

House Bill 551 (COMMITTEE SUBSTITUTE)

By: Representative Lindsey of the 54th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to public assistance, so as to provide for the "State False Medicaid Claims Act"; to provide for a short title; to provide for legislative findings; to provide for definitions; to provide for liability to this state for certain false claims; to provide for civil actions for false Medicaid claims; to provide for exclusions for certain civil actions; to provide for procedure; to provide for burden of proof; to provide for whistleblower protection; to provide for statute of limitations; to provide for venue; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "State False Medicaid Claims Act."

SECTION 2.

The General Assembly recognizes that the submission of false or fraudulent claims to the Georgia Medicaid program can and does cause the state treasury to incur serious financial losses which results in direct harm to the taxpayers of this state. This Act is intended to provide a partial remedy for this problem by providing specific procedures whereby this state, and private citizens acting for and on behalf of this state, may bring civil actions against persons and entities who have obtained state funds through the submission of false or fraudulent claims to state agencies. This Act, in its provision for double and sometimes treble damages, is remedial in purpose, and is intended not to punish, but insofar as possible to make the state treasury whole for both the direct and indirect losses caused by the submission of false or fraudulent claims resulting in payments by this state or state agencies. By receiving a portion of the recovery in civil actions brought under this article, "whistle blowers" are encouraged to come forward when they have information about the submission

of false claims to the Georgia Medicaid program, and rewarded when their initiative results in civil recoveries for this state.

SECTION 3.

Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to public assistance, is amended by adding a new article to read as follows:

"ARTICLE 7B

49-4-168.

As used in this article, the term:

(1) 'Claim' includes any request or demand, whether under a contract or otherwise, for money, property, or services, which is made to the Georgia Medicaid program, or to any officer, employee, fiscal intermediary, grantee or contractor of the Georgia Medicaid program, or to other persons or entities if it results in payments by the Georgia Medicaid program, if the Georgia Medicaid program provides or will provide any portion of the money or property requested or demanded, or if the Georgia Medicaid program will reimburse the contractor, grantee, or other recipient for any portion of the money or property requested or demanded. A claim includes a request or demand made orally, in writing, electronically, or magnetically. Each claim may be treated as a separate claim.

(2) 'Knowing' and 'knowingly' mean that a person, with respect to information:

(A) Has actual knowledge of the information;

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

(C) Acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

(3) 'Person' means any natural person, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity with capacity to sue or be sued.

49-4-168.1.

(a) Any person who:

(1) Knowingly presents or causes to be presented to the Georgia Medicaid program a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Georgia Medicaid program;

(3) Conspires to defraud the Georgia Medicaid program by getting a false or fraudulent claim allowed or paid;

(4) Has possession, custody, or control of property or money used, or to be used by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate of receipt;

(5) Being authorized to make or deliver a document certifying receipt of property used, or to be used, by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Georgia Medicaid program, who lawfully may not sell or pledge the property; or

(7) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay, repay or transmit money or property to the State of Georgia,

shall be liable to the State of Georgia for a civil penalty of not less than \$5,500.00 and not more than \$11,000.00 for each false or fraudulent claim, plus three times the amount of damages which the Georgia Medicaid program sustains because of the act of such person.

(b) The provisions of subsection (a) of this Code section notwithstanding, if the court finds that:

(1) The person committing the violation of this subsection furnished officials of the Georgia Medicaid program with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(2) Such person fully cooperated with any government investigation of such violation; and

(3) At the time such person furnished the Georgia Medicaid program with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this article 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 more than two times the amount of the actual damages which the Georgia Medicaid program sustained because of the act of such person.

(c) A person violating any provision of this subsection shall also be liable to this state for all costs of any civil action brought to recover the damages and penalties provided under this article.

49-4-168.2.

(a) The Attorney General shall be authorized to investigate suspected, alleged, and reported violations of this article. If the Attorney General finds that a person has violated

1 or is violating this article, then the Attorney General may bring a civil action against such
2 person under this article.

3 (b) Subject to the exclusions set forth in this Code section, a civil action under this article
4 may also be brought by a private person. A civil action shall be brought in the name of the
5 State of Georgia. The civil action may be dismissed only if the court and the Attorney
6 General give written consent to the dismissal and state the reasons for consenting to such
7 dismissal.

8 (c) Where a private person brings a civil action under this article, such person shall follow
9 the following special procedures:

10 (1) A copy of the complaint and written disclosure of substantially all material evidence
11 and information the person possesses shall be served on the Attorney General;

12 (2) The complaint shall be filed in camera, shall remain under seal for at least 60 days,
13 and shall not be served on the defendant until the court so orders. The purpose of the
14 period under seal shall be to allow the Attorney General to investigate the allegations of
15 the complaint. The Attorney General may elect to intervene and proceed with the civil
16 action within 60 days after it receives both the complaint and the material evidence and
17 information;

18 (3) The Attorney General may, for good cause shown, move the court for extensions of
19 the time during which the complaint remains under seal under paragraph (2) of this
20 subsection. Any such motions may be supported by affidavits or other submissions in
21 camera;

22 (4) Before the expiration of the 60 day period or any extensions obtained under
23 paragraph (3) of this subsection, the Attorney General shall:

24 (A) Proceed with the civil action, in which case the civil action shall be conducted by
25 the Attorney General; or

26 (B) Notify the court that it declines to take over the civil action, in which case the
27 person bringing the civil action shall have the right to proceed with the civil action;

28 (5) The defendant shall not be required to respond to any complaint filed under this Code
29 section until 30 days after the complaint is unsealed and served upon the defendant; and

30 (6) When a person brings a civil action under this subsection, no person other than the
31 Attorney General may intervene or bring a related civil action based on the facts
32 underlying the pending civil action.

33 (d)(1) If the Attorney General elects to intervene and proceed with the civil action, he
34 or she shall have the primary responsibility for prosecuting the civil action, and shall not
35 be bound by an act of the person bringing such civil action. Such person shall have the
36 right to continue as a party to the civil action, subject to the limitations set forth in this
37 subsection.

1 (2) The Attorney General may dismiss the civil action, notwithstanding the objections
2 of the person initiating the civil action, if the person has been notified by the Attorney
3 General of the filing of the motion and the court has provided the person with an
4 opportunity for a hearing on the motion.

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

9 (4) Upon a showing by the Attorney General that unrestricted participation during the
10 course of the litigation by the person initiating the civil action would interfere with or
11 unduly delay the Attorney General's litigation of the case, or would be repetitious,
12 irrelevant, or for purposes of harassment, the court may, in its discretion, impose
13 limitations on the person's participation, such as:

14 (A) Limiting the number of witnesses the person may call;

15 (B) Limiting the length of the testimony of such witnesses;

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

17 (D) Otherwise limiting the participation by the person in the litigation.

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

22 (f) If the Attorney General elects not to proceed with the civil action, the person who
23 initiated the civil action shall have the right to conduct the civil action. If the Attorney
24 General so requests, he or she shall be served with copies of all pleadings filed in the civil
25 action and shall be supplied with copies of all deposition transcripts. When a person
26 proceeds with the civil action, the court may nevertheless permit the Attorney General to
27 intervene at a later date for any purpose, including, but not limited to, dismissal of the civil
28 action notwithstanding the objections of the person initiating the civil action if such person
29 has been notified by the Attorney General of the filing of such motion and the court has
30 provided such person with an opportunity for a hearing on such motion.

31 (g) Whether or not the Attorney General proceeds with the civil action, upon a showing
32 by the Attorney General that certain actions of discovery by the person initiating the civil
33 action would interfere with the Attorney General's investigation or prosecution of a
34 criminal or civil matter arising out of the same facts, the court may stay such discovery for
35 a period of not more than 60 days. Such a showing shall be conducted in camera. The
36 court may extend the 60 day period upon a further showing in camera that the Attorney
37 General has pursued the criminal or civil investigation or proceedings with reasonable

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

3 (h) Notwithstanding subsections (b) and (c) of this Code section, the Attorney General
4 may elect to pursue this state's claim through any alternate remedy available to the
5 Attorney General, including any administrative proceeding to determine a civil money
6 penalty. If any such alternate remedy is pursued in another proceeding, the person
7 initiating the civil action shall have the same rights in such proceeding as such person
8 would have had if the civil action had continued under this Code section. Any finding of
9 fact or conclusion of law made in such other proceeding that has become final shall be
10 conclusive on all parties to a civil action under this Code section. For purposes of this
11 subsection, a finding or conclusion is final if it has been finally determined on appeal to the
12 appropriate court of the State of Georgia, if all time for filing such an appeal with respect
13 to the finding or conclusion has expired, or if the finding or conclusion is not subject to
14 judicial review.

15 (i)(1) If the Attorney General proceeds with a civil action brought by a private person
16 under subsection (b) of this Code section, such person shall, subject to the second
17 sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the
18 proceeds of the civil action or settlement of the claim, depending upon the extent to
19 which the person substantially contributed to the prosecution of the civil action. Where
20 the civil action is one which the court finds to be based primarily on disclosures of
21 specific information, other than information provided by the person bringing the civil
22 action, relating to allegations or transactions in a criminal, civil, or administrative
23 hearing, in a legislative, administrative, or Attorney General hearing, audit, or
24 investigation, or from the news media, the court may award such sums as it considers
25 appropriate, but in no case more than 10 percent of the proceeds, taking into account the
26 significance of the information and the role of the person bringing such civil action in
27 advancing the case to litigation. Any payment to a person under the first or second
28 sentence of this paragraph shall be made from the proceeds. The remaining proceeds
29 shall be payable to the Indigent Care Trust Fund to be used for the purposes set forth in
30 Code Section 31-8-154. Any such person shall also receive an amount for reasonable
31 expenses which the court finds to have been necessarily incurred, plus reasonable
32 attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the
33 defendant.

34 (2) If the Attorney General does not proceed with a civil action under this Code section,
35 the person bringing the civil action or settling the claim shall receive an amount which
36 the court decides is reasonable for collecting the civil penalty and damages. Such amount
37 shall be not less than 25 percent and not more than 30 percent of the proceeds of the civil

1 action or settlement and shall be paid out of such proceeds. The remaining proceeds shall
2 be payable to the Indigent Care Trust Fund to be used for the purposes set forth in Code
3 Section 31-8-154. Such person shall also receive an amount for reasonable expenses
4 which the court finds to have been necessarily incurred, plus reasonable attorney's fees
5 and costs. All such expenses, fees, and costs shall be awarded against the defendant.

6 (3) Whether or not the Attorney General proceeds with the civil action, if the court finds
7 that the civil action was brought by a person who planned and initiated the violation of
8 Code Section 49-4-168.1 upon which the civil action was brought, then the court may,
9 to the extent the court considers appropriate, reduce the share of the proceeds of the civil
10 action which the person would otherwise receive under paragraph (1) or (2) of this
11 subsection, taking into account the role of that person in advancing the case to litigation
12 and any relevant circumstances pertaining to the violation. If the person bringing the
13 civil action is convicted of criminal conduct arising from his or her role in the violation
14 of Code Section 49-4-168.1, such person shall be dismissed from the civil action and
15 shall not receive any share of the proceeds of the civil action. Such dismissal shall not
16 prejudice the right of the State of Georgia to continue the civil action, represented by the
17 Attorney General.

18 (4) If the Attorney General does not proceed with the civil action and the person bringing
19 the civil action conducts the civil action, the court may award to the defendant its
20 reasonable attorney's fees and expenses against the person bringing the civil action if the
21 defendant prevails in the civil action and the court finds that the claim of the person
22 bringing the civil action was clearly frivolous, clearly vexatious, or brought primarily for
23 purposes of harassment.

24 (5) The State of Georgia shall not be liable for expenses which a private person incurs
25 in bringing a civil action under this article.

26 (j) For purposes of this subsection, 'public employee,' 'public official,' and 'public
27 employment' shall include federal, state, and local employees and officials.

28 (1) No civil action may be brought under this article by a person who is or was a public
29 employee or public official if the allegations of such action are substantially based upon:

30 (A) Allegations of wrongdoing or misconduct which such person had a duty or
31 obligation to report or investigate within the scope of his or her public employment or
32 office; or

33 (B) Information or records to which such person had access as a result of his or her
34 public employment or office.

35 (2) No court shall have jurisdiction over a civil action under this article based upon the
36 public disclosure of allegations or transactions in a criminal, civil, or administrative
37 hearing, in a legislative, administrative, or Attorney General report, hearing, audit, or

1 investigation, or from the news media, unless the civil action is brought by the Attorney
2 General or unless the person bringing the civil action is an original source of the
3 information. For purposes of this paragraph, 'original source' means an individual who
4 has direct and independent knowledge of the information on which the allegations are
5 based and has voluntarily provided the information to this state before filing a civil action
6 under this Code section based on such information.

7 (3) In no event may a person bring a civil action under this article which is based upon
8 allegations or transactions which are the subject of a civil or administrative proceeding
9 to which the State of Georgia is already party.

10 (4) No civil action may be brought under this article with respect to any claim relating
11 to the assessment, payment, nonpayment, refund or collection of taxes pursuant to any
12 provisions of Title 48.

13 49-4-168.3.

14 (a) In any civil action brought under this article, the State of Georgia or person bringing
15 the civil action shall be required to prove all essential elements of the cause of civil action,
16 including damages, by a preponderance of the evidence.

17 (b) Except as otherwise provided in this article, all civil actions brought under this article
18 shall be governed by the provisions of Chapter 11 of Title 9, the 'Georgia Civil Practice
19 Act.'

20 49-4-168.4.

21 Any employee who is discharged, demoted, suspended, threatened, harassed, or in any
22 other manner discriminated against in the terms and conditions of employment by his or
23 her employer because of lawful acts done by the employee, on behalf of the employee or
24 others, in furtherance of a civil action under this article, including investigation for,
25 initiation of, testimony for, or assistance in a civil action filed or to be filed under this
26 article, shall be entitled to all relief necessary to make the employee whole. Such relief
27 shall include reinstatement with the same seniority status such employee would have had
28 but for the discrimination, two times the amount of back pay, interest on the back pay
29 award, and compensation for any special damages sustained as a result of the
30 discrimination, including litigation costs and reasonable attorney's fees. An employee may
31 bring a civil action in an appropriate court of the State of Georgia for the relief provided
32 in this Code section.

1 49-4-168.5.

2 All civil actions under this article shall be filed pursuant to Code Section 49-4-168.2 within
3 six years after the date the violation was committed, or three years after the date when facts
4 material to the right of civil action are known or reasonably should have been known by
5 the state official charged with the responsibility to act in the circumstances, whichever
6 occurs last; provided, however, that in no event shall any civil action be filed more than ten
7 years after the date upon which the violation was committed.

8 49-4-168.6.

9 All civil actions brought against natural persons under this article shall be brought in the
10 county where the defendant or, in the case of multiple defendants, or of defendants who are
11 not residents of the State of Georgia, in any county where any one defendant resides, can
12 be found, transacts business or commits an act in furtherance of the submittal of a false or
13 fraudulent claim to the Georgia Medicaid program."

14 **SECTION 4.**

15 This Act shall become effective upon its approval by the Governor or upon its becoming law
16 without such approval.

17 **SECTION 5.**

18 All laws and parts of law in conflict with this Act are repealed.