

LEGISLATIVE BILL 1084

Approved by the Governor April 15, 2004

Introduced by Erdman, 47; Aguilar, 35; Baker, 44; Byars, 30; Cunningham, 40; Engel, 17; Friend, 10; Jensen, 20; Johnson, 37; Jones, 43; Kremer, 34; Mossey, 3; Quandahl, 31; Redfield, 12; Schrock, 38; Smith, 48; Vrtiska, 1; Combs, 32

AN ACT relating to medicaid; to amend sections 68-1037.01 to 68-1037.05, Reissue Revised Statutes of Nebraska; to change the False Medicaid Claims Act as prescribed; to harmonize provisions; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 68-1037.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~68-1037.01.~~ Sections ~~68-1037.01 to 68-1037.05~~ 1 to 14 of this act shall be known and may be cited as the False Medicaid Claims Act.

Sec. 2. Section 68-1037.02, Reissue Revised Statutes of Nebraska, is amended to read:

~~68-1037.02.~~ For purposes of the False Medicaid Claims Act:

(1) Attorney General means the Attorney General, the office of the Attorney General, or a designee of the Attorney General;

(2) Claim means an application for payments for goods or services, including any written or electronically submitted request or demand to the state agency or its agents or assignees for reimbursement for goods or services purported to have been provided to a recipient, whether or not the state agency pays any portion of such claim any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, provider, or other recipient if the state provides any portion of the money or property that is requested or demanded or if the government will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded, whether or not the state pays any portion of such request or demand;

(2) (3) Department means the Department of Health and Human Services Finance and Support;

(4) Good or service includes (a) any particular item, device, medical supply, or service claimed to have been provided to a recipient and listed in an itemized claim for payment and (b) any entry in the cost report, books of account, or other documents supporting such good or service;

(3) Knows or should know (5) Knowing or knowingly means that a person, with respect to information:

(a) Has actual knowledge of ~~the~~ such information;
(b) Acts in deliberate ignorance of the truth or falsity of ~~the~~ such information; or

(c) Acts in reckless disregard of the truth or falsity of ~~the~~ such information;

~~No proof of specific intent to defraud is required;~~

(4) (6) Medicaid program means the medical assistance program under sections 68-1018 to 68-1025;

(5) (7) Person means a provider of goods or services covered under the medicaid program or any employee of such provider whether the provider is an individual, individual medical vendor, firm, corporation, professional association, professional corporation, partnership, limited liability company, organization, or other legal entity, or such an entity which is not a provider but which provides goods or services to such a provider any body politic or corporate, society, community, the public generally, individual, partnership, limited liability company, joint-stock company, or association; and

(6) (8) Recipient means an individual who is eligible to receive goods or services for which payment may be made under the medicaid program, + and

(7) State agency means the agency established or designated to administer or supervise the administration of the medicaid program.

Sec. 3. Section 68-1037.03, Reissue Revised Statutes of Nebraska, is amended to read:

~~68-1037.03.~~ (1) A person presents a false medicaid claim and is subject to civil liability if such person:

(a) Knowingly presents, or causes to be presented, to an officer or employee of the state, a false or fraudulent claim for payment or approval;

(b) Knowingly makes or uses, or causes to be made or used, a false

record or statement to obtain payment or approval by the state of a false or fraudulent claim;

(c) Conspires to defraud the state by obtaining payment or approval by the state of a false or fraudulent claim;

(d) Has possession, custody, or control of property or money used, or that will be used, by the state and, intending to defraud the state or willfully conceal the property, delivers, or causes to be delivered, less property than the amount for which such person receives a certificate or receipt;

(e) Buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the state knowing that such officer or employee may not lawfully sell or pledge such property; or

(f) Knowingly makes, uses, or causes to be made or used, a false record or statement with the intent to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state.

(2) A person who presents a false medicaid claim under subsection (1) of this section is subject to, in addition to any other remedies that may be prescribed by law, a civil penalty of not more than ten thousand dollars. In addition to any civil penalty, a person who presents a false medicaid claim under subsection (1) of this section may be subject to damages in the amount of three times the amount of the false claim submitted to the state due to the act of such person.

(3) If the state is the prevailing party in an action under the False Medicaid Claims Act, the defendant, in addition to penalties and damages, shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages under the act.

(4) Liability under this section is joint and several for any act committed by two or more persons. Any person that presents, or causes to be presented, to an officer, employee, assignee, or agent of the state agency a claim under the medicaid program presents a false claim if such person knows or should know:

(1) The goods or services were not provided as claimed;

(2) The claim is not true or is fraudulent;

(3) Such person made, used, or caused to be made or used a false record or statement to support a claim; or

(4) The good or service was provided by a person during a period that such person was excluded from the medicaid program pursuant to a determination by the United States Secretary of Health and Human Services or by the state agency.

Any person that presents a false claim is subject, in addition to any other remedies that may be prescribed by law, to a civil penalty of not more than five thousand dollars for each false claim. In addition, such person is subject to an award of twice the amount of damages sustained by the state agency because of such claim. In the court's discretion, the prevailing party may also recover the costs of a civil action brought to recover the penalties or damages and for reasonable fees incurred, including the costs for no more than one expert used in the investigation and trial.

Sec. 4. A person violates the False Medicaid Claims Act, and is subject to civil liability as provided in section 3 of this act, if such person is a beneficiary of an inadvertent submission of a false medicaid claim to the state, and subsequently discovers and, knowing the claim is false, fails to report the claim to the department within sixty days of such discovery. The beneficiary is not obliged to make such a report to the department if more than six years have passed since submission of the claim.

Sec. 5. A person violates the False Medicaid Claims Act, and a claim submitted with regard to a good or service is deemed to be false and subjects such person to civil liability as provided in section 3 of this act, if he or she, acting on behalf of a provider providing such good or service to a recipient under the medicaid program, charges, solicits, accepts, or receives anything of value in addition to the amount legally payable under the medicaid program in connection with a provision of such good or service knowing that such charge, solicitation, acceptance, or receipt is not legally payable.

Sec. 6. (1) A person violates the False Medicaid Claims Act and is subject to civil liability as provided in section 3 of this act and damages as provided in subsection (2) of this section if he or she:

(a) Having submitted a claim or received payment for a good or service under the medicaid program, knowingly fails to maintain such records as are necessary to disclose fully the nature of all goods or services for which a claim was submitted or payment was received, or such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based, for a period of at least six years after the date on which

payment was received; or

(b) Knowingly destroys such records within six years from the date payment was received.

(2) A person who knowingly fails to maintain records or who knowingly destroys records within six years from the date payment for a claim was received shall be subject to damages in the amount of three times the amount of the claim submitted for which records were knowingly not maintained or knowingly destroyed.

(3) If the state is the prevailing party in an action under this section, the defendant, in addition to penalties and damages, shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages under the act.

Sec. 7. Section 68-1037.04, Reissue Revised Statutes of Nebraska, is amended to read:

68-1037.04. (1) In determining the amount of any penalties or assessments damages awarded under the False Medicaid Claims Act, the following shall be taken into account:

(1) (a) The nature of claims and the circumstances under which they were presented;

(2) (b) The degree of culpability, and history of prior offenses, and financial condition of the person presenting the claims;

(3) (c) Coordination of the total penalties, and damages, and assessments arising from the same claims, goods, or services, whether based on state or federal statute; and

(4) (d) Such other matters as justice requires.

(2) (a) Any person who presents a false medicaid claim is subject to civil liability as provided in section 3 of this act, except when the court finds that:

(i) The person committing the violation of the False Medicaid Claims Act furnished officials of the state responsible for investigating violations of the act with all information known to such person about the violation within thirty days after the date on which the defendant first obtained the information;

(ii) Such person fully cooperated with any state investigation of such violation; and

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

(b) The court may assess not more than two times the amount of the false medicaid claims submitted because of the action of a person coming within the exception under subdivision (2)(a) of this section, and such person is also liable for the state's costs and attorney's fees for a civil action brought to recover any penalty or damages.

(3) Amounts recovered under the False Medicaid Claims Act shall be paid remitted to the State Treasurer for credit to the Department of Health and Human Services Cash Fund, except that damages that exceed compensatory damages civil penalties shall be credited to the permanent school fund. The amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the state agency to the person against whom the penalty or assessment has been assessed.

Sec. 8. Section 68-1037.05, Reissue Revised Statutes of Nebraska, is amended to read:

68-1037.05. (1) A civil action under the False Medicaid Claims Act may not shall be filed with respect to any claim later than brought within six years after the date the claim is discovered or should have been discovered by exercise of reasonable diligence and, in any event, no more than ten years after the date on which the violation of the act was committed. was presented. Such an action may be brought for false claims made prior to July 19, 1996, if the limitations period in this subsection has not passed.

(2) In an action brought under the act, the state shall prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

Sec. 9. (1) In any case involving allegations of civil violations or criminal offenses under the False Medicaid Claims Act, the Attorney General may take full charge of any investigation or advancement or prosecution of the case.

(2) The department shall cooperate with the state medicaid fraud control unit in conducting such investigations, civil actions, and criminal prosecutions and shall provide such information for such purposes as may be

requested by the Attorney General.

Sec. 10. The Attorney General shall: (1) Establish a state medicaid fraud control unit that meets the standards prescribed by 42 U.S.C. 1396b(q); and (2) apply to the Secretary of Health and Human Services for certification of the unit under 42 U.S.C. 1396b(q).

Sec. 11. The state medicaid fraud control unit shall employ such attorneys, auditors, investigators, and other personnel as authorized by law to carry out the duties of the unit in an effective and efficient manner. The purpose of the state medicaid fraud control unit is to conduct a statewide program for the investigation and prosecution of medicaid fraud and violations of all applicable state laws relating to the providing of medical assistance and the activities of providers of such assistance. The state medicaid fraud control unit may review and act on complaints of abuse and neglect of patients at health care facilities that receive payments under the medicaid program and may provide for collection or referral for collection of overpayments made under the medicaid program that are discovered by the unit.

Sec. 12. In carrying out the duties and responsibilities under the False Medicaid Claims Act, the Attorney General may:

(1) Enter upon the premises of any health care provider participating in the medicaid program (a) to examine all accounts and records that are relevant in determining the existence of fraud in the medicaid program, (b) to investigate alleged abuse or neglect of patients, or (c) to investigate alleged misappropriation of patients' private funds. The accounts or records of a nonmedicaid patient may not be reviewed by, or turned over to, the Attorney General without the patient's written consent or a court order;

(2) Subpoena witnesses or materials, including medical records relating to medicaid recipients, within or outside the state and, through any duly designated employee, administer oaths and affirmations and collect evidence for possible use in either civil or criminal judicial proceedings;

(3) Request and receive the assistance of any prosecutor or law enforcement agency in the investigation and prosecution of any violation of this section; and

(4) Refer to the department for collection each instance of overpayment to a provider of health care under the medicaid program which is discovered during the course of an investigation.

Sec. 13. (1) Notwithstanding any other provision of law, the Attorney General, upon reasonable request, shall have full access to all records held by a provider, or by any other person on his or her behalf, that are relevant to the determination of (a) the existence of civil violations or criminal offenses under the False Medicaid Claims Act or related offenses, (b) the existence of patient abuse, mistreatment, or neglect, or (c) the theft of patient funds.

(2) In examining such records, the Attorney General shall safeguard the privacy rights of recipients, avoiding unnecessary disclosure of personal information concerning named recipients. The Attorney General may transmit such information as he or she deems appropriate to the department and to other agencies concerned with the regulation of health care facilities or health professionals.

(3) No person holding such records may refuse to provide the Attorney General access to such records for the purposes described in the act on the basis that release would violate (a) a recipient's right of privacy, (b) a recipient's privilege against disclosure or use, or (c) any professional or other privilege or right.

Sec. 14. Any person who, after being ordered by a court to comply with a subpoena issued under the False Medicaid Claims Act, fails in whole or in part to testify or to produce evidence, documentary or otherwise, shall be in contempt of court as if the failure was committed in the presence of the court. The court may assess a fine of not less than one hundred dollars nor more than one thousand dollars for each day such person fails to comply. No person shall be found to be in contempt of court nor shall any fine be assessed if compliance with such subpoena violates such person's right against self-incrimination.

Sec. 15. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 16. Original sections 68-1037.01 to 68-1037.05, Reissue Revised Statutes of Nebraska, are repealed.