

False Medicaid Claims

This Act provides a partial remedy for false Medicaid claims by providing specific procedures whereby the state, and private citizens acting for and on behalf of the state, may bring civil actions against people 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 the Act, “whistleblowers” are encouraged to come forward when they have information about the submission of false claims to the state Medicaid program, and rewarded when their initiative results in civil recoveries for this state.

Submitted as:

Georgia

[HB 551](#)

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be known and may be cited as the “State False
2 Medicaid Claims Act.”

3
4 Section 2. [*Legislative Findings.*] The [General Assembly] recognizes that the submission
5 of false or fraudulent claims to the state Medicaid Program can and does cause the state treasury to
6 incur serious financial losses which results in direct harm to the taxpayers of this state. This Act is
7 intended to provide a partial remedy for this problem by providing specific procedures whereby
8 this state, and private citizens acting for and on behalf of this state, may bring civil actions against
9 people and entities who have obtained state funds through the submission of false or fraudulent
10 claims to state agencies. This Act, in its provision for double and sometimes treble damages, is
11 remedial in purpose, and is intended not to punish, but insofar as possible to make the state
12 treasury whole for both the direct and indirect losses caused by the submission of false or
13 fraudulent claims resulting in payments by this state or state agencies. By receiving a portion of
14 the recovery in civil actions brought under this Act, “whistleblowers” are encouraged to come
15 forward when they have information about the submission of false claims to the Medicaid
16 Program, and rewarded when their initiative results in civil recoveries for this state.

17
18 Section 3. [*Definitions.*] As used in this Act:

19 (1) ‘Claim’ includes any request or demand, whether under a contract or otherwise,
20 for money, property, or services, which is made to the Medicaid Program, or to any officer,
21 employee, fiscal intermediary, grantee or contractor of the Medicaid Program, or to other people
22 or entities if it results in payments by the Medicaid Program, if the Medicaid Program provides or
23 will provide any portion of the money or property requested or demanded, or if the Medicaid
24 Program will reimburse the contractor, grantee, or other recipient for any portion of the money or
25 property requested or demanded. A claim includes a request or demand made orally, in writing,
26 electronically, or magnetically. Each claim may be treated as a separate claim.

27 (2) 'Knowing' and 'knowingly' mean that a person, with respect to information:
28 (A) Has actual knowledge of the information;
29 (B) Acts in deliberate ignorance of the truth or falsity of the information; or
30 (C) Acts in reckless disregard of the truth or falsity of the information. No
31 proof of specific intent to defraud is required.

32 (3) 'Person' means any natural person, corporation, company, association, firm,
33 partnership, society, joint-stock company, or any other entity with capacity to sue or be sued.
34

35 Section 4. [*Penalties for Presenting a False Claim for Payment to the State Medicaid*
36 *Program.*]

37 (a) Any person who:

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

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

42 (3) Conspires to defraud the state Medicaid Program by getting a false or fraudulent
43 claim allowed or paid;

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

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

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

55 (7) Knowingly makes, uses, or causes to be made or used, a false record or
56 statement to conceal, avoid, or decrease an obligation to pay, repay or transmit money or property
57 to this state, shall be liable to this state for a [civil penalty of not less than \$5,500.00 and not more
58 than \$11,000.00 for each false or fraudulent claim], plus [three times the amount of damages
59 which the Medicaid Program sustains] because of the act of such person.

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

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

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

67 (3) At the time such person furnished the state Medicaid Program with the
68 information about the violation, no criminal prosecution, civil action, or administrative action had
69 commenced under this Act with respect to such violation, and the person did not have actual
70 knowledge of the existence of an investigation into such violation, the court may assess not more
71 than [two times the amount of the actual damages which the Medicaid Program sustained because
72 of the act of such person].

73 (c) A person violating any provision of this subsection shall also be liable to this state for
74 all costs of any civil action brought to recover the damages and penalties provided under this Act.
75

76 Section 5. *[Bringing Civil Actions Against People Who Violate this Act.]*

77 (a) The [Attorney General] shall be authorized to investigate suspected, alleged, and
78 reported violations of this Act. If the [Attorney General] finds that a person has violated or is
79 violating this Act, then the [Attorney General] may bring a civil action against such person under
80 this article.

81 (b) Subject to the exclusions set forth in this section, a civil action under this Act may also
82 be brought by a private person. A civil action shall be brought in the name of the state. The civil
83 action may be dismissed only if the court and the [Attorney General] give written consent to the
84 dismissal and state the reasons for consenting to such dismissal.

85 (c) Where a private person brings a civil action under this Act, such person shall follow the
86 following special procedures:

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

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

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

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

99 (A) Proceed with the civil action, in which case the civil action shall be
100 conducted by the [Attorney General]; or

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

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

105 (6) When a person brings a civil action under this subsection, no person other than
106 the [Attorney General] may intervene or bring a related civil action based on the facts underlying
107 the pending civil action.

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

112 (2) The [Attorney General] may dismiss the civil action, notwithstanding the
113 objections of the person initiating the civil action, if the person has been notified by the [Attorney
114 General] of the filing of the motion and the court has provided the person with an opportunity for
115 a hearing on the motion.

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

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

- (A) Limiting the number of witnesses the person may call;
- (B) Limiting the length of the testimony of such witnesses;
- (C) Limiting the person's cross-examination of witnesses; or
- (D) Otherwise limiting the participation by the person in the litigation.

(e) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the civil 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.

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

(g) Whether or not the [Attorney General] proceeds with the civil action, upon a showing by the [Attorney General] that certain actions of discovery by the person initiating the civil action would interfere with the [Attorney General'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 [60] days. Such a showing shall be conducted in camera. The court may extend the [60] day period upon a further showing in camera that the [Attorney General] 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.

(h) Notwithstanding subsections (b) and (c) of this section, the [Attorney General] may elect to pursue this state's claim through any alternate remedy available to the [Attorney General], including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the civil action shall have the same rights in such proceeding as such person would have had if the civil 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 a civil action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of this state, 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.

(i) (1) If the [Attorney General] proceeds with a civil action brought by a private person under subsection (b) of this section, such person shall, subject to the second sentence of this paragraph, receive [at least 15 percent but not more than 25 percent of the proceeds of the civil action or settlement of the claim], depending upon the extent to which the person substantially contributed to the prosecution of the civil action. Where the civil action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the civil action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or [Attorney General] hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case [more than 10 percent of the proceeds], taking into account the significance of the information and the role of the person bringing such civil action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. The remaining proceeds shall be payable to an [Indigent Care Trust Fund] as defined under [insert citation] to be used for the purposes set forth

174 in [insert citation]. Any such person shall also receive an amount for reasonable expenses which
175 the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All
176 such expenses, fees, and costs shall be awarded against the defendant.

177 (2) If the [Attorney General] does not proceed with a civil action under this section,
178 the person bringing the civil action or settling the claim shall receive an amount which the court
179 decides is reasonable for collecting the civil penalty and damages. Such amount shall be not [less
180 than 25 percent and not more than 30 percent of the proceeds of the civil action or settlement] and
181 shall be paid out of such proceeds. The remaining proceeds shall be payable to the [Indigent Care
182 Trust Fund] established under [insert citation] to be used for the purposes set forth in [insert
183 citation]. Such person shall also receive an amount for reasonable expenses which the court finds to
184 have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees,
185 and costs shall be awarded against the defendant.

186 (3) Whether or not the [Attorney General] proceeds with the civil action, if the
187 court finds that the civil action was brought by a person who planned and initiated the violation of
188 this Act upon which the civil action was brought, then the court may, to the extent the court
189 considers appropriate, reduce the share of the proceeds of the civil action which the person would
190 otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that
191 person in advancing the case to litigation and any relevant circumstances pertaining to the
192 violation. If the person bringing the civil action is convicted of criminal conduct arising from his
193 or her role in the violation of this Act, such person shall be dismissed from the civil action and
194 shall not receive any share of the proceeds of the civil action. Such dismissal shall not prejudice
195 the right of this state of Georgia to continue the civil action, represented by the [Attorney
196 General].

197 (4) If the [Attorney General] does not proceed with the civil action and the person
198 bringing the civil action conducts the civil action, the court may award to the defendant its
199 reasonable attorney's fees and expenses against the person bringing the civil action if the
200 defendant prevails in the civil action and the court finds that the claim of the person bringing the
201 civil action was clearly frivolous, clearly vexatious, or brought primarily for purposes of
202 harassment.

203 (5) The state shall not be liable for expenses which a private person incurs in
204 bringing a civil action under this Act.

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

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

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

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

213 (2) No court shall have jurisdiction over a civil action under this Act based upon
214 the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in
215 a legislative, administrative, or [Attorney General] report, hearing, audit, or investigation, or from
216 the news media, unless the civil action is brought by the [Attorney General] or unless the person
217 bringing the civil action is an original source of the information. For purposes of this paragraph,
218 'original source' means an individual who has direct and independent knowledge of the
219 information on which the allegations are based and has voluntarily provided the information to
220 this state before filing a civil action under this section based on such information.

221 (3) In no event may a person bring a civil action under this Act which is based upon
222 allegations or transactions which are the subject of a civil or administrative proceeding to which
223 the state is already party.

224 (4) No civil action may be brought under this Act with respect to any claim relating
225 to the assessment, payment, nonpayment, refund or collection of taxes pursuant to any provisions
226 of [insert citation].

227 (k) In any civil action brought under this Act, the state or person bringing the civil action
228 shall be required to prove all essential elements of the cause of civil action, including damages, by
229 a preponderance of the evidence.

230 (l) Except as otherwise provided in this Act, all civil actions brought under this Act shall
231 be governed by [insert citation].

232
233 Section 6. [*Relief for Employees Harmed Because They Helped Enforce this Act.*]

234 Any employee who is discharged, demoted, suspended, threatened, harassed, or in any
235 other manner discriminated against in the terms and conditions of employment by his or her
236 employer because of lawful acts done by the employee, on behalf of the employee or others, in
237 furtherance of a civil action under this Act, including investigation for, initiation of, testimony for,
238 or assistance in a civil action filed or to be filed under this Act, shall be entitled to all relief
239 necessary to make the employee whole. Such relief shall include reinstatement with the same
240 seniority status such employee would have had but for the discrimination, two times the amount of
241 back pay, interest on the back pay award, and compensation for any special damages sustained as
242 a result of the discrimination, including litigation costs and reasonable attorney's fees. An
243 employee may bring a civil action in an appropriate court of this state for the relief provided in this
244 section.

245
246 Section 7. [*Limitations on Filing a Civil Action Under this Act.*]

247 All civil actions under this Act shall be filed pursuant to [insert citation] within [six years
248 after the date] the violation was committed, or [three years after the date] when facts material to
249 the right of civil action are known or reasonably should have been known by the state official
250 charged with the responsibility to act in the circumstances, whichever occurs last; provided,
251 however, that in no event shall any civil action be filed more than [ten years after the date] upon
252 which the violation was committed.

253
254 Section 8. [*Civil Actions to Originate in Counties Where Defendant(s) Resides.*]

255 All civil actions brought against natural persons under this Act shall be brought in the
256 county where the defendant or, in the case of multiple defendants, or of defendants who are not
257 residents of this state, in any county where any one defendant resides, can be found, transacts
258 business or commits an act in furtherance of the submittal of a false or fraudulent claim to the state
259 Medicaid Program.

260
261 Section 9. [*Severability.*] [Insert severability clause.]

262
263 Section 10. [*Repealer.*] [Insert repealer clause.]

264
265 Section 11. [*Effective Date.*] [Insert effective date.]