

1 SENATE BILL 138  
2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY  
4 Steven P. Neville  
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9  
10 AN ACT

11 RELATING TO CIVIL ACTIONS; AMENDING, REPEALING AND ENACTING  
12 PROVISIONS OF THE MEDICAID FALSE CLAIMS ACT; INCREASING  
13 PENALTIES.  
14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 27-14-3 NMSA 1978 (being Laws 2004,  
17 Chapter 49, Section 3) is repealed and a new Section 27-14-3  
18 NMSA 1978 is enacted to read:

19 "27-14-3. [NEW MATERIAL] DEFINITIONS.--As used in the  
20 Medicaid False Claims Act:

21 A. "claim" means any request or demand, whether  
22 under a contract or otherwise, for money or property and  
23 whether or not the state has title to the money or property,  
24 that:

25 (1) is presented to an officer, employee or

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1 agent of the state; or

2 (2) is made to a contractor, grantee or other  
3 recipient, if the money or property is to be spent or used on  
4 the government's behalf or to advance a government program or  
5 interest, and if the state:

6 (a) provides or has provided any portion  
7 of the money or property requested or demanded; or

8 (b) will reimburse such contractor,  
9 grantee or other recipient for any portion of the money or  
10 property that is requested or demanded; and

11 (3) does not include requests or demands for  
12 money or property that the government has paid to an individual  
13 as compensation for state employment or as an income subsidy  
14 with no restrictions on that individual's use of the money or  
15 property;

16 B. "department" means the human services  
17 department;

18 C. "document" means the original or any copy of any  
19 book, record, report, memorandum, paper, communication,  
20 tabulation, chart or other document, or data compilations, in  
21 whatever format created or maintained, whether stored in or  
22 accessible through computer or other information retrieval  
23 systems, together with instructions and all other materials  
24 necessary to use or interpret such data compilations;

25 D. "knowing" or "knowingly" means that a person,

1 with respect to information:

2 (1) has actual knowledge of the information;

3 (2) acts in deliberate ignorance of the truth  
4 or falsity of the information; or

5 (3) acts in reckless disregard of the truth or  
6 falsity of the information;

7 E. "material" means having a natural tendency to  
8 influence, or be capable of influencing, the payment or receipt  
9 of money or property;

10 F. "medicaid" means the federal-state program  
11 administered by the department pursuant to Title 19 or Title 21  
12 of the federal Social Security Act;

13 G. "medicaid recipient" means a person who has  
14 received, or is eligible to receive, medicaid assistance or  
15 services for which a claim has been made;

16 H. "obligation" means an established duty, whether  
17 or not fixed, arising from an express or implied contractual,  
18 grantor-grantee or licensee-licensor relationship, from a fee-  
19 based or similar relationship, from statute or regulation, or  
20 from the retention of any overpayment;

21 I. "original source" means a person who either:

22 (1) prior to a public disclosure under  
23 Subsection C of Section 27-14-10 NMSA 1978, has voluntarily  
24 disclosed to the government the information on which  
25 allegations or transactions in a claim are based; or

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1 (2) has knowledge that is independent of and  
2 materially adds to the publicly disclosed allegations or  
3 transactions and has voluntarily provided the information to  
4 the government before filing an action under Section 27-14-7  
5 NMSA 1978;

6 J. "public official" means a person elected to an  
7 office in an election covered by the Campaign Reporting Act or  
8 a person appointed to an office that is subject to an election  
9 covered by that act;

10 K. "qui tam action" means a private civil action  
11 brought on behalf of the state pursuant to the Medicaid False  
12 Claims Act; and

13 L. "relator" means a qui tam plaintiff."

14 SECTION 2. Section 27-14-4 NMSA 1978 (being Laws 2004,  
15 Chapter 49, Section 4) is repealed and a new Section 27-14-4  
16 NMSA 1978 is enacted to read:

17 "27-14-4. [NEW MATERIAL] FALSE CLAIMS AGAINST THE STATE--  
18 LIABILITY FOR CERTAIN ACTS.--

19 A. A person shall not:

20 (1) knowingly present or cause to be  
21 presented:

22 (a) a false or fraudulent claim for  
23 payment by medicaid or for approval for payment by medicaid; or

24 (b) a claim for payment by medicaid for  
25 assistance or services provided to a person who is not

1 eligible, or presumptively eligible, for medicaid;

2 (2) knowingly make or use, or cause to be made  
3 or used, a false record or statement material to a false or  
4 fraudulent medicaid claim;

5 (3) knowingly make or use, or cause to be made  
6 or used, a false record or statement material to an obligation  
7 to pay, or transmit money or property to, medicaid;

8 (4) knowingly make, use or cause to be made or  
9 used, a false record or statement material to an obligation to  
10 pay or transmit money or property to the government, or  
11 knowingly conceal or knowingly and improperly avoid or decrease  
12 an obligation to pay or transmit money or property to the  
13 government;

14 (5) knowingly apply for and receive a benefit  
15 or payment from medicaid on behalf of another person and  
16 convert such benefit or payment to the person's own use, except  
17 pursuant to a lawful assignment of benefits;

18 (6) knowingly make a false statement or  
19 misrepresentation of material fact concerning the conditions or  
20 operations of a health care facility to qualify for medicaid  
21 certification or recertification;

22 (7) knowingly make a claim for a service or a  
23 product that was not provided;

24 (8) have possession, custody or control of  
25 medicaid funds or property and knowingly deliver, or cause to

1 be delivered, less than all such funds or property;

2 (9) make or deliver a document certifying  
3 receipt of medicaid property, without verifying receipt of all  
4 such property;

5 (10) knowingly buying, or receiving as a  
6 pledge of an obligation or debt, medicaid property from an  
7 officer, employee or agent of the state, or from a contractor  
8 or grantee of the state or other recipient of state medicaid  
9 funds, who does not have lawful authority to sell or pledge  
10 such property; or

11 (11) conspire to commit a violation of this  
12 subsection.

13 B. Proof of specific intent to defraud is not  
14 required for a violation of Subsection A of this section.

15 C. Any person found to have violated any provision  
16 of Subsection A of this section shall be liable to the state  
17 for:

18 (1) a civil penalty of not less than twelve  
19 thousand five hundred thirty-seven dollars (\$12,537) and not  
20 more than twenty-five thousand seventy-six dollars (\$25,076)  
21 for each such violation, which amount shall be adjusted  
22 pursuant to the Federal Civil Penalties Inflation Adjustment  
23 Act of 1990;

24 (2) three times the amount of damages  
25 sustained by the state from each such violation; and

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1 (3) reasonable attorney fees and costs of a  
2 civil action brought to recover damages or penalties and the  
3 costs of investigation incurred by the state related to such  
4 violation."

5 SECTION 3. Section 27-14-5 NMSA 1978 (being Laws 2004,  
6 Chapter 49, Section 5) is amended to read:

7 "27-14-5. DOCUMENTARY MATERIAL IN POSSESSION OF STATE  
8 AGENCY.--

9 A. The department and the attorney general shall  
10 have access to all documentary materials of persons and  
11 medicaid recipients to which a state agency has access.  
12 Documentary material provided pursuant to this subsection is  
13 provided to allow investigation of an alleged unlawful act or  
14 for use or potential use in an administrative or judicial  
15 proceeding.

16 B. Except for disclosure to any person under  
17 investigation or who is the subject of allegations made  
18 pursuant to the Medicaid False ~~[Claim]~~ Claims Act or as ordered  
19 by a court for good cause shown, neither the department nor the  
20 attorney general shall ~~[not]~~ produce for inspection or copying  
21 or otherwise disclose the contents of documentary material  
22 obtained pursuant to this section to a person other than:

23 (1) an authorized employee of the attorney  
24 general;

25 (2) an agency of this state, the United States

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1 or another state;

2 (3) a district attorney, city attorney or  
3 county attorney of this state;

4 (4) the United States attorney general; ~~[or]~~

5 (5) a state or federal grand jury; or

6 (6) a relator."

7 SECTION 4. Section 27-14-7 NMSA 1978 (being Laws 2004,  
8 Chapter 49, Section 7) is amended to read:

9 "27-14-7. CIVIL ACTION FOR FALSE CLAIMS.--

10 A. The department and the attorney general shall  
11 diligently investigate suspected violations. If the department  
12 or the attorney general finds that a person has violated or is  
13 violating the provisions of the Medicaid False Claims Act, the  
14 department or the attorney general may bring a civil action  
15 pursuant to ~~[Subsection F of]~~ this section.

16 B. A ~~[private civil]~~ qui tam action may be brought  
17 by ~~[an affected person]~~ a relator for a violation of the  
18 Medicaid False Claims Act on behalf of the ~~[person bringing~~  
19 ~~suit]~~ relator and ~~[for]~~ the state. The action shall be brought  
20 in the name of the state. The action may be dismissed only if  
21 the court ~~[and the department, pursuant to Subsection F of this~~  
22 ~~section]~~ and the department or the attorney general give  
23 written consent to the dismissal and their reasons for  
24 consenting.

25 C. For ~~[private civil]~~ qui tam actions, a copy of

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1 the complaint and written disclosure of substantially all  
2 material evidence and information the ~~[person]~~ relator  
3 possesses shall be served on the department or the attorney  
4 general. The complaint shall be filed ~~[in writing]~~ under seal  
5 and ~~[shall]~~ remain under seal for at least sixty days. The  
6 complaint shall not be served on the defendant until the  
7 expiration of sixty days or any extension approved. ~~[Within~~  
8 ~~sixty days after receiving a copy of the complaint, the~~  
9 ~~department shall conduct an investigation of the factual~~  
10 ~~allegations and legal contentions made in the complaint, shall~~  
11 ~~make a written determination of whether there is substantial~~  
12 ~~evidence that a violation has occurred and shall provide the~~  
13 ~~person against which a complaint has been made with a copy of~~  
14 ~~the determination. If the department determines that there is~~  
15 ~~not substantial evidence that a violation has occurred, the~~  
16 ~~complaint shall be dismissed]~~ While the complaint remains under  
17 seal, the department or the attorney general shall, to the  
18 extent either deems appropriate, investigate the legal and  
19 factual basis for the claims to determine whether to intervene  
20 and prosecute the action.

21 D. The department or the attorney general may, for  
22 good cause shown, move the court for extensions of time during  
23 which the complaint remains under seal. Any such motion may be  
24 supported by affidavits or other submissions in camera. The  
25 defendant shall not be required to respond to a complaint filed

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1 pursuant to this section until twenty days after the complaint  
2 is unsealed and served ~~[to]~~ upon the defendant. ~~[The complaint~~  
3 ~~shall be deemed unsealed at the expiration of the sixty-day~~  
4 ~~period in the absence of a court-approved extension.]~~

5 E. Before the expiration of the sixty-day period or  
6 any extensions obtained, the department ~~[pursuant to Subsection~~  
7 ~~F of this section]~~ or the attorney general shall:

8 (1) proceed with the action, in which case the  
9 action shall be conducted by the department or the attorney  
10 general; or

11 (2) notify the court and the ~~[person who~~  
12 ~~brought the action]~~ relator that it declines to take over the  
13 action, in which case the ~~[person bringing the action]~~ relator  
14 shall have the right to conduct the action ~~[if the department~~  
15 ~~determined that there is substantial evidence that a violation~~  
16 ~~of the Medicaid False Claims Act has occurred].~~

17 F. The department shall notify the attorney general  
18 prior to filing a civil action pursuant to the Medicaid False  
19 Claims Act and shall not proceed with the action except with  
20 the written approval of the attorney general. The attorney  
21 general shall, within ~~[twenty working]~~ sixty days from the  
22 notification by the department, notify the department whether  
23 it may proceed with the civil action. Failure by the attorney  
24 general to notify the department of its determination within  
25 the specified time period shall be construed as consent to

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1 proceed. The department shall, after filing the civil action,  
2 notify the attorney general of any proposed dismissal or  
3 settlement, and the department shall not proceed with the  
4 dismissal or settlement except with the written approval of the  
5 attorney general.

6 G. The department or the attorney general is  
7 authorized to prosecute a civil action for violation of the  
8 Medicaid False Claims Act.

9 H. When a person brings an action under this  
10 section, no person other than the government may intervene or  
11 bring a related action based on the facts underlying the  
12 pending action."

13 SECTION 5. Section 27-14-8 NMSA 1978 (being Laws 2004,  
14 Chapter 49, Section 8) is repealed and a new Section 27-14-8  
15 NMSA 1978 is enacted to read:

16 "27-14-8. [NEW MATERIAL] RIGHTS OF QUI TAM PARTIES.--

17 A. If the department or the attorney general  
18 proceeds with a qui tam action:

- 19 (1) the state shall have the primary
- 20 responsibility for prosecuting the action;
- 21 (2) the relator shall have the right to
- 22 continue as a party to the action, subject to limitations set
- 23 forth in this section; and

24 (3) the court may limit the relator's  
25 participation in the proceedings if, upon motion of the state,

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1 it finds that the relator's participation interferes with or  
2 unduly delays the state's prosecution of the case.

3 B. Notwithstanding an objection on the part of the  
4 relator, the state may dismiss or settle a qui tam action  
5 brought pursuant to the Medicaid False Claims Act, whether  
6 prosecuted jointly or separately by the state or the relator;  
7 provided that the state has served notice upon the relator of  
8 the state's intent to dismiss or settle and the relator is  
9 afforded an opportunity for a hearing.

10 C. A hearing on the settlement may be held in  
11 camera for good cause shown. The settlement shall be approved  
12 by the court if it finds that the proposed settlement is fair,  
13 adequate and reasonable under all of the circumstances.

14 D. If the state elects not to intervene, the  
15 relator shall have the right to conduct the qui tam action. If  
16 the department or the attorney general requests, the state  
17 shall be served with copies of pleadings and all deposition  
18 transcripts at the state's expense.

19 E. Upon a showing of good cause, the court may  
20 allow the state to intervene in the qui tam action at a later  
21 date, without limiting the status and rights of the relator.

22 F. Upon a showing by the state, which shall take  
23 place in camera, that certain discovery on the part of the  
24 relator will interfere with the state's own investigation or  
25 prosecution of a criminal or civil matter arising out of the

1 same facts, the court may stay such discovery by the relator  
2 for a period not to exceed sixty days. The court may extend  
3 the stay upon a further showing that the state has pursued a  
4 criminal or civil investigation or proceedings with reasonable  
5 diligence and that certain discovery by the relator will  
6 interfere with ongoing proceedings conducted by the state.

7 G. Upon a showing by the state that unrestricted  
8 participation of the relator would interfere with or unduly  
9 delay the state's prosecution of the qui tam action, or would  
10 be repetitious, irrelevant or for purposes of harassment, the  
11 court may limit:

12 (1) the number of witnesses the relator may  
13 call;

14 (2) the length of a relator's examination of a  
15 witness;

16 (3) the cross-examination of a witness by a  
17 relator; or

18 (4) the relator's participation in the qui tam  
19 action in any other respect.

20 H. Notwithstanding Subsection B of Section 27-14-7  
21 NMSA 1978, the government may elect to pursue its claim through  
22 any alternate remedy available to the government, including any  
23 administrative proceeding to determine a civil monetary  
24 penalty. If any such alternate remedy is pursued in another  
25 proceeding, the person initiating the action shall have the

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1 same rights in such proceeding as such person would have had if  
2 the action had continued under Section 27-14-7 NMSA 1978. Any  
3 finding of fact or conclusion of law made in such proceeding  
4 that has become final shall be conclusive on all parties to an  
5 action under Section 27-14-7 NMSA 1978. For purposes of the  
6 preceding sentence, a finding or conclusion is final if it has  
7 been finally determined on appeal to the appropriate court, if  
8 all time for filing such an appeal with respect to the finding  
9 or conclusion has expired or if the finding or conclusion is  
10 not subject to judicial review."

11 SECTION 6. Section 27-14-9 NMSA 1978 (being Laws 2004,  
12 Chapter 49, Section 9) is repealed and a new Section 27-14-9  
13 NMSA 1978 is enacted to read:

14 "27-14-9. [NEW MATERIAL] AWARD TO RELATOR.--

15 A. If the state proceeds with a qui tam action  
16 pursuant to the Medicaid False Claims Act, the relator shall  
17 receive at least fifteen percent but not more than twenty-five  
18 percent of the proceeds of the action or settlement of the  
19 claim, depending upon the extent to which the relator  
20 substantially contributed to the prosecution of the action.  
21 Where the action is one that the court finds to be based  
22 primarily on disclosures of specific information, other than  
23 information provided by the person bringing the action,  
24 relating to allegations or transactions in a criminal, civil or  
25 administrative hearing, in a legislative, administrative or

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1 other state report, hearing, audit or investigation, or from  
2 the news media, the court may award such sums as it considers  
3 appropriate, but in no case more than ten percent of the  
4 proceeds, taking into account the significance of the  
5 information and the role of the person bringing the action in  
6 advancing the case to litigation. Any payment to a person  
7 pursuant to this subsection shall be made from the proceeds.  
8 Any such person shall also receive an amount for reasonable  
9 expenses that the court finds to have been necessarily  
10 incurred, plus reasonable attorney fees and costs. All such  
11 expenses, fees and costs shall be awarded against the  
12 defendant.

13 B. If the state does not proceed with an action  
14 under this section, the relator bringing the action or settling  
15 the claim shall receive an amount that the court decides is  
16 reasonable for collecting the civil penalty and damages. The  
17 amount shall be not less than twenty-five percent and not more  
18 than thirty percent of the proceeds of the action or settlement  
19 and shall be paid out of such proceeds. The relator shall also  
20 receive an amount for reasonable expenses that the court finds  
21 to have been necessarily incurred, plus reasonable attorney  
22 fees and costs. All such expenses, fees and costs shall be  
23 awarded against the defendant.

24 C. Whether or not the state proceeds with the  
25 action, if the court finds that the action was brought by a

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1 relator who planned and initiated the violation of Section  
2 27-14-4 NMSA 1978 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 that the relator  
5 would otherwise receive under Subsection A or B of this  
6 section, taking into account the role of the relator in  
7 advancing the case to litigation and any relevant circumstances  
8 pertaining to the violation. If a relator bringing the action  
9 is convicted of criminal conduct arising from the relator's  
10 role in the violation of Section 27-14-4 NMSA 1978, such  
11 relator shall be dismissed from the civil action and shall not  
12 receive any share of the proceeds of the action. Such  
13 dismissal shall not prejudice the right of the state to  
14 continue the action, represented by the department or the  
15 attorney general.

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

23 SECTION 7. Section 27-14-10 NMSA 1978 (being Laws 2004,  
24 Chapter 49, Section 10) is repealed and a new Section 27-14-10  
25 NMSA 1978 is enacted to read:

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1 "27-14-10. [NEW MATERIAL] CERTAIN ACTIONS BARRED.--

2 A. A court shall not have jurisdiction over an  
3 action brought pursuant to the Medicaid False Claims Act  
4 against a member of the legislature, a member of the judiciary  
5 or a senior executive branch official if the action is  
6 substantially based on evidence or information known to the  
7 state when the action was brought. For purposes of this  
8 subsection, "senior executive branch official" means any  
9 officer, director or appointee of the executive department,  
10 which consists of the governor, lieutenant governor, secretary  
11 of state, state auditor, state treasurer, attorney general and  
12 commissioner of public lands, pursuant to Article 5, Section 1  
13 of the constitution of New Mexico.

14 B. A person shall not bring an action pursuant to  
15 the Medicaid False Claims Act that is substantially based upon  
16 allegations or transactions that are the subject of a civil  
17 suit or administrative civil money penalty proceeding to which  
18 the state is a party.

19 C. Unless the action is brought by the state or the  
20 person bringing the action is an original source of the  
21 information, the court shall dismiss an action or claim under  
22 this section, unless opposed by the state, if substantially the  
23 same allegations or transactions as alleged in the action or  
24 claim were publicly disclosed:

25 (1) in a state criminal, civil or

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1 administrative proceeding to which the state or its agent is or  
2 was a party;

3 (2) in a legislative, administrative or other  
4 state report, hearing, audit or investigation; or

5 (3) in the news media."

6 SECTION 8. Section 27-14-11 NMSA 1978 (being Laws 2004,  
7 Chapter 49, Section 11) is amended to read:

8 "27-14-11. [~~DEPARTMENT~~] STATE NOT LIABLE FOR CERTAIN  
9 EXPENSES.--The [~~department~~] state shall not be liable for  
10 expenses that a [~~person~~] relator incurs in bringing [~~an~~] a qui  
11 tam action pursuant to the Medicaid False Claims Act."

12 SECTION 9. Section 27-14-12 NMSA 1978 (being Laws 2004,  
13 Chapter 49, Section 12) is repealed and a new Section 27-14-12  
14 NMSA 1978 is enacted to read:

15 "27-14-12. [NEW MATERIAL] WHISTLEBLOWER PROTECTION.--

16 A. An employee, contractor or agent shall be  
17 entitled to all relief necessary to make that person whole if  
18 such person is discharged, demoted, suspended, threatened,  
19 harassed or in any manner discriminated against in the terms  
20 and conditions of employment because of lawful acts done by the  
21 employee, contractor, agent or associated others in furtherance  
22 of an action brought pursuant to the Medicaid False Claims Act,  
23 or other efforts to stop one or more violations of the Medicaid  
24 False Claims Act.

25 B. Relief under Subsection A of this section shall

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1 include:

2 (1) reinstatement with the same seniority  
3 status that such person would have had but for the retaliation  
4 or discrimination;

5 (2) two times the amount of back pay;

6 (3) interest on the amount of back pay;

7 (4) compensation for any special damages  
8 sustained as a result of the retaliation or discrimination; and

9 (5) reasonable attorney fees and costs.

10 C. An action brought under this section shall not  
11 be brought more than three years after the date on which the  
12 retaliation or discrimination occurred."

13 SECTION 10. Section 27-14-13 NMSA 1978 (being Laws 2004,  
14 Chapter 49, Section 13) is repealed and a new Section 27-14-13  
15 NMSA 1978 is enacted to read:

16 "27-14-13. [NEW MATERIAL] FALSE CLAIMS AND REPORTING  
17 PROCEDURE.--

18 A. A civil action pursuant to the Medicaid False  
19 Claims Act may not be brought:

20 (1) more than six years after the date on  
21 which the violation of the Medicaid False Claims Act occurred;  
22 or

23 (2) more than three years after the date on  
24 which the state official charged with responsibility to act in  
25 the circumstances knew or reasonably should have known facts

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1 material to its right of action, but in no event more than ten  
2 years after the date on which the violation was committed,  
3 whichever occurs last.

4 B. If the state intervenes in a qui tam action  
5 pursuant to the Medicaid False Claims Act, the state may file  
6 its own complaint or amend the relator's complaint, including  
7 adding additional claims for relief. Any such state pleading  
8 shall relate back to the filing date of the relator's original  
9 complaint, to the extent the state's pleading arises out of the  
10 conduct, transactions or occurrences set forth in the relator's  
11 original complaint.

12 C. In any action brought pursuant to the Medicaid  
13 False Claims Act, the state shall be required to prove all  
14 essential elements of the cause of action, including damages,  
15 by a preponderance of the evidence.

16 D. Notwithstanding any rule or other provision of  
17 law, a final judgment entered in favor of the state in any  
18 criminal proceeding charging fraud or false statements, whether  
19 upon a verdict after trial or upon a plea of guilty or nolo  
20 contendere, shall estop the defendant from denying the  
21 essential elements of the offense in any action brought  
22 pursuant to the Medicaid False Claims Act that involves the  
23 same transaction as in the criminal proceeding."

24 SECTION 11. Section 27-14-14 NMSA 1978 (being Laws 2004,  
25 Chapter 49, Section 14) is amended to read:

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1 "27-14-14. APPLICATION OF OTHER LAW.--The application of  
2 a civil remedy pursuant to this law does not preclude the  
3 application of other laws, statutes or regulatory remedy,  
4 except that a person may not be liable for a civil remedy  
5 pursuant to the Medicaid False Claims Act and civil damages or  
6 recovery pursuant to the Medicaid Fraud Act if the civil remedy  
7 and the civil damages or recoveries are assessed for the same  
8 conduct by another government agency. For cases involving  
9 medicaid filed on or after July 1, 2023, when conflicts exist  
10 between the Medicaid False Claims Act and the Fraud Against  
11 Taxpayers Act, the Medicaid False Claims Act is controlling."

12 SECTION 12. Section 27-14-15 NMSA 1978 (being Laws 2004,  
13 Chapter 49, Section 15) is amended to read:

14 "27-14-15. USE OF FUNDS.--

15 A. Damages collected pursuant to the Medicaid False  
16 Claims Act on behalf of the state shall be remitted to the  
17 state treasurer for deposit in the general fund to be used for  
18 the state's medicaid program.

19 B. Penalties [~~legal fees or costs of investigation~~]  
20 recovered pursuant to the Medicaid False Claims Act on behalf  
21 of the state shall be remitted to the state treasurer for  
22 deposit in the general fund to be used for the state's medicaid  
23 program.

24 C. [~~Pursuant to Subsection C of Section 30-44-8~~  
25 ~~NMSA 1978, penalties recovered pursuant to the Medicaid False~~

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1 ~~Claims Act on behalf of the state may be claimed by the~~  
2 ~~attorney general pursuant to procedures established by the~~  
3 ~~department and the attorney general]~~ Attorney fees and costs,  
4 and costs of investigation incurred by the department, shall be  
5 paid to the department. Attorney fees and costs, and costs of  
6 investigation incurred by the attorney general, shall be paid  
7 to the office of the attorney general."

8 SECTION 13. A new section of the Medicaid False Claims  
9 Act is enacted to read:

10 "[NEW MATERIAL] CIVIL INVESTIGATIVE DEMAND.--

11 A. Whenever the attorney general has reason to  
12 believe that any person may have information, or be in  
13 possession, custody or control of any document or tangible  
14 thing that the attorney general believes to be relevant to a  
15 false claims investigation, the attorney general may, prior to  
16 filing a civil proceeding alleging violations of the Medicaid  
17 False Claims Act or intervening in a qui tam proceeding under  
18 that act, execute in writing and cause to be served upon such  
19 person a civil investigative demand requiring such person to:

- 20 (1) produce documents or tangible things for
- 21 inspection or copying;
- 22 (2) give written answers to written
- 23 interrogatories; or
- 24 (3) give oral testimony.

25 B. The civil investigative demand shall not be a

1 matter of public record and shall not be disclosed or published  
2 by the attorney general except by court order.

3 C. A civil investigative demand shall:

4 (1) state the nature of the conduct  
5 constituting the alleged Medicaid False Claims Act violation  
6 that is under investigation and the applicable provision of law  
7 alleged to have been violated;

8 (2) if the demand is for the production of  
9 documents or tangible things:

10 (a) describe the documents or tangible  
11 things with reasonable particularity;

12 (b) specify the date, time and place on  
13 which the documents or tangible things are to be produced,  
14 which shall not be less than ten days after service of the  
15 demand; and

16 (c) identify the person to whom the  
17 documents or tangible things are to be made available;

18 (3) if the demand is for answers to written  
19 interrogatories, specify the date, time and place on which  
20 answers shall be served upon the attorney general; and

21 (4) if the demand is for the giving of oral  
22 testimony:

23 (a) specify the name of each person to  
24 be examined, if known, or name an organization or governmental  
25 agency as the witness and describe with reasonable

1 particularity the matters on which the examination is  
2 requested, and the organization or agency shall designate one  
3 or more persons to testify on its behalf as to such matters;

4 (b) specify the date, time and place on  
5 which the examination shall take place, which shall not be less  
6 than seven days after service of the demand, unless the  
7 attorney general determines that exceptional circumstances are  
8 present that warrant the commencement of such testimony in a  
9 lesser period of time; and

10 (c) state that attendance and testimony  
11 are necessary to the investigation and provide notice of the  
12 right to be accompanied by counsel.

13 D. A civil investigative demand shall not:

14 (1) be issued more than once to the same  
15 person for oral testimony unless the person requests otherwise  
16 or the attorney general, after investigation, notifies the  
17 person in writing that an additional demand for oral testimony  
18 is necessary;

19 (2) contain any requirement that would be  
20 unreasonable or improper if contained in a subpoena or subpoena  
21 duces tecum issued by a court of this state;

22 (3) require the disclosure of privileged  
23 matters or matters otherwise protected from disclosure under  
24 standards applicable to a subpoena or subpoena duces tecum  
25 issued by a court of this state; or



1 (4) require the removal of any documents from  
2 the custody of the person upon whom the demand is served,  
3 except in accordance with Subsection E of this section.

4 E. Requested documents and tangible things shall be  
5 produced for inspection and copying during normal business  
6 hours at the principal place of business of the person served  
7 with the demand, or at such other place and time as may be  
8 agreed upon by such person and the attorney general.

9 F. Except as provided by Subsection G of this  
10 section, the attorney general shall not disclose the product of  
11 discovery received pursuant to a civil investigative demand to  
12 anyone.

13 G. The attorney general may disclose the product of  
14 discovery received pursuant to a civil investigative demand to:

15 (1) an attorney general of another state, law  
16 enforcement authorities of this or another state or federal law  
17 enforcement authorities for purposes of investigating:

18 (a) allegations of one or more  
19 violations of the Medicaid False Claims Act that form the basis  
20 of the civil investigative demand; or

21 (b) other violations of state or federal  
22 law arising from matters disclosed pursuant to the civil  
23 investigative demand; and

24 (2) a relator and the relator's counsel;  
25 provided that the product of discovery relates to the relator's

1 qui tam action.

2 H. Service of a duly executed copy of the civil  
3 investigative demand shall be made by:

4 (1) delivering a copy of the demand to the  
5 person to whom the demand is addressed, wherever such person  
6 may be found, or by leaving the demand with a person over  
7 fifteen years old residing at the usual place of abode of the  
8 addressee or at the addressee's principal office or place of  
9 business;

10 (2) if the addressee is not a natural person,  
11 delivering a copy of the demand to an officer, managing or  
12 general agent or to any other agent authorized by appointment  
13 or by law to receive service of process; or

14 (3) registered or certified mail addressed to  
15 the person at the person's principal office or place of  
16 business, whether in this state or elsewhere.

17 I. At any time before the return date of the civil  
18 investigative demand, a person receiving the demand may file a  
19 complaint under seal seeking an order to set aside or modify  
20 the demand in the district court of the New Mexico county in  
21 which the person resides or has a principal office or place of  
22 business or in the district court of Santa Fe county if the  
23 person does not reside or have a principal office or place of  
24 business in New Mexico. Upon a showing of good cause, the  
25 court may set aside or modify the demand or extend the time for

.223744.2

underscoring material = new  
~~[bracketed material] = delete~~

1 discovery requested in the demand."

2 SECTION 14. APPLICABILITY.--The provisions of this act  
3 apply to civil actions alleging violations of the Medicaid  
4 False Claims Act filed on or after July 1, 2023.

5 SECTION 15. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is July 1, 2023.