

February 14, 2007

S 179. ACTIONS TO ADDRESS MEDICAID FRAUD. Filed 2/14/07. *TO STRENGTHEN THE PROSECUTION OF MEDICAID FRAUD BY INCREASING CRIMINAL PENALTIES FOR PROVIDER FRAUD, ESTABLISHING A PRIVATE CIVIL ACTION FOR PROVIDER FALSE CLAIMS, AUTHORIZING INVESTIGATIVE DEMAND PROCEDURES IN CASES OF PROVIDER FRAUD, MAKING IT UNLAWFUL TO ENGAGE IN KICKBACK ACTIVITIES RELATING TO REFERRALS TO AND PURCHASES FOR THE MEDICAID PROGRAM, AND TO APPROPRIATE FUNDS TO THE DEPARTMENT OF JUSTICE TO IMPLEMENT THIS ACT.* Effective December 1, 2007, amends GS 108A-70.12 to make it illegal for medical assistance providers under the Medical Assistance Program to: (1) conspire to defraud the Medical Assistance Program by getting a false claim allowed or paid or (2) knowingly make or use a false record to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medical Assistance Program. Amends GS 108A-70.12(b)(1) to increase the floor and the ceiling for civil penalties from \$5,000 to \$5,500 and from \$10,000 to \$11,000, respectively.

Enacts new Part 7A (Civil Action by Private Persons for Provider False Claims) of Article 2 of GS Chapter 108A to allow a person to bring a civil action for a violation of GS 108A-70.12 on behalf of the person and the State, in the name of the State. The complaint is to be (1) filed in camera, (2) remain under seal for 120 days, and (3) not be served on the defendant until the court orders. Provides for intervention by the State and extensions. If the State proceeds with the action, it has the primary responsibility for prosecuting the action and is not bound by the person bringing the action. Provides for state dismissal of the action, for state settlement of the action, for limitations on the person initiating the action in the litigation upon a showing by the state or defendant, for the person initiating the action to conduct the action if the state elects not to proceed, for a staying of the discovery period, and for the state to pursue its claim through alternative remedies. Provides for the awarding of penalties and damages whether the State proceeds with the action or the person bringing the action proceeds with the action. Bars the following actions: (1) an action brought based on information from a present or former State employee unless the person has already exhausted existing internal procedures or the State has failed to act on the information within a reasonable time; (2) actions based upon allegations that are the subject of a civil suit or administrative proceeding that the State is already party to; and (3) actions based upon public disclosure in a number of settings, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information. Sets the statute of limitations at six years after the violation is committed; or more than three years after the date when facts material to the right of action should have been known, but in that event, not more than 10 years after the date the violation is committed, whichever is later.

Enacts new GS 108A-63.1 (Authorized investigative demand procedures) allowing the Attorney General to issue a subpoena for information related to violations of GS 108A-64 (Medical assistance recipient fraud), 108A-60 (Protection of patient property), 14-32.1 (Assaults on handicapped persons; punishments), or 14-32.2 (Patient neglect and abuse; punishments). Provides for the issuance of subpoenas, witness fees, and enforcement of subpoenas. Limits instances when an individual's health information may be disclosed. Makes conforming changes to GS 108A-70.15.

Effective July 1, 2007, amends GS 108A-63 to make it illegal for a medical assistance provider to (or attempt to) execute a scheme or artifice to defraud the Medical Assistance Program or use false pretenses to obtain money or property owned by the Medical Assistance Program. If the value of benefits or services is \$100,000 or more, a violation is a Class C felony; if it is valued at less than \$100,000, a violation is a Class H felony. Also amends GS 108A-63 to make it illegal for any person to solicit or receive, or offer or pay, any remuneration in return for referring an individual to a person for furnishing services for which payment is made under the Medical Assistance Program or in return for purchasing or recommending purchasing an item for which payment may be made under the Medical Assistance Program. Appropriates unspecified amounts for 2007-08 and 2008-09 from the General Fund to the Department of Justice for additional investigative legal and support positions and for other purposes to carry out this act.

Intro. by Rand.

GS 108A, APPROP

July 31, 2007

S 179. ACTIONS TO ADDRESS MEDICAID FRAUD. Filed 2/14/07. Senate committee substitute makes the following changes to 1st edition. Modifies GS 108A-70.12 to clarify that it is unlawful for a medical assistance provider to engage in any of the listed activities. Modifies proposed new GS 108A-70.17 as follows. (1) Clarifies that a civil action initiated under GS 108A-70.12 (liability for certain acts) may be dismissed prior to service of the complaint on the defendant if specified conditions are met. (2) Clarifies that the time period to file a response to a complaint filed under the section begins 21 days after the complaint is unsealed and served on the defendant. (3) Permits the court to consolidate or dismiss subsequent actions filed based on the facts underlying a pending action while the complaint in that action is sealed.

Modifies proposed new GS 108A-70.17A to provide that the court may delay a discovery request from the person initiating the action for a period of not more than 60 days if the state makes a showing that any proposed discovery in the civil action would interfere with the state's ongoing criminal or civil prosecution. Deletes provision that provided that a person initiating the action has the same rights in an alternate proceeding as the person would have had if the action continued under the part. Modifies proposed new GS 108A-70.17B to direct that a person who has received or may receive a share of the proceeds or settlement based on the same facts in an action brought in federal court may not receive a share of proceeds awarded on the same facts in a state court. Makes additional changes in provisions regarding awards to *whistleblower* plaintiffs.

Modifies proposed new GS 108A-70.17C to direct that a court does not have jurisdiction over an action brought under the part based on information discovered by a present or former employee of a political subdivision of the state.

Deletes proposed new GS 108A-63.1 (authorized investigative demand procedures) and proposed amendments to GS 108A-63 (Medical assistance provider fraud). Deletes proposed appropriation from the General Fund to the Department of Justice.

The act becomes effective December 1, 2007, and applies to offenses committed on or after that date and actions filed on or after that date.