

SENATE FILE NO. SF0145

Medicaid fraud recovery.

Sponsored by: Senator(s) Peterson, Dockstader, Meier and
Perkins and Representative(s) Miller

A BILL

for

1 AN ACT relating to Medicaid; creating the Wyoming Medicaid
2 False Claims Act; authorizing civil recoveries for the
3 state and persons reporting false claims as specified;
4 prescribing duties of the attorney general; providing
5 procedures; providing for a limitations period and
6 applicability of the act; providing definitions;
7 prescribing criminal penalties as specified for failure to
8 maintain required records; and providing for an effective
9 date.

10

11 *Be It Enacted by the Legislature of the State of Wyoming:*

12

13 **Section 1.** W.S. 42-4-301 through 42-4-306 are created
14 to read:

15

16

ARTICLE 3

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FALSE MEDICAID CLAIMS

42-4-301. Short title.

This act shall be known and may be cited as the "Wyoming Medicaid False Claims Act."

42-4-302. Definitions.

(a) As used in this act:

(i) "Claim" means any request or demand under the Medicaid program, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that:

(A) Is presented to an officer, employee or agent of the United States; or

(B) Is made to a 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:

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

3

4 (II) Will reimburse the contractor,
5 grantee or other recipient for any portion of the money or
6 property which is requested or demanded; and

7

8 (C) Is not a request or demand for money or
9 property that the state has paid to an individual as
10 compensation for federal employment or as an income subsidy
11 with no restriction on that individual's use of the money
12 or property.

13

14 (ii) "Knowing" and "knowingly" mean that a
15 person, with respect to information, and with or without
16 specific intent to defraud:

17

18 (A) Has actual knowledge of the
19 information;

20

21 (B) Acts in deliberate ignorance of the
22 truth or falsity of the information; or

23

1 (C) Acts in reckless disregard of the truth
2 or falsity of the information.

3

4 (iii) "Material" means having a natural tendency
5 to influence, or be capable of influencing, the payment or
6 receipt of money or property;

7

8 (iv) "Obligation" means an established duty,
9 whether or not fixed, arising from an express or implied
10 contractual, grantor-grantee or licensor-licensee
11 relationship, from a fee based or similar relationship,
12 from statute or regulation or from the retention of any
13 overpayment;

14

15 (v) "Original source" means an individual who:

16

17 (A) Prior to a public disclosure, has
18 voluntarily disclosed to the state the information on which
19 allegations or transactions in a claim are based; or

20

21 (B) Who has knowledge that is independent
22 of and materially adds to the publicly disclosed
23 allegations or transactions, and who has voluntarily

1 provided the information to the state before filing an
2 action under W.S. 42-4-304.

3

4 (vi) "This act" means W.S. 42-4-301 through
5 42-4-306.

6

7 **42-4-303. Acts subjecting person to treble damages;**
8 **costs and civil penalties; exceptions.**

9

10 (a) Any person who commits any of the following acts
11 in relation to the Wyoming Medical Assistance and Services
12 Act shall be liable to the state for three (3) times the
13 amount of damages which the state sustains because of the
14 act of that person. A person who commits any of the
15 following acts shall also be liable to the state for the
16 costs of a civil action brought to recover any of those
17 penalties or damages, and shall be liable to the state for
18 a civil penalty of not less than five thousand dollars
19 (\$5,000.00) and not more than ten thousand dollars
20 (\$10,000.00) for each violation:

21

22 (i) Knowingly presents or causes to be presented
23 a false or fraudulent claim for payment or approval;

24

1 (ii) Knowingly makes or uses, or causes to be
2 made or used, a false record or statement material to a
3 false or fraudulent claim;

4
5 (iii) Conspires to commit a violation of
6 paragraph (i), (ii), (iv), (v), (vi) or (vii) of this
7 subsection;

8
9 (iv) Has possession, custody or control of
10 public property or money used or to be used by the state
11 and knowingly delivers or causes to be delivered less than
12 all of that money or property;

13
14 (v) Is authorized to make or deliver a document
15 certifying receipt of property used or to be used by the
16 state and, intending to defraud the state, makes or
17 delivers a receipt without completely knowing that the
18 information on the receipt is true;

19
20 (vi) Knowingly buys, or receives as a pledge of
21 an obligation or debt, public property from an officer or
22 employee of the state who lawfully may not sell or pledge
23 the property;

24

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

7

8 (b) Notwithstanding subsection (a) of this section,
9 the court may assess not less than two (2) times the amount
10 of damages which the state sustains because of the act of
11 the person described in that subdivision, and no civil
12 penalty, if the court finds all of the following:

13

14 (i) The person committing the violation
15 furnished officials of the state who are responsible for
16 investigating false claims violations with all information
17 known to that person about the violation within thirty (30)
18 days after the date on which the person first obtained the
19 information;

20

21 (ii) The person fully cooperated with any
22 investigation by the state;

23

1 (iii) At the time the person furnished the state
2 with information about the violation, no criminal
3 prosecution, civil action or administrative action had
4 commenced with respect to the violation and the person did
5 not have actual knowledge of the existence of an
6 investigation into the violation.

7

8 **42-4-304. Attorney general investigations and**
9 **prosecutions; powers of prosecuting authority; civil**
10 **actions by individuals as qui tam plaintiff and as private**
11 **citizens; jurisdiction of courts.**

12

13 (a) The attorney general shall diligently investigate
14 an alleged violation under W.S. 42-4-303(a). In conducting
15 an investigation, the attorney general shall have the
16 authority to conduct pre-filing discovery as authorized by
17 federal False Claims Act, 31 U.S.C. 3730. If the attorney
18 general finds that a person has violated or is violating
19 W.S. 42-4-303(a), the attorney general may bring a civil
20 action under this section against that person.

21

22 (b) A person may bring a civil action for a violation
23 of this act for the person and for the state in the name of
24 the state, subject to the following:

1

2 (i) The person bringing the action shall be
3 referred to as the qui tam plaintiff. The action may be
4 dismissed only if the court and the attorney general give
5 written consent to the dismissal and their reasons for
6 consenting;

7

8 (ii) A copy of the complaint and written
9 disclosure of substantially all material evidence and
10 information the person possesses shall be served on the
11 attorney general. The complaint shall also be filed in
12 camera, shall remain under seal for at least sixty (60)
13 days, and shall not be served on the defendant until
14 ordered by the court. The state may elect to intervene and
15 proceed with the action within sixty (60) days after it
16 receives both the complaint and the material evidence and
17 the information;

18

19 (iii) The state may, for good cause shown, move
20 the court for extensions of the time during which the
21 complaint remains under seal. The motions may be supported
22 by affidavits or other submissions in camera. The defendant
23 shall not be required to respond to any complaint filed
24 under this section until after the complaint is unsealed

1 and served upon the defendant pursuant to the Wyoming rules
2 of civil procedure;

3

4 (iv) Before the expiration of the sixty (60) day
5 period or any extensions obtained under paragraph (iii) of
6 this subsection, the state shall proceed with the action,
7 in which case the action shall be conducted by the state,
8 or notify the court that it declines to take over the
9 action, in which case the person bringing the action shall
10 have the right to conduct the action;

11

12 (v) When a person brings a valid action under
13 this subsection, no person other than the state may
14 intervene or bring a related action based on the facts
15 underlying the pending action.

16

17 (c) The parties to qui tam actions shall have the
18 following rights:

19

20 (i) If the state proceeds with the action, it
21 shall have the primary responsibility for prosecuting the
22 action, and shall not be bound by an act of the person
23 bringing the action. The person shall have the right to

1 continue as a party to the action, subject to the
2 limitations set forth in paragraph (ii) of this subsection;

3

4 (ii) The following shall apply:

5

6 (A) The state may seek to dismiss the
7 action for good cause notwithstanding the objections of the
8 qui tam plaintiff if the qui tam plaintiff has been
9 notified by the state of the filing of the motion and the
10 court has provided the qui tam plaintiff with an
11 opportunity for a hearing on the motion;

12

13 (B) The state may settle the action with
14 the defendant notwithstanding the objections of the qui tam
15 plaintiff if the court determines, after a hearing, that
16 the proposed settlement is fair, adequate and reasonable
17 under all of the circumstances. Upon a showing of good
18 cause, a hearing under this subparagraph may be held in
19 camera;

20

21 (C) Upon a showing by the state that
22 unrestricted participation during the course of the
23 litigation by the person initiating the action would
24 interfere with or unduly delay the state's prosecution of

1 the case, or would be repetitious, irrelevant or for
2 purposes of harassment; the court may, in its discretion,
3 impose limitations on the person's participation, such as:

4

5 (I) Limiting the number of witnesses
6 the person may call;

7

8 (II) Limiting the length of the
9 testimony of the witnesses;

10

11 (III) Limiting the person's cross-
12 examination of witnesses; or

13

14 (IV) Otherwise limiting the
15 participation by the person in the litigation.

16

17 (D) Upon a showing by the defendant that
18 unrestricted participation during the course of the
19 litigation by the person initiating the action would be for
20 purposes of harassment or would cause the defendant undue
21 burden or unnecessary expense, the court may limit the
22 participation by the person in the litigation.

23

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

11

12 (iv) Whether or not the state proceeds with the
13 action, upon a showing by the state that certain actions of
14 discovery by the person initiating the action would
15 interfere with the state's investigation or prosecution of
16 a criminal or civil matter arising out of the same facts,
17 the court may stay the discovery for a period of not more
18 than sixty (60) days. The state's showing shall be
19 conducted in camera. The court may extend the sixty (60)
20 day period upon a further showing in camera that the state
21 has pursued the criminal or civil investigation or
22 proceedings with reasonable diligence and any proposed
23 discovery in the civil action will interfere with the
24 ongoing criminal or civil investigation or proceedings;

1

2 (v) Notwithstanding subsection (b) of this
3 section, the state may elect to pursue its claim through
4 any alternate remedy available to the state, including any
5 administrative proceeding to determine a civil money
6 penalty. If any alternate remedy is pursued in another
7 proceeding, the person initiating the action shall have the
8 same rights in the proceeding as the person would have had
9 if the action had continued under this section. Any finding
10 of fact or conclusion of law made in the other proceeding
11 that has become final shall be conclusive on all parties to
12 an action under this section. For purposes of the
13 preceding sentence, a finding or conclusion is final if it
14 has been finally determined on appeal to the supreme court,
15 if all time for filing an appeal with respect to the
16 finding or conclusion has expired or if the finding or
17 conclusion is not subject to judicial review.

18

19 (d) A qui tam plaintiff may receive an award as
20 follows:

21

22 (i) If the state proceeds with an action brought
23 by a person under subsection (b) of this section, the
24 person shall, subject to the second sentence of this

1 paragraph, receive at least fifteen percent (15%) but not
2 more than twenty-five percent (25%) of the proceeds of the
3 action or settlement of the claim, depending upon the
4 extent to which the person or his counsel substantially
5 contributed to the prosecution of the action. Where the
6 action is one which the court finds to be based primarily
7 on disclosures of specific information, other than
8 information provided by the person bringing the action,
9 relating to allegations or transactions specifically in a
10 criminal, civil or administrative hearing, or in a
11 legislative or administrative report, hearing, audit or
12 investigation, or from the news media, the court may award
13 such sums as it considers appropriate, but in no case more
14 than ten percent (10%) of the proceeds, taking into account
15 the significance of the information and the role of the
16 person bringing the action in advancing the case to
17 litigation. Any payment to a person under the first or
18 second sentence of this paragraph shall be made from the
19 proceeds. The person shall also receive an amount for
20 reasonable expenses which the court finds to have been
21 necessarily incurred, plus reasonable attorneys' fees and
22 costs. The expenses, fees and costs shall be awarded
23 against the defendant;

24

1 (ii) If the state does not proceed with an
2 action under this section, the person bringing the action
3 or settling the claim shall receive an amount which the
4 court decides is reasonable for collecting the civil
5 penalty and damages. The amount shall be not less than
6 twenty-five percent (25%) and not more than thirty percent
7 (30%) of the proceeds of the action or settlement and shall
8 be paid out of the proceeds. Such person shall also receive
9 an amount for reasonable expenses which the court finds to
10 have been necessarily incurred, plus reasonable attorneys'
11 fees and costs. The expenses, fees and costs shall be
12 awarded against the defendant;

13

14 (iii) Whether or not the state proceeds with the
15 action, if the court finds that the action was brought by a
16 person who planned and initiated the violation of W.S.
17 42-4-303(a) upon which the action was brought, then the
18 court may, to the extent the court considers appropriate,
19 reduce the share of the proceeds of the action which the
20 person would otherwise receive under paragraph (i) or (ii)
21 of this subsection, taking into account the role of that
22 person in advancing the case to litigation and any relevant
23 circumstances pertaining to the violation. If the person
24 bringing the action is convicted of criminal conduct

1 arising from the person's role in the violation of W.S.
2 42-4-303(a), that person shall be dismissed from the civil
3 action and shall not receive any share of the proceeds of
4 the action. Such dismissal shall not prejudice the right of
5 the state to continue the action;

6

7 (iv) If the state does not proceed with the
8 action and the person bringing the action conducts the
9 action, the court may award to the defendant its reasonable
10 attorneys' fees and expenses if the defendant prevails in
11 the action and the court finds that the claim of the person
12 bringing the action was clearly frivolous, clearly
13 vexatious or brought primarily for purposes of harassment.

14

15 (e) This act shall not be construed to authorize:

16

17 (i) An action brought under W.S. 42-4-304(b)
18 against a member of the state legislative branch, a member
19 of the judiciary or a senior executive branch official if
20 the action is based on evidence or information known to the
21 state when the action was brought;

22

23 (ii) An action under W.S. 42-4-304(b) which is
24 based upon allegations or transactions which are the

1 subject of a civil suit or an administrative civil money
2 penalty proceeding in which the state is already a party;

3

4 (iii) The court shall dismiss an action or claim
5 under W.S. 42-4-304(b), unless opposed by the state, if
6 substantially the same allegations or transactions as
7 alleged in the action or claim were publicly disclosed:

8

9 (A) In a criminal, civil or administrative
10 hearing in which the state or an agent of the state is a
11 party;

12

13 (B) In a legislative or administrative
14 report, hearing, audit or investigation; or

15

16 (C) By the news media, unless the action is
17 brought by the attorney general or the person bringing the
18 action is an original source of the information.

19

20 (f) The state shall not be liable for expenses which
21 a person incurs in bringing an action under this section.

22

23 (g) Any employee, contractor or agent shall be
24 entitled to all relief necessary to make that employee,

1 contractor or agent whole if that employee, contractor or
2 agent is discharged, demoted, suspended, threatened,
3 harassed or in any other manner discriminated against in
4 the terms and conditions of employment because of lawful
5 acts done by the employee, contractor, agent or associated
6 others in furtherance of an action under this section or
7 other efforts to stop one (1) or more violations of this
8 article. Relief under this subsection shall include
9 reinstatement with the same seniority status that the
10 employee, contractor or agent would have had but for the
11 discrimination, two (2) times the amount of back pay,
12 interest on the back pay and compensation for any special
13 damages incurred as a result of discharge, demotion,
14 suspension, threat, harassment or other discrimination
15 including litigation costs and reasonable attorneys' fees.
16 An action under this subsection may not be brought more
17 than three (3) years after the date when the retaliation
18 occurred.

19

20 **42-4-305. Limitation of actions; retroactivity;**
21 **burden of proof.**

22

23 (a) A civil action under W.S. 42-4-304 may not be
24 brought more than six (6)) years after the date on which

1 the violation was committed or more than three (3) years
2 after the date when facts material to the right of action
3 are known or reasonably should have been known by the
4 official of the state charged with responsibility to act in
5 the circumstances, whichever occurs last, provided that in
6 no event shall a civil action be brought more than ten (10)
7 years after the date on which the violation is committed.

8

9 (b) In any action brought under W.S. 42-4-304, the
10 state or the qui tam plaintiff shall be required to prove
11 all essential elements of the cause of action, including
12 damages, by a preponderance of the evidence.

13

14 (c) If the state elects to intervene and proceed with
15 an action brought under W.S. 42-4-304(b), the state may
16 file its own complaint or amend the complaint of a person
17 who has brought an action under W.S. 42-4-304(b) to clarify
18 or add detail to the claims in which the state is
19 intervening and to add any additional claims with respect
20 to which the state contends it is entitled to relief. For
21 statute of limitations purposes, the state pleading shall
22 relate back to the filing date of the complaint of the
23 person who originally brought the action, to the extent
24 that the claim of the state arises out of the conduct,

1 transactions or occurrences set forth, or attempted to be
2 set forth, in the prior complaint of that person.

3

4 (d) Notwithstanding any other provision of law, a
5 guilty verdict rendered in a criminal proceeding charging
6 false statements or fraud, whether upon a verdict after
7 trial or upon a plea of guilty or nolo contendere, shall
8 estop the defendant from denying the essential elements of
9 the offense in any action which involves the same
10 transaction as in the criminal proceeding and which is
11 brought under W.S. 42-4-304.

12

13 **42-4-306. Remedies under other laws; liberality of**
14 **construction; adoption of legislative history.**

15

16 (a) The provisions of this act are not exclusive, and
17 the remedies provided for in this act shall be in addition
18 to any other remedies provided for in any other law or
19 available under common law.

20

21 (b) This act shall be liberally construed and applied
22 to promote the public interest.

23

1 **Section 2.** W.S. 42-4-102(a) by creating new
2 paragraphs (xi) and (xii) and 42-4-111 by creating a new
3 subsection (e) are amended to read:

4

5 **42-4-102. Definitions.**

6

7 (a) As used in this chapter:

8

9 (xi) "Intentional" means that a person, with
10 respect to information, intended to act in violation of the
11 law;

12

13 (xii) "Knowing" or "knowingly" includes
14 intentional or intentionally and means that a person, with
15 respect to information, acts:

16

17 (A) With actual knowledge of the
18 information;

19

20 (B) In deliberate ignorance of the truth or
21 falsity of the information; or

22

23 (C) In reckless disregard of the truth or
24 falsity of the information.

1

2 **42-4-111. Providing or obtaining assistance by**
3 **misrepresentation; penalties.**

4

5 (e) A person who fails to maintain records in
6 accordance with Medicaid program rules and requirements for
7 medical assistance is guilty of:

8

9 (i) A felony punishable by imprisonment for not
10 more than ten (10) years, a fine of not more than ten
11 thousand dollars (\$10,000.00), or both, if the value of
12 related medical assistance is one thousand dollars
13 (\$1,000.00) or more;

14

15 (ii) A misdemeanor punishable by imprisonment
16 for not more than six (6) months, a fine of not more than
17 seven hundred fifty dollars (\$750.00), or both, if the
18 value of related medical assistance is less than one
19 thousand dollars (\$1,000.00).

20

21 **Section 3.** This act is effective July 1, 2011.

22

23

(END)