

As Amended by House Committee

As Amended by Senate Committee

Session of 2014

SENATE BILL No. 271

By Committee on Judiciary

1-16

1 AN ACT concerning the Kansas medicaid fraud control act; relating to
2 penalties and fines; amending K.S.A. 2013 Supp. 21-5926, 21-5927,
3 21-5933 and 75-7508 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2013 Supp. 21-5926 is hereby amended to read as
7 follows: 21-5926. As used in ~~K.S.A. 2013 Supp. 21-5925 through 21-~~
8 ~~5934 and K.S.A. 2013 Supp. 75-725 and 75-726, and amendments thereto~~
9 ***the Kansas medicaid fraud control act:***

10 (a) *"Aggregate amount of payments illegally claimed" means the*
11 *greater of: (1) The actual pecuniary harm resulting from the offense; (2)*
12 *the pecuniary harm that was intended to result from the offense; or (3) the*
13 *intended pecuniary harm that would have been impossible or unlikely to*
14 *occur, such as in a government sting operation or a fraud in which the*
15 *claim exceeded the allowed value. The aggregate dollar amount of*
16 *fraudulent claims submitted to the medicaid program shall constitute*
17 *prima facie evidence of the amount of intended loss and is sufficient to*
18 *establish the aggregate amount of payments illegally claimed, if not*
19 *rebutted;*

20 ~~(a)~~ (b) "attorney general" means the attorney general, employees of
21 the attorney general or authorized representatives of the attorney general;

22 ~~(b)~~ (c) "benefit" means the receipt of money, goods, items, facilities,
23 accommodations or anything of pecuniary value;

24 ~~(c)~~ (d) "claim" means an electronic, electronic impulse, facsimile,
25 magnetic, oral, telephonic or written communication that is utilized to
26 identify any goods, service, item, facility or accommodation as
27 reimbursable to the Kansas medicaid program, or its fiscal agents, or
28 which states income or expense and is or may be used to determine a rate
29 of payment by the Kansas medicaid program, or its fiscal agent;

30 ~~(d)~~ (e) "fiscal agent" means any corporation, firm, individual,
31 organization, partnership, professional association or other legal entity
32 which, through a contractual relationship with the ~~department of social and~~
33 ~~rehabilitation services~~ *Kansas department of health and environment*
34 *division of health care finance* and thereby, the state of Kansas, receives,

1 processes and pays claims under the ~~Kansas~~ medicaid program;

2 ~~(e)~~ (f) "family member" means spouse, child, grandchild of any
3 degree, parent, mother-in-law, father-in-law, grandparent of any degree,
4 brother, brother-in-law, sister, sister-in-law, half-brother, half-sister, uncle,
5 aunt, nephew or niece, whether biological, step or adoptive;

6 ~~(f)~~ (g) "medicaid program" means the Kansas program of medical
7 assistance for which federal or state moneys, or any combination thereof,
8 are expended as administered by the ~~department of social and~~
9 ~~rehabilitation services~~ *Kansas department of health and environment*
10 *division of health care finance*, or its fiscal agent, or any successor federal
11 or state, or both, health insurance program or waiver granted thereunder;

12 ~~(g)~~ (h) "medically necessary" means for the purposes of ~~K.S.A. 2013~~
13 ~~Supp. 21-5925 through 21-5934 and K.S.A. 2013 Supp. 75-725 and 75-~~
14 ~~726, and amendments thereto, the Kansas medicaid fraud control act~~
15 only, any goods, service, item, facility, or accommodation, that a
16 reasonable and prudent provider under similar circumstances would
17 believe is appropriate for diagnosing or treating a recipient's condition,
18 illness or injury;

19 (i) "*pecuniary harm*" means *harm that is monetary or that otherwise*
20 *is readily measurable in money, and does not include emotional distress,*
21 *harm to reputation or other non-economic harm;*

22 ~~(h)~~ (j) "person" means any agency, association, corporation, firm,
23 limited liability company, limited liability partnership, natural person,
24 organization, partnership or other legal entity, the agents, employees,
25 independent contractors, and subcontractors, thereof, and the legal
26 successors thereto, and any official, employee or agent of a state or federal
27 agency having regulatory or administrative authority over the medicaid
28 program;

29 ~~(i)~~ (k) "provider" means a person who has applied to participate in,
30 who currently participates in, who has previously participated in, who
31 attempts or has attempted to participate in the medicaid program, by
32 providing or claiming to have provided goods, services, items, facilities or
33 accommodations;

34 ~~(j)~~ (l) "recipient" means an individual, either real or fictitious, in
35 whose behalf any person claimed or received any payment or payments
36 from the medicaid program, or its fiscal agent, whether or not any such
37 individual was eligible for benefits under the medicaid program;

38 ~~(k)~~ (m) "records" mean all written documents and electronic or
39 magnetic data, including, but not limited to, medical records, X-rays,
40 professional, financial or business records relating to the treatment or care
41 of any recipient; goods, services, items, facilities or accommodations
42 provided to any such recipient; rates paid for such goods, services, items,
43 facilities or accommodations; and goods, services, items, facilities, or

1 accommodations provided to nonmedicaid recipients to verify rates or
2 amounts of goods, services, items, facilities or accommodations provided
3 to medicaid recipients, as well as any records that the medicaid program,
4 or its fiscal agents require providers to maintain;

5 (⊕) (n) "sign" means to affix a signature, directly or indirectly, by
6 means of handwriting, typewriter, stamp, computer impulse or other
7 means; and

8 (⊕) (o) "statement or representation" means an electronic, electronic
9 impulse, facsimile, magnetic, oral, telephonic, or written communication
10 that is utilized to identify any goods, service, item, facility or
11 accommodation as reimbursable to the medicaid program, or its fiscal
12 agent, or that states income or expense and is or may be used to determine
13 a rate of payment by the medicaid program, or its fiscal agent.

14 Sec. 2. K.S.A. 2013 Supp. 21-5927 is hereby amended to read as
15 follows: 21-5927. (a) ~~Making a false claim, statement or representation~~
16 ~~to the medicaid program is, Medicaid fraud is:~~

17 (1) With intent to defraud, making, presenting, submitting, offering or
18 causing to be made, presented, submitted or offered:

19 (⊕) (A) Any false or fraudulent claim for payment for any goods,
20 service, item, facility accommodation for which payment may be made, in
21 whole or in part, under the medicaid program, whether or not the claim is
22 allowed or allowable;

23 (⊕) (B) any false or fraudulent statement or representation for use in
24 determining payments which may be made, in whole or in part, under the
25 medicaid program, whether or not the claim is allowed or allowable;

26 (⊕) (C) any false or fraudulent report or filing which is or may be
27 used in computing or determining a rate of payment for any goods,
28 service, item, facility or accommodation, for which payment may be made,
29 in whole or in part, under the medicaid program, whether or not the claim
30 is allowed or allowable;

31 (⊕) (D) any false or fraudulent statement or representation made in
32 connection with any report or filing which is or may be used in computing
33 or determining a rate of payment for any goods, service, item, facility or
34 accommodation for which payment may be made, in whole or in part,
35 under the medicaid program, whether or not the claim is allowed or
36 allowable;

37 (⊕) (E) any statement or representation for use by another in obtaining
38 any goods, service, item, facility or accommodation for which payment
39 may be made, in whole or in part, under the medicaid program, knowing
40 the statement or representation to be false, in whole or in part, by
41 commission or omission, whether or not the claim is allowed or allowable;

42 (⊕) (F) any claim for payment, for any goods, service, item, facility,
43 or accommodation, which is not medically necessary in accordance with

1 professionally recognized parameters or as otherwise required by law, for
 2 which payment may be made, in whole or in part, under the medicaid
 3 program, whether or not the claim is allowed or allowable;

4 ~~(7)~~ (G) any wholly or partially false or fraudulent book, record,
 5 document, data or instrument, which is required to be kept or which is kept
 6 as documentation for any goods, service, item, facility or accommodation
 7 or of any cost or expense claimed for reimbursement for any goods,
 8 service, item, facility or accommodation for which payment is, has been,
 9 or can be sought, in whole or in part, under the medicaid program, whether
 10 or not the claim is allowed or allowable;

11 ~~(8)~~ (H) any wholly or partially false or fraudulent book, record,
 12 document, data or instrument to any properly identified law enforcement
 13 officer, any properly identified employee or authorized representative of
 14 the attorney general, or to any properly identified employee or agent of the
 15 department of social and rehabilitation services, or its fiscal agent, in
 16 connection with any audit or investigation involving any claim for
 17 payment or rate of payment for any goods, service, item, facility or
 18 accommodation payable, in whole or in part, under the medicaid program;
 19 or

20 ~~(9)~~ (I) any false or fraudulent statement or representation made, with
 21 the intent to influence any acts or decision of any official, employee or
 22 agent of a state or federal agency having regulatory or administrative
 23 authority over the Kansas medicaid program; or

24 (2) *intentionally executing or attempting to execute a scheme or*
 25 *artifice to defraud the medicaid program or any contractor or*
 26 *subcontractor thereof.*

27 ~~(b) Making a false claim, statement or representation to the medicaid~~
 28 ~~programs defined in:~~

29 ~~(1) Subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6) or (a)(7),~~
 30 ~~where the aggregate amount of payments illegally claimed is:~~

31 ~~(A) \$25,000 or more is a severity level 7, nonperson felony;~~

32 ~~(B) at least \$1,000 but less than \$25,000 is a severity level 9,~~
 33 ~~nonperson felony; and~~

34 ~~(C) less than \$1,000 is a class A misdemeanor; and~~

35 (1) **Except as provided in subsection (b)(2), for each individual**
 36 **count of medicaid fraud as defined in subsection (a)(1)(A), (a)(1)(B), (a)**
 37 **(1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F), (a)(1)(G) or (a)(2), where the**
 38 **aggregate amount of payments illegally claimed is:**

39 **(A) \$100,000 or more, medicaid fraud is a severity level 5,**
 40 **nonperson felony;**

41 **(B) at least \$25,000 but less than \$100,000, medicaid fraud is a**
 42 **severity level 7, nonperson felony;**

43 **(C) at least \$1,000 but less than \$25,000, medicaid fraud is a**

1 **severity level 9, nonperson felony; and**

2 **(D) less than \$1,000, medicaid fraud is a class A nonperson**
3 **misdemeanor.**

4 **(2) For each individual count of medicaid fraud as defined in**
5 **subsection (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F),**
6 **(a)(1)(G) or (a)(2), where bodily harm to another person results from**
7 **such act and the aggregate amount of payments illegally claimed is:**

8 *(A) \$1,000,000 or more, medicaid fraud is a severity level 2,*
9 *nonperson felony;*

10 *(B) at least \$250,000 but less than \$1,000,000, medicaid fraud is a*
11 *severity level 3, nonperson felony;*

12 *(C) at least \$100,000 but less than \$250,000, medicaid fraud is a*
13 *severity level 4, nonperson felony;*

14 *(D) at least \$25,000 but less than \$100,000, medicaid fraud is a*
15 *severity level 5, nonperson felony;*

16 *(E) at least \$1,000 but less than \$25,000, medicaid fraud is a severity*
17 *level 7, nonperson felony;*

18 *(F) less than \$1,000, medicaid fraud is a class A nonperson*
19 *misdemeanor, except as provided in subsection (b)(1)(G); and*

20 *(G) less than \$1,000 and committed by a person who has been*
21 *convicted of a violation of this section within five years immediately*
22 *preceding commission of the crime, medicaid fraud is a severity level 7,*
23 *nonperson felony; and.*

24 ~~(2)~~ **(3) Medicaid fraud as defined in** subsection ~~(a)(8) or (a)(9)~~ *(a)(1)*
25 *(H) or (a)(1)(I) is a severity level 9, nonperson felony.*

26 *(c) In determining what is medically necessary pursuant to subsection*
27 ~~(a)(6)~~ *(a)(1)(F), the attorney general may contract with or consult with*
28 *qualified health care providers and other qualified individuals to identify*
29 *professionally recognized parameters for the diagnosis or treatment of the*
30 *recipient's condition, illness or injury.*

31 **(d) A person who violates the provisions of this section may also**
32 **be prosecuted for, convicted of, and punished for any form of battery**
33 **or homicide.**

34 Sec. 3. K.S.A. 2013 Supp. 21-5933 is hereby amended to read as
35 follows: 21-5933. *(a) In addition to any other criminal penalties*
36 *provided by law, any person convicted of a violation of K.S.A. 2013 Supp.*
37 *21-5925 through 21-5934 and K.S.A. 2013 Supp. 75-725 and 75-726, and*
38 ~~*amendments thereto, the Kansas medicaid fraud control act may be liable;*~~
39 ~~*in addition to any other criminal penalties provided by law, for all of the*~~
40 ~~*following:*~~

41 *(1) Payment of full restitution of the amount of the excess payments;*

42 *(2) payment of interest on the amount of any excess payments at the*
43 *maximum legal rate in effect on the date the payment was made to the*

1 person for the period from the date upon which payment was made, to the
2 date upon which repayment is made; and

3 (3) payment of all reasonable expenses that have been necessarily
4 incurred in the enforcement of ~~K.S.A. 2013 Supp. 21-5925 through 21-~~
5 ~~5934 and K.S.A. 2013 Supp. 75-725 and 75-726, and amendments thereto,~~
6 *the Kansas medicaid fraud control act* including, but not limited to, the
7 costs of the investigation, litigation and attorney fees.

8 (b) *In addition to any other criminal penalties provided by law, any*
9 *person convicted of a violation of the Kansas medicaid fraud control act*
10 *shall, upon request of the attorney general at any time prior to sentencing,*
11 *be subject to a fine of not less than \$1,000 and not more than \$11,000 for*
12 *each violation of such act.*

13 (b) (c) All moneys recovered pursuant to subsection (a)(1) and (2),
14 shall be remitted to the state treasurer in accordance with the provisions of
15 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
16 remittance, the state treasurer shall deposit the entire amount in the state
17 treasury to the credit of the medicaid fraud reimbursement fund, which is
18 hereby established in the state treasury. Moneys in the medicaid fraud
19 reimbursement fund shall be divided and payments made from such fund
20 to the federal government and affected state agencies for the refund of
21 moneys falsely obtained from the federal and state governments.

22 (e) (d) All moneys recovered pursuant to subsection (a)(3) shall be
23 remitted to the state treasurer in accordance with the provisions of K.S.A.
24 75-4215, and amendments thereto. Upon receipt of each such remittance,
25 the state treasurer shall deposit the entire amount in the state treasury to
26 the credit of the medicaid fraud prosecution revolving fund, which is
27 hereby established in the state treasury. Moneys in the medicaid fraud
28 prosecution revolving fund may be appropriated to the attorney general, or
29 to any county or district attorney who has successfully prosecuted an
30 action for a violation of ~~K.S.A. 2013 Supp. 21-5925 through 21-5934 and~~
31 ~~K.S.A. 2013 Supp. 75-725 and 75-726, and amendments thereto,~~ ***the***
32 ***Kansas medicaid fraud control act*** and been awarded such costs of
33 prosecution, in order to defray the costs of the attorney general and any
34 such county or district attorney in connection with their duties provided by
35 ~~K.S.A. 2013 Supp. 21-5925 through 21-5934 and K.S.A. 2013 Supp. 75-~~
36 ~~725 and 75-726, and amendments thereto~~ ***the Kansas medicaid fraud***
37 ***control act.*** No moneys shall be paid into the medicaid fraud prosecution
38 revolving fund pursuant to this section unless the attorney general or
39 appropriate county or district attorney has commenced a prosecution
40 pursuant to this section, and the court finds in its discretion that payment
41 of attorney fees and investigative costs is appropriate under all the
42 circumstances, and the attorney general, or county or district attorney has
43 proven to the court that the expenses were reasonable and necessary to the

1 investigation and prosecution of such case, and the court approves such
2 expenses as being reasonable and necessary.

3 *(e) All moneys recovered pursuant to subsection (b) shall be remitted*
4 *to the state treasurer in accordance with the provisions of K.S.A. 75-4215,*
5 *and amendments thereto. Upon receipt of each such remittance, the state*
6 *treasurer shall deposit the entire amount in the state treasury to the credit*
7 *of the false claims litigation revolving fund established by K.S.A. 2013*
8 *Supp. 75-7508, and amendments thereto.*

9 Sec. 4. K.S.A. 2013 Supp. 75-7508 is hereby amended to read as
10 follows: 75-7508. (a) Proceeds recovered as a result of an action filed
11 pursuant to ~~this~~ *the Kansas false claims act* shall be distributed in the
12 following order:

13 (1) To refund moneys falsely obtained from the federal government,
14 state government or political subdivision thereof pursuant to subsection
15 (b); and

16 (2) to the state treasurer for deposit in the state general fund pursuant
17 to subsection (c).

18 (b) A portion of the recovery equal to the amount of moneys falsely
19 obtained from the federal government, state government, affected political
20 subdivision thereof or state agencies, or a combination thereof, shall be
21 remitted to the appropriate entity shown to be defrauded, subject to any
22 further requirements established by federal or state law.

23 (c) That portion of any recovery remitted to the state treasurer
24 pursuant to subsection (a) shall be remitted to the state treasurer in
25 accordance with the provisions of K.S.A. 75-4215, and amendments
26 thereto. Upon receipt of such remittance, the state treasurer shall deposit
27 the entire amount in the state general fund and, subject to any relevant
28 guidelines of the federal department of health and human services' office
29 of inspector general regarding repayment of fees or recoveries, shall credit
30 10% of such remittance to the false claims litigation revolving fund, which
31 is hereby established in the state treasury. Moneys in the false claims
32 litigation revolving fund may be expended by the attorney general for the
33 purpose of hiring necessary staff and to defray the costs of investigating
34 and litigating ongoing false claims cases and may be shared at the
35 direction of the attorney general with the Kansas medicaid fraud ~~control~~
36 ~~unit~~ *and abuse division*, Kansas bureau of investigation or any county, city
37 or private attorneys who may be utilized or contracted with pursuant to
38 K.S.A. 2013 Supp. 75-7504, and amendments thereto, in carrying out the
39 purposes of this act and any other operating expenses incurred in
40 administering the Kansas false claims act. All expenditures from the false
41 claims litigation revolving fund shall be made in accordance with
42 appropriation acts upon warrants of the director of accounts and reports
43 issued pursuant to vouchers approved by the attorney general or the

1 attorney general's designee.

2 Sec. 5. K.S.A. 2013 Supp. 21-5926, 21-5927, 21-5933 and 75-7508
3 are hereby repealed.

4 Sec. 6. This act shall take effect and be in force from and after its
5 publication in the statute book.