

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 179  
Judiciary I (Civil) Committee Substitute Adopted 7/31/07

Short Title: Actions to Address Medicaid Fraud.

(Public)

Sponsors:

Referred to:

February 15, 2007

1 A BILL TO BE ENTITLED  
2 AN ACT TO STRENGTHEN THE PROSECUTION OF MEDICAID FRAUD BY  
3 INCREASING CRIMINAL PENALTIES FOR PROVIDER FRAUD,  
4 ESTABLISHING A PRIVATE CIVIL ACTION FOR PROVIDER FALSE  
5 CLAIMS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.(a)** G.S. 108A-70.11(5) reads as rewritten:

8 "(5) "Medical Assistance Program" means the Medical Assistance Program  
9 established pursuant to G.S. 108A-54 and includes the North Carolina  
10 Division of Medical Assistance and or its fiscal agent."

11 **SECTION 1.(b)** G.S. 108A-70.12(a) reads as rewritten:

12 "**§ 108A-70.12. Liability for certain acts; damages; effect of repayment.**

13 (a) Liability for Certain Acts. – It shall be unlawful for any provider of medical  
14 assistance under the Medical Assistance Program ~~to do any of the following:~~

- 15 (1) Knowingly present, or cause to be presented to the Medical Assistance  
16 Program a false or fraudulent claim for payment or ~~approval;~~  
17 ~~approval.~~
- 18 (2) Knowingly make, use, or cause to be made or used a false record or  
19 statement to get a false or fraudulent claim paid or approved by the  
20 Medical Assistance ~~Program.~~Program.
- 21 (3) Conspire to defraud the Medical Assistance Program by obtaining a  
22 false or fraudulent claim allowed or paid.
- 23 (4) Knowingly make, use, or cause to be made or used, a false record or  
24 statement to conceal, avoid, or decrease an obligation to pay or  
25 transmit money or property to the Medical Assistance Program.

26 Each claim presented or caused to be presented in violation of this section is a  
27 separate violation."

28 **SECTION 1.(c)** G.S. 108A-70.12(b)(1) reads as rewritten:

29 "(b) Damages. –

1 (1) Except as provided in subdivision (2) of this subsection, a court shall  
2 assess against any provider of medical assistance under the Medical  
3 Assistance Program who violates this section a civil penalty of not less  
4 than five thousand five hundred dollars (~~\$5,000~~)(\$5,500) and not more  
5 than ~~ten thousand~~ dollars (~~\$10,000~~)eleven thousand dollars (\$11,000)  
6 plus three times the amount of damages which the ~~Medicaid~~-Medical  
7 Assistance Program sustained because of the act of the provider.

8 ...."

9 **SECTION 2.** Article 2 of Chapter 108A of the General Statutes is amended  
10 by adding the following new Part to read:

11 "Part 7A. Civil Action by Private Persons for Provider False Claims.

12 **"§ 108A-70.17. Civil action filed by private persons.**

13 (a) A person may initiate a civil action for a violation of G.S. 108A-70.12 on  
14 behalf of the person and the State. The action shall be brought in the name of the State.  
15 The action may be dismissed prior to service of the complaint upon the defendant under  
16 subsection (c) of this section only if the court and the Attorney General have given  
17 written consent to the dismissal and their reasons for consenting.

18 (b) A copy of the complaint and written disclosure of substantially all material  
19 evidence and information the person possesses shall be served on the State. The  
20 complaint shall be filed in camera, shall remain under seal for at least 120 days, and  
21 shall not be served on the defendant until the court so orders. The State may elect to  
22 intervene and proceed with the action within 120 days after it receives both the  
23 complaint and the material evidence and information. The State may, for good cause  
24 shown, move the court for a partial lifting of the seal to facilitate the investigative  
25 process or settlement.

26 (c) The State may, for good cause shown, move the court for extensions of the  
27 time during which the complaint remains under seal. Any of these motions may be  
28 supported by affidavits or other submission in camera. The time period to respond to  
29 any complaint filed under this section shall commence 21 days after the complaint is  
30 unsealed and served upon the defendant.

31 (d) Before the expiration of the 120-day period or any extensions obtained under  
32 subsection (c) of this section, the State shall either proceed with the action, in which  
33 case the action shall be conducted by the State, or notify the court that it declines to take  
34 over the action, in which case the person initiating the action shall have the right to  
35 prosecute the action.

36 (e) When a person initiates an action under this section, no person other than the  
37 State may intervene or bring a related action based on the facts underlying the pending  
38 action. If another action is filed based on the facts underlying the pending action while  
39 the complaint is sealed under subsections (b) and (c) of this section, the court may  
40 consolidate the actions or dismiss the subsequent action.

41 **"§ 108A-70.17A. Rights of private plaintiff and State.**

42 (a) If the State proceeds with the action, it shall have the primary responsibility  
43 for prosecuting the action and shall not be bound by any act of the person initiating the

1 action. The person bringing the action shall have the right to continue as a party to the  
2 action, subject to the limitations of this section.

3 (b) The State may dismiss the action notwithstanding the objections of the person  
4 initiating the action if the person has been notified by the State of the filing of the  
5 motion, and the court has provided the person with an opportunity for a hearing on the  
6 motion.

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

11 (d) If the State proceeds with the action, the court may, in its discretion, impose  
12 limitations on the person's participation in the litigation as set forth in subsection (e) of  
13 this section. Such limitations must imposed after any of the following:

14 (1) A showing by the State that unrestricted participation during the  
15 course of the litigation by the person initiating the action would  
16 interfere with or unduly delay the State's prosecution of the case, or  
17 would be repetitious, irrelevant, or for purposes of harassment.

18 (2) A showing by the defendant that unrestricted participation during the  
19 course of the litigation by the person initiating the action would be for  
20 purposes of harassment or would cause the defendant undue burden or  
21 unnecessary expense.

22 (e) Limitations on participation of the person initiating the action shall include all  
23 of the following:

24 (1) Limiting the number of witnesses the person may call.

25 (2) Limiting the length of the testimony of such witnesses.

26 (3) Limiting the person's cross-examination of witnesses.

27 (4) Other limits on the participation by the person initiating the action in  
28 the litigation as the court deems appropriate.

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

36 (g) Whether or not the State proceeds with the action, upon a showing by the  
37 State that certain actions of discovery by the person initiating the action would interfere  
38 with the State's investigation or prosecution of a criminal or civil matter arising out of  
39 the same facts, the court may stay the discovery for a period of not more than 60 days.  
40 The showing by the State shall be conducted in camera. The court may extend the  
41 60-day period upon a further showing in camera that the State has pursued the criminal  
42 or civil investigation or proceedings with reasonable diligence, and any proposed  
43 discovery in the civil action will interfere with the ongoing criminal or civil  
44 investigation or prosecution of the criminal or civil matter.

1       (h) Notwithstanding G.S. 108A-70.17(b), the State may elect to pursue its claim  
2 through any alternate remedy available to the State, including any administrative  
3 proceeding to determine a civil money penalty. Any finding of fact or conclusion of law  
4 made in the alternate proceeding that has become final shall be conclusive on all parties  
5 to an action under this Part. For purposes of this subsection, a finding or conclusion is  
6 final if it has been finally determined on appeal by a court of competent jurisdiction of  
7 the State, if the time for filing an appeal with respect to the finding or conclusion has  
8 expired, or if the finding or conclusions are not subject to judicial review.

9 **"§ 108A-70.17B. Award to qui tam plaintiff.**

10       (a) Except as otherwise provided in this section, if the State proceeds with an  
11 action brought by a person under G.S. 108A-70.17, the person shall receive at least  
12 fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of  
13 the action or settlement of the claim, if any, depending upon the extent to which the  
14 person substantially contributed to the prosecution of the action. The plaintiff's share in  
15 the proceeds of the action or settlement is administrative costs of the action. A share of  
16 the proceeds of an action or settlement of the claim shall not be awarded to the person  
17 initiating the action in State court under this Part if the person has received or may  
18 receive a share of the proceeds or settlement of an action or claim on the same facts  
19 brought in federal court. Where the action is one that the court finds to be based  
20 primarily on disclosures of specific information, other than information proved by the  
21 person initiating the action, relating to allegations or transactions in a criminal, civil, or  
22 administrative hearing, in a legislative, administrative, or State Auditor's report, hearing,  
23 audit, or investigation, or from the news media, the court may reduce the award under  
24 this subsection to such sums as it considers appropriate, but in no case more than ten  
25 percent (10%) of the proceeds of the action, taking into account the significance of the  
26 information and the role of the person initiating the action in advancing the case to  
27 litigation.

28       (b) If the State does not proceed with an action, the person initiating the action or  
29 settling the claim shall receive an amount that the court decides is reasonable for  
30 collecting the civil penalty and damages, if awarded. The amount shall be not less than  
31 twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the  
32 action or settlement and shall be paid out of the proceeds.

33       (c) Notwithstanding subsections (a) and (b) of this section, if the person initiating  
34 the action is a person who primarily planned and initiated the violation of  
35 G.S. 108A-70.12 upon which the action was brought, that person shall be dismissed as a  
36 qui tam plaintiff and shall not receive any share of the proceeds of the action. If the  
37 person initiating the action is convicted of criminal conduct arising from the person's  
38 role in the violation of G.S. 108A-70.12, that person shall be dismissed from the civil  
39 action and shall not receive any share of the proceeds of the action. The dismissal shall  
40 not prejudice the right of the State to continue the action.

41       (d) If the State does not proceed with the action and the person initiating the  
42 action conducts the action, the court may award to the defendant its reasonable  
43 attorneys' fees and expenses if the defendant prevails in the action and if the court finds

1 that the claim of the person bringing the action was clearly frivolous, clearly vexatious,  
2 or brought primarily for purposes of harassment.

3 **"§ 108A-70.17C. Certain actions barred.**

4 (a) No court shall have jurisdiction over an action brought under this Part based  
5 on information discovered by a present or former employee of the State or a political  
6 subdivision of the State during the course of the present or former employee's  
7 employment unless that employee first, in good faith, exhausted existing internal  
8 procedures for reporting and seeking recovery of the falsely claimed sums through  
9 official channels, and unless the State or political subdivision failed to act on the  
10 information provided within a reasonable period of time.

11 (b) In no event may a person bring an action under this Part that is based upon  
12 allegations or transactions that are the subject of a criminal action, civil action, or an  
13 administrative proceeding in which the State is already a party.

14 (c) No court shall have jurisdiction over an action under this Part based upon the  
15 public disclosure of allegations or transactions in a criminal, civil, or administrative  
16 hearing, in a legislative, administrative, or State Auditor's report, hearing, audit, or  
17 investigation, or from the news media, unless the action is brought by the Attorney  
18 General, or the person initiating the action is an original source of the information. For  
19 purposes of this section, "original source" means an individual who has direct and  
20 independent knowledge of the information on which the allegations are based and has  
21 voluntarily provided the information to the State before filing an action under this Part  
22 that is based on the information.

23 (d) The State is not liable for expenses a person incurs in bringing an action  
24 under this Part.

25 (e) G.S. 108A-70.14 and G.S. 108A-70.15 apply to this Part.

26 **"§ 108A-70.17D. Procedure; statute of limitations.**

27 (a) A civil action under this Part may not be brought after the later of either of  
28 the following:

29 (1) More than six years after the date on which the violation is committed.

30 (2) More than three years after the date when facts material to the right of  
31 the action are known or reasonably should have been known by the  
32 official of the State charged with responsibility to act in the  
33 circumstances.

34 (b) If the civil action is brought under subdivision (a)(2) of this section, it may  
35 not be brought more than 10 years after the date on which the violation is committed."

36 **SECTION 3.** G.S. 108A-70.15 reads as rewritten:

37 **"§ 108A-70.15. Employee remedies.**

38 (a) In the absence of fraud or malice, no person who furnishes information to  
39 officials of the State responsible for investigating false claims violations shall be liable  
40 for damages in a civil action for any oral or written statement made or any other action  
41 that is necessary to supply information required pursuant to this ~~Part~~Part or Part 7A of  
42 this Article.

43 (b) Any employee of a provider who is discharged, demoted, suspended,  
44 threatened, harassed, or in any other manner discriminated against in the terms and

1 conditions of employment by the employee's employer because of lawful acts done by  
2 the employee on behalf of the employee or others in furtherance of an action under  
3 ~~G.S. 108A-70.12, 108A-70.12, or Part 7A of this Article,~~ including investigation for,  
4 initiation of, testimony for, or assistance in an action filed or to be filed under  
5 ~~G.S. 108A-70.12, 108A-70.12, or Part 7A of this Article,~~ shall be entitled to all relief  
6 necessary to make the employee whole. Relief shall include reinstatement with the same  
7 seniority status as the employee would have had but for the discrimination, two times  
8 the amount of back pay, interest on the back pay, and compensation for any special  
9 damages sustained as a result of the discrimination, including litigation costs and  
10 reasonable attorneys' fees. An employee may bring an action in the appropriate court for  
11 the relief provided in this section."

12           **SECTION 4.** This act becomes effective December 1, 2007, and applies to  
13 offenses committed on or after that date and actions filed on or after that date.