

1 SB367  
2 180638-1  
3 By Senator Pittman  
4 RFD: Finance and Taxation General Fund  
5 First Read: 11-APR-17

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

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

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

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

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

1 enforcement agencies investigating false or  
2 fraudulent claims actions.

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

5  
6 A BILL  
7 TO BE ENTITLED  
8 AN ACT

9  
10 To create the Alabama Medicaid False Claims Act,  
11 relating to false or fraudulent claims made upon the Alabama  
12 Medicaid program; to subject certain violators making false  
13 claims or committing fraud against the Alabama Medicaid Agency  
14 to treble damages and civil penalties; to provide for  
15 associated investigative costs; to provide for exceptions; to  
16 provide for the responsibilities of the Attorney General and  
17 private individuals in investigating and proceeding against  
18 violators in civil actions; to prohibit retaliatory actions by  
19 employers against employees who disclose information to  
20 government or law enforcement agencies investigating false  
21 claims; and to provide for the limitation of actions.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

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

21           a. Has actual knowledge of the information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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