

SENATE FILE NO. SF0083

Medicaid fraud recovery.

Sponsored by: Senator(s) Peterson and Representative(s)
Harvey

A BILL

for

1 AN ACT relating to Medicaid; creating the Wyoming Medicaid
2 False Claims Act; authorizing civil recoveries for the
3 state as specified; prescribing duties of the attorney
4 general; providing procedures; providing for a limitations
5 period and applicability of the act; providing definitions;
6 prescribing criminal penalties as specified for failure to
7 maintain required records; creating a cause of action for
8 retaliatory employment actions; and providing for an
9 effective 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, property or services that:

(A) Is presented to an officer, employee or agent of the state; 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.

7

8 (ii) "Knowing" and "knowingly" mean that a
9 person, with respect to information, and with or without
10 specific intent to defraud:

11

12 (A) Has actual knowledge of the
13 information;

14

15 (B) Acts in deliberate ignorance of the
16 truth or falsity of the information; or

17

18 (C) Acts in reckless disregard of the truth
19 or falsity of the information.

20

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

24

1 (iv) "This act" means W.S. 42-4-301 through
2 42-4-306.

3

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

6

7 (a) Any person who commits any of the following acts
8 in relation to the Wyoming Medicaid program shall be liable
9 to the state for three (3) times the amount of damages
10 which the state sustains because of the act of that person.
11 A person who commits any of the following acts shall also
12 be liable to the state for the costs of a civil action
13 brought to recover any of those penalties or damages, and
14 shall be liable to the state for a civil penalty of not
15 less than one thousand dollars (\$1,000.00) and not more
16 than ten thousand dollars (\$10,000.00) for each violation:

17

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

20

21 (ii) Knowingly makes, uses or causes to be made
22 or used, a false record or statement material to a false or
23 fraudulent claim;

24

1 (iii) Is a beneficiary of an inadvertent
2 submission of a false claim to any employee, officer or
3 agent of the state or a political subdivision of the state,
4 or to any contractor, grantee or other recipient of state
5 funds or funds of any political subdivision of the state,
6 who subsequently discovers the falsity of the claim and
7 fails to disclose the false claim and make satisfactory
8 arrangements for repayment to the state or affected
9 political subdivision within ninety (90) days after
10 discovery of the false claim;

11

12 (iv) Conspires to commit a violation of
13 paragraph (i), (ii) or (iii) of this subsection.

14

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

20

21 (i) The person committing the violation
22 furnished officials of the state who are responsible for
23 investigating false claims violations with all information
24 known to that person about the violation within thirty (30)

1 days after the date on which the person first obtained the
2 information;

3

4 (ii) The person fully cooperated with any
5 investigation by the state;

6

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

13

14 **42-4-304. Attorney general investigations and**
15 **prosecutions; powers of prosecuting authority; remedies for**
16 **retaliation; venue; no private right of action.**

17

18 (a) The attorney general shall diligently investigate
19 alleged violations of W.S. 42-4-303(a). If the attorney
20 general finds that a person has violated or is violating
21 W.S. 42-4-303(a), the attorney general may bring a civil
22 action under this section against that person.

23

1 (b) Any employee, contractor or agent of a person
2 being investigated for a violation of W.S. 42-4-303(a)
3 shall be entitled to recover all economic damages suffered
4 if that employee, contractor or agent is discharged,
5 demoted, suspended, threatened, harassed or in any other
6 manner retaliated against in the terms and conditions of
7 employment because of lawful acts taken in good faith by
8 the employee or others in an action reported, filed or
9 investigated under this act. An action by an employee,
10 contractor or agent under this subsection shall not be
11 brought more than three (3) years after the date when the
12 retaliation occurred. A person may bring an action in the
13 appropriate district court for the relief provided in this
14 section. This section shall not otherwise be construed to
15 create a private cause of action for violations of this act
16 and is limited to the remedies expressly created by this
17 section related to employment retaliation.

18

19 (c) Any action under this act may be brought in the
20 district court of any county in which the defendant, or any
21 of them, resides or transacts business or in which any act
22 prohibited by W.S. 42-4-303 occurred.

23

1 (d) Except as provided in subsection (b) of this
2 section, nothing in this act shall be construed to create a
3 private cause of action.

4

5 (e) The remedies provided in this act are separate
6 from and additional to any remedies available under the
7 State Government Fraud Reduction Act.

8

9 **42-4-305. Limitation of actions; retroactivity;**
10 **burden of proof.**

11

12 (a) A civil action under W.S. 42-4-304(a) shall not
13 be brought more than six (6) years after the date on which
14 the violation was committed or more than three (3) years
15 after the date when facts material to the right of action
16 are known or reasonably should have been known by the
17 official of the state charged with responsibility to act in
18 the circumstances, whichever occurs last, provided that in
19 no event shall a civil action be brought more than ten (10)
20 years after the date on which the violation is committed.

21

22 (b) In any action brought under W.S. 42-4-304, the
23 state shall be required to prove all essential elements of

1 the cause of action, including damages, by a preponderance
2 of the evidence.

3

4 (c) 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; joint and several liability.**

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) Liability pursuant to this act is joint and
22 several for any violation done by two (2) or more persons.

23

1 **Section 2.** W.S. 42-4-102(a) by creating new
2 paragraphs (xii) and (xiii) 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 (xii) "Intentional" means that a person, with
10 respect to information, intended to act in violation of the
11 law;

12

13 (xiii) "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) It is unlawful for a person to knowingly fail to
6 maintain records in accordance with Medicaid program rules
7 as necessary to disclose fully the nature of the goods,
8 services, items, facilities or accommodations for which a
9 claim was submitted or payment was received under the
10 Medicaid program. Any person who violates this subsection
11 is guilty of:

12

13 (i) A misdemeanor punishable by imprisonment for
14 not more than six (6) months, a fine of not more than seven
15 hundred fifty dollars (\$750.00), or both, if the medical
16 assistance claimed for which records were not maintained
17 equals less than twenty-five percent (25%) of the Medicaid
18 claims submitted by that person in a three (3) month period
19 that includes the date on which the claim was submitted;

20

21 (ii) A misdemeanor punishable by imprisonment
22 for not more than one (1) year, a fine of not more than
23 five thousand dollars (\$5000.00), or both, if the medical
24 assistance claimed for which records were not maintained

1 equals twenty-five percent (25%) or more of the Medicaid
2 claims submitted by that person in a three (3) month period
3 that includes the date on which the claim was submitted;

4
5 (iii) A felony punishable by imprisonment for
6 not more than ten (10) years, a fine of not more than ten
7 thousand dollars (\$10,000.00), or both, if:

8
9 (A) The person intended to defraud and the
10 medical assistance claimed for which records were not
11 maintained equals twenty-five percent (25%) or more of the
12 Medicaid claims submitted by that person in a three (3)
13 month period that includes the date on which the claim was
14 submitted; or

15
16 (B) The conviction is the person's second
17 offense within a three (3) year period under this
18 subsection.

19
20 **Section 3.** This act is effective July 1, 2013.

21
22 (END)