

March 12, 2009

S 602. MEDICAID FALSE CLAIMS/QUI TAM ACTIONS. Filed 3/12/09. *TO STRENGTHEN THE PROSECUTION OF MEDICAID FRAUD BY INCREASING CRIMINAL PENALTIES FOR PROVIDER FRAUD, CREATING CRIMINAL PENALTIES FOR OBSTRUCTION AND MAKING FALSE ENTRIES, ESTABLISHING A PRIVATE CIVIL ACTION FOR PROVIDER FALSE CLAIMS, AUTHORIZING A SUBPOENA FOR DOCUMENTS IN CASES OF PROVIDER FRAUD AND ABUSE, AND TO APPROPRIATE FUNDS TO THE DEPARTMENT OF JUSTICE TO IMPLEMENT THIS ACT.*

Effective July 1, 2009. Amends GS 108A-70.11(5) to clarify that the definition for *Medical Assistance Program* means the Medical Assistance Program (MAP) established under GS 108A-54 and includes the NC Division of Medical Assistance or its fiscal agents or contractors (was, fiscal agents).

Amends GS 108A-70.12(a) to expand unlawful acts by a provider of medical assistance under MAP to include: (1) conspiring to defraud MAP by obtaining payment for a false or fraudulent claim or getting such a claim allowed; and (2) 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 MAP.

Amends GS 108A-70.12(b)(1) (regarding damages) to increase the civil penalty that a court may assess against a provider of medical assistance under MAP for a violation to not less than \$5,500 (was, \$5,000) and not more than \$11,000 (was, \$10,000). Also provides for a penalty of three times the amount of damages which MAP (was, *Medicaid Assistance Program*) sustained because of the actions of the provider.

Effective January 1, 2010. Enacts new Part 7A, *Civil Action by Private Persons for Provider False Claims*, in GS Chapter 108A, Article 2. Permits a person to bring a civil action for a violation of GS 108A-70.12 (regarding liability for certain acts by providers of medical assistance under MAP). Provides that the action is for the person and the state, and that the action is to be brought in the name of the state. Requires the written consent of the court and the Attorney General before the person who brought the action may have it voluntarily dismissed. Provides for service of the complaint on the Attorney General and prohibits service of the complaint on the defendant until the court orders it. Also requires the complaint to remain under seal for 120 days. Provides additional details regarding the filing of a civil action by private persons.

Provides that should the state proceed with an action, the state has the primary responsibility for prosecuting the action; however, permits the person bringing the action to continue as a party subject to the limitations of this proposed section. Identifies procedural and substantive issues to be considered in a *qui tam* action (a Latin phrase that refers to a legal action by a private citizen, popularly called a whistleblower, against an entity on behalf of the person and the government under a statute that provides a penalty for violations by the entity in the performance of a contract with the government or in violation of a government regulation). Provides that the private citizen or plaintiff in the *qui tam* action may receive an award of at least 15% but not more than 25% of the proceeds of the action or the settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action. Also allows for the Awarding of an amount for reasonable expenses, plus attorneys fees and costs. Provides additional regulations regarding awards to *qui tam* plaintiffs in cases where the state does not proceed with the action and the plaintiff proceeds with the action. Provides for the reduction of shares in specified circumstances. Provides limitations regarding jurisdiction and bars certain actions under proposed new Part 7A. Also provides that GS 108A-70.14 (regarding a civil investigative demand from the office of the Attorney General), and GS 108A-70.15 (regarding remedies for employees who file whistleblower actions), apply to proposed Part 7A. Makes conforming changes to GS 108A-70.15.

Enacts new GS 108A-63.1, authorizing the Attorney General to serve a subpoena on any corporation or governmental entity for production of any records, books, papers, documents, electronic media, or other objects or tangible things under the custody, care, or control of a corporation or governmental entity, that may be relevant to any criminal investigation of an act or activity of a provider that involves a violation of (1) GS 108A-63 (medical assistance provider fraud), (2) GS 14-100 (obtaining property by false pretenses), (3) GS 108A-60 (protection of patient property), (4) GS 14-90 (embezzlement of property), (5) GS 14-32.1 (assaults on

handicap persons), (6) 14-112.2 (exploitation of an elder or disable adult), or (7) GS 14—32.2 (patient abuse and neglect). Provides additional specifications regarding legal procedures relevant to the issuance of the subpoena and response by the entities receiving service.

Provides that a civil action may be brought for activity prior to the effective date of January 1, 2010 under proposed new Part 7A and proposed new GS 108A-63.1 providing that the limitations period set in GS 108A-70.13 (false claims procedure) have not lapsed.

Effective July 1, 2009. Amends GS 108A-63 (regarding medical assistance provider fraud), clarifying that willfully and knowingly engaging in behavior to defraud MAP is unlawful and a Class C felony if the value of the health care benefits, items or services is \$100,000 or more and a Class H felony if their value is less than \$100,000. Provides that it is unlawful for any provider; (1) to, or attempt to, obstruct, delay, or mislead an investigation, or (2) make a false entry in, alter, destroy, or conceal a financial, medical or other record related to the provision of a benefit item, or service with the intent to defraud.

Appropriates an unstated dollar amount for the 2009-10 and 2010-11 fiscal years from the General Fund to the Department of Justice to be used for additional investigative legal and support positions and other purposes to carry out the provisions of the act.

Intro. by Kinnaird.

GS 108A, APPROP