HOUSE BILL 1986
By Shipley

SENATE BILL 2080

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 4; Title 50; Title 56 and Title 71, relative to certain financial claims for payment or reimbursement.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 2, Part 1, is amended by adding the following as new sections:

56-2-125.

(a) All entities providing health insurance or health care coverage, workers compensation, auto insurance, or homeowner's insurance to individuals residing within the state shall respond to eligibility inquiry messages or upload to a centralized database such information on coverage and benefits as may be required by any health care provider, health plan, health plan sponsor, or their agent regarding the coverage provided by the entity to any patient or beneficiary of the medical service provider, health plan, or health plan sponsor.

(b) Publicly sponsored health plans, including medical assistance under title 71, state employee and state retiree health plans, and the health plans of political subdivisions, shall presume that coverage may exist for their insured persons on the enrollment record of any other health plan and shall cause eligibility inquiries to be transmitted to every health plan or casualty insurer in the United States, for their respective classes of claims, to resolve the primacy of the state's health plans prior to receiving claims or expending public funds on claims or on premiums. After September 1, 2009, no public funds shall be expended on any claim or premium in the absence of a

third-party certification that a comprehensive, electronic test of primacy has first been executed.

(c) Any health care provider, health plan, health plan sponsor or its agent is authorized to transmit the minimum human identifiers in lawful authorized inquiries including the name, gender, and date of birth of a patient to any and all entities licensed or registered to provide health insurance or health care coverage or casualty coverage to individuals residing within the state to establish the coverage in force for a patient presenting or about to present a claim. A health plan receiving such messages shall respond accurately to them in not more than twenty-four (24) hours.

56-2-126.

(a) Any party named in § 56-2-125 has a cause of action for injunctive relief and costs, including attorney fees, for the enforcement of this section against any noncompliant health plan. Upon a second or successive occurrence of failure or refusal to reply to the messages required under § 56-2-125(a) and (b), a court must award damages to a plaintiff, according to subsection (b).

(b) Upon a finding that a health plan knowingly failed or refused to comply with the duties imposed by this section, a court must impose a penalty of one thousand dollars ($1,000) per eligibility message to which the health plan failed or refused to reply, in accordance with this section. An attempt to impose data elements or other burdens not expressly authorized by this section upon the content, terms, or execution of such messaging must be construed as a refusal to comply.

(c) Upon a showing by any health plan funded in whole or in part by the state or its agent that a health plan has failed or refused to respond to the messaging requirements of this section, the attorney general and reporter shall:

(1) Subpoena the enrollment data of any such entity;

(2) Commence a complaint under applicable federal law for administrative sanctions under the Health Insurance Portability and Accountability Act;

(3) Commence a prosecution under 18 U.S.C. § 1035; and

(4) Commence an action in state court to enjoin the entity from nonperformance of its duty pursuant to this section.

(d) Upon notice of a second finding by a court, the attorney general and reporter, or any health plan or health care provider operated by or for the benefit of the state or its political subdivisions, of the failure or refusal of an entity described in § 56-2-125 to comply with the messaging required in § 56-2-125, the commissioner of commerce and insurance shall permanently revoke the license of any health plan. The commissioner of commerce and insurance shall include any finding of another state's health plan or provider or by the federal government of a violation of comparable law in the calculation of the first and second offenses.

(e) Every state-funded health plan and medical provider shall commence an audit of the primacy of its payments by matching the identities of its beneficiaries electronically using the transactions mandated under applicable federal law against the enrollment of all other health plans within one hundred twenty (120) days of the effective date of this act. Each such organization shall file the report of that audit with the appropriate committees of the senate and house of representatives within three hundred (300) days of the effective date of this act.

(f) After September 1, 2009, no health plan funded directly or indirectly by tax assets shall pay any claim or premium which lacks a certificate of the health plan's primacy derived from a comprehensive, electronic, preemptive test of all other coverage, or a certificate of its net liability as a secondary payer.

(g) The department of revenue shall respond to inquiries or enable access to data on the employment and income of any person seeking contribution to such person's cost of coverage under medical assistance pursuant to title 71, chapter 5, for the purpose of enabling the accurate and current determination of resources at the time of enrollment and at the time of any claim arising under and potentially billable to a state-supported health plan.

56-2-127. Eligibility, coverage, employment, and income data that is shared under this act by health plans and other parties in the process of determining primacy shall be construed as an element of data used in the process of billing for medical services rendered and is expressly exempt from the privacy and confidentiality provisions of applicable federal law and state law. No person receiving such data for that purpose may convert the use of said data to any other purpose.

SECTION 2. Tennessee Code Annotated, Title 4, Chapter 18, is amended by deleting the chapter in its entirety and by substituting instead the following:

4-18-101. As used in this chapter unless the context requires otherwise:

(1) "Claim" includes any request or demand for state funds made to any employee, officer, or agent of the state, or to any contractor, grantee, or other recipient, whether under contract or not;

(2) "Employer" includes any natural person, corporation, firm, association, organization, partnership, business, trust, or state-affiliated entity involved in a nongovernmental function, including state universities and state hospitals;

(3)

(A) "Knowing" and "knowingly" means that a person, with respect to information, does any of the following:

(i) Has actual knowledge of the information;

(ii) Acts in deliberate ignorance of the truth or falsity of the information; or

(iii) Acts in reckless disregard of the truth or falsity of the information;

(B) Proof of specific intent to defraud is not required;

(4) "Person" includes any natural person, corporation, firm, association, organization, partnership, business, or trust; and

(5) "State funds" means money, property, or services, if any portion of the money, property, or services issued from, or was provided by, the state, or if the state will reimburse a contractor, grantee, or other recipient for any portion of the money, property, or services.

4-18-102.

(a) Any person who commits any of the following acts shall be liable to the state for three (3) times the amount of damages that the state sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the state for the costs of a civil action brought to recover any of those penalties or damages, and shall be liable to the state for a civil penalty of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000) for each violation:

(1) Knowingly presenting or causing to be presented to any employee, officer, or agent of the state, or to any contractor, grantee, or other recipient of state funds, a false or fraudulent claim for payment or approval;

(2) Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved;

(3) Conspiring to defraud the state by getting a false claim allowed or paid, or conspiring to defraud the state by knowingly making, using, or causing to

be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state;

(4) Possession, custody, or control of public property or money used or to be used by the state and knowingly delivering or causing to be delivered less property than the amount for which the person receives a certificate or receipt;

(5) Being authorized to make or deliver a document certifying receipt of property used or to be used by the state and knowingly making or delivering a receipt that falsely represents the property used or to be used;

(6) Knowingly buying, or receiving as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;

(7) Knowingly making, using, or causing to be made or used, a false or incomplete record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state; or

(8) Being a beneficiary of an inadvertent submission of a false claim to any employee, officer, or agent of the state, or to any contractor, grantee, or other recipient of state funds, subsequently discovering the falsity of the claim, and failing to disclose the false claim to the state within a reasonable time after discovery of the false claim.

(b) Notwithstanding subsection (a), the court may assess not less than two (2) times the amount of damages that the state sustains because of the act of the person described in subsection (a), and no civil penalty, if the court finds all of the following:

(1) The person committing the violation furnished officials of the state who are responsible for investigating false claims violations with all information known to that person about the violation within thirty (30) days after the date on which the person first obtained the information;

(2) The person fully cooperated with any investigation by the state; and

(3) At the time the person furnished the state with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) This section does not apply to claims, records, or statements made under title 67, chapters 4, 5, or 8.

4-18-103.

(a) The attorney general and reporter diligently shall investigate a violation under § 4-18-102. If the attorney general and reporter finds that a person has violated or is violating § 4-18-102, the attorney general and reporter may bring a civil action under this section against that person.

(b)

(1) A person may bring a civil action for a violation of § 4-18-102 for the person and for the state in the name of the state. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interest of the parties involved and the public purposes behind this chapter.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the attorney general and reporter. The complaint shall also be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and the information.

(3) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (b)(2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until after the complaint is unsealed and served upon the defendant pursuant to the rules of civil procedure.

(4) Before the expiration of the sixty-day period or any extensions obtained under subdivision (b)(3), the state shall:

(A) Proceed with the action, in which case the action shall be conducted by the state; or

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings a valid action under this subsection (b), no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(c)

(1) If the state proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in subdivision (c)(2).

(2)

(A) The state may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the state of the filing of the

motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and present evidence at a hearing.

(B) The state may settle the action with the defendant notwithstanding the objections of the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.

(C) Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(i) Limiting the number of witnesses the person may call;

(ii) Limiting the length of the testimony of such witnesses;

(iii) Limiting the person's cross-examination of witnesses; or

(iv) Otherwise limiting the participation by the person in the litigation.

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

(3) If the state elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts, at the state's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

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

(5) Notwithstanding subsection (b), the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such

person would have had if the 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 an action under this section.

(6) For purposes of this subdivision (c), a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the 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.

(d)

(1)

(A)

(i) If the state proceeds with an action brought by a person under subsection (b), such person shall, subject to the limitations in subdivision (d)(1)(A)(i), receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, which includes damages, civil penalties, payments for costs of compliance, and any other economic benefit realized by the government as a result of the action, depending upon the extent to which the person or his or her counsel, or both, substantially contributed to the prosecution of the action.

(ii) Where the 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 action, relating to

allegations or transactions specifically in a criminal, civil, or administrative hearing, or in a legislative or administrative report, 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 ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(B) Any payment to a person under subdivision (d)(1)(A) shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the appropriate state court judge finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the state does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of such proceeds, which includes damages, civil penalties, payments for costs of compliance, and any other economic benefit realized by the government as a result of the action. Such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 4-18-102 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under subdivision (1) or (2), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from such person's role in the violation of § 4-18-102, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

(4) If the state does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e)

(1) No court shall have jurisdiction over an action brought under subsection (b) against a member of the state legislative branch, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the state when the action was brought.

(2) In no event may a person bring an action under subsection (b) that is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the state is already a party.

(3) Upon motion of the attorney general and reporter, the court may, in consideration of all the equities, dismiss a relator if the elements of the actionable false claims alleged in the qui tam complaint have been publicly disclosed specifically in the news media or in a publicly disseminated governmental report, at the time the complaint is filed.

(f) The state is not liable for expenses that a person incurs in bringing an action under this section.

(g) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by such person's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court of the state for the relief provided in this subsection (g).

4-18-104.

(a) A civil action under § 4-18-103 may not be brought more than ten (10) years after the date on which the violation was committed.

(b) A civil action under § 4-18-103 may be brought for activity prior to the effective date of this section if the limitations period set in subsection (a) has not lapsed.

(c) In any action brought under § 4-18-103, the state or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other law, a guilty verdict rendered in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought under § 4-18-103(a), (b) or (c).

4-18-405.

(a) The provisions of this chapter are not exclusive, and the remedies provided for in this chapter shall be in addition to any other remedies provided for in any other law or available under common law.

(b) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

(c) This chapter shall be liberally construed and applied to promote the public interest. This chapter also adopts the congressional intent behind the federal False Claims Act (31 U.S.C. §§ 3729-3733), including the legislative history underlying the 1986 amendments to the federal False Claims Act.

SECTION 3. Tennessee Code Annotated, Sections 71-5-181, 71-5-182, 71-5-183, 71-5-184 and 71-5-185, are deleted in their entireties.

SECTION 4. For the purposes of rulemaking, this act shall take effect on becoming law, the public welfare requiring it, and for all other purposes it shall take effect on July 1, 2009, the public welfare requiring it.