

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 277

Introduced by Harr, 8; Nordquist, 7; Seiler, 33.

Read first time January 16, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the False Medicaid Claims Act; to amend
2 sections 68-935, 68-936, and 68-945, Reissue Revised
3 Statutes of Nebraska; to redefine a term; to change
4 provisions relating to presentation of a false medicaid
5 claim; to change powers relating to the Attorney General;
6 and to repeal the original sections.

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

1 Section 1. Section 68-935, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 68-935 For purposes of the False Medicaid Claims Act:

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

7 ~~(2) Claim means any request or demand, whether under a
8 contract or otherwise, for money or property that is made to a
9 contractor, grantee, provider, or other recipient if the state
10 provides any portion of the money or property that is requested or
11 demanded or if the government will reimburse the contractor, grantee,
12 or other recipient for any portion of the money or property that is
13 requested or demanded, whether or not the state pays any portion of
14 such request or demand;~~

15 (2) Claim means any request or demand, whether under a
16 contract or otherwise, for money or property, and whether or not the
17 state has title to the money or property, that:

18 (a) Is presented to an officer, employee, or agent of the
19 state; or

20 (b) Is made to a contractor, grantee, or other recipient,
21 if the money or property is to be spent or used on the state's behalf
22 or to advance a state program or interest, and if the state:

23 (i) Provides or has provided any portion of the money or
24 property requested or demanded; or

25 (ii) Will reimburse such contractor, grantee, or other

1 recipient for any portion of the money or property which is requested
 2 or demanded;

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

8 ~~(4)~~ ~~(4)(a)~~ Knowing or and knowingly means that a person,
 9 with respect to information:

10 ~~(a)~~ ~~(i)~~ Has actual knowledge of such the information;

11 ~~(b)~~ ~~(ii)~~ Acts in deliberate ignorance of the truth or
 12 falsity of such the information; or

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

15 (b) Acts committed in a knowing manner or committed
 16 knowingly shall not require proof of a specific intent to defraud;

17 (5) Material means having a natural tendency to influence
 18 or be capable of influencing the payment or receipt of money or
 19 property;

20 (6) Obligation means an established duty, whether or not
 21 fixed, arising from: An express or implied contractual, grantor-
 22 grantee, or licensor-licensee relationship; a fee-based or similar
 23 relationship; statute or rule or regulation; or the retention of any
 24 overpayment;

25 ~~(5)~~ ~~(7)~~ Person means any body politic or corporate,

1 society, community, the public generally, individual, partnership,
2 limited liability company, joint-stock company, or association; and

3 ~~(6)-(8)~~ Recipient means an individual who is eligible to
4 receive goods or services for which payment may be made under the
5 medical assistance program.

6 Sec. 2. Section 68-936, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 68-936 (1) A person presents a false medicaid claim and
9 is subject to civil liability if such person:

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

13 (b) Knowingly makes, ~~or~~ uses, or causes to be made or
14 used, a false record or statement material to obtain payment or
15 approval by the state of a false or fraudulent claim;

16 (c) ~~Conspires to defraud the state by obtaining payment~~
17 ~~or approval by the state of a false or fraudulent claim;~~ commit a
18 violation of the False Medicaid Claims Act;

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

25 (e) Is authorized to make or deliver a document

1 certifying receipt of property used, or to be used, by the state and,
2 intending to defraud the state, makes or delivers the receipt without
3 completely knowing that the information on the receipt is true;

4 (f) Knowingly buys, (e) Buys, or receives as a pledge of
5 an obligation or debt, public property from any officer or employee
6 of the state ~~knowing that such officer or employee who~~ may not
7 lawfully sell or pledge such property; or

8 ~~(f)(g) Knowingly makes, uses, or causes to be made or~~
9 ~~used, a false record or statement with the intent to conceal, avoid,~~
10 ~~or decrease an obligation to pay or transmit money or property to the~~
11 ~~state. material to an obligation to pay or transmit money or property~~
12 to the state or knowingly conceals, avoids, or decreases an
13 obligation to pay or transmit money or property to the state.

14 (2) A person who ~~presents a false medicaid claim under~~
15 ~~subsection (1) of this section commits a violation of the False~~
16 Medicaid Claims Act is subject to, in addition to any other remedies
17 that may be prescribed by law, a civil penalty of not more than ten
18 thousand dollars. In addition to any civil penalty, ~~a any such person~~
19 ~~who presents a false medicaid claim under subsection (1) of this~~
20 ~~section may be subject to damages in the amount of three times the~~
21 ~~amount of the false claim submitted to the state due to the act of~~
22 ~~such person. because of the act of that person.~~

23 (3) If the state is the prevailing party in an action
24 under the False Medicaid Claims Act, the defendant, in addition to
25 penalties and damages, shall pay the state's costs and attorney's

1 fees for the civil action brought to recover penalties or damages
2 under the act.

3 (4) Liability under this section is joint and several for
4 any act committed by two or more persons.

5 Sec. 3. Section 68-945, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 68-945 In carrying out the duties and responsibilities
8 under the False Medicaid Claims Act, the Attorney General may:

9 (1) Enter upon the premises of any provider participating
10 in the medical assistance program (a) to examine all accounts and
11 records that are relevant in determining the existence of fraud in
12 the medical assistance program, (b) to investigate alleged abuse or
13 neglect of patients, or (c) to investigate alleged misappropriation
14 of patients' private funds; ~~The accounts or records of a~~
15 ~~nonmedicaid patient may not be reviewed by, or turned over to, the~~
16 ~~Attorney General without the patient's written consent or a court~~
17 ~~order;~~

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

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

1 (4) Refer to the department for collection each instance
2 of overpayment to a provider under the medical assistance program
3 which is discovered during the course of an investigation.

4 Sec. 4. Original sections 68-935, 68-936, and 68-945,
5 Reissue Revised Statutes of Nebraska, are repealed.