THE MEDICAID FALSE CLAIM ACT

Act 72 of 1977

AN ACT to prohibit fraud in the obtaining of benefits or payments in connection with the medical assistance program; to prohibit kickbacks or bribes in connection with the program; to prohibit conspiracies in obtaining benefits or payments; to authorize the attorney general to investigate alleged violations of this act; to provide for the appointment of investigators by the attorney general; to ratify prior appointments of attorney general investigators; to provide for civil actions to recover money received by reason of fraudulent conduct; to provide for receiverships of residential health care facilities; to prohibit retaliation; to provide for certain civil fines; and to prescribe remedies and penalties.

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 1982, Act 518, Imd. Eff. Dec. 31, 1982 ;-- Am. 2005, Act 337, Imd. Eff. Jan. 3, 2006

The People of the State of Michigan enact:

CAUTION! This document is from an archive and may contain outdated information.

400.601 Short title.

Sec. 1.

This act shall be known and may be cited as "the medicaid false claim act".

History: 1977, Act 72, Imd. Eff. July 27, 1977

400.602 Definitions.

Sec. 2.

As used in this act:

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

(b) "Claim" means any attempt to cause the department of community health to pay out sums of money under the social welfare act.

(c) "Deceptive" means making a claim or causing a claim to be made under the social welfare act that contains a statement of fact or that fails to reveal a fact, which statement or failure leads the department to believe the represented or suggested state of affair to be other than it actually is.

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

(e) "Health facility or agency" means a health facility or agency, as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(f) "Knowing" and "knowingly" means that a person is in possession of facts under which he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a medicaid benefit. Knowing or knowingly includes acting in deliberate ignorance of the truth or falsity of facts or acting in reckless disregard of the truth or falsity of facts. Proof of specific intent to defraud is not required.

(g) "Medicaid benefit" means a benefit paid or payable under a program for medical assistance for the medically indigent in accordance with the social welfare act.

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

(i) "Social welfare act" means the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984 ;-- Am. 2008, Act 421, Imd. Eff. Jan. 6, 2009

400.603 Application for, or determining rights to, medicaid benefits; false statement or false representation of material facts; concealing or failing to disclose certain events; felony; penalty.

Sec. 3.

(1) A person shall not knowingly make or cause to be made a false statement or false representation of a material fact in an application for medicaid benefits.

(2) A person shall not knowingly make or cause to be made a false statement or false representation of a material fact for use in determining rights to a medicaid benefit.

(3) A person, who having knowledge of the occurrence of an event affecting his initial or continued right to receive a medicaid benefit or the initial or continued right of any other person on whose behalf he has applied for or is receiving a benefit, shall not conceal or fail to disclose that event with intent to obtain a benefit to which the person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled.

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

History: 1977, Act 72, Imd. Eff. July 27, 1977

CAUTION! This document is from an archive and may contain outdated information

400.604 Furnishing of goods or services; kickbacks or bribes; payments or rebates for referrals; felony; penalty.

Sec. 4.

A person who solicits, offers, or receives a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part pursuant to a program established under Act No. 280 of the Public Acts of 1939, as amended, who makes or receives the payment, or who receives a rebate of a fee or charge for referring an individual to another person for the furnishing of the goods and services is guilty of a felony, punishable by imprisonment for not more than 4 years, or by a fine of not more than $30,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977

400.605 Conditions or operation of institution or facility; false statement or false representation of material fact to qualify for certification or recertification; felony; penalty.

Sec. 5.

(1) A person shall not knowingly and wilfully make, or induce or seek to induce the making of, a false statement or false representation of a material fact with respect to the conditions or operation of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, or home health agency.

(2) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 4 years, or by a fine of not more than $30,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977

400.606 Obtaining payment or allowance of false claim; felony; penalty.

Sec. 6.

(1) A person shall not enter into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false claim under the social welfare act, Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.121 of the Michigan Compiled Laws.

(2) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 10 years, or by a fine of not more than $50,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984

400.607 Making or presenting false claims or false record or statement; violations as separate offenses; liability of health facility or agency; violation as felony; penalty.

Sec. 7.

(1) A person shall not make or present or cause to be made or presented to an employee or officer of this state a claim under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, upon or against the state, knowing the claim to be false.

(2) A person shall not make or present or cause to be made or presented a claim under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, that he or she knows falsely represents that the goods or services for which the claim is made were medically necessary in accordance with professionally accepted standards. Each claim violating this subsection is a separate offense. A health facility or agency is not liable under this subsection unless the health facility or agency, pursuant to a conspiracy, combination, or collusion with a physician or other provider, falsely represents the medical necessity of the particular goods or services for which the claim was made.

(3) A person shall not knowingly make, use, or cause to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state pertaining to a claim presented under the social welfare act.

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

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984 ;-- Am. 2008, Act 421, Imd. Eff. Jan. 6, 2009

CAUTION! This document is from an archive and may contain outdated information.

400.608 Prosecution; evidence; rebuttable presumptions.

Sec. 8.

(1) In a prosecution under this act, it shall not be necessary to show that the person had knowledge of similar acts having been performed in the past by a person acting on his or her behalf, nor to show that the person had actual notice that the acts by the persons acting on his or her behalf occurred to establish the fact that a false statement or representation was knowingly made.

(2) It shall be a rebuttable presumption that a person knowingly made a claim for a medicaid benefit if the person's actual, facsimile, stamped, typewritten, or similar signature is used on the form required for the making of a claim for a medicaid benefit.

(3) If a claim for a medicaid benefit is made by means of computer billing tapes or other electronic means, it shall be a rebuttable presumption that the person knowingly made the claim if the person has notified the department of social services in writing that claims for medicaid benefits will be submitted by use of computer billing tapes or other electronic means.

(4) In any civil or criminal action under this act, the official certificate of the director of social services or the director's delegate setting forth that documentary material or any compilation of documentary material is an authentic record or a compilation of the records of the medical assistance program under the social welfare act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.121 of the Michigan Compiled Laws, shall create a rebuttable presumption that the record or compilation is authentic.

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984

400.609 Persons convicted 3 or more times for offense and subsequently convicted of another offense; penalty.

Sec. 9.

(1) A person who is convicted 3 or more times for an offense under this act and who is subsequently convicted of another offense under this act may be sentenced to imprisonment for a term of not more than 10 years. To be subject to punishment under this section, it is not necessary to establish that the person was indicted and convicted as a previous offender, but the increased punishment provided in this section shall be imposed in accordance with the procedure prescribed in section 13 of chapter 9 of Act No. 175 of the Public Acts of 1927, as amended, being section 769.13 of the Michigan Compiled Laws.

(2) Sentences imposed for a conviction of separate offenses under this act may run consecutively.

History: 1977, Act 72, Imd. Eff. July 27, 1977

CAUTION! This document is from an archive and may contain outdated information.

400.610 Investigation by attorney general or assistant attorney general; appointment and powers of investigators; ratification of appointments; written demand; noncompliance; action to enforce demand; service; order; confidentiality.

Sec. 10.

(1) The attorney general or an assistant attorney general on behalf of the attorney general may conduct an investigation of an alleged violation of this act.

(2) For purposes of enforcing this act, the attorney general may appoint investigators who shall be peace officers and whose powers shall include, but not be limited to, the following:

(a) The power to execute and serve search warrants, arrest warrants, subpoenas, administrative warrants, and summonses issued under the authority of the state.

(b) The power to seize property pursuant to the laws of this state.

(c) Investigators appointed by the attorney general may exercise the powers provided in this subsection when working in conjunction with local law enforcement agencies or the department of state police.

(3) All appointments of attorney general investigators by the attorney general on and after January 1, 1979 as peace officers are hereby ratified.

(4) If the attorney general has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation for violation of this act, the attorney general may serve upon the person, before bringing any action, a written demand to appear and be examined under oath, and to produce the document or object for inspection and copying. The demand shall include all of the following:

(a) Be served upon the person in the manner required for service of process in this state.

(b) Describe the nature of the conduct constituting the violation under investigation.

(c) Describe the document or object with sufficient definiteness to permit it to be fairly identified.

(d) Contain a copy of any written interrogatories.

(e) Prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories, and within which the document or object must be produced, and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general, on or before that time.

(f) Specify a place for the taking of testimony or for production and designate the person who shall be custodian of the document or object.

(g) Contain a copy of subsection (5).

(5) If a person objects to or otherwise fails to comply with the written demand served upon him or her under subsection (4), the attorney general may file in the circuit court of the county in which the person resides or in which the person maintains a principal place of business within this state an action to enforce the demand. Notice of hearing the action and a copy of all pleadings shall be served upon the person, who may appear in opposition. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been or is

presently occurring a violation of this act, and that the information sought or document or object demanded is relevant to the investigation, the court shall order the person to comply with the demand, subject to modification the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

(6) Except as required by federal law, any procedure, testimony taken, or material produced shall be kept confidential by the attorney general before bringing an action against a person under this act for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or disclosure is authorized by the court.

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 1982, Act 518, Imd. Eff. Dec. 31, 1982 ;-- Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984

400.610a Civil action in name of state; initiation; complaint; intervention; pleadings; discovery; stay; alternative remedy; award; share of proceeds; court finding of frivolous claim; civil fine.

Sec. 10a.

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

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

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

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

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

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

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

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

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

(c) Request the court to limit the participation of the person initiating the action. If the attorney general demonstrates that unrestricted participation by the person initiating the action during the litigation would interfere with or unduly delay the attorney general's prosecution of the case or would be repetitious, irrelevant, or unduly harassing, the court may do any of the following:

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

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

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

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

(6) If the attorney general notifies the court that he or she declines to take over the action under subsection (3), the person who initiated the action may proceed with the action. At the attorney general's request and expense, the attorney general shall be provided with copies of all pleadings filed in the action and copies of all deposition transcripts. Notwithstanding the attorney general's election not to take over the action, the court may permit the attorney general to intervene in the action at any time upon a showing of good cause and, subject to subsection (7),

CAUTION! This document is from an archive and may contain outdated information.

without affecting the rights or status of the person initiating the action.

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

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

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

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

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

(10) If the court finds an action under this section to be based primarily on disclosure of specific information that was not provided by the person bringing the action, such as information from a criminal, civil, or administrative hearing in a state or federal department or agency, a legislative report, hearing, audit, or investigation, or the news media, and the attorney general proceeds with the action, the court may award the person bringing the action no more than 10% of the monetary recovery in addition to reasonable attorney fees, necessary expenses, and costs.

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

(12) A person other than the attorney general shall not bring an action under this section that is based on allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding to which this state or the federal government is already a party. The court shall dismiss an action brought in violation of this section.

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

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

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

History: Add. 2005, Act 337, Imd. Eff. Jan. 3, 2006 ;-- Am. 2008, Act 421, Imd. Eff. Jan. 6, 2009

400.610b Recovery of costs by attorney general.

Sec. 10b.

CAUTION! This document is from an archive and may contain outdated information.

(1) The attorney general may recover all costs this state incurs in the litigation and recovery of medicaid restitution under this act, including the cost of investigation and attorney fees. The attorney general shall retain the amount received for activities under this act, excluding amounts for restitution, court costs, and fines, not to exceed the amount of this state's funding match for the medicaid fraud control unit.

(2) The attorney general shall not retain amounts under this section until all the restitution awarded in the proceeding has been paid.

(3) Costs that the attorney general recovers in excess of the state's funding match for the medicaid fraud control unit shall be deposited in the Michigan medicaid benefits trust fund established in section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

History: Add. 2005, Act 337, Imd. Eff. Jan. 3, 2006

400.610c Employment action against employee initiating, assisting in, or participating in court action; prohibition; violation; liability of employer.

Sec. 10c.

(1) An employer shall not discharge, demote, suspend, threaten, harass, or in any other manner, discriminate against an employee in the terms and conditions of employment because the employee engaged in lawful acts, including initiating, assisting in, or participating in the furtherance of an action under this act or because the employee cooperates with or assists in an investigation under this act. This prohibition does not apply to an employment action against an employee who the court finds brought a frivolous claim, as defined in section 2591 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2591; the court finds to have planned and initiated the conduct upon which the action is brought; or is convicted of criminal conduct arising from a violation of this act.

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

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

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

(c) Interest on the back pay.

(d) Compensation for any special damages.

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

CAUTION! This document is from an archive and may contain outdated information.

History: Add. 2005, Act 337, Imd. Eff. Jan. 3, 2006 ;-- Am. 2008, Act 421, Imd. Eff. Jan. 6, 2009

400.611 Filing and prosecution of action; jurisdiction; service of process.

Sec. 11.

(1) An action brought by the attorney general under this act may be filed in Ingham county and may be prosecuted to final judgment in satisfaction there.

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

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

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 2005, Act 337, Imd. Eff. Jan. 3, 2006 ;-- Am. 2008, Act 421, Imd. Eff. Jan. 6, 2009

400.612 Civil penalty for receiving benefit by reason of fraud, making fraudulent statement, knowingly concealing material fact, or engaging in prohibited conduct; criminal action not required.

Sec. 12.

(1) A person who receives a benefit that the person is not entitled to receive by reason of fraud or making a fraudulent statement or knowingly concealing a material fact, or who engages in any conduct prohibited by this statute, shall forfeit and pay to the state the full amount received, and for each claim a civil penalty of not less than $5,000.00 or more than $10,000.00 plus triple the amount of damages suffered by the state as a result of the conduct by the person.

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

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 2008, Act 421, Imd. Eff. Jan. 6, 2009

400.613 Revocation of license of residential health care facility; petition for appointment of receiver; order; appointment, compensation, and powers and duties of receiver.

Sec. 13.

(1) As a means of protecting the health, safety, and welfare of patients in a residential health care facility, including hospitals, nursing homes, and other institutions reimbursed for resident or patient care by the medical assistance program established by Act No. 280 of the Public Acts of 1939, as amended, if the license of a residential health care facility is revoked for violation of this act, the attorney general may file a petition with the circuit court for the county of Ingham or the circuit court in the county in which the residential health care facility is located for the appointment of a receiver.

(2) The circuit court shall issue an order to show cause why a receiver should not be appointed returnable within 5 days after the filing of the petition.

(3) If the court finds that the facts warrant the granting of the petition, the court shall appoint a receiver to take charge of the residential health care facility. The court may determine fair compensation for the receiver.

(4) A receiver appointed pursuant to this section shall have the powers and duties prescribed by the court not inconsistent with section 2926 of Act No. 236 of the Public Acts of 1961, being section 600.2926 of the Michigan Compiled Laws. The receiver may correct an act prohibited by this act or required under Act No. 280 of the Public Acts of 1939, as amended.

History: 1977, Act 72, Imd. Eff. July 27, 1977

CAUTION! This document is from an archive and may contain outdated information.

400.614 Statute of limitations.

Sec. 14.

(1) A person shall not bring a civil action under section 10a after the later of the following:

(a) More than 6 years after the date on which the violation described in section 10a was committed.

(b) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state of Michigan charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation was committed.

(2) A person may bring an action under this act for conduct that occurred before the effective date of the amendatory act that added this section if the action is filed within the time limitation in subsection (1).

History: Add. 2008, Act 421, Imd. Eff. Jan. 6, 2009

400.615 Burden of proof; preponderance of evidence.

Sec. 15.

A person bringing a civil action under this act is required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

History: Add. 2008, Act 421, Imd. Eff. Jan. 6, 2008

CAUTION!
This document is from an archive and may contain outdated information.