

SENATE BILL No. 271

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

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

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

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

~~(a)~~(b) “attorney general” means the attorney general, employees of the attorney general or authorized representatives of the attorney general;

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

~~(c)~~(d) “claim” means an electronic, electronic impulse, facsimile, magnetic, oral, telephonic or written communication that is utilized to identify any goods, service, 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;

~~(d)~~(e) “fiscal agent” means any corporation, firm, individual, organization, partnership, professional association or other legal entity which, through a contractual relationship with the ~~department of social and rehabilitation services~~ *Kansas department of health and environment division of health care finance* and thereby, the state of Kansas, receives, processes and pays claims under the ~~Kansas~~ medicaid program;

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

~~(f)~~(g) “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~~ *Kansas department of health and environment division of health care finance*, or its fiscal agent, or any successor federal or state, or both, health insurance program or waiver granted thereunder;

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

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

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

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

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

~~(k)~~(m) “records” mean all written documents and electronic or magnetic data, including, but not limited to, medical records, X-rays, professional, financial or business records relating to the treatment or care of any recipient; goods, services, items, facilities or accommodations provided to any such recipient; rates paid for such goods, services, items, facilities or accommodations; and goods, services, items, facilities, or accommodations provided to nonmedicaid recipients to verify rates or amounts of goods, services, items, facilities or accommodations provided to medicaid recipients, as well as any records that the medicaid program, or its fiscal agents require providers to maintain;

~~(l)~~(n) “sign” means to affix a signature, directly or indirectly, by means of handwriting, typewriter, stamp, computer impulse or other means; and

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

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

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

~~(1)~~(A) Any false or fraudulent claim for payment for any goods, service, item, facility accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

~~(2)~~(B) any false or fraudulent statement or representation for use in determining payments which may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

~~(3)~~(C) any false or fraudulent report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

~~(4)~~(D) any false or fraudulent statement or representation made in connection with any report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

~~(5)~~(E) any statement or representation for use by another in obtaining any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, knowing the statement or representation to be false, in whole or in part, by commission or omission, whether or not the claim is allowed or allowable;

~~(6)~~(F) any claim for payment, for any goods, service, item, facility, or accommodation, which is not medically necessary in accordance with professionally recognized parameters or as otherwise required by law, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

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

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

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

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

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

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

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

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

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

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

(A) *\$250,000 or more, medicaid fraud is a severity level 3, nonperson felony;*

(B) *at least \$100,000 but less than \$250,000, medicaid fraud is a severity level 5, nonperson felony;*

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

(D) *at least \$1,000 but less than \$25,000, medicaid fraud is a severity level 9, nonperson felony; and*

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

(2) *For each individual count of medicaid fraud as defined in subsection (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F), (a)(1)(G) or (a)(2):*

(A) *When great bodily harm results from such act, regardless of the aggregate amount of payments illegally claimed, medicaid fraud is a severity level 4, person felony, except as provided in subsection (b)(2)(B); and*

(B) *when death results from such act, regardless of the aggregate amount of payments illegally claimed, medicaid fraud is a severity level 1, person felony.*

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

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

(d) *In sentencing for medicaid fraud, subsection (c)(3) of K.S.A. 2013 Supp. 21-6815, and amendments thereto, shall not apply and an act or omission by the defendant that resulted in any medicaid recipient receiving any service that was of lesser quality or amount than the service to which such recipient was entitled may be considered an aggravating factor in determining whether substantial and compelling reasons for departure exist pursuant to K.S.A. 2013 Supp. 21-6801 through 21-6824, and amendments thereto.*

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

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

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

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

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

(3) payment of all reasonable expenses that have been necessarily incurred in the enforcement of ~~K.S.A. 2013 Supp. 21-5025 through 21-5034 and K.S.A. 2013 Supp. 75-725 and 75-726, and amendments thereto,~~ the *Kansas medicaid fraud control act* including, but not limited to, the costs of the investigation, litigation and attorney fees.

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

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

~~(c)(d)~~ (d) All moneys recovered pursuant to subsection (a)(3) shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the medicaid fraud prosecution revolving fund, which is hereby established in the state treasury. Moneys in the medicaid fraud prosecution revolving fund may be appropriated to the attorney general, or to any county or district attorney who has successfully prosecuted an action for a violation of ~~K.S.A. 2013 Supp. 21-5025 through 21-5034 and K.S.A. 2013 Supp. 75-725 and 75-726, and amendments thereto,~~ the *Kansas medicaid fraud control act* and been awarded such costs of prosecution, in order to defray the costs of the attorney general and any such county or district attorney in connection with their duties provided by ~~K.S.A. 2013 Supp. 21-5025 through 21-5034 and K.S.A. 2013 Supp. 75-725 and 75-726, and amendments thereto~~ the *Kansas medicaid fraud control act*. No moneys shall be paid into the medicaid fraud prosecution revolving fund pursuant to this section unless the attorney general or appropriate county or district attorney has commenced a prosecution pursuant to this section, and the court finds in its discretion that payment of attorney fees and investigative costs is appropriate under all the circumstances, and the attorney general, or county or district attorney has proven to the court that the expenses were reasonable and necessary to the investigation and prosecution of such case, and the court approves such expenses as being reasonable and necessary.

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

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

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

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

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

(c) That portion of any recovery remitted to the state treasurer pursuant to subsection (a) shall be remitted to the state treasurer in accord-

ance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state general fund and, subject to any relevant guidelines of the federal department of health and human services' office of inspector general regarding repayment of fees or recoveries, shall credit 10% of such remittance to the false claims litigation revolving fund, which is hereby established in the state treasury. Moneys in the false claims litigation revolving fund may be expended by the attorney general for the purpose of hiring necessary staff and to defray the costs of investigating and litigating ongoing false claims cases and may be shared at the direction of the attorney general with the ~~Kansas medicaid fraud control unit~~ *and abuse division*, Kansas bureau of investigation or any county, city or private attorneys who may be utilized or contracted with pursuant to K.S.A. 2013 Supp. 75-7504, and amendments thereto, in carrying out the purposes of this act and any other operating expenses incurred in administering the Kansas false claims act. All expenditures from the false claims litigation revolving fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or the attorney general's designee.

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

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.