

71-5-181. Tennessee Medicaid False Claims Act - Short title. -

(a) The title of this section and §§ 71-5-182 - 71-5-185 is and may be cited as the “Tennessee Medicaid False Claims Act.”

(b) “Medicaid program” as used in §§ 71-5-182 - 71-5-185 includes the TennCare program and any successor program to the medicaid program.

[Acts 1993, ch. 364, § 1.]

71-5-182. Violations - Damages - Definitions. -

(a) Any person who:

(1) (A) Presents, or causes to be presented, to the state a claim for payment under the medicaid program knowing such claim is false or fraudulent;

(B) Makes, uses, or causes to be made or used, a record or statement to get a false or fraudulent claim under the medicaid program paid for or approved by the state knowing such record or statement is false;

(C) Conspires to defraud the state by getting a claim allowed or paid under the medicaid program knowing such claim is false or fraudulent; or

(D) Makes, uses, or causes to be made or used, a record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state, relative to the medicaid program, knowing such record or statement is false;

Is liable to the state for a civil penalty of not less than five thousand dollars (\$5,000) and not more than twenty-five thousand dollars (\$25,000), plus three (3) times the amount of damages which the state sustains because of the act of that person.

(2) However, if the court finds that:

(A) The person committing the violation of this subsection (a) furnished officials of the state responsible for investigating false claims violations with all information known to such person about the violation within thirty (30) days after the date on which the defendant first obtained the information;

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

(C) 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 §§ 71-5-181 -71-5-186 with respect to such violation, and the person

did not have actual knowledge of the existence of an investigation into such violation;

The court may assess not less than two (2) times the amount of damages which the state sustains because of the act of the person.

(3) A person violating this subsection (a) shall also be liable for the costs of a civil action brought to recover any such penalty or damages.

(b) For purposes of this section, “knowing” and “knowingly” mean that a person, with respect to information:

(1) Has actual knowledge of the information;

(2) Acts in deliberate ignorance of the truth or falsity of the information; or

(3) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) “Claim” includes any request or demand for money, property, or services made to any employee, officer, or agent of the state, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded was issued from, or was provided by, the state.

(d) Any person who engages, has engaged or proposes to engage in any act described by subsection (a) may be enjoined in any court of competent jurisdiction in an action brought by the attorney general; such action shall be brought in the name of the state and shall be granted if it is clearly shown that the state's rights are being violated by such person or entity and the state will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of such person or entity will tend to render such final judgment ineffectual. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent any act described by subsection (a) by any person or entity, or as may be necessary to restore to the Medicaid program any money or property, real or personal, which may have been acquired by means of such act.

[Acts 1993, ch. 364, § 2; 2004, ch. 784, § 2.]

71-5-183. Civil actions - Employee remedies. -

(a) If the attorney general and reporter finds that a person has violated or is violating § 71-5-182, the attorney general and reporter may bring a civil action under this section against the person.

(b) (1) A person may bring a civil action for a violation of § 71-5-182 for the person and for the state. The action shall be brought in the name of the state of Tennessee. The action may be dismissed only if the court and the attorney general and reporter or district attorney general give written consent to the dismissal and their reasons for consenting.

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

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

(4) Before the expiration of the sixty-day period or any extensions obtained under subdivision (b)(3), the state shall:

(A) Proceed with the action, in which case the action shall be conducted by the state; or

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

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

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

(2) (A) The state may dismiss the action notwithstanding the objections of the person initiating the action, if the person has been notified by the state

of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The state may settle the action with the defendant notwithstanding the objections of the person initiating the action, if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(i) Limiting the number of witnesses the person may call;

(ii) Limiting the length of the testimony of such witnesses;

(iii) Limiting the person's cross-examination of witnesses; or

(iv) Otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

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

(4) Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal

or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

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

(d) (1) (A) If the state proceeds with an action brought by a person under subsection (a), a person shall, subject to subdivision (d)(1)(B), receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(B) Where the action is one that 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 in a criminal, civil, or administrative hearing, report, audit, investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(C) Any payment to a person under subdivisions (d)(1)(A) and (d)(1)(B) shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the state does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 71-5-182 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under subdivision (d)(1) or (d)(2), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from such person's role in the violation of § 71-5-181, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

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

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

(2) (A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, audit, investigation, or from the news media, unless the action is brought by the attorney general and reporter or district attorney general or the person bringing the action is an original source of the information.

(B) For purpose of this subdivision (e)(2), "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and who has voluntarily provided the information to the state before filing an action under this section that is based on the information.

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

(g) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by such employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained

as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court for the relief provided in this subsection (g).

[Acts 1993, ch. 364, § 3; 2005, ch. 474, § 15.]

71-5-184. Service - Limitations. -

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under § 71-5-183 may be served at any place in the United States.

(b) A civil action under § 71-5-183 may not be brought:

(1) More than six (6) years after the date on which the violation of § 71-5-182 is committed; or

(2) More than three (3) years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, but in no event more than ten (10) years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under § 71-5-183, the state shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, the Tennessee Rules of Criminal Procedure, or the Tennessee Rules of Evidence, a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall stop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought under subsection (a) or (b) or § 71-5-183.

[Acts 1993, ch. 364, § 4.]

71-5-185. Venue. -

Any action under § 71-5-183 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one (1) defendant can be found, resides, transacts business, or in which any act proscribed by § 71-5-182 occurred. A summons as required by the Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

[Acts 1993, ch. 364, § 5.]

71-5-2601. Offenses — Penalties — Remedies — Limitations. —

(a) (1) (A) A person, including an enrollee, recipient, or applicant, commits an offense who knowingly obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement, representation, or impersonation, or by concealment of any material fact, or by any other fraudulent means, or in any manner not authorized by any rule, regulation, or statute governing TennCare:

(i) Medical assistance benefits or any assistance provided pursuant to any rule, regulation, procedure, or statute governing TennCare to which such person is not entitled, or of a greater value than that to which such person is authorized;

(ii) Benefits by knowingly making a willfully false statement, or concealing a material fact relating to personal or household income, thereby resulting in the assessment of a lower monthly premium than the person would be required to pay if not for the false statement or concealment of a material fact; or

(iii) Controlled substance benefits by knowingly, willfully and with the intent to deceive, failing to disclose to a physician, nurse practitioner, ancillary staff, or other health care provider from whom the person obtains a controlled substance, or a prescription for a controlled substance, that the person has received either the same controlled substance or a prescription for the same controlled substance, or a controlled substance of similar therapeutic use or a prescription for a controlled substance of similar therapeutic use, from another practitioner within the previous thirty (30) days and the person used TennCare to pay for either the clinical visit or for payment of the controlled substances.

(B) An offense under this subdivision (a)(1) is a Class E felony.

(2) (A) A person, firm, corporation, partnership or any other entity, including a vendor, other than an enrollee, recipient, or applicant, commits an offense who knowingly obtains, or attempts to obtain, or aids or abets any person or entity to obtain, by means of a willfully false statement, report, representation, claim or impersonation, or by concealment of any material fact, or by any other fraudulent means, including knowingly presenting or causing to be presented to TennCare or any of its contractors, subcontractors or vendors a false or fraudulent claim for payment or approval, or in any manner not authorized by any rule, regulation, procedure, or statute governing TennCare, medical assistance payments provided pursuant to any rule, regulation, procedure, or statute governing TennCare to which the person or entity is not entitled, or of a greater value than that to which the person or entity is authorized. For purposes of this subsection (a), “attempts to obtain” includes making or presenting to any person a claim for any payment under any rule, regulation, procedure, or statute governing TennCare, knowing the claim to be false, fictitious or fraudulent.

(B) An offense under this subdivision (a)(2) is a Class D felony unless the value of the property or services obtained meets the threshold set for a Class B or Class C offense under § 39-14-105, in which case the appropriate higher class shall apply. In addition to any other penalty, a sentence that includes a fine, when imposed upon an entity or upon a person for actions benefiting an entity, shall include the corporation fine specified in § 40-35-111.

(3) (A) A person, firm, corporation, partnership or any other entity commits an offense when providing a willfully false statement regarding another's medical condition or eligibility for insurance, to aid or abet another in obtaining or attempting to obtain medical assistance payments, medical assistance benefits or any assistance provided under any rule, regulation, procedure, or statute governing TennCare to which the person is not entitled or to a greater value than that to which such person is authorized. For purposes of this subsection (a), "attempting to obtain" includes making or presenting to any person a claim for any payment under any rule, regulation, procedure, or statute governing TennCare, knowing such claim to be false, fictitious or fraudulent.

(B) An offense under this subdivision (a)(3) is a Class D felony unless the value of the property or services obtained meets the threshold set for a Class B or Class C offense under § 39-14-105, in which case the appropriate higher class shall apply. In addition to any other penalty, a sentence that includes a fine, when imposed upon an entity or upon a person for actions benefiting an entity, shall include the corporation fine specified in § 40-35-111.

(b) In addition to any other penalties provided for any person, firm, corporation, partnership or other entity under subsection (a), the court shall also:

(1) (A) Order restitution to TennCare in the greater of the total amount of all medical assistance payments made to all providers, or the total amount of all payments to a managed care entity, related to the services underlying the offense; and

(B) Report the person or entity to the appropriate professional licensure board or the department of commerce and insurance for disciplinary action.

(2) In addition to any other penalties provided under this section, the court may also, to the full extent permitted by federal law and the TennCare waiver as interpreted by the CMS, order any such person or entity disqualified from participation in the medical assistance program; such disqualification may also apply to any person who is convicted of a criminal offense involving the selling of prescription drugs obtained through the TennCare program. Any person or entity disqualified from participation in the medical assistance program shall make restitution in the total amount of the medical assistance or underpayment which forms the basis for the conviction before such person or entity can re-enroll in the TennCare program.

(3) A subsequent denial of eligibility or denial of a claim for payment does not, of itself, establish proof of falsity of a statement, representation, report or claim for payment under subsection (a).

(c) Nothing in this section shall be construed as prohibiting a person or entity violating the provisions of this section from being prosecuted for theft of property or services under title 39, part 14.

(d) In addition to any other remedy available, including those provided in this section, the state may recover from any person or such person's estate, or from a firm, corporation, partnership or other entity, including a vendor, the amount of medical assistance benefits or payments improperly paid as a result of fraudulent means or actions not authorized by any rule, regulation, procedure, or statute governing TennCare.

(e) Notwithstanding any other provision of law to the contrary, prosecutions for violations of this section shall be commenced within four (4) years after the commission of the offense.

[Acts 2004, ch. 784, § 1; 2007, ch. 103, § 1; 2007, ch. 458, §§ 1, 2.]

71-5-2602. Record keeping. —

(a) Upon submitting a claim for, or upon receiving payment for, goods, services, items, facilities or accommodations under the TennCare program, a managed care organization, provider, vendor, subcontractor, or any other person or entity, shall maintain adequate records for a minimum of five (5) years after the date on which payment was received, if payment was received, or for five (5) years after the date on which the claim was submitted, if payment was not received. The bureau of TennCare shall have the authority to make appropriate and reasonable exceptions to the requirements of this subsection (a) upon a showing of good cause.

(b) Failure to maintain adequate records is defined as negligently failing to maintain such records as are necessary to disclose fully the nature of the goods, services, items, facilities, or accommodations for which a claim was submitted or payment was received by the managed care organization, provider, vendor, subcontractor, or any other person or entity receiving funds originating from the TennCare program. Records include records kept in any form or fashion, including, but not limited to, any and all medical records, documents, data, or items, electronic or nonelectronic, related to the provision of and billing for services and goods. Failure to maintain adequate records during an audit period is punishable by recovery of one hundred fifty percent (150%) of the amount payable to the person or entity, directly or indirectly, using TennCare funds for the TennCare-related services for which the person or entity has failed to maintain records. Failure to maintain adequate records during a subsequent audit period is punishable by recovery of three hundred percent (300%) of the amount payable to the person or entity, directly or indirectly, using TennCare funds for the TennCare-related services for which the person or entity has failed to maintain records. Any further offense within five (5)

years of the second offense may result in a recommendation by the office of inspector general to the bureau of TennCare to restrict the person or entity from receiving future TennCare payments. These matters shall be referred to the attorney general for recovery of funds.

[Acts 2004, ch. 784, § 1; 2005, ch. 474, §§ 21, 22.]

71-5-2603. Fraud reporting requirements — Immunity from liability. —

(a) All managed care organizations, contractors, subcontractors, providers or any other person or entity shall advise the office of TennCare inspector general immediately when there is actual knowledge, not subject to a testimonial privilege, that an act of recipient, enrollee, or applicant fraud is being, or has been committed. The office of TennCare inspector general shall review the information to determine if there is a sufficient basis to warrant a full investigation. The office of TennCare inspector general is authorized to establish an electronic system for treating physicians to report recipient, enrollee or applicant fraud.

(b) All managed care organizations, contractors, subcontractors, providers or any other person or entity shall advise the medicaid fraud control unit (MFCU) immediately when there is actual knowledge, not subject to a testimonial privilege, that an act of provider fraud is being, or has been committed. The MFCU shall review the information to determine if there is a sufficient basis to warrant a full investigation. MFCU is authorized to establish an electronic system for treating physicians to report provider fraud.

(c) Any person or entity making a complaint or furnishing a report, information or records in good faith pursuant to this section is immune from civil liability for making such complaint or report.

(d) Willful failure to report such fraud shall be subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each finding to be assessed by the office of TennCare inspector general.

[Acts 2004, ch. 784, § 1.]

71-5-2604. Administrative remedies — Recovery of costs — Contested cases — Rules and regulations — Final orders. —

(a) Without regard to any other civil or criminal liability that might attach, by operation of this section or any other law, the office of inspector general shall have an administrative remedy against an enrollee, recipient, applicant, or person purporting to be an enrollee, recipient, or applicant, who improperly obtains medical assistance benefits or any assistance from the TennCare program, to which the person is not entitled. The office of inspector general shall also have an administrative remedy against any person who assists any enrollee, recipient, or applicant, or purported enrollee, recipient, or applicant in improperly obtaining benefits or assistance.

(b) (1) The administrative remedy established by this section shall be for the recovery of the amount of:

(A) Any medical assistance benefits or any assistance improperly paid for by TennCare as a result of any misrepresentation or omission made by the person, to the extent that the amount has not otherwise been recovered by the TennCare bureau; and

(B) Any unpaid or underpaid premiums that were assessed at a lower monthly amount than would have been set if not for the misrepresentation or omission by the person, to the extent that the amount has not otherwise been recovered by the TennCare bureau.

(2) All such persons shall be jointly and severally liable to the state of Tennessee.

(c) The office of inspector general shall also have a right to recover the reasonable costs of proceedings pursuant to this section, including professional fees of court reporters and hearing officers or administrative judges, the reasonable costs of investigating claims arising under this section, reasonable attorney's fees, as well as interest on the amount owed by the person, calculated from the date that the medical assistance or any assistance was improperly received, or from the date the correct premiums should have been paid.

(d) All costs of medical assistance, or any assistance, or unpaid premiums recouped pursuant to this section, and any interest thereon, shall be paid to the TennCare bureau. All costs of proceedings, investigative costs, and attorney's fees pursuant to this section shall be paid to the office of inspector general, except as otherwise provided.

(e) Notwithstanding any other provision of law to the contrary, administrative actions pursuant to this section shall be commenced within four (4) years after the date of discovery by the state of the acts of misrepresentation or omission.

(f) The office of inspector general may invoke the remedy established by this section by initiating a contested case in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In an administrative action under this subsection (f), the office of the inspector general shall show that the amount sought to be recovered was paid in the form of medical assistance benefits or any assistance as a result of material misrepresentation or omission. The office of inspector general need not show that the misrepresentation or omission was intentional or fraudulent.

(g) The inspector general shall have authority to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as are necessary to implement the provisions of this part. The rules shall be promulgated as public necessity rules. For purposes of rendering a final order pursuant to the Uniform Administrative Procedures Act, the inspector general is designated the agency person to review initial orders and issue final agency decisions. Orders issued by the inspector

general shall have the effect of a final order pursuant to the Uniform Administrative Procedures Act.

(h) (1) Whenever an order issued by the inspector general pursuant to this part has become final, a notarized copy of the order may be filed in the office of the clerk of the chancery court of Davidson County.

(2) When filed in accordance with the provisions of this section, a final order shall be considered as a judgment by consent of the parties on the same terms and condition as those recited in the final order. The judgment shall be promptly entered by the court. Except as otherwise provided in this section, the procedure for entry of judgment and the effect of the judgment shall be the same as provided in title 26, chapter 6.

(3) A judgment entered pursuant to this section shall become final on the date of entry.

(4) A final judgment under this subsection (h) has the same effect, is subject to the same procedures, and may be enforced or satisfied in the same manner, as any other judgment of a court of record of this state.

[Acts 2006, ch. 1010, § 2.]

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