

Introduced by

Senators K. Roers, Hogan, J. Lee

Representatives Boschee, Rohr, Schneider

1 A BILL for an Act to provide for liability for false medical assistance claims and to provide for a  
2 Medicaid fraud control unit; and to 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. "Abuse" means conduct by a provider or other person involving disregard of and an  
8 unreasonable failure to conform with the laws and rules governing the Medicaid  
9 program if the disregard or failure results or may result in payment by a Medicaid  
10 agency of medical assistance payments or benefits to which the provider knows the  
11 provider is not entitled.

12 2. "Benefit" means the provision of anything of pecuniary value under the Medicaid  
13 program.

14 3. "Claim" means any request or demand, whether under a contract or otherwise, for  
15 money or property under the Medicaid program regardless of whether the state has  
16 title to the money or property which is:

17 a. Presented to an officer, employee, or agent of the state; or

18 b. Made to a contractor, grantee, or other recipient, if the money or property is to be  
19 spent or used on the state's behalf or to advance a state program or interest, and  
20 if the state:

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

23 (2) Will reimburse such contractor, grantee, or other recipient for any portion of  
24 the money or property that is requested or demanded; and does not include

- 1                   requests or demands for money or property the state has paid to an  
2                   individual as compensation for state employment or as an income subsidy  
3                   with no restrictions on that individual's use of the money or property.
- 4       4.   "Department" means the department of human services.
- 5       5.   "Document" means an application, claim, form, report, record, writing, or  
6           correspondence, whether in written, electronic, magnetic, or other form.
- 7       6.   "Fraud" means any conduct or activity prohibited by law or rule involving knowing  
8           conduct or omission to perform a duty that results in or may result in payments to  
9           which the person is not entitled.
- 10      7.   "Knowingly" or "knowing" requires no proof of specific intent to defraud and means a  
11           person has actual knowledge of the information, acts in deliberate ignorance of the  
12           truth or falsity of the information, or acts in reckless disregard of the truth or falsity of  
13           the information.
- 14      8.   "Material" means having a natural tendency to influence, or be capable of influencing,  
15           the payment or receipt of money or property.
- 16      9.   "Medicaid agency" means an agency or entity of state, county, or local government  
17           which administers any part of the Medicaid program, whether under direct statutory  
18           authority or under contract with an authorized agency of the state or federal  
19           government.
- 20      10. "Misappropriation of patient property" means exploitation, deliberate misplacement, or  
21           wrongful use or taking of a patient's property, whether temporary or permanent,  
22           without authorization by the patient or the patient's designated representative. The  
23           term includes conduct with respect to a patient's property, which would constitute a  
24           criminal offense under chapter 12.1-23.
- 25      11. "Obligation" means an established duty, whether fixed, arising from an express or  
26           implied contractual, grantor-grantee, or licensor-licensee relationship, from a  
27           fee-based or similar relationship, from statute or regulation, or from the retention of  
28           any overpayment.
- 29      12. "Original source" means an individual who before a public disclosure has voluntarily  
30           disclosed to the state the information on which allegations or transactions in a claim  
31           are based or who has knowledge that is independent of and materially adds to the

- 1           publicly disclosed allegations or transactions, and who has voluntarily provided the  
2           information to the state before filing an action under this Act.
- 3        13.   "Patient abuse" means the willful infliction of physical or mental injury of a patient or  
4           unreasonable confinement, intimidation, or punishment that results in pain, physical or  
5           mental harm, or mental anguish of a patient. The term includes conduct with respect to  
6           a patient which would constitute a criminal offense under chapter 12.1-16, 12.1-17,  
7           12.1-18, 12.1-20, or 12.1-22.
- 8        14.   "Patient neglect" means a failure, through inattentiveness, carelessness, or other  
9           omission, to provide to a patient goods and services necessary to avoid physical  
10          harm, mental anguish, or mental illness if an omission is not caused by factors beyond  
11          the person's control or by good-faith errors in judgment. The term includes conduct  
12          with respect to a patient which would constitute a criminal offense under section  
13          12.1-17-03.
- 14       15.   "Proceeds" means civil penalties and damages and excludes attorney's fees and  
15          costs.
- 16       16.   "Provider" means a person that furnishes items or services for which payment is  
17          claimed under the Medicaid program.
- 18       17.   "Record" means medical, professional, business, or financial information and  
19          documents, whether in written, electronic, magnetic, microfilm, or other form:  
20            a.   Pertaining to the provision of treatment, care, services, or items to a recipient;  
21            b.   Pertaining to the income and expenses of the provider; or  
22            c.   Otherwise relating to or pertaining to a determination of entitlement to payment or  
23                reimbursement under the Medicaid program.

24       **SECTION 2.**

25       **Liability for certain acts - Civil penalty.**

- 26       1.   Except as provided in subsection 2, a person is liable to the state for a civil penalty of  
27          not less than ten thousand nine hundred fifty-seven dollars and not more than  
28          twenty-one thousand nine hundred fifty-six dollars for each act specified in this  
29          section, three times the amount of damages the state sustains because of the  
30          person's act, and costs of the investigation and litigation fees, if the person:

- 1           a. Knowingly presents or causes to be presented a false or fraudulent claim for  
2           payment or approval;
- 3           b. Knowingly makes, uses, or causes to be made or used, a false record or  
4           statement material to a false or fraudulent claim;
- 5           c. Conspires to commit a violation of this section;
- 6           d. Has possession, custody, or control of public property or money used or to be  
7           used by the state and knowingly delivers or causes to be delivered less than all  
8           of that money or property;
- 9           e. Is authorized to make or deliver a document certifying receipt of property used or  
10          to be used by the state and, with the intent to defraud the state, makes or  
11          delivers a receipt without completely knowing the information on the receipt is  
12          true; or
- 13          f. Knowingly makes, uses, or causes to be made or used a false record or  
14          statement material to an obligation to pay or transmit money or property to the  
15          state or knowingly conceals or knowingly and improperly avoids or decreases an  
16          obligation to pay or transmit money or property to the state.
- 17      2. The court may assess not less than two times the amount of damages the state  
18      sustains because of the act of the person and the person is liable to the state for the  
19      costs of the civil action brought to recover any such penalty or damages if the court  
20      finds:
  - 21          a. The person committing the act furnished the attorney general with all information  
22          known to that person about the act within thirty days after the date on which the  
23          person first obtained the information;
  - 24          b. The person fully cooperated with any investigation of the act by the attorney  
25          general; and
  - 26          c. At the time the person furnished the attorney general with information about the  
27          act, a criminal prosecution, civil action, or administrative action had not been  
28          commenced with respect to the act and the person did not have actual  
29          knowledge of the existence of an investigation into the violation.
- 30      3. Annually, the attorney general shall review the civil penalty rates and by administrative  
31      rule shall amend these civil penalty rates to comport with the penalty amounts under

1           the federal Civil Penalties Inflation Adjustment Act of 1990 [Pub. L. 101-410; 104 Stat.  
2           890; 28 U.S.C. 2461].

3           **SECTION 3.**

4           **Limitation of actions.**

5           1. A civil action filed under this Act must be brought by the later of:

6           a. Six years after the date on which the violation was committed; or

7           b. Three years after the date facts material to the right of action are known or  
8           reasonably should have been known by the official of the state charged with  
9           responsibility to act in the circumstances.

10          2. An action may not be brought pursuant to subdivision b of subsection 1 more than ten  
11          years after the date on which the violation was committed.

12          **SECTION 4.**

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

14          The attorney general's Medicaid fraud control unit shall enforce this Act and may investigate  
15          an alleged violation of this Act and may file a civil action, a criminal action, or both against any  
16          person that violated or is violating this Act.

17          **SECTION 5.**

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

19          1. A person may bring a civil action for a violation of this Act on behalf of the person and  
20          the state. The action must be brought in the name of the state. The action may be  
21          dismissed only if the court and the attorney general give written consent to the  
22          dismissal and provide the reasons for consenting to the dismissal.

23          2. A copy of the complaint and written disclosure of substantially all material evidence  
24          and information the person possesses must be served on the attorney general  
25          pursuant to the North Dakota Rules of Civil Procedure. The complaint must be filed  
26          under seal and must remain under seal for at least sixty days. The complaint may not  
27          be served upon the defendant until the court orders that it be served.

28          3. Within sixty days after receiving the complaint and the material evidence and  
29          information, the attorney general may elect to intervene and proceed with the action or  
30          to notify the court the attorney general declines to take over the action. If the attorney  
31          general declines to intervene or take over the action, the person bringing the action

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

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

28       **SECTION 6.**

1       **Filing prohibited.**

2       1. A person may not bring an action under this Act based upon allegations or  
3       transactions which are the subject of a civil suit or an administrative civil money  
4       penalty proceeding in which the state is already a party.

5       2. The court shall dismiss an action or claim brought under this Act, unless opposed by  
6       the state, if substantially the same allegations or transactions as alleged in the action  
7       or claim were publicly disclosed; in a criminal, civil, or administrative hearing in which  
8       the state or its agent is a party; in a legislative, state auditor, or other state report,  
9       hearing, audit, or investigation; or from the news media, unless the action is brought  
10      by the attorney general or the person bringing the action is an original source of the  
11      information.

12      **SECTION 7.**

13      **Dismissal of civil action.**

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

18      **SECTION 8.**

19      **Burden of proof.**

20      The standard of proof in a civil action brought under this Act is the preponderance of the  
21      evidence.

22      **SECTION 9.**

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

24      1. Except as provided in subsection 2, if the attorney general proceeds with an action  
25      brought by a person pursuant to section 5 of this Act, the person is entitled to receive  
26      at least fifteen percent, but not more than twenty-five percent, of the proceeds  
27      recovered and collected in the action or in settlement of the claim, depending on the  
28      extent to which the person substantially contributed to the prosecution of the action.

29      2. The court may award an amount the court considers appropriate, but in no case more  
30      than ten percent of the proceeds in an action the court finds to be based primarily on  
31      disclosures of specific information, other than information provided by the person



1 bringing the action, relating to allegations or transactions disclosed through a criminal,  
2 civil, or administrative hearing; a legislative, administrative, auditor report, hearing,  
3 audit, or investigation; or the news media. In determining the award, the court shall  
4 take into account the significance of the information and the role of the person bringing  
5 the action in advancing the case to litigation.

6 3. A payment to a person bringing an action pursuant to this section may be made only  
7 from the proceeds recovered and collected in the action or in settlement of the claim.  
8 In addition, the person is entitled to receive an amount for reasonable expenses the  
9 court finds to have been necessarily incurred, and reasonable attorney's fees and  
10 costs. The expenses, fees, and costs must be awarded against the defendant.

11 4. If the attorney general does not proceed with an action pursuant to section 5 of this  
12 Act, the person bringing the action or settling the claim is entitled to receive an amount  
13 the court decides is reasonable for collecting the civil penalty and damages on behalf  
14 of the attorney general. The amount may not be less than twenty-five percent nor  
15 more than thirty percent of the proceeds recovered and collected in the action or  
16 settlement of the claim and must be paid out of the proceeds. In addition, the person is  
17 entitled to receive an amount for reasonable expenses the court finds were  
18 necessarily incurred, plus reasonable attorney's fees and costs. All expenses, fees,  
19 and costs must be awarded against the defendant.

20 5. Whether the attorney general proceeds with the action, if the court finds the action was  
21 brought by a person that planned or initiated the violation of this Act, the court may  
22 reduce or eliminate the share of the proceeds the person would otherwise receive  
23 pursuant to subsections 1 through 4, taking into account the role of the person in  
24 advancing the case to litigation and any relevant circumstances pertaining to the  
25 violation. If the person bringing the action is convicted of criminal conduct arising from  
26 the person's role in the violation of this section, the person must be dismissed from the  
27 civil action and may not receive any share of the proceeds of the action. The dismissal  
28 does not prejudice the right of the attorney general to continue the action.

29 6. The attorney general is entitled to any damages and civil penalties not awarded to the  
30 person bringing the action, and the damages and civil penalties must be deposited in  
31 the general fund.

1       7. Unless otherwise provided, the remedies or penalties provided by this Act are  
2           cumulative to each other and to the remedies or penalties available under all other  
3           laws of the state.

4       **SECTION 10.**

5       **Effect of criminal conviction.**

6       A defendant convicted in any criminal proceeding under this Act is precluded from  
7       subsequently denying the essential elements of the criminal offense of which the defendant was  
8       convicted in any civil proceeding. For purposes of this section, a conviction may result from a  
9       verdict or plea of guilty.

10      **SECTION 11.**

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

12      If the state favorably settles or prevails in a civil action in which the state intervened or filed,  
13      the state is entitled to be awarded reasonable expenses, consultant and expert witness fees,  
14      costs, and attorney's fees. In an action in which outside counsel is engaged by the attorney  
15      general, the costs and attorney's fees awarded to that counsel must equal the outside counsel's  
16      charges reasonably incurred for costs and attorney's fees in prosecuting the action. A plaintiff is  
17      entitled to an amount for reasonable expenses the court finds to have been necessarily  
18      incurred, plus reasonable costs and attorney's fees, if the action is settled favorably for the state  
19      or the state prevails in the action. The expenses, fees, and costs must be awarded against the  
20      defendant. ~~A defendant in a civil action brought pursuant to this Act which prevails in an action if~~  
21      ~~the attorney general does not intervene in a civil action and the person bringing the civil action~~  
22      ~~conducts the action and the defendant prevails in the action~~ that is not settled and the court  
23      finds was clearly frivolous or brought solely for harassment purposes, ~~the defendant~~ is entitled  
24      to reasonable costs and attorney's fees, ~~which must be equitably apportioned against the~~  
25      ~~person that brought the action and the state if a person and the state were co-plaintiffs. The~~  
26      ~~state is not liable for costs, attorney's fees, or other expenses incurred by a person in bringing~~  
27      ~~or defending an action under this Act.~~

28      **SECTION 12.**

29      **Relief from retaliatory actions.**

30      1. An employee, contractor, or agent is entitled to all relief necessary to make that  
31      employee, contractor, or agent whole, if that employee, contractor, or agent is

1 discharged, demoted, suspended, threatened, harassed, or in any other manner  
2 discriminated against in the terms and conditions of employment because of lawful  
3 acts done by the employee, contractor, agent, or associated others in furtherance of  
4 an action under this Act or other efforts to stop one or more violations of this Act.

5 2. Relief under subsection 1 includes reinstatement with the same seniority status that  
6 employee, contractor, or agent would have had but for the discrimination, two times  
7 the amount of back pay, interest on the back pay, and compensation for any special  
8 damages sustained as a result of the discrimination, including litigation costs and  
9 reasonable attorney's fees. An action under this section may be brought in the  
10 appropriate district court for the relief provided in this subsection.

11 3. A civil action under this section may not be brought more than three years after the  
12 date the retaliation occurred.

13 **SECTION 13.**

14 **Settlement by attorney general.**

15 The attorney general may settle the case with a defendant notwithstanding the objections of  
16 any person that initiated the action if the court determines, after a hearing, the settlement is fair,  
17 adequate, and reasonable under the circumstances. Upon a showing of good cause, the  
18 hearing may be held in camera. A hearing is not otherwise required for the court to approve any  
19 settlement.

20 **SECTION 14.**

21 **Medicaid fraud control unit.**

22 The Medicaid fraud control unit is established as a division of the attorney general's office.  
23 The Medicaid fraud control unit, which is under the supervision and control of the attorney  
24 general, consists of the agents and employees the attorney general considers necessary and  
25 appropriate. The Medicaid fraud control unit is a criminal justice agency within the meaning of  
26 section 12-60-16.1. Agents designated by the attorney general have peace officer status and  
27 authority, including the authority of search, seizure, and arrest. All recovered money will be  
28 forwarded to the designated state Medicaid agency for appropriate allocation between the  
29 federal government and the general fund. The portion of state match appropriations for the  
30 Medicaid fraud control unit will be appropriated from the general fund.

31 **SECTION 15.**

1       **Powers and duties of Medicaid fraud control unit.**

2       1.   The Medicaid fraud control unit shall:

3           a.   Investigate and prosecute under applicable criminal or civil laws fraud and patient  
4                abuse or neglect by providers or any other person, including cases referred by  
5                the department;

6           b.   Review complaints of patient abuse, patient neglect, and misappropriation of  
7                patient property and, if appropriate, investigate and initiate criminal or civil  
8                proceedings or refer the complaint to another federal, state, or local agency for  
9                action;

10          c.   Refer to the department for collection and, if appropriate, imposition of  
11                appropriate provider administrative actions involving provider overpayments and  
12                abuse;

13          d.   Communicate and cooperate with and, subject to applicable confidentiality laws,  
14                provide information to other federal, state, and local agencies involved in the  
15                investigation and prosecution of health care fraud, patient abuse, and other  
16                improper activities related to the Medicaid program;

17          e.   Transmit to other state and federal agencies, in accordance with law, reports of  
18                convictions, copies of judgments and sentences imposed and other information  
19                and documents for purposes of program exclusions or other sanctions or  
20                penalties under Medicaid, Medicare, or other state or federal benefit or  
21                assistance programs;

22          f.   Recommend to state agencies appropriate or necessary adoption or revision of  
23                laws, rules, policies, and procedures to prevent fraud, abuse, and other improper  
24                activities under the Medicaid program and to aid in the investigation and  
25                prosecution of fraud, abuse, and other improper activities under the Medicaid  
26                program; and

27          g.   Enter an agreement with the Medicaid agency regarding referrals, information  
28                sharing, and improper payment recoveries as provided in title 42, Code of  
29                Federal Regulations, part 455, section 23.

30       2.   The Medicaid fraud control unit may:

- 1           a. Initiate criminal prosecutions and civil actions pursuant to subsection 1 in any  
2           court of competent jurisdiction in the state;
- 3           b. Upon request, obtain information and records from applicants, recipients, and  
4           providers;
- 5           c. Subject to applicable federal confidentiality laws and rules and for purposes  
6           related to any investigation or prosecution under subsection 1, obtain from the  
7           department, local offices of public assistance, and other local, county, or state  
8           government departments or agencies records and other information, including  
9           applications, provider enrollment forms, claims and reports, individual or entity  
10          tax returns, or other information provided to or in the possession of the tax  
11          commissioner or the state auditor;
- 12          d. Refer appropriate cases to federal, other state, or local agencies for investigation,  
13          prosecution, or imposition of penalties, restrictions, or sanctions;
- 14          e. Work cooperatively with federal agencies; and
- 15          f. Enter agreements with the department and other federal, state, and local  
16          agencies in furtherance of the unit's mission.

17          **SECTION 16.**

18          **Medicaid fraud - Criminal penalty.**

- 19          1. A person commits a criminal offense under this section if the person knowingly:
  - 20           a. Presents for allowance, for payment, or for the purpose of concealing, avoiding,  
21           or decreasing an obligation to pay a false or fraudulent medical assistance claim,  
22           bill, account, voucher, or writing to a public agency, public servant, or contractor  
23           authorized to allow or pay medical assistance claims;
  - 24           b. Solicits, accepts, offers, or provides any remuneration, including a kickback,  
25           bribe, or rebate in exchange for purchasing, leasing, ordering, arranging for, or  
26           recommending the purchasing, leasing, or ordering of any services or items from  
27           a provider for which payment may be made under the Medicaid program;
  - 28           c. Solicits, accepts, offers, or provides any remuneration, including a kickback,  
29           bribe, or rebate in exchange for a fee for referring a recipient to another provider  
30           or arranging for the furnishing of services or items for which payment may be  
31           made under the Medicaid program;

- 1           d. Fails or refuses to provide covered medically necessary services to eligible  
2           recipients as required with respect to a managed care contract, health  
3           maintenance organization contract, or similar contract or subcontract under the  
4           Medicaid program; or
- 5           e. Conspires with another person to commit a violation of this section.
- 6        2. Conduct or activity that does not violate or which is protected under the provisions of,  
7        or federal regulations adopted under 42 U.S.C. 1395nn and 42 U.S.C. 1320a-7b(b), is  
8        not considered an offense under subdivision b of subsection 1, and the conduct or  
9        activity must be accorded the same protections allowed under federal laws and  
10       regulations.
- 11       3. A person convicted of this offense involving payments, benefits, kickbacks, bribes,  
12       rebates, remuneration, services, or claims not exceeding one thousand dollars in  
13       value is guilty of a class A misdemeanor.
- 14       4. Notwithstanding subsection 3, if the value of the payments, benefits, kickbacks, bribes,  
15       rebates, remuneration, services, or claims of the Medicaid fraud were part of a  
16       common scheme and exceed one thousand dollars in value, a violation of this Act is a  
17       class C felony.
- 18       5. Notwithstanding subsection 3, if the value of the payments, benefits, kickbacks, bribes,  
19       rebates, remuneration, services, or claims of the Medicaid fraud were part of a  
20       common scheme and exceed ten thousand dollars in value but do not exceed fifty  
21       thousand dollars, a violation of this Act is a class B felony.
- 22       6. Notwithstanding subsection 3, if the value of the payments, benefits, kickbacks, bribes,  
23       rebates, remuneration, services, or claims of the Medicaid fraud were part of a  
24       common scheme and exceed fifty thousand dollars in value, a violation of this Act is a  
25       class A felony.
- 26       a. For purposes of imposing sentence for a conviction under this Act, the value of  
27       payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims  
28       involved is the greater of the value of Medicaid payments or benefits received as  
29       a result of the illegal conduct or activity or the value of the payments, benefits,  
30       kickbacks, bribes, rebates, remuneration, services, or claim involved.

- 1           b. Amounts involved in Medicaid fraud committed pursuant to a common scheme or  
2           the same transaction may be aggregated in determining the value involved.
- 3           c. A person convicted of the offense of Medicaid fraud must be suspended from  
4           participation in the Medicaid program:
- 5                 (1) For any period of time not less than one year for a first offense or the person  
6                 may be permanently terminated from participation in the medical assistance  
7                 program;
- 8                 (2) For any period of time not less than three years for a second offense, or the  
9                 person may be permanently terminated from participation in the medical  
10                assistance program; or
- 11                (3) Permanently for a third offense.
- 12         7. In addition to any other penalty provided by law, a person convicted of Medicaid fraud  
13           is not entitled to bill or collect from the recipient, the Medicaid program, or any other  
14           third-party payer for the services or items involved and shall repay to the Medicaid  
15           program any payments or benefits obtained by any person for the services or items  
16           involved.

17         **SECTION 17.**

18         **Civil investigative demands and subpoenas - Failure to comply - Confidentiality.**

- 19         1. If the attorney general, or a designee, has reason to believe a person may be in  
20           possession, custody, or control of documentary material or information relevant to an  
21           investigation under this Act, the attorney general, or a designee, may, before  
22           commencing a civil proceeding under section 5 of this Act, issue in writing and cause  
23           to be served upon the person, a civil investigative demand or subpoena requiring the  
24           person to, under oath:
- 25                a. Produce the documentary material for inspection and copying;
- 26                b. Answer in writing written interrogatories with respect to the documentary material  
27                or information;
- 28                c. Give oral testimony concerning the **subject matter of the investigation, including**  
29                **any** documentary material or information; or
- 30                d. Furnish any combination of the material, answers, or testimony.

1       2. If a civil investigative demand or subpoena is an express demand for product of  
2       discovery, the attorney general or a designee shall cause to be served, a copy of such  
3       demand upon the person from which the discovery was obtained and shall notify the  
4       person to which such demand is issued of the date on which the copy was served.

5       3. If a person objects to or otherwise fails to comply with a civil investigative demand or  
6       subpoena served upon that person under subsection 1, the attorney general may file  
7       in the district court a petition for an order to enforce the demand or subpoena. If the  
8       court finds the demand or subpoena is proper, the court shall order the person to  
9       comply with the demand or subpoena and may grant such injunctive or other relief as  
10       may be required until the person complies with the demand or subpoena. Notice of  
11       hearing on the petition and a copy of the petition must be served upon the person that  
12       may appear in opposition to the petition. If the attorney general prevails in an action  
13       brought under this subsection, the court shall award to the attorney general  
14       reasonable attorney's fees, costs, and expenses incurred in bringing the action.

15       4. Any testimony taken or material produced under this section must be kept confidential  
16       by the attorney general before bringing an action against a person under this chapter  
17       for the violation under investigation, unless confidentiality is waived by the person  
18       being investigated and the person that testified, answered interrogatories, or produced  
19       material, or disclosure is authorized by the court.

20       5. Information obtained by the attorney general or designee may be shared with a person  
21       that initiated the action if the attorney general or designee determine it is necessary as  
22       part of any investigation under this Act and the person agrees to comply with the  
23       confidentiality provisions provided in subsection 4, and unless otherwise provided by  
24       state or federal law.

25       **SECTION 18.**

26       **Cooperation of governmental agencies with Medicaid fraud control unit.**

27       All local, county, and state departments and agencies shall cooperate with the Medicaid  
28       fraud control unit and the unit's agents and employees to effectuate the purposes of the unit.

29       **SECTION 19.**

30       **Authorization to adopt rules.**

31       The attorney general may adopt rules, pursuant to chapter 28-32, to implement this Act.