
19      continue the action.
- 20      6. The attorney general is entitled to any damages and civil penalty not awarded to the  
21      person bringing the action, and the damages and civil penalty must be deposited in  
22      the general fund.
- 23      7. Unless otherwise provided, the remedies or penalties provided by this Act are  
24      cumulative to each other and to the remedies or penalties available under all other  
25      laws of the state.

26      **SECTION 10.**

27      **Effect of criminal conviction.**

28      A defendant convicted in any criminal proceeding is precluded from subsequently denying  
29      the essential allegations of the criminal offense of which the defendant was convicted in any  
30      civil proceeding. For purposes of this section, a conviction may result from a verdict or plea.

31      **SECTION 11.**

1       **Costs and attorney's fees.**

2       If the state favorably settles or prevails in a civil action in which the state intervened or filed,  
3 the state is entitled to be awarded reasonable expenses, consultant and expert witness fees,  
4 costs, and attorney's fees. A plaintiff is entitled to an amount for reasonable expenses the court  
5 finds to have been necessarily incurred, plus reasonable costs and attorney's fees, if the action  
6 is settled favorably for the state or the state prevails in the action. The expenses, fees, and  
7 costs must be awarded against the defendant. A defendant in a civil action brought pursuant to  
8 this section which prevails in an action that is not settled and that the court finds was clearly  
9 frivolous or brought solely for harassment purposes is entitled to reasonable costs and  
10 attorney's fees, which must be equitably apportioned against the person that brought the action,  
11 and the state if a person and the state were coplaintiffs.

12       **SECTION 12.**

13       **Relief from retaliatory actions.**

- 14       1. An employee, contractor, or agent is entitled to all relief necessary to make that  
15 employee, contractor, or agent whole, if that employee, contractor, or agent is  
16 discharged, demoted, suspended, threatened, harassed, or in any other manner  
17 discriminated against in the terms and conditions of employment because of lawful  
18 acts done by the employee, contractor, or agent or associated others in furtherance of  
19 an action under this Act or other efforts to stop one or more violations of this Act.
- 20       2. Relief under subsection 1 must include reinstatement with the same seniority status  
21 that employee, contractor, or agent would have had but for the discrimination, two  
22 times the amount of backpay, interest on the backpay, and compensation for any  
23 special damages sustained as a result of the discrimination, including litigation costs  
24 and reasonable attorney's fees. An action under this subsection may be brought in the  
25 appropriate district court for the relief provided in this subsection.
- 26       3. A civil action under this section may not be brought more than three years after the  
27 date the retaliation occurred.

28       **SECTION 13.**

29       **Settlement by attorney general.**

30       The attorney general may settle a case with a defendant under this Act, notwithstanding the  
31 objections of any person that initiated the action if the court determines, after a hearing, the

1 settlement is fair, adequate, and reasonable under the circumstances. Upon a showing of good  
2 cause, the hearing may be held in camera.

3 **SECTION 14.**

4 **False medical assistance claim to public agency - Penalty.**

- 5 1. A person commits an offense under this section if the person knowingly presents for  
6 allowance, for payment, or for the purpose of concealing, avoiding, or decreasing an  
7 obligation to pay a false or fraudulent medical assistance claim, bill, account, voucher,  
8 or writing to a public agency, public servant, or contractor authorized to allow or pay  
9 valid medical assistance claims presented to a public agency.
- 10 2. A criminal violation of this Act is a class A misdemeanor.
- 11 3. Notwithstanding subsection 2, if a false or fraudulent medical assistance claim is  
12 knowingly submitted as part of a common scheme and if the value of the claim or the  
13 aggregate value of one or more claims exceeds one thousand dollars in value, a  
14 violation of this Act is a class C felony.
- 15 4. Notwithstanding subsection 3, if a false or fraudulent medical assistance claim is  
16 knowingly submitted as part of a common scheme and if the value of the claim or the  
17 aggregate value of one or more claims exceeds ten thousand dollars in value, but  
18 does not exceed fifty thousand dollars, a violation of this Act is a class B felony.
- 19 5. Notwithstanding subsection 4, if a false or fraudulent medical assistance claim is  
20 knowingly submitted as part of a common scheme and if the value of the claim or the  
21 aggregate value of one or more claims exceeds fifty thousand dollars in value, a  
22 violation of this Act is a class A felony.