

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

1 FALSE MEDICAID CLAIMS

2

3 **42-4-301. Short title.**

4

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

7

8 **42-4-302. Definitions.**

9

10 (a) As used in this act:

11

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

16

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

19

20 (B) Is made to a contractor, grantee or
21 other recipient, if the money or property is to be spent or
22 used on the state's behalf or to advance a state program or
23 interest, and if the state:

24

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 to any employee, officer or agent of the state a false or
24 fraudulent claim for payment or approval;

1

2 (ii) Knowingly makes or uses, or causes to be
3 made or used, a false record or statement to obtain payment
4 or approval of a false or fraudulent claim;

5

6 (iii) Conspires to defraud the state by
7 obtaining payment or approval of a false claim, or
8 conspires to defraud the state by knowingly making, using
9 or causing to be made or used a false record or statement
10 to conceal, avoid or decrease an obligation to pay or
11 transmit money or property to the state;

12

13 (iv) Has possession, custody or control of
14 public property or money used or to be used by the state
15 and knowingly delivers or causes to be delivered less
16 property than the amount for which the person receives a
17 certificate or receipt;

18

19 (v) Is authorized to make or deliver a document
20 certifying receipt of property used or to be used by the
21 state and knowingly makes or delivers a receipt that
22 falsely represents the property used or to be used;

23

1 (vi) Knowingly buys, or receives as a pledge of
2 an obligation or debt, public property from any person who
3 lawfully may not sell or pledge the property;

4
5 (vii) Knowingly makes, uses or causes to be made
6 or used, a false record or statement to conceal, avoid or
7 decrease an obligation to pay or transmit money or property
8 to the state;

9
10 (viii) Is a beneficiary of an inadvertent
11 submission of a false claim to any employee, officer or
12 agent of the state, subsequently discovers the falsity of
13 the claim, and fails to disclose the false claim to the
14 state within a reasonable time after discovery of the false
15 claim.

16
17 (b) Notwithstanding subsection (a) of this section,
18 the court may assess not less than two (2) times the amount
19 of damages which the state sustains because of the act of
20 the person described in that subdivision, and no civil
21 penalty, if the court finds all of the following:

22
23 (i) The person committing the violation
24 furnished officials of the state who are responsible for

1 investigating false claims violations with all information
2 known to that person about the violation within thirty (30)
3 days after the date on which the person first obtained the
4 information;

5

6 (ii) The person fully cooperated with any
7 investigation by the state;

8

9 (iii) At the time the person furnished the state
10 with information about the violation, no criminal
11 prosecution, civil action or administrative action had
12 commenced with respect to the violation and the person did
13 not have actual knowledge of the existence of an
14 investigation into the violation.

15

16 **42-4-304. Attorney general investigations and**
17 **prosecutions; powers of prosecuting authority; civil**
18 **actions by individuals as qui tam plaintiff and as private**
19 **citizens; jurisdiction of courts.**

20

21 (a) The attorney general shall diligently investigate
22 an alleged violation under W.S. 42-4-303(a). In conducting
23 an investigation, the attorney general shall have the
24 authority to conduct prefiling discovery as authorized by

1 federal False Claims Act, 31 U.S.C. 3730. If the attorney
2 general finds that a person has violated or is violating
3 W.S. 42-4-303(a), the attorney general may bring a civil
4 action under this section against that person.

5
6 (b) A person may bring a civil action for a violation
7 of this act for the person and for the state in the name of
8 the state, subject to the following:

9
10 (i) The person bringing the action shall be
11 referred to as the qui tam plaintiff. Once filed, the
12 action may be dismissed only with the written consent of
13 the court, which shall include the court's reasons for
14 consenting, taking into account the best interest of the
15 parties involved and the public purposes behind this act;

16
17 (ii) A copy of the complaint and written
18 disclosure of substantially all material evidence and
19 information the person possesses shall be served on the
20 attorney general. The complaint shall also be filed in
21 camera, shall remain under seal for at least sixty (60)
22 days, and shall not be served on the defendant until
23 ordered by the court. The state may elect to intervene and
24 proceed with the action within sixty (60) days after it

1 receives both the complaint and the material evidence and
2 the information;

3

4 (iii) The state may, for good cause shown, move
5 the court for extensions of the time during which the
6 complaint remains under seal. The motions may be supported
7 by affidavits or other submissions in camera. The defendant
8 shall not be required to respond to any complaint filed
9 under this section until after the complaint is unsealed
10 and served upon the defendant pursuant to the Wyoming rules
11 of civil procedure;

12

13 (iv) Before the expiration of the sixty (60) day
14 period or any extensions obtained under paragraph (iii) of
15 this subsection, the state shall proceed with the action,
16 in which case the action shall be conducted by the state,
17 or notify the court that it declines to take over the
18 action, in which case the person bringing the action shall
19 have the right to conduct the action;

20

21 (v) When a person brings a valid action under
22 this subsection, no person other than the state may
23 intervene or bring a related action based on the facts
24 underlying the pending action.

1

2 (c) The parties to qui tam actions shall have the
3 following rights:

4

5 (i) If the state proceeds with the action, it
6 shall have the primary responsibility for prosecuting the
7 action, and shall not be bound by an act of the person
8 bringing the action. The person shall have the right to
9 continue as a party to the action, subject to the
10 limitations set forth in paragraph (ii) of this subsection;

11

12 (ii) The following shall apply:

13

14 (A) The state may seek to dismiss the
15 action for good cause notwithstanding the objections of the
16 qui tam plaintiff if the qui tam plaintiff has been
17 notified by the state of the filing of the motion and the
18 court has provided the qui tam plaintiff with an
19 opportunity to oppose the motion and present evidence at a
20 hearing;

21

22 (B) The state may settle the action with
23 the defendant notwithstanding the objections of the qui tam
24 plaintiff if the court determines, after a hearing

1 providing the qui tam plaintiff an opportunity to present
2 evidence, that the proposed settlement is fair, adequate
3 and reasonable under all of the circumstances;

4
5 (C) Upon a showing by the state that
6 unrestricted participation during the course of the
7 litigation by the person initiating the action would
8 interfere with or unduly delay the state's prosecution of
9 the case, or would be repetitious, irrelevant or for
10 purposes of harassment; the court may, in its discretion,
11 impose limitations on the person's participation, such as:

12
13 (I) Limiting the number of witnesses
14 the person may call;

15
16 (II) Limiting the length of the
17 testimony of the witnesses;

18
19 (III) Limiting the person's cross-
20 examination of witnesses; or

21
22 (IV) Otherwise limiting the
23 participation by the person in the litigation.

1 (D) Upon a showing by the defendant that
2 unrestricted participation during the course of the
3 litigation by the person initiating the action would be for
4 purposes of harassment or would cause the defendant undue
5 burden or unnecessary expense, the court may limit the
6 participation by the person in the litigation.

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

18
19 (iv) Whether or not the state proceeds with the
20 action, upon a showing by the state that certain actions of
21 discovery by the person initiating the action would
22 interfere with the state's investigation or prosecution of
23 a criminal or civil matter arising out of the same facts,
24 the court may stay the discovery for a period of not more

1 than sixty (60) days. The state's showing shall be
2 conducted in camera. The court may extend the sixty (60)
3 day period upon a further showing in camera that the state
4 has pursued the criminal or civil investigation or
5 proceedings with reasonable diligence and any proposed
6 discovery in the civil action will interfere with the
7 ongoing criminal or civil investigation or proceedings;

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

1

2 (d) A qui tam plaintiff may receive an award as
3 follows:

4

5 (i) If the state proceeds with an action brought
6 by a person under subsection (b) of this section, the
7 person shall, subject to the second sentence of this
8 paragraph, receive at least fifteen percent (15%) but not
9 more than twenty-five percent (25%) of the proceeds of the
10 action or settlement of the claim, which includes damages,
11 civil penalties, payments for costs of compliance and any
12 other economic benefit realized by the government as a
13 result of the action, depending upon the extent to which
14 the person or his counsel substantially contributed to the
15 prosecution of the action. Where the action is one which
16 the court finds to be based primarily on disclosures of
17 specific information, other than information provided by
18 the person bringing the action, relating to allegations or
19 transactions specifically in a criminal, civil or
20 administrative hearing, or in a legislative or
21 administrative report, hearing, audit or investigation, or
22 from the news media, the court may award such sums as it
23 considers appropriate, but in no case more than ten percent
24 (10%) of the proceeds, taking into account the significance

1 of the information and the role of the person bringing the
2 action in advancing the case to litigation. Any payment to
3 a person under the first or second sentence of this
4 paragraph shall be made from the proceeds. The person shall
5 also receive an amount for reasonable expenses which the
6 court finds to have been necessarily incurred, plus
7 reasonable attorneys' fees and costs. The expenses, fees
8 and costs shall be awarded against the defendant;

9
10 (ii) If the state does not proceed with an
11 action under this section, the person bringing the action
12 or settling the claim shall receive an amount which the
13 court decides is reasonable for collecting the civil
14 penalty and damages. The amount shall be not less than
15 twenty-five percent (25%) and not more than thirty percent
16 (30%) of the proceeds of the action or settlement and shall
17 be paid out of the proceeds. Such person shall also receive
18 an amount for reasonable expenses which the court finds to
19 have been necessarily incurred, plus reasonable attorneys'
20 fees and costs. The expenses, fees and costs shall be
21 awarded against the defendant;

22
23 (iii) Whether or not the state proceeds with the
24 action, if the court finds that the action was brought by a

1 person who planned and initiated the violation of W.S.
2 42-4-303(a) upon which the action was brought, then the
3 court may, to the extent the court considers appropriate,
4 reduce the share of the proceeds of the action which the
5 person would otherwise receive under paragraph (i) or (ii)
6 of this subsection, taking into account the role of that
7 person in advancing the case to litigation and any relevant
8 circumstances pertaining to the violation. If the person
9 bringing the action is convicted of criminal conduct
10 arising from the person's role in the violation of W.S.
11 42-4-303(a), that person shall be dismissed from the civil
12 action and shall not receive any share of the proceeds of
13 the action. Such dismissal shall not prejudice the right of
14 the state to continue the action;

15

16 (iv) If the state does not proceed with the
17 action and the person bringing the action conducts the
18 action, the court may award to the defendant its reasonable
19 attorneys' fees and expenses if the defendant prevails in
20 the action and the court finds that the claim of the person
21 bringing the action was clearly frivolous, clearly
22 vexatious or brought primarily for purposes of harassment.

23

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

1

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

7

8 (ii) An action under W.S. 42-4-304(b) which is
9 based upon allegations or transactions which are the
10 subject of a civil suit or an administrative civil money
11 penalty proceeding in which the state is already a party;

12

13 (iii) A qui tam action under this act if at the
14 time the complaint is filed the elements of the actionable
15 false claims have been publicly disclosed specifically in
16 the news media or in a publicly disseminated governmental
17 report, unless the action is brought by the attorney
18 general or the person who brought the action is an original
19 source of the information.

20

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

23

1 (g) Any employee who is discharged, demoted,
2 suspended, threatened, harassed or in any other manner
3 discriminated against in the terms and conditions of
4 employment by his or her employer because of lawful acts
5 done by the employee on behalf of the employee or others in
6 furtherance of an action under this section, including
7 investigation for, initiation of, testimony for or
8 assistance in an action filed or to be filed under this
9 section, shall be entitled to all relief necessary to make
10 the employee whole. The relief shall include reinstatement
11 with the same seniority status the employee would have had
12 but for the discrimination, two (2) times the amount of
13 back pay, interest on the back pay, and compensation for
14 any special damages sustained as a result of the
15 discrimination, including litigation costs and reasonable
16 attorneys' fees. An employee may bring an action in the
17 district court for the relief provided in this subsection.

18

19 **42-4-305. Limitation of actions; retroactivity;**
20 **burden of proof.**

21

22 (a) A civil action under W.S. 42-4-304 may not be
23 brought more than ten (10) years after the date on which
24 the violation was committed.

1

2 (b) A civil action under W.S. 42-4-304 may be brought
3 for activity prior to the effective date of this act if the
4 limitations period set in subsection (a) of this section
5 has not lapsed.

6

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

11

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

1

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

10

11 **42-4-306. Remedies under other laws; liberality of**
12 **construction; adoption of legislative history.**

13

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

18

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

21

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

1

2 **42-4-102. Definitions.**

3

4 (a) As used in this chapter:

5

6 (xi) "Intentional" means that a person, with
7 respect to information, intended to act in violation of the
8 law;

9

10 (xii) "Knowing" or "knowingly" includes
11 intentional or intentionally and means that a person, with
12 respect to information, acts:

13

14 (A) With actual knowledge of the
15 information;

16

17 (B) In deliberate ignorance of the truth or
18 falsity of the information; or

19

20 (C) In reckless disregard of the truth or
21 falsity of the information.

22

23 **42-4-111. Providing or obtaining assistance by**
24 **misrepresentation; penalties.**

1

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

5

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

11

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

17

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

19

20

(END)