

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 13-0831.01 Brita Darling x2241

SENATE BILL 13-205

SENATE SPONSORSHIP

Hodge and Roberts,

HOUSE SPONSORSHIP

Gardner,

Senate Committees
Health & Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING REVISIONS TO THE COLORADO MEDICAID FALSE CLAIMS**
102 **ACT TO COMPLY WITH FEDERAL LAW.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

In order for Colorado to retain a greater percentage of monetary recoveries for fraudulent medicaid claims, the "Colorado Medicaid False Claims Act" (act) must be at least as effective as federal law in rewarding and facilitating qui tam actions for false and fraudulent claims. The bill amends the act to bring the act into compliance with federal law as

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
April 2, 2013

follows:

- ! Removes specific dollar amounts relating to the penalty and instead references federal law to determine the amount of the penalty and any adjustments to the penalty;
- ! Corrects statutory language as to whom a claim is presented;
- ! Clarifies that the act bars persons other than the state from intervening only in actions brought under this act and not in other actions;
- ! Clarifies that the court does not have jurisdiction under this act against members of the general assembly, state judiciary, or an elected executive branch official if the claim is based upon information or evidence known to the state at the time the action is brought;
- ! Clarifies that a person bringing the action (relator) cannot bring an action based upon allegations or transactions that are the subject of a civil suit or administrative civil money penalty proceeding in which the state is already a party;
- ! Requires the court, with certain exceptions, to dismiss an action that is based upon allegations or transactions publicly disclosed in certain ways, unless the relator is the original source of the information;
- ! Clarifies who can bring an action under the act for retaliation relating to employment and provides the time frame within which an action for retaliation must be brought; and
- ! Amends the definitions of "obligation" and "original source".

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 13-80-102.5, **amend**

3 (1) as follows:

4 **13-80-102.5. Limitation of actions - medical or health care.**

5 (1) Except as otherwise provided in this section OR SECTION 25.5-4-307,
6 C.R.S., no action alleging negligence, breach of contract, lack of
7 informed consent, or other action arising in tort or contract to recover
8 damages from any health care institution, as defined in paragraph (a) of
9 subsection (2) of this section, or any health care professional, as defined

1 in paragraph (b) of subsection (2) of this section, shall be maintained
2 unless such action is instituted within two years after the date that such
3 action accrues pursuant to section 13-80-108 (1), but in no event shall an
4 action be brought more than three years after the act or omission which
5 gave rise to the action.

6 **SECTION 2.** In Colorado Revised Statutes, 13-80-103.5, **repeal**
7 (1) (e) as follows:

8 **13-80-103.5. General limitation of actions - six years.** (1) The
9 following actions shall be commenced within six years after the cause of
10 action accrues and not thereafter:

11 (e) ~~All actions brought for restitution and civil penalties pursuant~~
12 ~~to section 25.5-4-306, C.R.S.~~

13 **SECTION 3.** In Colorado Revised Statutes, 25.5-4-304, **amend**
14 (5) as follows:

15 **25.5-4-304. Definitions.** As used in sections 25.5-4-303.5 to
16 25.5-4-309, unless the context otherwise requires:

17 (5) "Obligation" means a fixed or contingent duty arising from an
18 express or implied contractual, quasi-contractual, grantor-grantee,
19 licensor-licensee, statutory, fee-based, or similar relationship, ~~and~~ OR the
20 retention of overpayment.

21 **SECTION 4.** In Colorado Revised Statutes, 25.5-4-305, **amend**
22 (1) introductory portion and (1) (a) as follows:

23 **25.5-4-305. False medicaid claims - liability for certain acts.**

24 (1) Except as otherwise provided in subsection (2) of this section, a
25 person is liable to the state for a civil penalty of not less than five
26 thousand FIVE HUNDRED dollars and not more than ~~ten~~ ELEVEN thousand
27 dollars, PROVIDED THAT THESE UPPER AND LOWER LIMITS ON LIABILITY

1 SHALL AUTOMATICALLY INCREASE TO EQUAL THE CIVIL PENALTY
2 ALLOWED UNDER THE FEDERAL "FALSE CLAIMS ACT", 31 U.S.C. SEC.
3 3729, ET SEQ., IF AND AS THE PENALTIES IN SUCH FEDERAL ACT MAY BE
4 ADJUSTED FOR INFLATION AS DESCRIBED IN SAID ACT IN ACCORDANCE
5 WITH THE FEDERAL "CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF
6 1990", PUB. L. NO. 101-410, plus three times the amount of damages that
7 the state sustains because of the act of that person, if the person:

8 (a) Knowingly presents, or causes to be presented, ~~to an officer or~~
9 ~~employee of the state~~ a false or fraudulent claim for payment or approval;

10 **SECTION 5.** In Colorado Revised Statutes, 25.5-4-306, **amend**
11 (2) (e), (5), and (7) as follows:

12 **25.5-4-306. Civil actions for false medicaid claims.** (2) **Actions**
13 **by private persons.** (e) When a relator brings an action under this
14 subsection (2), ~~the federal false claims act, or any similar provision of the~~
15 ~~laws of any other state,~~ no person other than the state may intervene or
16 bring a related action based on the facts underlying the pending action.

17 (5) **Certain actions barred.** (a) A court shall not have
18 jurisdiction over an action brought under this section against a member
19 of the general assembly, a member of the state judiciary, or an elected
20 official in the executive branch of the state of Colorado ~~IF THE ACTION IS~~
21 ~~BASED ON EVIDENCE OR INFORMATION KNOWN TO THE STATE WHEN THE~~
22 ~~ACTION WAS BROUGHT.~~

23 (b) A relator shall not bring an action under subsection (2) of this
24 section that is based upon allegations or transactions that are the subject
25 of a civil suit ~~in a court of this state~~ or an administrative civil money
26 penalty proceeding in which the state is already a party.

27 (c) (I) A court shall ~~not have jurisdiction over~~ DISMISS an action

1 OR CLAIM brought under subsection (2) of this section ~~if the action is~~
2 ~~based upon the public disclosure of allegations or transactions in a~~
3 UNLESS OPPOSED BY THE STATE, IF SUBSTANTIALLY THE SAME
4 ALLEGATIONS OR TRANSACTIONS AS ALLEGED IN THE ACTION OR CLAIM
5 WERE PUBLICLY DISCLOSED IN A STATE criminal, civil, or administrative
6 hearing IN WHICH THE STATE OR ITS AGENT IS A PARTY, in a legislative,
7 administrative, or state auditor's report, hearing, audit, or investigation,
8 or ~~from~~ BY the news media, unless the action is brought by the state or the
9 relator is an original source of the information. ~~that is the basis for the~~
10 ~~action.~~

11 (II) For purposes of this paragraph (c), "original source" means an
12 individual who ~~has direct and independent knowledge of the information~~
13 ~~on which the allegations are based~~ PRIOR TO A PUBLIC DISCLOSURE UNDER
14 SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) HAS VOLUNTARILY DISCLOSED
15 TO THE STATE THE INFORMATION ON WHICH THE ALLEGATIONS OR
16 TRANSACTIONS IN A CLAIM ARE BASED, OR WHO HAS KNOWLEDGE THAT IS
17 INDEPENDENT OF AND MATERIALLY ADDS TO THE PUBLICLY DISCLOSED
18 ALLEGATIONS OR TRANSACTIONS, and has voluntarily provided the
19 information to the state before filing an action under subsection (2) of this
20 section. that is based on the information.

21 (7) **Private action for retaliation.** (a) ~~A relator~~ AN EMPLOYEE,
22 CONTRACTOR, OR AGENT shall be entitled to all relief necessary to make
23 the ~~relator~~ EMPLOYEE, CONTRACTOR, OR AGENT whole, if the ~~relator~~
24 EMPLOYEE, CONTRACTOR, OR AGENT is discharged, demoted, suspended,
25 threatened, harassed, or in any other manner discriminated against in the
26 terms and conditions of ~~the relator's~~ employment by the defendant or by
27 any other person because of lawful acts done by the ~~relator~~ EMPLOYEE,

1 CONTRACTOR, OR AGENT, OR ASSOCIATED OTHERS in furtherance of an
2 action under this section or in furtherance of an effort to stop any
3 violations of section 25.5-4-305.

4 (b) (I) ~~A relator~~ AN EMPLOYEE, CONTRACTOR, OR AGENT who
5 seeks relief pursuant to this subsection (7) shall be entitled to all relief
6 necessary to make the ~~relator~~ EMPLOYEE, CONTRACTOR, OR AGENT whole.
7 Such relief shall include:

8 (A) ~~If the relator is an employee,~~ Reinstatement with the same
9 seniority status the ~~relator~~ EMPLOYEE, CONTRACTOR, OR AGENT would
10 have had but for the discrimination, twice the amount of back pay, and
11 interest on the back pay; and

12 (B) Compensation for any special damages sustained as a result
13 of the discrimination or retaliation, including litigation costs and
14 reasonable attorney fees.

15 (II) ~~A relator~~ AN EMPLOYEE, CONTRACTOR, OR AGENT may bring
16 an action in the appropriate court of the state for the relief provided in this
17 subsection (7).

18 **SECTION 6.** In Colorado Revised Statutes, 25.5-4-307, **add** (5)
19 as follows:

20 **25.5-4-307. False medicaid claims procedures.** (5) A PRIVATE
21 ACTION FOR RETALIATION UNDER SECTION 25.5-4-306 (7) MAY NOT BE
22 BROUGHT MORE THAN THREE YEARS AFTER THE DATE WHEN THE
23 RETALIATION OCCURRED.

24 **SECTION 7. Act subject to petition - effective date.** This act
25 takes effect at 12:01 a.m. on the day following the expiration of the
26 ninety-day period after final adjournment of the general assembly (August
27 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the
2 state constitution against this act or an item, section, or part of this act
3 within such period, then the act, item, section, or part will not take effect
4 unless approved by the people at the general election to be held in
5 November 2014 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor.