

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 943

Short Title: Medicaid False Claims Act.

(Public)

Sponsors: Senators Rand; Cooper and Perdue.

Referred to: Judiciary.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE MEDICAL ASSISTANCE PROVIDER FALSE CLAIMS ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 108A of the General Statutes is amended by adding the following new sections to read:

**"§ 108A-63.1. Medical assistance provider false claims.**

(a) Definitions. – As used in G.S. 108A-63.1, 108A-63.2, 108A-63.3, and 108A-63.4:

(1) 'Claim' means an application for payment or approval or for use in determining entitlement to payment presented to the Medical Assistance Program in any form, including written, electronic, or magnetic, which identifies a service, good, or accommodation as reimbursable under the Medical Assistance Program.

(2) 'Knowingly' means that a provider, with respect to information about a false or fraudulent claim:

a. Has actual knowledge of the information;

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

1           c.     Acts in reckless disregard of the truth or falsity of the  
2                 information. No proof of specific intent to defraud is required.

3           (3)   'Medical Assistance Program' is the North Carolina Division of Medical  
4                 Assistance and its fiscal agent.

5           (4)   'Restitution' is the difference between what the Medical Assistance  
6                 Program paid a provider and the amount it would have paid the provider  
7                 in the absence of a violation of this section and may be established by  
8                 statistical sampling methods.

9           (b)   Liability for Certain Acts. – It shall be unlawful for any provider of medical  
10                assistance under the Medical Assistance Program to:

11           (1)   Knowingly present, or cause to be presented to the Medical Assistance  
12                 Program a false or fraudulent claim for payment or approval or for use  
13                 in determining entitlement to payment of a claim;

14           (2)   Knowingly make, use, or cause to be made or used a false record or  
15                 statement to obtain a false or fraudulent claim paid or approved by the  
16                 Medical Assistance Program;

17           (3)   Knowingly present, or cause to be presented to the Medical Assistance  
18                 Program a claim for providing a service, good, or accommodation  
19                 which may only be furnished by a person who is licensed by an  
20                 appropriate licensing authority, when the person who furnished the  
21                 service, good, or accommodation was not licensed by the appropriate  
22                 licensing authority;

23           (4)   Knowingly present, or cause to be presented to the Medical Assistance  
24                 Program a claim for payment or approval or for use in determining  
25                 entitlement to payment of a claim during a period in which the provider  
26                 was excluded from participating in the Medical Assistance Program  
27                 pursuant to a determination by the Secretary of the United States  
28                 Department of Health and Human Services or the North Carolina  
29                 Department of Human Resources; or

30           (5)   Knowingly accept a person as a patient under the Medical Assistance  
31                 Program and knowingly bill the patient for services except as allowed  
32                 by administrative rule.

33           Each claim presented or caused to be presented in violation of subsections (b)(1)  
34           through (b)(4) of this section and each bill presented in violation of subsection (b)(5) of  
35           this section is a separate violation.

36           (c)   Liability. –

37           (1)   Except as provided in subdivision (2) of this subsection, any provider of  
38                 medical assistance under the Medical Assistance Program who violates  
39                 this section is liable for all of the following:

40           a.     Full restitution to the Medical Assistance Program;

41           b.     Damages in the amount of three times the amount of the  
42                 restitution; and

1           c.       A civil penalty to the State of not less than five thousand dollars  
2                   (\$5,000) and not more than ten thousand dollars (\$10,000) for  
3                   each violation of this section.

4       (2)   A court may assess damages of not less than two times the amount of  
5       restitution to the Medical Assistance Program if a court finds that:

6           a.       The provider committing a violation of this section furnished  
7                   officials of the State responsible for investigating false claims  
8                   violations with all information known to the provider about the  
9                   violation within 30 days after the date the provider first obtained  
10                  the information;

11          b.       The provider fully cooperated with any State investigation of  
12                   such violation; and

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

18       (3)   A provider violating this section shall also be liable for the costs of a  
19       civil action brought to recover any penalty or damages, interest on the  
20       restitution at the maximum legal rate in effect on the date the payment  
21       was made to the provider for the period from the date upon which  
22       payment was made to the provider to the date upon which repayment is  
23       made by the provider to the Medical Assistance Program, and the costs  
24       of the investigation.

25       (d)   Repayment. – Intent to repay or repayment of any amounts obtained by a  
26       provider as a result of any acts described in subsection (b) of this section shall not be a  
27       defense to or grounds for dismissal of an action brought pursuant to this section.  
28       However, any repayment may be considered in mitigation of the amount of any penalties  
29       assessed.

30       **"§ 108A-63.2. False claims procedure.**

31       (a)   The Attorney General shall have the authority to investigate, institute  
32       proceedings, compromise and settle any investigation or action, and perform all duties in  
33       connection with any civil action to enforce G.S. 108A-63.1.

34       (b)   A civil action under G.S. 108A-63.1 may not be brought more than six years  
35       after the date the violation of G.S. 108A-63.1 is committed, or more than three years after  
36       the date when facts material to the right of action are known or reasonably should have  
37       been known by the official of the State of North Carolina charged with responsibility to  
38       act in the circumstances, but in no event more than 10 years after the date on which the  
39       violation is committed, which ever occurs last.

40       (c)   In any action brought under G.S. 108A-63.1, the State shall be required to  
41       prove all essential elements of the cause of action, including damages, by the greater  
42       weight of the evidence.

1       (d) Notwithstanding any other provision of law or rule, a final judgment rendered  
2 in favor of the State in any criminal proceeding charging fraud or false statements,  
3 whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop  
4 the defendant from denying the essential elements of the offense in any action which  
5 involves the same transaction as in the criminal proceeding and which is brought under  
6 G.S. 108A-63.1.

7       (e) No criminal or administrative action need be brought against any provider as a  
8 condition for establishing civil liability under G.S. 108A-63.1. The civil liability under  
9 G.S. 108A-63.1 is in addition to any other criminal, civil, and administrative liabilities or  
10 penalties that may be prescribed by law.

11       (f) The amount of restitution due and number of violations of G.S. 108A-63.1  
12 shall be established by the trial judge or, in the event of a jury trial, by jury verdict. The  
13 amount of penalties, treble damages, interest, cost of the investigation, and cost of the  
14 civil action shall be determined by the trial judge in accordance with G.S. 108A-63.1(c).

15       (g) Venue for any action brought pursuant to G.S. 108A-63.1 shall be in either  
16 Wake County or in any county in which claim originated, or in which any statement or  
17 record was made, or acts done, or services, goods, or accommodations rendered in  
18 connection with any act constituting part of the violation of G.S. 108A-63.1.

19 **"§ 108A-63.3. Civil investigative demand.**

20       (a) If the Attorney General has reasonable cause to believe that a person has  
21 information or is in possession, custody, or control of any document or other tangible  
22 object relevant to an investigation or that would lead to the discovery of relevant  
23 information in an investigation of a violation of G.S. 108A-63.1, the Attorney General  
24 may serve upon the person, before bringing an action under G.S. 108A-63.1 or other false  
25 claims law, a civil investigative demand to appear and be examined under oath, to answer  
26 written interrogatories under oath, and to produce any documents or objects for their  
27 inspection and copying. The civil investigative demand shall:

- 28       (1) Be served upon the person in the manner required for service of process  
29 in civil actions and may be served by any Assistant Attorney General or  
30 investigator assigned to the North Carolina Department of Justice;
- 31       (2) Describe the nature of the conduct constituting the violation under  
32 investigation;
- 33       (3) Describe the class or classes of any documents or objects to be produced  
34 with sufficient definiteness to permit them to be fairly identified;
- 35       (4) Contain a copy of any written interrogatories to be answered;
- 36       (5) Prescribe a reasonable date and time at which the person shall appear to  
37 testify, answer any written interrogatories, or produce any document or  
38 object;
- 39       (6) Advise the person that objections to or reasons for not complying with  
40 the demand may be filed with the Attorney General on or before that  
41 date and time;
- 42       (7) Specify a place for the taking of testimony;

1           (8) Designate a person to whom answers to written interrogatories shall be  
2           submitted and to whom any document or object shall be produced; and

3           (9) Contain a copy of subsections (b) and (c) of this section.

4           (b) The date within which to answer any written interrogatories and within which  
5 any document or object must be produced shall be more than 20 days after the civil  
6 investigative demand has been served upon the person. The date within which a person  
7 must appear to testify shall be more than seven days after the demand has been served  
8 upon the person. If the Attorney General determines that exceptional circumstances are  
9 present that warrant commencement of the testimony within a lesser period of time, the  
10 time prescribed in this subsection may be shortened.

11          (c) Responses and Procedures. –

12           (1) Oral examinations. – The Attorney General may administer the oath to  
13 any person examined pursuant to this section. The testimony shall be  
14 transcribed. The Attorney General may exclude from the place where  
15 the examination is held all persons except the person giving the  
16 testimony, the attorney or other representative of the person giving the  
17 testimony, the Attorney General conducting the examination, the  
18 investigator assisting the Attorney General, the stenographer, and any  
19 other person agreed upon by the Attorney General and the person giving  
20 the testimony. When the testimony is transcribed, the person shall have  
21 a reasonable opportunity to examine and read the transcript, unless an  
22 examination and reading are waived by the person. Any changes in  
23 form or substance which the person desires to make shall be entered and  
24 identified upon the transcript by the person. The transcript shall then be  
25 signed by the person, unless the person in writing waives the signing, is  
26 ill, cannot be found, or refuses to sign.

27           (2) Interrogatories. – Each interrogatory in a civil investigative demand  
28 served under this section shall be answered separately and fully in  
29 writing under oath and shall be submitted under sworn certificate by the  
30 person to whom the demand is directed, or in the case of a person other  
31 than a natural person, a person having knowledge of the facts and  
32 circumstances relating to the production and authorized to act on behalf  
33 of the person. If a person objects to any interrogatory, the reasons for  
34 the objection shall be stated in the certificate instead of an answer. The  
35 certificate shall state that all information required by the demand and in  
36 the possession, custody, control, or knowledge of the person to whom  
37 the demand is directed has been submitted. To the extent that any  
38 information is not furnished, the information shall be identified and  
39 reasons set forth with particularity regarding the reasons why the  
40 information was not furnished.

41           (3) Production of documents or objects. – The production of documents and  
42 objects in response to a civil investigative demand served under this  
43 section shall be made under a sworn certificate by the person to whom

1           the demand is directed, or in the case of a person other than a natural  
2           person, a person having knowledge of the facts and circumstances  
3           relating to the production and authorized to act on behalf of the person.  
4           The certificate shall state that all of the documentary material required  
5           by the demand and in the possession, custody, or control of the person  
6           to whom the demand is directed has been produced and made available.  
7           Upon written agreement between the person served with the civil  
8           investigative demand and the Attorney General, the person may  
9           substitute copies for originals of all or any part of the documents  
10           requested.

11           (d) No person shall be excused from testifying, answering interrogatories, or  
12           producing documents or objects in response to a civil investigative demand on the ground  
13           that the testimony, answers, documents, or objects required of the person may tend to  
14           incriminate the person. However, no compelled testimony, answers, documents, or  
15           objects may be used against the person in a criminal action, except a prosecution for  
16           perjury or for contempt arising from a failure to comply with an order of the court.

17           (e) Any person appearing for oral testimony under a civil investigative demand  
18           issued pursuant to this section shall be entitled to the same fees and allowances paid to  
19           witnesses in the General Court of Justice of the State of North Carolina.

20           (f) If a person objects to or otherwise fails to comply with a civil investigative  
21           demand served upon the person under subsection (a) of this section, the Attorney General  
22           may file an action in superior court for an order to enforce the demand. Venue for the  
23           action to enforce the demand shall be in either Wake County or the county in which the  
24           person resides. Notice of a hearing on the action to enforce the demand and a copy of the  
25           action shall be served upon the person in the same manner as prescribed in the Rules for  
26           Civil Procedure. If the court finds that the demand is proper, that there is reasonable  
27           cause to believe that there may have been a violation of G.S. 108A-63.1, and that the  
28           information sought or document or object demanded is relevant to the violation, the court  
29           shall order the person to comply with the demand, subject to modifications the court may  
30           prescribe.

31           (g) If the person fails to comply with an order entered pursuant to subsection (f) of  
32           this section, the court may:

33                   (1) Adjudge the person to be in contempt of court;

34                   (2) Grant injunctive relief against the person to whom the demand is issued  
35                   to restrain the conduct which is the subject of the investigation; or

36                   (3) Grant such other relief as the court may deem proper.

37           (h) Any transcript of oral testimony, answers to written interrogatories, and  
38           documents and objects produced pursuant to this section may be used in connection with  
39           any civil action brought under G.S. 108A-63.1.

40           (i) The North Carolina Rules of Civil Procedure shall apply to this section to the  
41           extent that the rules are not inconsistent with the provisions of this section.

42           "§ 108A-63.4. Employee remedies.

1       (a) In the absence of fraud or malice, no person who furnishes information to  
2 officials of the State responsible for investigating false claims violations shall be liable  
3 for damages in a civil action for any oral or written statement made or any other action  
4 that is necessary to supply information required pursuant to this section.

5       (b) Any employee of a provider who is discharged, demoted, suspended,  
6 threatened, harassed, or in any other manner discriminated against in the terms and  
7 conditions of employment by the employee's employer because of lawful acts done by the  
8 employee on behalf of the employee or others in furtherance of an action under G.S.  
9 108A-63.1, including investigation for, initiation of, testimony for, or assistance in an  
10 action filed or to be filed under G.S. 108A-63.1, shall be entitled to any relief necessary  
11 to make the employee whole. Relief shall include reinstatement with the same seniority  
12 status as the employee would have had but for the discrimination, two times the amount  
13 of back pay, interest on the back pay, and compensation for any special damages  
14 sustained as a result of the discrimination, including litigation costs and reasonable  
15 attorneys' fees. An employee may bring an action in the appropriate court for the relief  
16 provided in this section."

17       Section 2. This act becomes effective December 1, 1997, and applies to  
18 violations committed on or after that date.