

AN ACT relating to the Kentucky False Claims Act.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 9 of this Act:

- (1) "Claim" includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the Commonwealth provides any portion of the money or property which is requested or demanded, or if the Commonwealth will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded;*
- (2) "Commonwealth" means the Commonwealth of Kentucky, and any cabinet, agency, board, commission, or similar entity of state government, and includes within the class of persons against whom a violation of subsection (1) of Section 2 of this Act may be committed a public or private entity under contract with the government to accept, process, review, or pay claims, including any managed care provider contracting with the state Medical Assistance Program;*
- (3) "Documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information-retrieval systems, together with instructions and all other materials necessary to use or interpret the data compilations, and any product of discovery;*
- (4) "Knowing" and "knowingly," with respect to information, means that a person, acting with or without a specific intent to defraud, either:*

 - (a) Has actual knowledge of the information;*
 - (b) Acts in deliberate ignorance of the truth or falsity of the information; or*
 - (c) Acts in reckless disregard of the truth or falsity of the information.*

In no case shall a person who acts merely negligently, inadvertently, or mistakenly with respect to information be deemed to have acted knowingly;

(5) "Original source" means an individual who has voluntarily disclosed to the government the information on which allegations or transactions in a claim are based prior to their public disclosure under circumstances described in subsection (1) of Section 3 of this Act or who has knowledge that is independent of and materially adds to the publically disclosed allegations or transactions and provided that knowledge to the government prior to filing an action as a relator under Sections 1 to 9 of this Act; and

(6) "Relator" means a private individual who brings a civil action on behalf of both the Commonwealth and the individual under Section 3 of this Act.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) No person shall:

(a) Knowingly present, or cause to be presented, to an officer or employee of the Commonwealth a false or fraudulent claim for payment or approval;

(b) Knowingly make, use, or cause to be made or used, a materially false record or statement to get a false or fraudulent claim paid or approved by the Commonwealth;

(c) Have possession, custody, or control of property or money used, or to be used, by the Commonwealth and, intending to defraud the Commonwealth or to willfully conceal the property, deliver or cause to be delivered less than all of that money or property;

(d) Authorize to make or deliver a document certifying receipt of property used, or to be used, by the Commonwealth and, intending to defraud the Commonwealth, make or deliver the receipt without completely knowing that the information on the receipt is true;

- (e) Knowingly buy, or receive as a pledge of an obligation or debt, public property from an officer or employee of the Commonwealth who lawfully may not sell or pledge the property;
- (f) Knowingly make, use, or cause to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Commonwealth;
- (g) Knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money to the Commonwealth; or
- (h) Conspire to commit a violation of this subsection.
- (2) A person who violates subsection (1) of this section shall be liable in a civil action brought under Sections 1 to 9 of this Act for:

 - (a) Three (3) times the amount of damages sustained by the Commonwealth;
 - (b) A civil penalty of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000) for each violation; and
 - (c) The costs of a civil action brought to recover the penalty or damages, including a reasonable attorney's fee.
- (3) The Attorney General may bring a civil action to recover the damages, penalties, and costs authorized by this section or to obtain appropriate injunctive relief restraining future violations, or both.
- (4) In determining the amount of the civil penalty imposed under subsection (2) of this section for a violation of this section, the court shall consider:

 - (a) The nature, circumstances, extent, and gravity of the violation;
 - (b) Whether the person has previously violated this section;
 - (c) The violation's threat to public or individual health and safety;
 - (d) Whether the person acted in bad faith in committing the violation; and
 - (e) The amount necessary to deter future violations.
- (5) The court may reduce a person's liability under subsection (2)(a) of this section

to double the value of the damages sustained if, prior to the Attorney General beginning an investigation of the violation, the person furnished all information known to the person about the violation to the Attorney General not later than the thirtieth day after the date on which the person first obtained the information.

(6) This section shall not apply to claims, records, or statements made in relation to any tax imposed by the Commonwealth.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) A private person may bring a civil action as a relator to recover the amounts allowed by Section 2 of this Act if:

(a) The relator has not been convicted of a criminal offense arising out of the violation;

(b) The violation is not the basis of a previously initiated criminal, civil, or administrative action in which the Commonwealth is a party; and

(c) The violation has not been previously disclosed in the news media or in a legislative or administrative report, hearing, audit, or investigation unless the relator is an original source for information on the violation.

(2) In initiating the civil action, a relator, in addition to any other ordinary filing requirements, shall:

(a) Notify the circuit clerk in writing that the action is being brought under Sections 1 to 9 of this Act, which the Court of Justice may require by rule to be done utilizing a form provided by the Administrative Office of the Courts;

(b) Request that a copy of the complaint be sent to the Attorney General; and

(c) Within five (5) days of the filing of the complaint, deliver to the Attorney General a written disclosure of substantially all material evidence and information possessed by the person pertaining to the alleged violation.

- (3) A circuit clerk receiving a complaint under subsection (2) of this section shall:
- (a) Send a copy of the complaint to the Attorney General;
 - (b) Place the case record under seal until ordered otherwise by the court, with access being allowed only to the court, the relator, and the Attorney General; and
 - (c) Issue process for the defendant only after ordered to do so by the court.
- (4) Within the sixty (60) day period following the filing of the complaint, the Attorney General may intervene in the action and assume representation of the Commonwealth's interest. Upon motion of the Attorney General with proper notice to the relator, the court may, after an in camera hearing, extend this sixty (60) day period for good cause shown.
- (5) If the Attorney General intervenes under this section, the Attorney General shall:
- (a) Notify the relator of the intervention and move the court to direct the clerk to unseal the case record and issue process to the defendant either immediately or at a future time certain;
 - (b) Have primary responsibility for prosecuting the action and not be bound by an act of the relator, although the relator may continue as a party; and
 - (c) Have the authority to seek dismissal of or settle the action over the relator's objection if the court finds after a hearing, which may be held in camera, that the dismissal or settlement is fair, adequate, and reasonable under all the circumstances.
- (6) If the Attorney General does not intervene under subsection (4) of this section, the Attorney General shall notify the relator and the court of the decision not to intervene. The relator shall then move the court to direct the clerk to unseal the case record and issue process to the defendant. The court, without limiting the status and rights of the relator, may permit the Attorney General to intervene at a later date upon a showing of good cause.

- (7) A defendant's time period for filing an answer shall not begin to run until process is issued for that defendant.
- (8) While under seal, a civil action may only be dismissed on motion of the relator, with either the Attorney General's consent or upon a showing of good cause made in a hearing where the Attorney General may be heard on the request.
- (9) At the Attorney General's request and expense, a relator shall provide copies of all pleadings and discovery in the action.
- (10) Once a civil action under Sections 1 to 9 of this Act has been filed, no other person may act as a relator in a civil action alleging a violation of Section 2 of this Act based upon the same facts and circumstances.
- (11) The Commonwealth shall not be liable for expenses that a relator incurs in bringing an action under this section.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

- (1) The proceeds of a civil action brought under Sections 1 to 9 of this Act or any resulting settlement shall be distributed to the Commonwealth subject to the following awards to be made by the court:
- (a) If the Attorney General brings or intervenes and assumes control of the action, the court shall award the Attorney General five percent (5%) to fifteen percent (15%) of the total proceeds after giving consideration to the extent of that office's participation in the case and the fiscal needs of that office in performing its assigned responsibilities under Sections 1 to 9 of this Act;
- (b) If the action was brought by a relator, the court shall consider the extent to which the relator substantially contributed to the prosecution of the action and award the relator fifteen percent (15%) to twenty-five percent (25%) of the total proceeds if an award is made to the Attorney General under this

subsection, and twenty-five percent (25%) to thirty percent (30%) if an award is not made to the Attorney General. In fixing a relator's share of the proceeds, the court shall limit the relator's share to not more than ten percent (10%) of the proceeds if:

1. The relator was an original source for the information forming the basis for the action and the information was previously disclosed in a prior criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or in the news media; or
2. The relator planned or initiated the violation, but the court believes an award is merited after considering the relator's role in advancing the case to litigation and any relevant circumstances pertaining to the violation; and

(c) The Attorney General and any relator awarded a share of the proceeds under this subsection shall also be awarded their reasonable expenses, attorney's fees, and costs that the court finds to have been necessarily incurred in bringing the action, with these expenses, fees, and costs being paid by the defendant.

(2) Any proceeds distributed to the Commonwealth in accordance with this section shall be remitted to the unit of government injured by the violation of Section 2 of this Act up to the amount required to reimburse that unit for its loss. Any remaining proceeds distributed to the state shall be deposited in the Kentucky False Claims Recovery Fund, which shall be a separate, nonlapsing, interest-bearing fund within the State Treasury. Amounts deposited in or accruing to the fund, including interest, shall remain inviolate until appropriated by the General Assembly for a specific purpose.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

- (1) Discovery in a civil action brought under Sections 1 to 9 of this Act may be stayed or limited by the court if the Attorney General shows that the discovery may unreasonably interfere with a separate civil or criminal action in which the Commonwealth is a party.
- (2) If a relator's unrestricted participation during the course of litigation would interfere with or unduly delay the Commonwealth's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may upon motion of any party to the case impose limitations on the relator's participation, including:
- (a) Limiting the number of witnesses the relator may call;
 - (b) Limiting the length of the testimony of witnesses called by the relator;
 - (c) Limiting the relator's cross-examination of witnesses; or
 - (d) Otherwise limiting the participation by the relator in the litigation.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

- (1) Whenever the Attorney General has reasonable cause to believe that any person may be in possession, custody, or control of any information or documentary material relevant to an investigation of a violation of Section 2 of this Act, the Attorney General may, prior to the initiation of a civil action regarding the violation, issue and cause to be served on any person an administrative subpoena requiring the recipient to provide testimony, information, or records pertaining to the alleged violation by means of a deposition, deposition upon written questions, interrogatories, or request for the production of documents in the same manner and using the same process, standards, and protections as provided for in discovery under the Kentucky Rules of Civil Procedure.
- (2) The administrative subpoena shall be served in the same manner as a subpoena in a civil action.

(3) (a) Information and records held by the Attorney General after being gathered pursuant to this section or having been voluntarily provided in lieu of an administrative subpoena shall not be an open record under KRS 61.870 to 61.884, and shall not be released or disclosed by the Attorney General except:

1. With the consent of the person who provided or who is the subject of the information or record;
2. Pursuant to a court order;
3. In the course of civil litigation under Sections 1 to 9 of this Act, subject to applicable rules of court;
4. To an agency of this state, the United States, or another state;
5. To a Commonwealth's attorney, county attorney, or political subdivision of this state;
6. To a state or federal grand jury;
7. To the United States Attorney General; or
8. To any other person authorized by law to receive the information.

(b) The provisions of this subsection shall not alter the accessibility, releaseability, or open records status of information or records gathered by or provided to the Attorney General which continue to be held by the person or entity from whom the information or records were obtained.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent or associated others in

furtherance of an action under Sections 1 to 9 of this Act or other efforts to stop violations of Section 2 of this Act.

(2) An employee, contractor, or agent who is injured by a violation of this section may petition a court for:

(a) Injunctive relief reinstating the employee, contractor, or agent with the same seniority status the employee, contractor, or agent would have had but for the discrimination;

(b) A monetary award of not less than twice the amount of back pay and interest and an amount compensating the employee, contractor, or agent for any other damages sustained as a result of the violation; and

(c) The employee, contractor, or agent's litigation costs and fees, including a reasonable attorney's fee.

(3) A public employee may utilize this section notwithstanding the administrative remedies granted by KRS Chapters 16, 18A, 78, 90, 95, and 156, and other chapters of the Kentucky Revised Statutes.

(4) An action alleging a violation of this section shall be brought within three (3) years of the cause of action accruing.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) A civil action brought under Sections 1 to 9 of this Act or an action to enforce or limit an administrative subpoena issued under Section 6 of this Act:

(a) Shall be brought in the Franklin Circuit Court or in the Circuit Court of any county in which any part of the violation occurred;

(b) Shall not, except as provided in Section 7 of this Act, be brought:

1. More than six (6) years after the date on which the violation of Section 2 of this Act occurred; or

2. More than three (3) years after the date when facts material to the

right of action are known or reasonably should have been known to an official of the Commonwealth charged with responsibility to act in the circumstances, but no more than ten (10) years after the date on which the violation of Section 2 of this Act is committed; and

(c) Shall require that all elements of a case, including damages, be proven by a preponderance of the evidence.

(2) Any remedies or investigatory authority granted under Sections 1 to 9 of this Act shall be ancillary and supplemental to other criminal, civil, or administrative remedies or authority, including professional or vocational discipline.

(3) Sections 1 to 9 of this Act shall not waive sovereign immunity.

(4) The provisions of Sections 1 to 9 of this Act adopt the intent underlying the federal False Claims Act, 31 U.S.C. secs. 3729-3733, as amended, and the decisions of the courts of the United States under that Act may be used as an aid in construing the provisions of Sections 1 to 9 of this Act.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 9 of this Act shall be known as may be cited as the Kentucky False Claims Act.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) (a) The Attorney General shall have access to all documentary materials generated by the Medical Assistance Program which are under the care, custody, or control of any state or local agency. Any documentary material gathered by the Attorney General under this subsection shall not be an open record under KRS 61.870 to 61.884, and shall not be released or disclosed, except under the same circumstances as delineated under subsection (3) of Section 6 of this Act for the release of information gathered under that

section.

(b) To the extent permitted by 31 U.S.C. secs. 3729 to 3733, the Attorney General may bring an action as relator under 31 U.S.C. sec. 3730 with respect to an act in connection with the Medical Assistance Program for which a person may be held liable under 31 U.S.C. sec. 3729.

(2) If a civil action brought under Sections 1 to 9 of this Act recovers damages arising from an unlawful act involving the Medical Assistance Program, proceeds directed by Section 4 of this Act to be repaid to the Commonwealth or deposited into the Kentucky False Claims Act Recovery Fund shall be paid to the Medical Assistance Program which shall repay to the federal government any required amounts out of these funds.

(3) The cabinet shall develop a system of administrative sanctions for Medical Assistance Program providers who violate Section 2 of this Act, with sanctions including suspension or termination of participation in the program. The sanctioning system may be triggered by a finding of liability in a civil action brought under Sections 1 to 9 of this Act.

➔Section 11. KRS 205.8467 is amended to read as follows:

(1) Any provider who has been found by a preponderance of the evidence in an administrative process, in conformity with any applicable federal regulations and with due process protections, to have knowingly submitted or caused claims to be submitted for payment for furnishing treatment, services, or goods under a medical assistance program provided under this chapter, which payment the provider was not entitled to receive by reason of a violation of this chapter or who has violated Section 2 of this Act, shall:

(a) Be liable for restitution of any payments received in violation of this chapter, and interest at the maximum legal rate pursuant to KRS 360.010 in effect on the date any payment was made, for the period from the date payment was

made to the date of repayment to the Commonwealth;

- (b) Be liable for a civil payment in an amount up to three (3) times the amount of excess payments;
 - (c) Be liable for payment of a civil payment of five thousand five hundred dollars (\$5,500) to eleven thousand dollars (\$11,000)~~five hundred dollars (\$500)~~ for each false or fraudulent claim submitted for providing treatment, services, or goods;
 - (d) Be liable for payment of legal fees and costs of investigation and enforcement of civil payments; and
 - (e) Be removed as a participating provider in the Medical Assistance Program for two (2) months to six (6) months for a first offense, for six (6) months to one (1) year for a second offense, and for one (1) year to five (5) years for a third offense.
- (2) Liability for damages or penalties established under Sections 1 to 9 of this Act shall take priority over and offset any liability for similar damages or penalties under this section. An administrative action under this section may be stayed during the pendency of a civil action brought under Sections 1 to 9 of this Act.
- (3) Civil payments, interest, costs of investigation, and enforcement of the civil remedies recovered on behalf of the Commonwealth under this section shall be remitted to the State Treasurer for deposit in a Medicaid trust fund which is hereby created and shall not lapse. Funds deposited in the Medicaid trust fund shall not be spent until appropriated by the General Assembly for medical assistance services.
- ~~(4)~~~~(3)~~ The remedies under this section are separate from and cumulative to any other administrative, civil, or criminal remedies available under federal or state law or regulation.
- ~~(5)~~~~(4)~~ The Cabinet for Health and Family Services, in consultation with the Office of the Attorney General, may promulgate administrative regulations, pursuant to

KRS Chapter 13A, for the administration of the civil payments contained in this section.

➔Section 12. KRS 194A.990 is amended to read as follows:

- (1) Any person who violates the provisions of KRS 194A.505(1), (2), or (7) shall be guilty of a Class A misdemeanor, unless the sum total of benefits received in excess of that to which the person was entitled at the time of the offense was committed is valued at or over one hundred dollars (\$100), in which case it is a Class D felony.
- (2) Any person who violates KRS 194A.505(3) shall be guilty of a Class D felony.
- (3) Any person who violates the provisions of KRS 194A.505(4) or (5) shall be guilty of a Class C felony.
- (4) Any person who violates the provisions of KRS 194A.505(6) shall be guilty of a Class D felony, unless the purpose of the violation is to obtain ten thousand dollars (\$10,000) or more, in which case it shall be a Class C felony.
- (5) Any person who violates KRS 194A.505(1) to (6) shall, in addition to any other penalties provided by law, forfeit and pay a civil penalty of payment to the cabinet in the amount of all benefits and payments to which the person was not entitled.
- (6) Any provider who violates KRS 194A.505(1) to (6) shall, in addition to any other penalties provided by law, including the penalty set forth in subsection (5) of this section, forfeit and pay civil penalties of:
 - (a) Payment to the State Treasury's general revenue fund in an amount equal to three (3) times the amount of the benefits and payments to which the person was not entitled; and
 - (b) Payment to the State Treasury's general revenue fund of all reasonable expenses that the court determines have been necessarily incurred by the state in the enforcement of this section.
- (7) Liability for damages or penalties established under Sections 1 to 9 of this Act shall take priority over and offset any liability for similar civil damages or**

penalties under this section.