

1 SB216
2 173599-2
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 11-FEB-16

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8 SYNOPSIS: Existing law does not provide a specific
9 remedy for the state to pursue damages sustained
10 when a person or entity commits false or fraudulent
11 acts against the state.

12 This bill would establish the Alabama
13 Medicaid False Claims Act, to provide a remedy for
14 fraudulent claims in the Alabama Medicaid program.

15 This bill would provide that certain persons
16 who make false claims or commit fraud against the
17 Medicaid program would be liable to the state for
18 three times the amount of damage sustained, a civil
19 penalty, and any associated costs, including
20 attorneys' fees.

21 This bill would provide for the
22 responsibilities of the Attorney General and
23 private individuals in investigating and proceeding
24 against violators in civil actions.

25 This bill would prohibit any employer from
26 taking retaliatory action or preventing an employee
27 from disclosing information to government or law

1 enforcement agencies investigating false or
2 fraudulent claims actions.

3 This bill would also provide for the
4 limitation of actions.

5
6 A BILL
7 TO BE ENTITLED
8 AN ACT
9

10 To create the Alabama Medicaid False Claims Act,
11 relating to false or fraudulent claims made upon the Alabama
12 Medicaid program; to subject certain violators making false
13 claims or committing fraud against the Alabama Medicaid Agency
14 to treble damages and civil penalties; to provide for
15 associated investigative costs; to provide for exceptions; to
16 provide for the responsibilities of the Attorney General and
17 private individuals in investigating and proceeding against
18 violators in civil actions; to prohibit retaliatory actions by
19 employers against employees who disclose information to
20 government or law enforcement agencies investigating false
21 claims; and to provide for the limitation of actions.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. The act shall be known and may be cited
24 as the Alabama Medicaid False Claims Act.

25 Section 2. For the purposes of this act, the
26 following terms shall have the following meanings:

1 (1) CLAIM. Any request or demand, whether under a
2 contract or otherwise, for money or property and whether or
3 not the state has title to the money or property, based on
4 costs or projected costs and including any entry or omission
5 in a cost report or similar document, book of account, or any
6 other document that supports or attempts to support the claim
7 that satisfies either of the following:

8 a. Is presented to the Alabama Medicaid Agency, its
9 employees, agents, contractors, or its designated fiscal
10 intermediary.

11 b. Is made to a contractor, grantee, or other
12 recipient, if the money or property is to be spent or used on
13 the Alabama Medicaid Agency's behalf or to advance an Alabama
14 Medicaid Agency program or interest, and if the Alabama
15 Medicaid Agency provides or has provided any portion of the
16 money or property requested or will reimburse such contractor,
17 grantee, or other recipient for any portion of the money or
18 property which is requested or demanded.

19 (2) KNOWING or KNOWINGLY. A person, with respect to
20 information, satisfies any of the following:

21 a. Has actual knowledge of the information.

22 b. Acts in deliberate ignorance of the truth or
23 falsity of the information.

24 c. Acts in reckless disregard of the truth or
25 falsity of the information.

1 (3) PERSON. Any natural person, corporation, firm,
2 association, organization, partnership, limited liability
3 company, business, or trust.

4 (4) MATERIAL. Having a natural tendency to
5 influence, or be capable of influencing, the payment or
6 receipt of money or property.

7 (5) OBLIGATION. An established duty, whether or not
8 fixed, arising from an express or implied contractual,
9 grantor-grantee, or licensor-licensee relationship, from a
10 fee-based or similar relationship, from statute or regulation,
11 or from the retention of any overpayment.

12 Section 3. (a) (1) Except as otherwise provided in
13 subdivision (3), a person who does any of the following is
14 liable to the state for a civil penalty of not less than five
15 thousand five hundred dollars (\$5,500) and not more than
16 eleven thousand dollars (\$11,000) for each claim, as adjusted
17 by the Federal Civil Penalties Inflation Adjustment Act of
18 1990, plus three times the amount of damages which the state
19 sustains because of the act of that person and the costs of a
20 civil action brought to recover any penalty or damages:

21 a. Knowingly presents, or causes to be presented, a
22 false or fraudulent claim for payment or approval to the
23 Alabama Medicaid program.

24 b. Knowingly makes, uses, or causes to be made or
25 used, a false or fraudulent record or statement material to a
26 false or fraudulent claim to the Alabama Medicaid program.

1 c. Knowingly makes, uses, or causes to be made or
2 used, a false record or statement material to an obligation to
3 pay or transmit money or property to the Alabama Medicaid
4 program, or knowingly conceals or knowingly and improperly
5 avoids or decreases an obligation to pay or transmit money or
6 property to the Alabama Medicaid program.

7 d. Conspires to commit a violation of paragraph a.,
8 b., or c.

9 (2) No proof of specific intent to defraud is
10 required under this section.

11 (3) The court shall assess not less than two times
12 the amount of damages which the state sustains because of the
13 act of the person if it finds all of the following:

14 a. The person committing the violation of this
15 subsection furnished officials of the state responsible for
16 investigating false claims violations with all information
17 known to the person about the violation within 30 days after
18 the date on which the defendant first obtained the
19 information.

20 b. The person fully cooperated with any state
21 investigation of the violation of this subsection.

22 c. At the time the person furnished the state with
23 the information about the violation, no criminal prosecution,
24 civil action, or administrative action had commenced with
25 respect to the violation, and the person did not have actual
26 knowledge of the existence of an investigation into the
27 violation.

1 (b) (1) A person who engages, has engaged, or
2 proposes to engage in any act described by subsection (a) may
3 be enjoined in any court of competent jurisdiction in an
4 action brought by the Attorney General.

5 (2) The action shall be brought in the name of the
6 state and shall be granted if it is clearly shown that the
7 state's rights are being violated by the person and the state
8 will suffer immediate and irreparable injury, loss, or damage
9 pending a final judgment in the action, or that the acts or
10 omissions of the person will tend to render such final
11 judgment ineffectual.

12 (3) The court may make such orders or judgments,
13 including the appointment of a receiver, as may be necessary
14 to prevent any act described by subsection (a) by any person,
15 or as may be necessary to restore to the Medicaid program any
16 money or property, real or personal, which may have been
17 acquired by means of the act.

18 Section 4. (a) The Attorney General shall diligently
19 investigate a violation of this act. If the Attorney General
20 finds that a person has violated or is violating this act, he
21 or she may bring a civil action under this section against the
22 person.

23 (b) (1) A private person may bring a civil action for
24 a violation of this act for the person and for the state. The
25 action shall be brought in the name of the State of Alabama.
26 The action may be dismissed only if the court and the Attorney

1 General give written consent to the dismissal and their
2 reasons for consenting.

3 (2) A copy of the complaint and written disclosure
4 of substantially all material evidence and information the
5 person possesses shall be served on the state. The complaint
6 shall be filed in camera, shall remain under seal for at least
7 60 days, and shall not be served on the defendant until the
8 court so orders. The state may elect to intervene and proceed
9 with the action within 60 days after it receives both the
10 complaint and the material evidence and information.

11 (3) The state, for good cause shown, may move the
12 court for extensions of the time during which the complaint
13 remains under seal under subdivision (2). The motion may be
14 supported by affidavits or other submissions in camera. The
15 defendant may not be required to respond to any complaint
16 filed under this section until 20 days after the complaint is
17 unsealed and served upon the defendant.

18 (4) Before the expiration of the 60-day period or
19 any extensions obtained under subdivision (3), the state shall
20 do either of the following:

21 a. Proceed with the action, in which case the action
22 shall be conducted by the state.

23 b. Notify the court that it declines to take over
24 the action, in which case the person bringing the action shall
25 have the right to conduct the action.

26 (5) When a person brings an action under this
27 subsection, no person other than the state may intervene or

1 bring a related action based on the facts underlying the
2 pending action.

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

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

14 b. The state may settle the action with the
15 defendant notwithstanding the objections of the person
16 initiating the action, if the court determines, after a
17 hearing, that the proposed settlement is fair, adequate, and
18 reasonable under the circumstances. Upon a showing of good
19 cause, the hearing may be held in camera.

20 c. Upon a showing by the state that unrestricted
21 participation during the course of the litigation by the
22 person initiating the action would interfere with or unduly
23 delay the state's prosecution of the case, or would be
24 repetitious, irrelevant, or for purposes of harassment, the
25 court may impose limitations on the person's participation,
26 such as any of the following:

1 1. Limiting the number of witnesses the person may
2 call.

3 2. Limiting the length of the testimony of such
4 witnesses.

5 3. Limiting the person's cross-examination of
6 witnesses.

7 4. Otherwise limiting the participation by the
8 person in the litigation.

9 d. Upon a showing by the defendant that unrestricted
10 participation during the course of the litigation by the
11 person initiating the action would be for purposes of
12 harassment or would cause the defendant undue burden or
13 unnecessary expense, the court may limit the participation by
14 the person in the litigation.

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

25 (4) Whether or not the state proceeds with the
26 action, upon a showing by the state that certain actions of
27 discovery by the person initiating the action would interfere

1 with the state's investigation or prosecution of a criminal or
2 civil matter arising out of the same facts, the court may stay
3 the discovery for a period of not more than 60 days. Such a
4 showing shall be conducted in camera. The court may extend the
5 60-day period upon a further showing in camera that the state
6 has pursued the criminal or civil investigation or proceedings
7 with reasonable diligence and any proposed discovery in the
8 civil action will interfere with the ongoing criminal or civil
9 investigation or proceedings.

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

26 (d) (1) a. If the state proceeds with an action
27 brought by a person under subsection (a), a person, subject to

1 paragraph b., shall receive at least 15 percent, but not more
2 than 25 percent of the proceeds of the action or settlement of
3 the claim, depending upon the extent to which the person
4 substantially contributed to the prosecution of the action.

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

15 c. Any payment to a person under paragraph a. or b.
16 shall be made from the proceeds. The person shall also receive
17 an amount for reasonable expenses that the court finds to have
18 been necessarily incurred, plus reasonable attorney's fees and
19 costs. All expenses, fees, and costs shall be awarded against
20 the defendant.

21 (2) If the state does not proceed with an action
22 under this section, the person bringing the action or settling
23 the claim shall receive an amount that the court decides is
24 reasonable for collecting the civil penalty and damages. The
25 amount shall be not less than 25 percent and not more than 30
26 percent of the proceeds of the action or settlement and shall
27 be paid out of such proceeds. The person shall also receive an

1 amount for reasonable expenses which the court finds to have
2 been necessarily incurred, plus reasonable attorney's fees and
3 costs. All expenses, fees, and costs shall be awarded against
4 the defendant.

5 (3) Whether or not the state proceeds with the
6 action, if the court finds that the action was brought by a
7 person who planned and initiated the violation upon which the
8 action was brought, then the court may, to the extent the
9 court considers appropriate, reduce the share of the proceeds
10 of the action that the person would otherwise receive under
11 subdivision (1) or (2), taking into account the role of that
12 person in advancing the case to litigation and any relevant
13 circumstances pertaining to the violation. If the person
14 bringing the action is convicted of criminal conduct arising
15 from the person's role in the filing of the false claim upon
16 which action is brought pursuant to this act, that person
17 shall be dismissed from the civil action and shall not receive
18 any share of the proceeds of the action. The dismissal does
19 not prejudice the right of the state to continue the action.

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

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

6 (2)a. The court shall dismiss an action or claim
7 brought under subsection (b), unless opposed by the Attorney
8 General, if substantially the same allegations or transactions
9 as alleged in the action or claim were publicly disclosed
10 under any of the following circumstances:

11 1. In a criminal, civil, or administrative hearing
12 in which the state or its agent is a party.

13 2. In a state report, hearing audit, or
14 investigation.

15 3. From the news media, unless the action is brought
16 by the Attorney General or the person bringing the action is
17 an original source of the information.

18 b. For purpose of this subdivision "original source"
19 means an individual who either:

20 1. Prior to a public disclosure has voluntarily
21 disclosed to the state the information on which allegations or
22 transactions in a claim are based.

23 2. Has knowledge that is independent of and
24 materially adds to the publicly disclosed allegations or
25 transactions, and voluntarily provided the information to the
26 state before filing an action under this section.

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

3 (g) (1) Any employee, contractor, agent, or
4 associated others who are discharged, demoted, suspended,
5 threatened, harassed, or in any other manner discriminated
6 against in the terms and conditions of employment because of
7 lawful acts done by the employee, contractor, agent, or
8 associated others in furtherance of an action under this
9 section or other efforts to stop one or more violations of
10 this act, shall be entitled to all relief necessary to make
11 the employee whole.

12 (2) Relief shall include reinstatement with the same
13 seniority status the employee, contractor, agent, or
14 associated others would have had but for the discrimination,
15 two times the amount of back pay, interest on the back pay,
16 and compensation for any special damages sustained as a result
17 of the discrimination, including litigation costs and
18 reasonable attorney's fees. An employee may bring an action in
19 the appropriate court for the relief provided in this
20 subsection.

21 (3) A civil action brought pursuant to this
22 subsection may not be brought more than three years after the
23 date when the retaliation occurred.

24 Section 5. (a) A subpoena requiring the attendance
25 of a witness at a trial or hearing conducted under this act
26 may be served at any place in the United States.

1 (b) A civil action under this act may not be
2 brought:

3 (1) More than six years after the date on which the
4 violation of this act is committed; or

5 (2) More than three years after the date when facts
6 material to the right of action are known or reasonably should
7 have been known by the official of the state charged with
8 responsibility to act in the circumstances, but in no event
9 more than 10 years after the date on which the violation is
10 committed, whichever occurs last.

11 (c) (1) If the state elects to intervene and proceed
12 with an action brought under this act, the state may file its
13 own complaint or amend the complaint of a person who has
14 brought an action under this act to clarify or add detail to
15 the claims in which the state is intervening and to add any
16 additional claims with respect to which the state contends it
17 is entitled to relief.

18 (2) For statute of limitations purposes, any state
19 pleading shall relate back to the filing date of the complaint
20 of the person who originally brought the action, to the extent
21 that the claim of the state arises out of the same conduct,
22 transactions, or occurrences set forth, or attempted to set
23 forth, in the prior complaint of that person.

24 (d) In any action brought under this act, the state
25 shall be required to prove all essential elements of the cause
26 of action, including damages, by a preponderance of the
27 evidence.

1 (e) Notwithstanding any other provision of law, the
2 Alabama Rules of Criminal Procedure, or the Alabama Rules of
3 Evidence, a final judgment rendered in favor of the state in
4 any criminal proceeding charging fraud or false statements,
5 whether upon a verdict after trial or upon a plea of guilty
6 shall estop the defendant from denying the essential elements
7 of the offense in any action that involves the same
8 transaction as in the criminal proceeding and that is brought
9 under this act.

10 Section 6. Any action under this act may be brought
11 in any judicial circuit in which the defendant or, in the case
12 of multiple defendants, any one defendant can be found,
13 resides, transacts business, or in which any act proscribed by
14 this act occurred. A summons as required by the Alabama Rules
15 of Civil Procedure shall be issued by the appropriate circuit
16 court clerk and served at any place within or outside the
17 United States.

18 Section 7. This act shall become effective on the
19 first day of the third month following its passage and
20 approval by the Governor, or its otherwise becoming law.