

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS75430-LN-224 (3/21)

Short Title: Medicaid Fraud/Private Civil Actions.

(Public)

Sponsors: Senator Rand.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CIVIL ACTIONS BY PRIVATE PERSONS FOR VIOLATIONS OF THE PROVIDER FALSE CLAIMS ACT; AND TO APPROPRIATE FUNDS TO THE DEPARTMENT OF JUSTICE TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 108A of the General Statutes is amended by adding the following new Part to read:

"Part 7A. Civil Action by Private Persons for Provider False Claims.

"§ 108A-70.17. Civil action filed by private persons.

(a) A person may bring a civil action for a violation of G.S. 108A-70.12 on behalf of the person and the State. The action shall be brought in the name of the State. The action may be dismissed only if the court and the Attorney General have given written consent to the dismissal and their reasons for consenting.

(b) A copy of the motion for judgment and written disclosure of substantially all material evidence and information the person possesses shall be served on the State. The motion for judgment shall be filed in camera, shall remain under seal for at least 120 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 120 days after it receives both the motion for judgment and the material evidence and information.

(c) The State may, for good cause shown, move the court for extensions of the time during which the motion for judgment remains under seal. Any of these motions may be supported by affidavits or other submission in camera. The defendant shall not be required to respond to any motion for judgment filed under this section until 21 days after the motion for judgment is unsealed and served upon the defendant.

(d) Before the expiration of the 120-day period or any extensions obtained under subsection (c) of this section, the State shall proceed with the action, in which case the

1 action shall be conducted by the State, or notify the court that it declines to take over the
2 action, in which case the person bringing the action shall have the right to prosecute the
3 action.

4 (e) When a person brings an action under this section, no person other than the
5 State may intervene or bring a related action based on the facts underlying the pending
6 action.

7 **"§ 108A-70.17A. Rights of private plaintiff and State.**

8 (a) If the State proceeds with the action, it shall have the primary responsibility
9 for prosecuting the action and shall not be bound by an act of the person bringing the
10 action. The person bringing the action shall have the right to continue as a party to the
11 action, subject to the limitations of this section.

12 (b) The State may dismiss the action notwithstanding the objections of the person
13 initiating the action if the person has been notified by the State of the filing of the
14 motion, and the court has provided the person with an opportunity for a hearing on the
15 motion.

16 (c) The State may settle the action with the defendant notwithstanding the
17 objections of the person initiating the action if the court determines, after a hearing, that
18 the proposed settlement is fair, adequate, and reasonable under all the circumstances.
19 Upon a showing of good cause, such hearing may be held in camera. The State may, for
20 good cause shown, move the court for a partial lifting of the seal to facilitate the
21 investigative process or settlement.

22 (d) Upon a showing by the State that unrestricted participation during the course
23 of the litigation by the person initiating the action would interfere with or unduly delay
24 the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of
25 harassment, the court may, in its discretion, impose limitations on the person's
26 participation, such as (i) limiting the number of witnesses the person may call; (ii)
27 limiting the length of the testimony of such witnesses; (iii) limiting the person's
28 cross-examination of witnesses; and (iv) otherwise limiting the participation by the
29 person in the litigation.

30 (e) Upon a showing by the defendant that unrestricted participation during the
31 course of the litigation by the person initiating the action would be for purposes of
32 harassment or would cause the defendant undue burden or unnecessary expense, the
33 court may limit the participation by the person in the litigation.

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

41 (g) Whether or not the State proceeds with the action, upon a showing by the
42 State that certain actions of discovery by the person initiating the action would interfere
43 with the State's investigation or prosecution of a criminal or civil matter arising out of
44 the same facts, the court may stay the discovery for a period of not more than 60 days.

1 The showing by the State shall be conducted in camera. The court may extend the
2 60-day period upon a further showing in camera that the State has pursued the criminal
3 or civil investigation or proceedings with reasonable diligence, and any proposed
4 discovery in the civil action will interfere with the ongoing criminal or civil
5 investigation or proceedings.

6 (h) Notwithstanding G.S. 108A-70.17(b), the State may elect to pursue its claim
7 through any alternate remedy available to the State, including any administrative
8 proceeding to determine a civil money penalty. If an alternate remedy is pursued in
9 another proceeding, the person initiating the action shall have the same rights in the
10 alternate proceeding as the person would have had if the action had continued under this
11 section. Any finding of fact or conclusion of law made in the alternate proceeding that
12 has become final shall be conclusive on all parties to an action under this Part. For
13 purposes of this subsection, a finding or conclusion is final if it has been finally
14 determined on appeal to a court of competent jurisdiction of the State, if the time for
15 filing an appeal with respect to the finding or conclusion has expired, or if the finding or
16 conclusions are not subject to judicial review.

17 **"§ 108A-70.17B. Award to private plaintiff.**

18 (a) Except as otherwise provided in this section, if the State proceeds with an
19 action brought by a person under G.S. 108A-70.17, the person shall receive at least
20 fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of
21 the action or settlement of the claim, depending upon the extent to which the person
22 substantially contributed to the prosecution of the action. The plaintiff's share in the
23 proceeds of the action or settlement is administrative costs of the action. Where the
24 action is one that the court finds to be based primarily on disclosures of specific
25 information, other than information proved by the person bringing the action, relating to
26 allegations or transaction in a criminal, civil, or administrative hearing, in a legislative,
27 administrative, or State Auditor's report, hearing, audit, or investigation, or from the
28 news media, the court may award such sums as it considers appropriate, but in no case
29 more than ten percent (10%) of the proceeds of the award. The person shall also receive
30 an amount for reasonable expenses that the court finds to have been necessarily
31 incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs
32 shall be awarded against the defendant. A share of the proceeds of an action or
33 settlement of the claim shall not be awarded to the person bringing the action in State
34 court under this Part if the person has received or may receive a share of the proceeds or
35 settlement of an action or claim on the same facts brought in federal court.

36 (b) If the State does not proceed with an action, the person bringing the action or
37 settling the claim shall receive an amount that the court decides is reasonable for
38 collecting the civil penalty and damages. The amount shall be not less than twenty-five
39 percent (25%) and not more than thirty percent (30%) of the proceeds of the award or
40 settlement and shall be paid out of the proceeds. The person shall also receive an
41 amount for reasonable expenses that the court finds to have been necessarily incurred,
42 plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be
43 awarded against the defendant.

1 (c) Whether or not the State proceeds with the action, if the court finds that the
2 action was brought by a person who planned and initiated the violation of
3 G.S. 108A-70.12 upon which the action was brought, or if the person bringing the
4 action is convicted of criminal conduct arising from the person's role in the violation of
5 G.S. 108A-70.12, that person shall be dismissed from the civil action and shall not
6 receive any share of the proceeds of the action. The dismissal shall not prejudice the
7 right of the State to continue the action.

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

13 **"§ 108A-70.17C. Certain actions barred.**

14 (a) No court shall have jurisdiction over an action brought under this Part based
15 on information discovered by a present or former employee of the State during the
16 course of the present or former employee's employment unless that employee first, in
17 good faith, exhausted existing internal procedures for reporting and seeking recovery of
18 the falsely claimed sums through official channels and unless the State failed to act on
19 the information provided within a reasonable period of time.

20 (b) No court shall have jurisdiction over any action brought under this Part by an
21 inmate incarcerated within a State or local correctional facility.

22 (c) No court shall have jurisdiction over an action brought under this Part against
23 any department, authority, board, bureau, commission, or agency of the State, any
24 political subdivision of the State, a member of the General Assembly, a member of the
25 judiciary, or an exempt official if the action is based on evidence or information known
26 to the State when the action was brought. For purposes of this section, "exempt official"
27 means the Governor, Lieutenant Governor, Attorney General, and the directors or
28 members of any department, authority, board, bureau, commission, or agency of the
29 State or any political subdivision of the State.

30 (d) In no event may a person bring an action under this Part that is based upon
31 allegations or transactions that are the subject of a civil suit or an administrative
32 proceeding in which the State is already a party.

33 (e) No court shall have jurisdiction over an action under this Part based upon the
34 public disclosure of allegations or transactions in a criminal, civil, or administrative
35 hearing, in a legislative, administrative, or State Auditor's report, hearing, audit, or
36 investigation, or from the news media, unless the action is brought by the Attorney
37 General, or the person bringing the action is an original source of the information. For
38 purposes of this section, "original source" means an individual who has direct and
39 independent knowledge of the information on which the allegations are based and has
40 voluntarily provided the information to the State before filing an action under this Part
41 that is based on the information.

42 (f) The State is not liable for expenses a person incurs in bringing an action
43 under this Part.

44 (g) G.S. 108A-70.14 and G.S. 108A-70.15 apply to this Part.

1 **"§ 108A-70.17D. Procedure; statute of limitations.**

2 (a) A subpoena requiring the attendance of a witness at a trial or hearing
3 conducted under this Part may be served at any place in the State.

4 (b) A civil action under this Part may not be brought (i) more than six years after
5 the date on which the violation is committed, or (ii) more than three years after the date
6 when facts material to the right of the action are known or reasonably should have been
7 known by the official of the State charged with responsibility to act in the
8 circumstances, but in that event no more than 10 years after the date on which the
9 violation is committed, whichever occurs last."

10 **SECTION 2.** G.S. 108A-70.15 reads as rewritten

11 **"§ 108A-70.15. Employee remedies.**

12 (a) In the absence of fraud or malice, no person who furnishes information to
13 officials of the State responsible for investigating false claims violations shall be liable
14 for damages in a civil action for any oral or written statement made or any other action
15 that is necessary to supply information required pursuant to this ~~Part~~ Part or Part 7A of
16 this Article.

17 (b) Any employee of a provider who is discharged, demoted, suspended,
18 threatened, harassed, or in any other manner discriminated against in the terms and
19 conditions of employment by the employee's employer because of lawful acts done by
20 the employee on behalf of the employee or others in furtherance of an action under
21 ~~G.S. 108A-70.12, 108A-70.12, or Part 7A of this Article,~~ including investigation for,
22 initiation of, testimony for, or assistance in an action filed or to be filed under
23 ~~G.S. 108A-70.12, 108A-70.12, or Part 7A of this Article,~~ shall be entitled to all relief
24 necessary to make the employee whole. Relief shall include reinstatement with the same
25 seniority status as the employee would have had but for the discrimination, two times
26 the amount of back pay, interest on the back pay, and compensation for any special
27 damages sustained as a result of the discrimination, including litigation costs and
28 reasonable attorneys' fees. An employee may bring an action in the appropriate court for
29 the relief provided in this section."

30 **SECTION 3.** There is appropriated from the General Fund to the
31 Department of Justice the sum of \$ for the 2006-2007 fiscal year. These funds shall be
32 used for additional investigative positions needed to carry out the provisions of this act.

33 **SECTION 4.** Sections 1 and 2 of this act become effective December 1,
34 2006. The remainder of this act becomes effective July 1, 2006.