

## SENATE BILL No. 535

By Committee on Judiciary

2-7

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AN ACT concerning civil actions and civil penalties; relating to false or fraudulent medicaid claims.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. (a) As used in this act: (1) "Claim" means an electronic, electronic impulse, facsimile, magnetic, oral, telephonic or written communication that is utilized to identify any goods, services, item, facility or accommodation as reimbursable to the Kansas medicaid program, or its fiscal agents, or which states income or expense and is or may be used to determine a rate of payment by the Kansas medicaid program, or its fiscal agent;

(2) "knowing" and "knowingly" means that a person, with respect to information has actual knowledge of this information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. The terms "knowing" and "knowingly" do not require proof of specific intent to defraud; and

(3) "medicaid program" means the Kansas program of medical assistance for which federal or state moneys, or any combination thereof, are expended as administered by the department of social and rehabilitation services, or its fiscal agent; or any successor federal or state, or both, health insurance program or waiver granted thereunder.

(b) (1) Except as otherwise provided, any person who: (A) Knowingly presents, or causes to be presented, to the medicaid program, a false or fraudulent claim for payment or approval; (B) 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 medicaid program; (C) conspires to defraud the medicaid program; (D) is a beneficiary of an inadvertent submission of a false claim to the medicaid program, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the medicaid program; or (E) is the beneficiary of an inadvertent payment or overpayment by the medicaid program of moneys not due and knowingly fails to repay the inadvertent payment or overpayment to the medicaid program is liable to the state for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages which the medicaid program sustains because of the act of such person.

1 (2) If the court finds that: (A) The person committing the violation  
2 of this act furnished officials of the state responsible for investigating false  
3 claims violations with all information known to such person about the  
4 violation within 30 days after the date on which the defendant first ob-  
5 tained the information, (B) such person fully cooperated with any state  
6 investigation of such violation, and (C) at the time such person furnished  
7 the state with the information about the violation, no criminal prosecu-  
8 tion, civil action or administrative action with respect to such violation,  
9 and the person did not have actual knowledge of the existence of an  
10 investigation into such violation, the court may assess not less than two  
11 times the amount of damages which the state sustains because of the act  
12 of the person.

13 (3) A person violating this act shall also be liable to the state for the  
14 costs of a civil action brought to recover any such penalty or damages.

15 (c) The attorney general shall investigate violations under this act. If  
16 the attorney general finds a violation of this act, the attorney general may  
17 bring a civil action under this act. Nothing in this act shall be construed  
18 to create a private cause of action.

19 (d) The attorney general may simultaneously conduct criminal inves-  
20 tigations and proceedings while conducting civil investigations and pro-  
21 ceedings concerning the same subject matter for violations as described  
22 in this act.

23 (e) Upon a showing by the state that certain actions of discovery in a  
24 proceeding under this act may interfere with the state's investigation or  
25 court proceeding of a criminal matter arising out of the same facts, the  
26 court may stay all proceedings under this act. Such showing shall be con-  
27 ducted *in camera*.

28 (f) Any action pursuant to this act must be commenced within five  
29 years from the date when the falsity or fraud is discovered.

30 (g) In any action brought under this act, the state shall be required  
31 to prove all essential elements of the cause of action, including damages,  
32 by preponderance of the evidence.

33 (h) Any pleading filed claiming relief pursuant to this act is not sub-  
34 ject to the requirements of subsection (b) of K.S.A. 60-209, and amend-  
35 ments thereto, except that such pleading shall set forth the period of time  
36 of the allegedly false or fraudulent claims and shall generally describe the  
37 false or fraudulent nature of the claims or scheme composed of several  
38 claims.

39 (i) Any action under this act may be brought in any district court  
40 where the defendant, or in the case of multiple defendants, any one de-  
41 fendant can be found, resides, transacts business, or in which any act  
42 prohibited by this act occurred, or in the district court of Shawnee county.

43 (j) Whenever the attorney general has reason to believe that any per-

1 son may be in possession, custody or control of any documentary material  
2 or information relevant to an investigation under this act, the attorney  
3 general, before commencing a civil proceeding, may issue in writing and  
4 cause to be served upon such person, a civil investigative demand. Such  
5 demand shall require such person to: (1) Produce such documentary ma-  
6 terial for inspection and copying, (2) answer in writing written interro-  
7 gatories with respect to such documentary material or information, (3) give  
8 oral testimony concerning such documentary material or information, or  
9 (4) furnish any combination of such material, answers or testimony.

10 (k) Whenever any person fails to comply with any civil investigative  
11 demand issued under subsection (j), or whenever satisfactory copying or  
12 reproduction of any material requested in such demand cannot be done  
13 and such person refuses to surrender such material, the attorney general  
14 may file a petition for an order of such court for the enforcement of the  
15 civil investigative demand in the district court.

16 (l) A final judgment rendered in favor of the state in any criminal  
17 proceeding, whether upon a verdict after a trial or upon a plea of guilty  
18 or *nolo contendere*, shall estop the defendant from denying the elements  
19 of the offense in any action brought under this act which involves the  
20 same facts or circumstances as in the criminal proceeding.

21 (m) Intent to repay or repayment of any amounts obtained by a per-  
22 son as a result of any acts prohibited in subsection (b) shall not be a  
23 defense to or grounds for dismissal of an action brought pursuant to this  
24 act. However, a court may consider any repayment in mitigation of the  
25 amount of any penalties assessed.

26 Sec. 2. This act shall take effect and be in force from and after its  
27 publication in the statute book.

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