

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1174

Introduced by

Representatives Hogan, K. Koppelman, Maragos, Olson

Senators Bekkedahl, Poolman, Unruh

1 A BILL for an Act to provide for ~~civil~~ liability for false medical assistance claims to the state; and
2 to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.**

5 **Definitions.**

6 As used in this Act, unless the context otherwise requires:

7 1. a. "Claim" ~~includes any~~ means a request or demand, whether under a contract or
8 otherwise, for money, or property, or services made regardless of whether the
9 state has title to that money or property, which is presented to an employee,
10 officer, or agent of a governmental unit the state or is made to a contractor,
11 grantee, or other recipient, whether under contract or not, if any portion of the
12 money, or property, or services requested or demanded issued from or was
13 provided by a governmental unit is to be spent or used on behalf of the state or to
14 advance a state program or interest, and if the state:

15 (1) Provides or has provided any portion of the money or property requested or
16 demand; or

17 (2) Will reimburse such contractor, grantee, or other recipient for any portion of
18 the money or property that is requested or demanded.

19 b. The term ~~includes a document submitted as part of or in support of the~~
20 claim does not include a request or demand for money or property the state has
21 paid to an individual as compensation for state employment or as an income
22 subsidy with no restrictions on that individual's use of the money or property.

23 2. "Governmental unit" means the state or a political subdivision of the state.

- 1 ~~3. "Knowingly" has the same meaning as defined in section 12.1-02-02, and a specific~~
2 ~~intent to defraud is not required. "Knowingly" or "knowing" means an individual who,~~
3 ~~regardless of whether that individual has an intent to defraud, has actual knowledge of~~
4 ~~information, acts in deliberate ignorance of the truth or falsity of the information, or~~
5 ~~acts in reckless disregard of the truth or falsity of the information.~~
6 3. "Material" means having a natural tendency to influence, or be capable of influencing,
7 the payment or receipt of money or property.
8 4. "Obligation" means an established duty, regardless of whether fixed, arising from an
9 express or implied contractual, grantor-grantee, or licensor-licensee relationship, from
10 a fee-based or similar relationship, from statute or regulation, or from the retention of
11 any overpayment.
12 5. "Original source" means an individual, who before a public disclosure, voluntarily
13 disclosed to the state the information on which allegations or transactions in the claim
14 are based, or who has knowledge that is independent of and materially adds to the
15 publicly disclosed allegations or transactions, and who has voluntarily provided the
16 information to the state before filing an action under this Act.

17 **SECTION 2.**

18 **Liability for certain acts - Penalty.**

- 19 1. Except as provided in subsection 2, a person is liable to ~~a governmental unit~~ the state
20 for a civil penalty of not less than five thousand ~~five hundred~~ dollars and not more than
21 ~~ten~~ eleven thousand dollars for each act specified in this section, three times the
22 amount of damages ~~a governmental unit~~ the state sustains because of the person's
23 act, and expenses, costs, and attorney's fees, if the person:
24 a. Knowingly presents or causes to be presented ~~to an officer or employee of the~~
25 ~~governmental unit~~ a false or fraudulent ~~medical assistance~~ claim for payment or
26 approval;
27 b. Knowingly makes, uses, or causes to be made or used a false record or
28 statement ~~material to get~~ a false or fraudulent ~~medical assistance~~ claim paid or
29 approved by the ~~governmental unit~~ state;
30 c. Conspires to commit a violation of this subsection;

- d. Has possession, custody, or control of public property or money used or to be used by the ~~governmental unit~~state to provide medical assistance and, ~~with the intent to defraud the governmental unit or to willfully conceal the property,~~ knowingly delivers or causes to be delivered less than all that property or money than the amount for which the person receives a certificate or receipt;
- e. Is authorized to make or deliver a document certifying receipt of property used or to be used by the ~~governmental unit~~state and, with the intent to defraud the ~~governmental unit or to willfully conceal the property~~state, makes or delivers a receipt without completely knowing the information on the receipt is true;
- f. Knowingly ~~buys or receives as a pledge of an obligation or debt public property of the governmental unit from any person that may not lawfully sell or pledge the property~~ conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state; or
- g. Knowingly makes, uses, or causes to be made or used a false record or statement material to ~~conceal, avoid, or decrease~~ an obligation to pay or transmit money or property to the ~~governmental unit or its contractors; or~~state.
- ~~h. As a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental unit, subsequently discovers the fraudulent claim or the falsity of the claim and fails to disclose the false or fraudulent claim to the governmental unit within a reasonable time after discovery of the false or fraudulent claim.~~
2. In a civil action brought under this section, a court shall assess a civil penalty of not less than five thousand five hundred dollars and not more than ~~ten~~eleven thousand dollars for each act specified in this section, and not less than two times and not more than three times the amount of damages a governmental unitthe state sustains because of the person's act. However, the court may assess not less than two times the amount of damages the state sustains as a result of the act of the person and the person is liable to the state for the costs of the civil action brought to recover any such penalty or damages if the court finds all of the following:
- a. The person committing the act furnished the attorney general with all information known to that person about the act within thirty days after the date on which the person first obtained the information.

b. The person fully cooperated with any investigation of the act by the attorney general.

c. At the time the person furnished the attorney general with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

3. A person that violates the provisions of this section also is liable to the ~~governmental unit~~state for the expenses, costs, and attorney's fees of the civil action brought to recover the penalty or damages.

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

5. ~~This section does not apply to claims filed under title 38, 57, or 65~~The attorney general may adopt rules to increase the minimum amount of civil penalties under this section to address inflation. The attorney may base this increase on the Federal Civil Penalties Inflation Adjustment Act of 1990 [Pub. L. 101-410; 28 U.S.C. 2461].

SECTION 3.

Filing prohibited.

Notwithstanding the provisions of chapter 32-12.1 and 32-12.2, ~~a person may not file a complaint or civil action:~~

- ~~1. Against a governmental unit or an officer or employee of a governmental unit arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental unit;~~
- ~~2. Based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental unit is already a party;~~
- ~~3. Based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house of representatives, the state auditor or legislative budget analyst and auditor, the auditor or legislative body of a political subdivision, or the news media, unless the person has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil~~

~~action, voluntarily provided the information to the agency of the governmental unit involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or~~

~~4. Based upon information discovered by a present or former employee of the governmental unit during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental unit failed to act on the information provided within a reasonable period of time unless opposed by the state, a court shall dismiss an action or a claim brought under this Act if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil, or administrative hearing in which the state or the state's agent is a party; in a legislative, state auditor, or other state report, hearing, audit, or investigation; or from the news media, unless the action is brought by the attorney general, or the person bringing the action is an original source of the information.~~

SECTION 4.

Limitation of actions.

1. A complaint or civil action filed under this section must be brought by the later of:
 - a. Six years after the date on which the violation was committed; or
 - b. Three years after the date facts material to the right of action are known or reasonably should have been known by the official of the ~~governmental unit~~state charged with responsibility to act in the circumstances.
2. An action may not be brought pursuant to subdivision b of subsection 1 more than ten years after the date on which the violation was committed.

SECTION 5.

Investigation and action by attorney general.

The attorney general shall investigate an alleged violation of this Act and may file a civil action, a criminal action, or both against any person that violated or is violating this Act.

SECTION 6.

Complaint by person - Civil action.

1. A person may bring a civil action for a violation of this Act on behalf of the person and the ~~governmental unit~~state. The action must be brought in the name of the ~~governmental unit~~state. The action may be dismissed only if the court and the attorney general give written consent to the dismissal and provide the reasons for consenting to the dismissal.
2. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses must be served on the attorney general pursuant to rule 5 of the North Dakota Rules of Civil Procedure. The complaint must be filed under seal and must remain under seal for at least sixty days. The complaint may not be served upon the defendant until the court orders that it be served.
3. Within sixty days after receiving the complaint and the material evidence and information, the attorney general may elect to intervene and proceed with the action or to notify the court the attorney general declines to take over the action. If the attorney general declines to intervene or take over the action, the person bringing the action may conduct the action. For good cause shown, the attorney general may move the court for extensions of the time during which the complaint remains under seal.
4. The defendant may not be required to respond to any complaint until twenty days after the complaint is unsealed and served upon the defendant pursuant to rule 5 of the North Dakota Rules of Civil Procedure.
5. If the attorney general proceeds with the action, the attorney general has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action. The person bringing the action has the right to continue as a party to the action subject to the limitations set forth in this chapter.
6. If the attorney general elects not to proceed with the action and the person that initiated the action conducts ~~it~~the action:
 - a. Upon the attorney general's request, the person that initiated the action shall serve the ~~governmental unit~~attorney general with copies of all pleadings filed in the action and shall supply the attorney general with copies of all deposition transcripts at the attorney general's expense; or

b. The court, without limiting the status and rights of the person initiating the action, may permit the attorney general to intervene at a later date upon a showing of good cause.

7. If a person files a civil action under this section, no person other than the attorney general may intervene or bring a related action based on the facts underlying the pending action.

8. Upon a showing by the attorney general unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the attorney general's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court may impose limitations on the person's participation, including:

a. Limiting the number of witnesses the person may call;

b. Limiting the length of testimony of witnesses called by the person;

c. Limiting the person's cross-examination of witnesses; or

d. Otherwise limiting the participation of the person in the litigation.

9. Regardless of whether the attorney general proceeds with the action, upon an in-camera showing by the attorney general that actions of discovery by the person initiating the action would interfere with the attorney general's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may extend the sixty-day period upon a further in-camera showing that the attorney general has pursued the criminal or civil investigation with reasonable diligence and any discovery in the civil action will interfere with the ongoing investigation or proceedings.

10. The attorney general may elect to pursue the claim through any alternate remedy available, including administrative proceedings to determine a civil penalty. If an alternate remedy is pursued, the person initiating the action has the same rights in such proceeding as the person would in proceeding under this section. A finding of fact or conclusion of law made in such other proceeding which has become final is conclusive on all parties to an action under this section. A finding or conclusion is final if the finding or conclusion has been determined on appeal to the appropriate court, if time for filing such an appeal has expired, or if the finding or conclusion is not subject to judicial review.

11. If the attorney general elects to intervene and proceed with an action, the attorney general may file a complaint or amend the complaint of a person that brought an action to clarify or add detail to the claim in which the attorney general is intervening and to add additional claims with which the attorney general contends the attorney general is entitled to relief. For statute of limitations purposes, any such pleading must relate back to the filing date of the complaint of the person that originally brought the action to the extent the attorney general's claim arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the earlier complaint of that person.

SECTION 7.

Dismissal of civil action.

On motion of the attorney general, the court may dismiss a civil action notwithstanding the objection of the person that initiated the action if the attorney general notified the person of the filing of the motion to dismiss and the court has given the person an opportunity to oppose the motion and present evidence at a hearing.

SECTION 8.

Burden of proof.

The standard of proof in civil actions brought under this section is the preponderance of the evidence.

SECTION 9.

Distribution of damages and civil penalty.

1. Except as provided in subsection 2, if the attorney general proceeds with an action brought by a person pursuant to section 6 of this Act, the person is entitled to receive at least fifteen percent, but not more than twenty-five percent, of the proceeds recovered and collected in the action or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action.
2. The court may award an amount the court considers appropriate, but in no case more than ten percent of the proceeds in an action the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through a criminal, civil, or administrative hearing; a legislative, administrative, or auditor report, hearing,

1 audit, or investigation; or the news media. In determining the award, the court shall
2 take into account the significance of the information and the role of the person bringing
3 the action in advancing the case to litigation.

4 3. A payment to a person bringing an action pursuant to this section may be made only
5 from the proceeds recovered and collected in the action or in settlement of the claim.
6 In addition, the person is entitled to receive an amount for reasonable expenses the
7 court finds to have been necessarily incurred, and reasonable attorney's fees and
8 costs. The expenses, fees, and costs must be awarded against the defendant.

9 4. If the attorney general does not proceed with an action pursuant to section 6 of this
10 Act, the person bringing the action or settling the claim is entitled to receive an amount
11 the court decides is reasonable for collecting the civil penalty and damages on behalf
12 of the attorney general ~~or governmental unit.~~ The amount may not be less than
13 twenty-five percent nor more than thirty percent of the proceeds recovered and
14 collected in the action or settlement of the claim and must be paid out of the proceeds.
15 In addition, the person is entitled to receive an amount for reasonable expenses the
16 court finds were necessarily incurred, plus reasonable attorney fees and costs. All
17 expenses, fees, and costs must be awarded against the defendant.

18 5. Whether the attorney general proceeds with the action, if the court finds the action was
19 brought by a person that planned; ~~or initiated; or knowingly participated in~~ the violation
20 of section 3 of this Act, the court may reduce or eliminate the share of the proceeds of
21 the action the person would otherwise receive pursuant to subsections 1, 2, 3, and 4,
22 taking into account the role of the person in advancing the case to litigation and any
23 relevant circumstances pertaining to the violation. If the person bringing the action is
24 convicted of criminal conduct arising from the person's role in the violation of this
25 section, the person must be dismissed from the civil action and may not receive any
26 share of the proceeds of the action. The dismissal does not prejudice the right of the
27 attorney general to continue the action.

28 6. The ~~governmental unit~~attorney general is entitled to any damages and civil penalty not
29 awarded to the person bringing the action, and the damages and civil penalty must be
30 deposited in the general fund ~~of the governmental unit, except that if a trust fund of the~~
31 governmental unit suffered a loss as a result of the defendant's actions, the trust fund

~~first must be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental unit.~~

7. Unless otherwise provided, the remedies or penalties provided by this Act are cumulative to each other and to the remedies or penalties available under all other laws of the state.

SECTION 10.

Effect of criminal conviction.

A defendant convicted in any criminal proceeding is precluded from subsequently denying the essential allegations of the criminal offense of which the defendant was convicted in any civil proceeding. For purposes of this section, a conviction may result from a verdict or plea.

SECTION 11.

Costs and attorney's fees.

~~The governmental unit that filed~~ If the state favorably settles or prevails in a civil action or in which the state intervened or filed, the state is entitled to be awarded reasonable expenses, consultant and expert witness fees, costs, and attorney's fees if the action is settled favorably for the governmental unit or the governmental unit prevails. In an action in which outside counsel is engaged by the attorney general, the costs and attorney's fees awarded to that counsel must equal the outside counsel's charges reasonably incurred for costs and attorney's fees in prosecuting the action. In any other actions in which costs and attorney's fees are awarded to the governmental unit, the costs and attorney's fees must be calculated by reference to the hourly rate charged by the attorney general for providing legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A plaintiff is entitled to an amount for reasonable expenses the court finds to have been necessarily incurred, plus reasonable costs and attorney's fees, if the action is settled favorably for the ~~governmental unit~~ state or the ~~governmental unit~~ state prevails in the action. The expenses, fees, and costs must be awarded against the defendant. A defendant in a civil action brought pursuant to this section which prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to reasonable costs and attorney's fees, which must be equitably apportioned against the person that brought

the action, and the ~~governmental unit~~ state if a person and ~~a governmental unit~~ the state were
complaintiffs.

SECTION 12.

~~Prohibitions on employers – Employee remedies~~ Relief from retaliatory actions.

~~1. An entity may not adopt or enforce a rule, regulation, or policy preventing an employee
from disclosing information to a government or law enforcement agency with regard to
or from acting in furtherance of an investigation of a violation of this Act or an action
brought under this Act.~~

~~2. An entity may not discharge, demote, suspend, threaten, harass, or deny promotion to
or in any other manner discriminate against an employee's terms and conditions of
employment because of the employee's disclosure of information to a government or
law enforcement agency pertaining to a violation of this Act.~~

~~3. A governmental unit or private unit that violates subsection 2 is liable for:~~

~~a. Reinstatement to the same position with the same seniority status, salary,
benefits, and other conditions of employment the employee would have had but
for the discrimination;~~

~~b. Backpay plus interest on the backpay;~~

~~c. Compensation for any special damages sustained as a result of the
discrimination; and~~

~~d. Reasonable court or administrative proceeding costs and reasonable attorney's
fees.~~

~~4. An employee may file an action for the relief provided in this section.~~

1. An employee, contractor, or agent is entitled to all relief necessary to make that
employee, contractor, or agent whole, if that employee, contractor, or agent is
discharged, demoted, suspended, threatened, harassed, or in any other manner
discriminated against in the terms and conditions of employment because of lawful
acts done by the employee, contractor, or agent or associated others in furtherance of
an action under this Act or other efforts to stop one or more violations of this Act.

2. Relief under subsection 1 must include reinstatement with the same seniority status
that employee, contractor, or agent would have had but for the discrimination, two
times the amount of backpay, interest on the backpay, and compensation for any

special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An action under this subsection may be brought in the appropriate district court for the relief provided in this subsection.

3. A civil action under this section may not be brought more than three years after the date the retaliation occurred.

SECTION 13.

Settlement by attorney general.

The attorney general may settle ~~the~~a case with a defendant under this Act, notwithstanding the objections of any person that initiated the action if the court determines, after a hearing, the settlement is fair, adequate, and reasonable under the circumstances. Upon a showing of good cause, the hearing may be held in camera.

SECTION 14.

False medical assistance claim to public agency - Penalty.

1. A person commits an offense under this section if the person knowingly presents for allowance, for payment, or for the purpose of concealing, avoiding, or decreasing an obligation to pay a false or fraudulent medical assistance claim, bill, account, voucher, or writing to a public agency, public servant, or contractor authorized to allow or pay valid medical assistance claims presented to a public agency.

2. A criminal violation of this Act is a class A misdemeanor.

3. Notwithstanding subsection 2, if a false or fraudulent medical assistance claim is knowingly submitted as part of a common scheme and if the value of the claim or the aggregate value of one or more claims exceeds one thousand dollars in value, a violation of this Act is a class C felony.

4. Notwithstanding subsection 3, if a false or fraudulent medical assistance claim is knowingly submitted as part of a common scheme and if the value of the claim or the aggregate value of one or more claims exceeds ten thousand dollars in value, but does not exceed fifty thousand dollars, a violation of this Act is a class B felony.

5. Notwithstanding subsection 4, if a false or fraudulent medical assistance claim is knowingly submitted as part of a common scheme and if the value of the claim or the aggregate value of one or more claims exceeds fifty thousand dollars in value, a violation of this Act is a class A felony.