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SENATE BILL 943

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Short Title: Medicaid False Claims Act.

(Public)

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Sponsors:

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Referred to:

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 Part to read:

**"PART 7. MEDICAL ASSISTANCE PROVIDER FALSE CLAIMS ACT.**

**"§ 108A-70.10. Short title.**

This Part may be cited as the Medical Assistance Provider False Claims Act.

**"§ 108A-70.11. Definitions.**

Definitions. – As used in this Part:

(1) 'Attorney General' means the Attorney General or any Deputy,  
Assistant, or Associate Attorney General.

(2) '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

1 identifies a service, good, or accommodation as reimbursable under the  
2 Medical Assistance Program.

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

7 (4) 'Knowingly' means that a provider, with respect to the information:

8 a. Has actual knowledge of the information;

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

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

13 (5) 'Medical Assistance Program' means the North Carolina Division of  
14 Medical Assistance and its fiscal agent.

15 **"§ 108A-70.12. Liability for certain acts; damages; effect of repayment.**

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

18 (1) Knowingly present, or cause to be presented to the Medical Assistance  
19 Program a false or fraudulent claim for payment or approval; or

20 (2) Knowingly make, use, or cause to be made or used a false record or  
21 statement to get a false or fraudulent claim paid or approved by the  
22 Medical Assistance Program.

23 Each claim presented or caused to be presented in violation of this section is a  
24 separate violation.

25 (b) Damages. –

26 (1) Except as provided in subdivision (2) of this subsection, a court shall  
27 assess against any provider of medical assistance under the Medical  
28 Assistance Program who violates this section a civil penalty of not less  
29 than five thousand dollars (\$5,000) and not more than ten thousand  
30 dollars (\$10,000) plus three times the amount of damages which the  
31 Medicaid Assistance Program sustained because of the act of the  
32 provider.

33 (2) A court may assess a penalty of not less than two times the amount of  
34 damages which the Medical Assistance Program sustains because of the  
35 act of the provider if a court finds that:

36 a. The provider committing a violation of this section furnished  
37 officials of the State responsible for investigating false claims  
38 violations with all information known to the provider about the  
39 violation within 30 days after the date the provider first obtained  
40 the information;

41 b. The provider fully cooperated with any State investigation of the  
42 violation; and

1           c.       At the time the provider furnished the State with the information  
2                   about the violation, no criminal prosecution, civil action, or  
3                   administrative action had commenced with respect to the  
4                   violation, and the provider did not have actual knowledge of the  
5                   existence of an investigation into the violation.

6           (3)     In addition to the damages and penalty assessed by the court pursuant to  
7                   subdivision (1) or (2) of this subsection, a provider violating this section  
8                   shall also be liable for the costs of a civil action brought to recover any  
9                   penalty or damages, interest on the damages at the maximum legal rate  
10                  in effect on the date the payment was made to the provider for the  
11                  period from the date upon which payment was made to the provider to  
12                  the date upon which repayment is made by the provider to the Medical  
13                  Assistance Program, and the costs of the investigation.

14           (4)     As applied to providers that are subject to certification review by the  
15                   Division of Facility Services, a violation of Medicaid provider  
16                   certification standards in providing a service, good, or accommodation  
17                   shall not be considered an independent basis for liability under this Act.  
18                   However, liability may be imposed if a false or fraudulent claim is  
19                   presented as set forth in subsection (a) of this section in connection with  
20                   that service, good, or accommodation.

21           (c)     Effect of Repayment. – Intent to repay or repayment of any amounts obtained  
22                   by a provider as a result of any acts described in subsection (a) of this section shall not be  
23                   a defense to or grounds for dismissal of an action brought pursuant to this section.  
24                   However, a court may consider any repayment in mitigation of the amount of any  
25                   penalties assessed.

26           "**§ 108A-70.13. False claims procedure.**

27           (a)     The Attorney General shall have the authority to investigate, institute  
28                   proceedings, compromise and settle any investigation or action, and perform all duties in  
29                   connection with any civil action to enforce G.S. 108A-70.12.

30           (b)     A civil action under G.S. 108A-70.12 may not be brought more than six years  
31                   after the date the violation of G.S. 108A-70.12 is committed, or more than three years  
32                   after the date when facts material to the right of action are known or reasonably should  
33                   have been known by the official of the State of North Carolina charged with  
34                   responsibility to act in the circumstances, but in no event more than 10 years after the  
35                   date on which the violation is committed, whichever occurs last.

36           (c)     In any action brought under G.S. 108A-70.12, the State shall be required to  
37                   prove all essential elements of the cause of action, including damages, by the greater  
38                   weight of the evidence.

39           (d)     Notwithstanding any other provision of law or rule, a final judgment rendered  
40                   in favor of the State in any criminal proceeding charging fraud or false statements,  
41                   whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop  
42                   the defendant from denying the essential elements of the offense in any action which

1 involves the same transaction as in the criminal proceeding and which is brought under  
2 G.S. 108A-70.12.

3 (e) No criminal or administrative action need be brought against any provider as a  
4 condition for establishing civil liability under G.S. 108A-70.12. The civil liability under  
5 G.S. 108A-70.12 is in addition to any other criminal, civil, and administrative liabilities  
6 or penalties that may be prescribed by law. However, treble and double damages and  
7 civil penalties provided by G.S. 108A-70.12 shall not be assessed against a provider if  
8 treble or double damages or civil penalties have been previously assessed against the  
9 provider for the same claims under the federal False Claims Act, 31 U.S.C. § 3729, et  
10 seq., or the federal Civil Monetary Penalty Law, 42 U.S.C. § 1320a-7a. In the event that  
11 any provider is found liable under the provisions of this Act and is subsequently found  
12 liable for the same claim under the federal False Claims Act, or the appropriate sections  
13 of the federal Civil Monetary Penalty Law, the State and the Medical Assistance Program  
14 shall pay to the federal government on behalf of the provider any amounts, other than  
15 restitution, recovered or otherwise obtained by the State under this Act, not to exceed the  
16 amount of the federal damages and penalties.

17 (f) The amount of damages and number of violations of G.S. 108A-70.12 shall be  
18 established by the trial judge or, in the event of a jury trial, by jury verdict. The amount  
19 of penalties, treble or double damages, interest, cost of the investigation, and cost of the  
20 civil action shall be determined by the trial judge as prescribed in G.S. 108A-70.12(b).

21 (g) Venue for any action brought pursuant to G.S. 108A-70.12 shall be in either  
22 Wake County or in any county in which claim originated, or in which any statement or  
23 record was made, or acts done, or services, goods, or accommodations rendered in  
24 connection with any act constituting part of the violation of G.S. 108A-70.12.

25 **§ 108A-70.14. Civil investigative demand.**

26 (a) If the Attorney General has reasonable cause to believe that a person has  
27 information or is in possession, custody, or control of any document or other tangible  
28 object relevant to an investigation or that would lead to the discovery of relevant  
29 information in an investigation of a violation of G.S. 108A-70.12, the Attorney General  
30 may serve upon the person, before bringing an action under G.S. 108A-70.12 or other  
31 false claims law, a civil investigative demand to appear and be examined under oath, to  
32 answer written interrogatories under oath, and to produce any documents or objects for  
33 their inspection and copying.

34 (b) The civil investigative demand shall:

- 35 (1) Be served upon the person in the manner required for service of process  
36 in civil actions and may be served by the Attorney General or  
37 investigator assigned to the North Carolina Department of Justice;
- 38 (2) Describe the nature of the conduct constituting the violation under  
39 investigation;
- 40 (3) Describe the class or classes of any documents or objects to be produced  
41 with sufficient definiteness to permit them to be fairly identified;
- 42 (4) Contain a copy of any written interrogatories to be answered;

1           (5)    Prescribe a reasonable date and time at which the person shall appear to  
2           testify, answer any written interrogatories, or produce any document or  
3           object;

4           (6)    Advise the person that objections to or reasons for not complying with  
5           the demand may be filed with the Attorney General on or before that  
6           date and time;

7           (7)    Specify a place for the taking of testimony;

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

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

11          (c)    The date within which to answer any written interrogatories and within which  
12          any document or object must be produced shall be more than 30 days after the civil  
13          investigative demand has been served upon the person. The date within which a person  
14          must appear to testify shall be more than 15 days after the demand has been served upon  
15          a person who resides out-of-state or more than 10 days after the demand has been served  
16          upon a person who resides in-state.

17          (d)    The person before whom the oral examination is to be taken shall put the  
18          person to be examined on oath and shall personally, or by someone acting under the  
19          person's direction and in the person's presence, record the testimony of the person to be  
20          examined. The Attorney General may exclude from the place where the examination is  
21          held all persons except the person giving the testimony, the attorney or other  
22          representative of the person giving the testimony, the Attorney General conducting the  
23          examination, the investigator assisting the Attorney General, the stenographer, and any  
24          other person agreed upon by the Attorney General and the person giving the testimony.  
25          When the testimony is transcribed, the person shall have a reasonable opportunity to  
26          examine and read the transcript, unless an examination and reading are waived by the  
27          person. Any changes in form or substance which the person desires to make shall be  
28          entered and identified upon the transcript by the person. The transcript shall then be  
29          signed by the person, unless the person in writing waives the signing, is ill, cannot be  
30          found, or refuses to sign.

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

42          (f)    The production of documents and objects in response to a civil investigative  
43          demand served under this section shall be made under a sworn certificate by the person to

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

9 (g) No person shall be excused from testifying, answering interrogatories, or  
10 producing documents or objects in response to a civil investigative demand on the ground  
11 that the testimony, answers, documents, or objects required of the person may tend to  
12 incriminate the person. However, no testimony, answers, documents, or objects  
13 compelled pursuant to G.S. 108A-70.14 may be used against the person in a criminal  
14 action, except a prosecution for perjury or for contempt arising from a failure to comply  
15 with an order of the court.

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

19 (i) If a person objects to or otherwise fails to comply with a civil investigative  
20 demand served upon the person under subsection (a) of this section, the Attorney General  
21 may file an action in superior court for an order to enforce the demand. Venue for the  
22 action to enforce the demand shall be in either Wake County or the county in which the  
23 person resides. Notice of a hearing on the action to enforce the demand and a copy of the  
24 action shall be served upon the person in the same manner as prescribed in the Rules for  
25 Civil Procedure. If the court finds that the demand is proper, that there is reasonable  
26 cause to believe that there may have been a violation of G.S. 108A-70.12, and that the  
27 information sought or document or object demanded is relevant to the violation, the court  
28 shall order the person to comply with the demand, subject to modifications the court may  
29 prescribe.

30 (j) If the person fails to comply with an order entered pursuant to subsection (i) of  
31 this section, the court may:

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

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

35 (3) Grant any other relief as the court may deem proper.

36 (k) Any transcript of oral testimony, answers to written interrogatories, and  
37 documents and objects produced pursuant to this section may be used in connection with  
38 any civil action brought under G.S. 108A-70.12.

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

41 **"§ 108A-70.15. Employee remedies.**

42 (a) In the absence of fraud or malice, no person who furnishes information to  
43 officials of the State responsible for investigating false claims violations shall be liable

1 for damages in a civil action for any oral or written statement made or any other action  
2 that is necessary to supply information required pursuant to this Part.

3 (b) Any employee of a provider who is discharged, demoted, suspended,  
4 threatened, harassed, or in any other manner discriminated against in the terms and  
5 conditions of employment by the employee's employer because of lawful acts done by the  
6 employee on behalf of the employee or others in furtherance of an action under G.S.  
7 108A-70.12, including investigation for, initiation of, testimony for, or assistance in an  
8 action filed or to be filed under G.S. 108A-70.12, shall be entitled to all relief necessary  
9 to make the employee whole. Relief shall include reinstatement with the same seniority  
10 status as the employee would have had but for the discrimination, two times the amount  
11 of back pay, interest on the back pay, and compensation for any special damages  
12 sustained as a result of the discrimination, including litigation costs and reasonable  
13 attorneys' fees. An employee may bring an action in the appropriate court for the relief  
14 provided in this section.

15 **"§ 108A-70.16. Uniformity of interpretation.**

16 This Part shall be so interpreted and construed as to be consistent with the federal  
17 False Claims Act, 31 U.S.C. § 3729, et seq., and any subsequent amendments to that act."

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