

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 ~~3.2.~~ "Claim" means ~~any~~:

15 ~~a.~~ Any request or demand, whether under a contract or otherwise, for money or
16 property under the Medicaid program regardless of whether the state has title to
17 the money or property which is:

18 ~~a.~~ (1) Presented to an officer, employee, or agent of the state; or

19 ~~b.~~ (2) Made to a contractor, grantee, or other recipient, if the money or property is
20 to be spent or used on the state's behalf or to advance a state program or
21 interest, and if the state:

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

1 ~~(2)~~ (b) Will reimburse such contractor, grantee, or other recipient for any
2 portion of the money or property that is requested or demanded; ~~and~~
3 does.

4 b. A claim does not include requests or demands for money or property the state
5 has paid to an individual as compensation for state employment or as an income
6 subsidy with no restrictions on that individual's use of the money or property.

7 4.3. "Department" means the department of human services.

8 5.4. "Document" means an application, claim, form, report, record, writing, or
9 correspondence, whether in written, electronic, magnetic, or other form.

10 6.5. "Fraud" means any conduct or activity prohibited by law or rule involving knowing
11 conduct or omission to perform a duty that results in or may result in payments to
12 which the person is not entitled.

13 ~~7.6. "Knowingly" or "knowing" requires no proof of specific intent to defraud and means a~~
14 ~~person has actual knowledge of the information, acts in deliberate ignorance of the~~
15 ~~truth or falsity of the information, or acts in reckless disregard of the truth or falsity of~~
16 ~~the information~~ means "knowingly" as defined in section 12.1-02-02.

17 8.7. "Material" means having a natural tendency to influence, or be capable of influencing,
18 the payment or receipt of money or property.

19 9.8. "Medicaid agency" means an agency or entity of state, county, or local government
20 which administers any part of the Medicaid program, whether under direct statutory
21 authority or under contract with an authorized agency of the state or federal
22 government.

23 10.9. "Misappropriation of patient property" means exploitation, deliberate misplacement, or
24 wrongful use or taking of a patient's property, whether temporary or permanent,
25 without authorization by the patient or the patient's designated representative. The
26 term includes conduct with respect to a patient's property, which would constitute a
27 criminal offense under chapter 12.1-23.

28 ~~11.10.~~ "Obligation" means an established duty, whether fixed, arising from an express or
29 implied contractual, grantor-grantee, or licensor-licensee relationship, from a
30 fee-based or similar relationship, from statute or regulation, or from the retention of
31 any overpayment.

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

6 ~~13.11.~~ "Patient abuse" means the willful infliction of physical or mental injury of a patient or
7 unreasonable confinement, intimidation, or punishment that results in pain, physical or
8 mental harm, or mental anguish of a patient. The term includes conduct with respect to
9 a patient which would constitute a criminal offense under chapter 12.1-16, 12.1-17,
10 12.1-18, 12.1-20, or 12.1-22.

11 ~~14.12.~~ "Patient neglect" means a failure, through inattentiveness, carelessness, or other
12 omission, to provide to a patient goods and services necessary to avoid physical
13 harm, mental anguish, or mental illness if an omission is not caused by factors beyond
14 the person's control or by good-faith errors in judgment. The term includes conduct
15 with respect to a patient which would constitute a criminal offense under section
16 12.1-17-03.

17 ~~15.~~ ~~"Proceeds" means civil penalties and damages and excludes attorney's fees and~~
18 ~~costs.~~

19 ~~16.13.~~ "Provider" means a person that furnishes items or services for which payment is
20 claimed under the Medicaid program.

21 ~~17.14.~~ "Record" means medical, professional, business, or financial information and
22 documents, whether in written, electronic, magnetic, microfilm, or other form:
23 a. Pertaining to the provision of treatment, care, services, or items to a recipient;
24 b. Pertaining to the income and expenses of the provider; or
25 c. Otherwise relating to or pertaining to a determination of entitlement to payment or
26 reimbursement under the Medicaid program.

27 **SECTION 2.**

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

- 29 1. Except as provided in ~~subsections~~ ~~subsections 2 and 3~~, a person is liable to the state for
30 a civil penalty of not less than ~~ten~~ thousand ~~nine hundred fifty seven~~ dollars and
31 not more than ~~twenty-one~~ thousand ~~nine hundred fifty six~~ dollars for each act

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

1 commenced with respect to the act and the person did not have actual
2 knowledge of the existence of an investigation into the violation.

3 ~~3. Annually, the attorney general shall review the civil penalty rates and by administrative~~
4 ~~rule shall amend these civil penalty rates to comport with the penalty amounts under~~
5 ~~the federal Civil Penalties Inflation Adjustment Act of 1990 [Pub. L. 101-410; 104 Stat.~~
6 ~~890; 28 U.S.C. 2461].~~ If the total claim made or presented by a person under
7 subsection 1 is less than one hundred thousand dollars, the civil penalty for which the
8 person is liable may not be more than fifteen percent of the total claim submitted.

9 **SECTION 3.**

10 **Limitation of actions.**

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

18 **SECTION 4.**

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

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

23 ~~**SECTION 5.**~~

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 the North Dakota Rules of Civil Procedure. The complaint must be filed~~

1 under seal and must remain under seal for at least sixty days. The complaint may not
2 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 a person brings an action under this section, no person other than the attorney~~
13 ~~general may intervene or bring a related action based on the facts underlying the~~
14 ~~pending action.~~

15 ~~6. If the attorney general proceeds with the action, the attorney general has the primary~~
16 ~~responsibility for prosecuting the action and is not bound by an act of the person~~
17 ~~bringing the action. The person bringing the action has the right to continue as a party~~
18 ~~to the action subject to the limitations set forth in this Act.~~

19 ~~7. If the attorney general elects not to proceed with the action and the person that~~
20 ~~initiated the action conducts the action:~~

21 ~~a. Upon the attorney general's request, the person that initiated the action shall~~
22 ~~serve the attorney general with copies of all pleadings filed in the action and shall~~
23 ~~supply the attorney general with copies of all deposition transcripts at the~~
24 ~~attorney general's expense; or~~

25 ~~b. The court, without limiting the status and rights of the person initiating the action,~~
26 ~~may permit the attorney general to intervene at a later date upon a showing of~~
27 ~~good cause.~~

28 ~~8. If a person files a civil action under this section, no person other than the attorney~~
29 ~~general may intervene or bring a related action based on the facts underlying the~~
30 ~~pending action.~~

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

1 ~~extent the attorney general's claim arises out of the conduct, transactions, or~~
2 ~~occurrences set forth, or attempted to be set forth, in the prior complaint of that~~
3 ~~person.~~

4 ~~— SECTION 6.~~

5 ~~— **Filing prohibited.**~~

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

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

16 ~~— SECTION 7.~~

17 ~~— **Dismissal of civil action.**~~

18 ~~On motion of the attorney general, the court may dismiss a civil action notwithstanding the~~
19 ~~objection of the person that initiated the action if the attorney general notified the person of the~~
20 ~~filing of the motion to dismiss and the court has given the person an opportunity to oppose the~~
21 ~~motion and present evidence at a hearing.~~

22 **SECTION 5.**

23 **Burden of proof.**

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

26 ~~— SECTION 9.~~

27 ~~— **Distribution of damages and civil penalty.**~~

28 ~~1. Except as provided in subsection 2, if the attorney general proceeds with an action~~
29 ~~brought by a person pursuant to section 5 of this Act, the person is entitled to receive~~
30 ~~at least fifteen percent, but not more than twenty five percent, of the proceeds.~~

1 ~~recovered and collected in the action or in settlement of the claim, depending on the~~
2 ~~extent to which the person substantially contributed to the prosecution of the action.~~

3 ~~2. The court may award an amount the court considers appropriate, but in no case more~~
4 ~~than ten percent of the proceeds in an action the court finds to be based primarily on~~
5 ~~disclosures of specific information, other than information provided by the person~~
6 ~~bringing the action, relating to allegations or transactions disclosed through a criminal,~~
7 ~~civil, or administrative hearing; a legislative, administrative, auditor report, hearing,~~
8 ~~audit, or investigation; or the news media. In determining the award, the court shall~~
9 ~~take into account the significance of the information and the role of the person bringing~~
10 ~~the action in advancing the case to litigation.~~

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

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

25 ~~5. Whether the attorney general proceeds with the action, if the court finds the action was~~
26 ~~brought by a person that planned or initiated the violation of this Act, the court may~~
27 ~~reduce or eliminate the share of the proceeds the person would otherwise receive~~
28 ~~pursuant to subsections 1 through 4, taking into account the role of the person in~~
29 ~~advancing the case to litigation and any relevant circumstances pertaining to the~~
30 ~~violation. If the person bringing the action is convicted of criminal conduct arising from~~
31 ~~the person's role in the violation of this section, the person must be dismissed from the~~

~~civil action and may not receive any share of the proceeds of the action. The dismissal does not prejudice the right of the attorney general to continue the action.~~

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

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

SECTION 6.

Effect of criminal conviction.

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

SECTION 7.

Costs and attorney's fees.

If the state favorably settles or prevails in a civil action in which the state intervened or filed, the state is entitled to be awarded reasonable expenses, consultant and expert witness fees, costs, and attorney's fees. In an action in which outside counsel is engaged by the attorney general, the costs and attorney's fees awarded to that counsel must equal the outside counsel's charges reasonably incurred for costs and attorney's fees in prosecuting the action. ~~A plaintiff is entitled to an amount for reasonable expenses the court finds to have been necessarily incurred, plus reasonable costs and attorney's fees, if the action is settled favorably for the state or the state prevails in the action.~~ The expenses, fees, and costs must be awarded against the defendant. ~~If the attorney general does not intervene in a civil action and the person bringing the civil action conducts the action and the defendant prevails in the action that is not settled and the court finds was clearly frivolous or brought solely for harassment purposes, the defendant is entitled to reasonable costs and attorney's fees.~~ The state is not liable for costs, attorney's fees, or other expenses incurred by a person in bringing or defending an action under this Act.

1 **SECTION 8.**

2 **Relief from retaliatory actions.**

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

17 ~~**SECTION 13.**~~

18 ~~**Settlement by attorney general.**~~

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

24 **SECTION 9.**

25 **Medicaid fraud control unit.**

26 The Medicaid fraud control unit is established as a division of the attorney general's office.
27 The Medicaid fraud control unit, which is under the supervision and control of the attorney
28 general, consists of the agents and employees the attorney general considers necessary and
29 appropriate. The Medicaid fraud control unit is a criminal justice agency within the meaning of
30 section 12-60-16.1. Agents designated by the attorney general have peace officer status and
31 authority, including the authority of search, seizure, and arrest. All recovered money will be

1 forwarded to the designated state Medicaid agency for appropriate allocation between the
2 federal government and the general fund. The portion of state match appropriations for the
3 Medicaid fraud control unit will be appropriated from the general fund.

4 **SECTION 10.**

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

6 1. The Medicaid fraud control unit shall:

- 7 a. Investigate and prosecute under applicable criminal or civil laws fraud and patient
8 abuse or neglect by providers or any other person, including cases referred by
9 the department;
- 10 b. Review complaints of patient abuse, patient neglect, and misappropriation of
11 patient property and, if appropriate, investigate and initiate criminal or civil
12 proceedings or refer the complaint to another federal, state, or local agency for
13 action;
- 14 c. Refer to the department for collection and, if appropriate, imposition of
15 appropriate provider administrative actions involving provider overpayments and
16 abuse;
- 17 d. Communicate and cooperate with and, subject to applicable confidentiality laws,
18 provide information to other federal, state, and local agencies involved in the
19 investigation and prosecution of health care fraud, patient abuse, and other
20 improper activities related to the Medicaid program;
- 21 e. Transmit to other state and federal agencies, in accordance with law, reports of
22 convictions, copies of judgments and sentences imposed and other information
23 and documents for purposes of program exclusions or other sanctions or
24 penalties under Medicaid, Medicare, or other state or federal benefit or
25 assistance programs;
- 26 f. Recommend to state agencies appropriate or necessary adoption or revision of
27 laws, rules, policies, and procedures to prevent fraud, abuse, and other improper
28 activities under the Medicaid program and to aid in the investigation and
29 prosecution of fraud, abuse, and other improper activities under the Medicaid
30 program; and

- 1 g. Enter an agreement with the Medicaid agency regarding referrals, information
2 sharing, and improper payment recoveries as provided in title 42, Code of
3 Federal Regulations, part 455, section 23.
- 4 2. The Medicaid fraud control unit may:
- 5 a. Initiate criminal prosecutions and civil actions pursuant to subsection 1 in any
6 court of competent jurisdiction in the state;
- 7 b. Upon request, obtain information and records from applicants, recipients, and
8 providers;
- 9 c. Subject to applicable federal confidentiality laws and rules and for purposes
10 related to any investigation or prosecution under subsection 1, obtain from the
11 department, local offices of public assistance, and other local, county, or state
12 government departments or agencies records and other information, including
13 applications, provider enrollment forms, claims and reports, individual or entity
14 tax returns, or other information provided to or in the possession of the tax
15 commissioner or the state auditor;
- 16 d. Refer appropriate cases to federal, other state, or local agencies for investigation,
17 prosecution, or imposition of penalties, restrictions, or sanctions;
- 18 e. Work cooperatively with federal agencies; and
- 19 f. Enter agreements with the department and other federal, state, and local
20 agencies in furtherance of the unit's mission.

21 **SECTION 11.**

22 **Medicaid fraud - Criminal penalty.**

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

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

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

20 **SECTION 12.**

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

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

- 1 c. Give oral testimony concerning the subject matter of the investigation, including
2 any documentary material or information; or
- 3 d. Furnish any combination of the material, answers, or testimony.
- 4 2. If a civil investigative demand or subpoena is an express demand for product of
5 discovery, the attorney general or a designee shall cause to be served, a copy of such
6 demand upon the person from which the discovery was obtained and shall notify the
7 person to which such demand is issued of the date on which the copy was served.
- 8 3. If a person objects to or otherwise fails to comply with a civil investigative demand or
9 subpoena served upon that person under subsection 1, the attorney general may file
10 in the district court a petition for an order to enforce the demand or subpoena. If the
11 court finds the demand or subpoena is proper, the court shall order the person to
12 comply with the demand or subpoena and may grant such injunctive or other relief as
13 may be required until the person complies with the demand or subpoena. Notice of
14 hearing on the petition and a copy of the petition must be served upon the person that
15 may appear in opposition to the petition. If the attorney general prevails in an action
16 brought under this subsection, the court shall award to the attorney general
17 reasonable attorney's fees, costs, and expenses incurred in bringing the action.
- 18 4. Any testimony taken or material produced under this section must be kept confidential
19 by the attorney general before bringing an action against a person under this chapter
20 for the violation under investigation, unless confidentiality is waived by the person
21 being investigated and the person that testified, answered interrogatories, or produced
22 material, or disclosure is authorized by the court.
- 23 5. Information obtained by the attorney general or designee may be shared with a person
24 that initiated the action if the attorney general or designee determine it is necessary as
25 part of any investigation under this Act and the person agrees to comply with the
26 confidentiality provisions provided in subsection 4, and unless otherwise provided by
27 state or federal law.

28 **SECTION 13.**

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

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

1 **SECTION 14.**

2 **Authorization to adopt rules.**

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