

TENNESSEE MEDICAID FALSE CLAIMS ACT

(As amended by Acts 2012, chapter 806)

71-5-181 Tennessee Medicaid False Claims Act -- Short title.

(a) The title of this section and §§ 71-5-182 -- 71-5-186 is and may be cited as the "Tennessee Medicaid False Claims Act."

(b) "Medicaid program" as used in §§ 71-5-182 -- 71-5-186 includes the TennCare program and any successor program to the medicaid program.

71-5-182. Violations -- Damages -- Definitions.

(a) Subject to subdivision (2), any person who:

(1)(A) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval under the medicaid program;

(B) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim to get a false or fraudulent claim under the medicaid program paid for or approved;

(C) Conspires to commit a violation of subsection (A), (B), or (D); Or

(D) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money, or property to the state, or knowingly conceals, or knowingly and improperly, avoids, or decreases an obligation to pay or transmit money or property to the state, relative to the medicaid program;

is liable to the state for a civil penalty of not less than five thousand dollars (\$ 5,000) and not more than twenty-five thousand dollars (\$ 25,000), adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 101-410), plus three (3)

times the amount of damages which the state sustains because of the act of that person.

(2) However, if the court finds that:

(A) The person committing the violation of this subsection (a) furnished officials of the state responsible for investigating false claims violations with all information known to such person about the violation within thirty (30) days after the date on which the defendant first obtained the information;

(B) The person fully cooperated with any state investigation of such violation; and

(C) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under Sections 71-5-181 through 71-5-186 with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation;

The court may assess not less than two (2) times the amount of damages which the state sustains because of the act of the person.

(3) A person violating this subsection (a) shall also be liable for the costs of a civil action brought to recover any such penalty or damages.

(a) Any person who:

(b) For purposes of this section, "knowing" and "knowingly" mean that a person, with respect to information:

(1) Has actual knowledge of the information;

(2) Acts in deliberate ignorance of the truth or falsity of the information; or

(3) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) "Claim" means any request or demand, whether under a contract or otherwise, for money or property and whether or not the state has title to the money or property, that is presented to any employee, officer, or agent of the state, or is made to any contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and if the state provides or has provided any portion of the money or property requested or demanded; or if the state will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and does not include requests or demands for money or property that the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or property.

(d) "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

(e) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(f) Any person who engages, has engaged or proposes to engage in any act described by subsection (a) may be enjoined in any court of competent jurisdiction in an action brought by the attorney general. The action shall be brought in the name of the state and shall be granted if it is clearly shown that the state's rights are being violated by such person or entity and the state will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of such person or entity will tend to render such final judgment ineffectual. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent any act described by subsection (a) by any person or entity, or as may be necessary to restore to the Medicaid program any money or property, real or personal, which may have been acquired by means of such act.

71-5-183. Civil actions -- Employee remedies.

(a) If the attorney general and reporter finds that a person has violated or is violating § 71-5-182, the attorney general and reporter may bring a civil action under this section against the person.

(b) (1) A person may bring a civil action for a violation of § 71-5-182 for the person and for the state. The action shall be brought in the name of the state of Tennessee. The action may be dismissed only if the court and the attorney general and reporter or district attorney general give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state. The complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.

(3) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (b)(2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the sixty-day period or any extensions obtained under subdivision (b)(3), the state shall:

(A) Proceed with the action, in which case the action shall be conducted by the state; or

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection (b), no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(c) (1) If the state proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in subdivision (c)(2).

(2) (A) The state may dismiss the action notwithstanding the objections of the person initiating the action, if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The state may settle the action with the defendant notwithstanding the objections of the person initiating the action, if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(i) Limiting the number of witnesses the person may call;

(ii) Limiting the length of the testimony of such witnesses;

(iii) Limiting the person's cross-examination of witnesses; or

(iv) Otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action

would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the state elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts, at the state's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

(4) Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil monetary penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceedings as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this subdivision (c)(5), a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of jurisdiction, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) (1) (A) If the state proceeds with an action brought by a person under subsection (a), a person shall, subject to subdivision (d)(1)(B), receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(B) Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, report, audit, investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(C) Any payment to a person under subdivisions (d)(1)(A) and (d)(1)(B) shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the state does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 71-5-182 upon which the action was brought, then the court may, to the extent the court considers

appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under subdivision (d)(1) or (d)(2), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from such person's role in the violation of § 71-5-181, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

(4) If the state does not proceed with the action and the person bringing the action conducts the action, the court shall award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e)(1) In no event may a person bring an action under subsection (b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil monetary penalty proceeding in which the state is already a party.

(2)(A) The court shall dismiss an action or claim under this section, unless opposed by the state, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil, or administrative hearing in which the state or its agent is a party; in a state legislative, State Comptroller, or other state report, hearing, audit, or investigation; or from the news media, unless the action is brought by the attorney general and reporter or district attorney general or the person bringing the action is an original source of the information.

(B) For purpose of this subdivision (e)(2), "original source" means an individual who either prior to a public disclosure under subdivision (e)(2)(A) has voluntarily disclosed to the state the information on which allegations or transactions in a claim are based; or who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the state before filing an action under this section.

(f) The state is not liable for expenses that a person incurs in bringing an action under this section.

(g) Any employee, contractor, or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent on behalf of the employee or associated others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee, contractor, or agent whole. The relief shall include reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An action under this subsection may be brought in the appropriate court for the relief provided in this subsection (g), but may not be brought more than 3 years after the date when the retaliation occurred.

(h) (1) Upon written request of the attorney general and reporter, the bureau of TennCare may bring an action as an administrative proceeding on behalf of the state for recovery under § 71-5-182 against any person specified by the attorney general and reporter other than an enrollee, recipient or applicant, subject to the conditions set forth in this subsection (h).

(2) The amount of actual damages that the state may seek in such administrative proceeding shall not exceed twenty five thousand dollars (\$ 25,000). This limit shall not apply to any civil penalties or costs that the state is eligible to recover under § 71-5-182 or to § 71-5-182 related to double or treble damages.

(3) Notwithstanding § 71-5-182, the civil penalty for each violation of § 71-5-182 in such administrative proceeding shall be not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000).

(4) Any administrative action brought pursuant to this subsection (h) shall be subject to § 71-5-184.

(5) Any administrative action brought pursuant to this subsection (h) shall be initiated as a contested case in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(6) The bureau of TennCare shall have authority to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as are necessary to implement this subsection (h). For purposes of rendering a final order pursuant to the Uniform Administrative Procedures Act, the bureau of TennCare is designated as the agency to review initial orders and issue final agency decisions. Orders issued by the bureau of TennCare shall have the effect of a final order pursuant to the Uniform Administrative Procedures Act.

(7) (A) Whenever an order issued by the bureau of TennCare pursuant to this part has become final, a notarized copy of the order may be filed in the office of the clerk of the chancery court of DavidsonCounty.

(B) When filed in accordance with this subsection (h), a final order shall be considered as a judgment by consent of the parties on the same terms and conditions as those recited in the order. The judgment shall be promptly entered by the court. Except as otherwise provided in this subsection (h), the procedure for entry of judgment and the effect of the judgment shall be the same as provided in title 26, chapter 6.

(C) A judgment entered pursuant to this subsection (h) shall become final on the date of entry.

(D) A final judgment under this subsection (h) has the same effect, is subject to the same procedures and may be enforced or satisfied in the same manner as any other judgment of a court of record of this state.

(8) Any recovery under this subsection (h) in excess of the amounts paid to reimburse the bureau of TennCare for damages and costs and to other interested parties shall be paid to the attorney general and reporter to be used to investigate and prosecute health care fraud in the TennCare program.

(9) This subsection (h) is declared to be remedial in nature and shall be liberally construed to effectuate its purposes.

71-5-184 Service -- Limitations.

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under § 71-5-183 may be served at any place in the United States.

(b) A civil action under § 71-5-183 may not be brought:

(1) More than six (6) years after the date on which the violation of § 71-5-182 is committed, or

(2) More than three (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 charged with responsibility to act in the circumstances, but in no event more than ten (10) years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under § 71-5-183, the state shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, the Rules of Criminal Procedure, or the Rules of Evidence, a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall stop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) or § 71-5-183.

71-5-185 Venue.

Any action under § 71-5-183 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one (1) defendant can be found, resides, transacts business, or in which any act proscribed by § 71-5-182 occurred. A summons as required by the Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.