

1 SB241
2 206277-2
3 By Senator McClendon
4 RFD: Judiciary
5 First Read: 23-FEB-21

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, civil
19 penalties, and any associated costs, including
20 attorney's 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. Includes a request or demand made orally,
2 in writing, electronically, or magnetically. Each claim may be
3 treated as a separate claim. The term includes any request or
4 demand, whether under a contract or otherwise, for money or
5 property and whether or not the state has title to the money
6 or property, based on costs or projected costs and including
7 any entry or omission in a cost report or similar document,
8 book of account, or any other document that supports or
9 attempts to support the claim that satisfies either of the
10 following:

11 a. Is presented to the Alabama Medicaid Agency, its
12 employees, agents, contractors, or its designated fiscal
13 intermediary.

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

22 (2) KNOWING or KNOWINGLY. Requires no proof of
23 specific intent to defraud, and means a person, with respect
24 to information, satisfies any of the following:

25 a. Has actual knowledge of the information.

26 b. Acts in deliberate ignorance of the truth or
27 falsity of the information.

1 c. Acts in reckless disregard of the truth or
2 falsity of the information.

3 (3) PERSON. Any natural person, corporation, firm,
4 association, organization, partnership, limited liability
5 company, business, trust, society, or any other entity with
6 the capacity to sue or be sued.

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

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

15 Section 3. (a) (1) Except as otherwise provided in
16 subdivision (3), a person who does any of the following is
17 liable to the state for a civil penalty of not less than five
18 thousand five hundred dollars (\$5,500) and not more than
19 eleven thousand dollars (\$11,000) for each claim, as adjusted
20 by the Federal Civil Penalties Inflation Adjustment Act of
21 1990, plus three times the amount of damages which the state
22 sustains because of the act of that person and the costs of a
23 civil action brought to recover any penalty or damages:

24 a. Knowingly presents, or causes to be presented, a
25 false or fraudulent claim for payment or approval to the
26 Alabama Medicaid program.

1 b. Knowingly makes, uses, or causes to be made or
2 used, a false or fraudulent record or statement material to a
3 false or fraudulent claim to the Alabama Medicaid program.

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

10 d. Has possession, custody, or control of property
11 or money used or to be used by the Alabama Medicaid program
12 and knowingly delivers, or causes to be delivered, less than
13 all of such property or money.

14 e. Is authorized to make or deliver a document
15 certifying receipt or property used, or to be used, by the
16 Alabama Medicaid program and, intending to defraud the Alabama
17 Medicaid program, makes or delivers the receipt without
18 completely knowing that the information on the receipt is
19 true.

20 f. Knowingly buys, or receives as a pledge of an
21 obligation or debt, public property from an officer or
22 employee of the Alabama Medicaid program who lawfully may not
23 sell or pledge the property.

24 g. Conspires to commit a violation of paragraphs a.
25 through f., inclusive.

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

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

4 a. The person committing the violation of this
5 subsection furnished officials of the state responsible for
6 investigating false claims violations with all information
7 known to the person about the violation within 30 days after
8 the date on which the defendant first obtained the
9 information.

10 b. The person fully cooperated with any state
11 investigation of the violation of this subsection.

12 c. At the time the person furnished the state with
13 the information about the violation, no criminal prosecution,
14 civil action, or administrative action had commenced with
15 respect to the violation, and the person did not have actual
16 knowledge of the existence of an investigation into the
17 violation.

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

22 (2) The action shall be brought in the name of the
23 state and shall be granted if it is clearly shown that the
24 state's rights are being violated by the person and the state
25 will suffer immediate and irreparable injury, loss, or damage
26 pending a final judgment in the action, or that the acts or

1 omissions of the person will tend to render the final judgment
2 ineffectual.

3 (3) The court may make orders or judgments,
4 including the appointment of a receiver, as may be necessary
5 to prevent any act described by subsection (a) by any person,
6 or as may be necessary to restore to the Medicaid program any
7 money or property, real or personal, which may have been
8 acquired by means of the act.

9 Section 4. (a) The Attorney General shall diligently
10 investigate a violation of this act. If the Attorney General
11 finds that a person has violated, or is violating this act, he
12 or she may bring a civil action under this section against the
13 person.

14 (b) (1) A private person may bring a civil action for
15 a violation of this act for the person and for the state. The
16 action shall be brought in the name of the State of Alabama.
17 The action may be dismissed only if the court and the Attorney
18 General give written consent to the dismissal and their
19 reasons for consenting.

20 (2) A copy of the complaint and written disclosure
21 of substantially all material evidence and information the
22 person possesses shall be served on the Attorney General. The
23 complaint shall be filed in camera, shall remain under seal
24 for at least 60 days, and shall not be served on the defendant
25 until the court so orders. The state may elect to intervene
26 and proceed with the action within 60 days after it receives
27 both the complaint and the material evidence and information.

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

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

11 a. Proceed with the action, in which case the action
12 shall be conducted by the state.

13 b. Notify the court that it declines to take over
14 the action, in which case the person bringing the action shall
15 have the right to conduct the action.

16 (5) When a person brings an action under this
17 subsection, no person other than the state may intervene or
18 bring a related action based on the facts underlying the
19 pending action.

20 (c) (1) If the state proceeds with the action, it
21 shall have the primary responsibility for prosecuting the
22 action and may not be bound by an act of the person bringing
23 the action. The person shall have the right to continue as a
24 party to the action, subject to the limitations set forth in
25 subdivision (2).

26 (2)a. The state may dismiss the action
27 notwithstanding the objections of the person initiating the

1 action, if the person has been notified by the state of the
2 filing of the motion and the court has provided the person
3 with an opportunity for a hearing on the motion.

4 b. The state may settle the action with the
5 defendant notwithstanding the objections of the person
6 initiating the action, if the court determines, after a
7 hearing, that the proposed settlement is fair, adequate, and
8 reasonable under the circumstances. Upon a showing of good
9 cause, the hearing may be held in camera.

10 c. Upon a showing by the state that unrestricted
11 participation during the course of the litigation by the
12 person initiating the action would interfere with or unduly
13 delay the state's prosecution of the case, or would be
14 repetitious, irrelevant, or for purposes of harassment, the
15 court may impose limitations on the person's participation,
16 such as any of the following:

17 1. Limiting the number of witnesses the person may
18 call.

19 2. Limiting the length of the testimony of
20 witnesses.

21 3. Limiting the person's cross-examination of
22 witnesses.

23 4. Otherwise limiting the participation by the
24 person in the litigation.

25 d. Upon a showing by the defendant that unrestricted
26 participation during the course of the litigation by the
27 person initiating the action would be for purposes of

1 harassment or would cause the defendant undue burden or
2 unnecessary expense, the court may limit the participation by
3 the person in the litigation.

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

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

26 (5) Notwithstanding subsection (b), the state may
27 elect to pursue its claim through any alternate remedy

1 available to the state, including any administrative
2 proceeding to determine a civil monetary penalty. If any
3 alternate remedy is pursued in another proceeding, the person
4 initiating the action shall have the same rights in the
5 proceedings as the person would have had if the action had
6 continued under this section. Any finding of fact or
7 conclusion of law made in the other proceeding that has become
8 final shall be conclusive on all parties to an action under
9 this section. For purposes of this subdivision, a finding or
10 conclusion is final if it has been finally determined on
11 appeal to the appropriate court of jurisdiction, if all time
12 for filing such an appeal with respect to the finding or
13 conclusion has expired, or if the finding or conclusion is not
14 subject to judicial review.

15 (d) (1) a. If the state proceeds with an action
16 brought by a person under subsection (b), a person, subject to
17 paragraph b., shall receive at least 15 percent, but not more
18 than 25 percent of the proceeds of the action or settlement of
19 the claim, depending upon the extent to which the person
20 substantially contributed to the prosecution of the action.

21 b. Where the action is one that the court finds to
22 be based primarily on disclosures of specific information,
23 other than information provided by the person bringing the
24 action, relating to allegations or transactions in a criminal,
25 civil, or administrative hearing, report, audit,
26 investigation, or from the news media, the court may award
27 sums as it considers appropriate, but in no case more than 10

1 percent of the proceeds, taking into account the significance
2 of the information and the role of the person bringing the
3 action in advancing the case to litigation.

4 c. Any payment to a person under paragraph a. or b.
5 shall be made from the proceeds. The person shall also receive
6 an amount for reasonable expenses that the court finds to have
7 been necessarily incurred, plus reasonable attorney's fees and
8 costs. All expenses, fees, and costs shall be awarded against
9 the defendant.

10 (2) If the state does not proceed with an action
11 under this section, the person bringing the action or settling
12 the claim shall receive an amount that the court determines is
13 reasonable for collecting the civil penalty and damages. The
14 amount shall be not less than 25 percent and not more than 30
15 percent of the proceeds of the action or settlement and shall
16 be paid out of such proceeds. The person shall also receive an
17 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 (3) Whether or not the state proceeds with the
22 action, if the court finds that the action was brought by a
23 person who planned and initiated the violation upon which the
24 action was brought, then the court, to the extent the court
25 considers appropriate, may reduce the share of the proceeds of
26 the action that the person would otherwise receive under
27 subdivision (1) or (2), taking into account the role of that

1 person in advancing the case to litigation and any relevant
2 circumstances pertaining to the violation. If the person
3 bringing the action is convicted of criminal conduct arising
4 from the person's role in the filing of the false claim upon
5 which action is brought pursuant to this act, that person
6 shall be dismissed from the civil action and shall not receive
7 any share of the proceeds of the action. The dismissal does
8 not prejudice the right of the state to continue the action.

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

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

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

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

1 2. In a state report, hearing audit, or
2 investigation.

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

6 b. For purpose of this subdivision "original source"
7 means an individual who satisfies either of the following:

8 1. Prior to a public disclosure has voluntarily
9 disclosed to the state the information on which allegations or
10 transactions in a claim are based.

11 2. Has knowledge that is independent of and
12 materially adds to the publicly disclosed allegations or
13 transactions, and voluntarily provided the information to the
14 state before filing an action under this section.

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

17 (g) (1) Any employee, contractor, agent, or
18 associated others who are discharged, demoted, suspended,
19 threatened, harassed, or in any other manner discriminated
20 against in the terms and conditions of employment because of
21 lawful acts done by the employee, contractor, agent, or
22 associated others in furtherance of an action under this
23 section or other efforts to stop one or more violations of
24 this act, shall be entitled to all relief necessary to make
25 the employee whole.

26 (2) Relief shall include reinstatement with the same
27 seniority status the employee, contractor, agent, or

1 associated others would have had but for the discrimination,
2 two times the amount of back pay, interest on the back pay,
3 and compensation for any special damages sustained as a result
4 of the discrimination, including litigation costs and
5 reasonable attorney's fees. An employee, contractor, agent, or
6 associated other may bring an action in the appropriate court
7 for the relief provided in this subsection.

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

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

14 (b) A civil action under this act may not be
15 brought:

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

18 (2) More than four years after the date when facts
19 material to the right of action are known or reasonably should
20 have been known by the official of the state charged with
21 responsibility to act in the circumstances, but in no event
22 more than 10 years after the date on which the violation is
23 committed, whichever occurs last.

24 (c) (1) If the state elects to intervene and proceed
25 with an action brought under this act, the state may file its
26 own complaint or amend the complaint of a person who has
27 brought an action under this act to clarify or add detail to

1 the claims in which the state is intervening and to add any
2 additional claims with respect to which the state contends it
3 is entitled to relief.

4 (2) For statute of limitations purposes, any state
5 pleading shall relate back to the filing date of the complaint
6 of the person who originally brought the action, to the extent
7 that the claim of the state arises out of the same conduct,
8 transactions, or occurrences set forth, or attempted to set
9 forth, in the prior complaint of that person.

10 (d) In any action brought under this act, the state
11 shall be required to prove all essential elements of the cause
12 of action, including damages, by a preponderance of the
13 evidence.

14 (e) Notwithstanding any other provision of law, the
15 Alabama Rules of Criminal Procedure, or the Alabama Rules of
16 Evidence, a final judgment rendered in favor of the state in
17 any criminal proceeding charging fraud or false statements,
18 whether upon a verdict after trial or upon a plea of guilty
19 shall estop the defendant from denying the essential elements
20 of the offense in any action that involves the same
21 transaction as in the criminal proceeding and that is brought
22 under this act.

23 Section 6. Any action under this act may be brought
24 in any judicial circuit in which the defendant or, in the case
25 of multiple defendants, any one defendant can be found,
26 resides, transacts business, or in which any act prohibited by
27 this act occurred. A summons as required by the Alabama Rules

1 of Civil Procedure shall be issued by the appropriate circuit
2 court clerk and served at any place within or outside the
3 United States.

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