

Added by 2007 Wis. Act 20

## **WISCONSIN FALSE CLAIMS FOR MEDICAL ASSISTANCE LAW**

### **20.931 False claims for medical assistance; actions by or on behalf of state.**

(1) In this section:

(b) "Claim" includes any request or demand for medical assistance made to any officer, employee, or agent of this state.

(c) "Employer" includes all agencies and authorities.

(d) "Knowingly" means, with respect to information, having actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information, or acting in reckless disregard of the truth or falsity of the information. "Knowingly" does not mean specifically intending to defraud.

(dm) "Medical assistance" has the meaning given under s.49.43 (8).

(e) "Proceeds" includes damages, civil penalties, surcharges, payments for costs of compliance, and any other economic benefit realized by this state as a result of an action or settlement of a claim.

(f) "State public official" has the meaning given in s. 19.42(14).

(2) Except as provided in sub. (3), any person who does any of the following is liable to this state for 3 times the amount of the damages sustained by this state because of the actions of the person, and shall forfeit not less than \$5,000 nor more than \$10,000 for each violation:

(a) Knowingly presents or causes to be presented to any officer, employee, or agent of this state a false claim for medical assistance.

(b) Knowingly makes, uses, or causes to be made or used a false record or statement to obtain approval or payment of a false claim for medical assistance.

(c) Conspires to defraud this state by obtaining allowance or payment of a false claim for medical assistance, or by knowingly making or 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 Medical Assistance program.

(g) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease any obligation to pay or transmit money or property to the Medical Assistance program.

(h) Is a beneficiary of the submission of a false claim for medical assistance to any officer, employee, or agent of this state, knows that the claim is false, and fails to disclose the false claim to this state within a reasonable time after the person becomes aware that the claim is false.

(3) The court may assess against a person who violates sub. (2) not less than 2 nor more than 3 times the amount of the damages sustained by the state because of the acts of the person, and shall not assess any forfeiture, if the court finds all of the following:

(a) The person who commits the acts furnished the attorney general with all information known to the person about the acts within 30 days after the date on which the person obtained the information.

(b) The person fully cooperated with any investigation of the acts by this state.

(c) At the time that the person furnished the attorney general with information concerning the acts, no criminal prosecution or civil or administrative enforcement action had been commenced with respect to any such act, and the person did not have actual knowledge of the existence of any investigation into any such act.

(5) (a) Except as provided in subs. (10) and (12), any person may bring a civil action as a qui tam plaintiff against a person who commits an act in violation of sub. (2) for the person and the state in the name of the state.

(b) The plaintiff shall serve upon the attorney general a copy of the complaint and documents disclosing substantially all material evidence and information that the person possesses. The plaintiff shall file a copy of the complaint with the court for inspection in camera. Except as provided in par. (c), the complaint shall remain under seal for a period of 60 days from the date of filing, and shall not be served upon the defendant until the court so orders. Within 60 days from the date of service upon the attorney general of the complaint, evidence, and information under this paragraph, the attorney general may intervene in the action.

(c) The attorney general may, for good cause shown, move the court for one or more extensions of the period during which a complaint in an action under this subsection remains under seal.

(d) Before the expiration of the period during which the complaint remains under seal, the attorney general shall do one of the following:

1. Proceed with the action or an alternate remedy under sub. (10), in which case the action or proceeding under sub. (10) shall be prosecuted by the state.

2. Notify the court that he or she declines to proceed with the action, in which case the person bringing the action may proceed with the action.

(e) If a person brings a valid action under this subsection, no person other than the state may intervene or bring a related action while the original action is pending based upon the same facts underlying the pending action.

(f) In any action or other proceeding under sub. (10) brought under this subsection, the plaintiff is required to prove all essential elements of the cause of action or complaint, including damages, by a preponderance of the evidence.

(6) If the state proceeds with an action under sub. (5) or an alternate remedy under sub. (10), the state has primary responsibility for prosecuting the action or proceeding under sub. (10). The state is not bound by any act of the person bringing the action, but that person has the right to continue as a party to the action, subject to the limitations under sub. (7).

(7) (a) The state may move to dismiss an action under sub. (5) or an administrative proceeding under sub. (10) to which the state is a party for good cause shown, notwithstanding objection of the person bringing the action, if that person is served with a copy of the state's motion and is provided with an opportunity to oppose the motion before the court or the administrative agency before which the proceeding is conducted.

(b) With the approval of the governor, the attorney general may compromise and settle an action under sub. (5) or an administrative proceeding under sub. (10) to which the state is a party, notwithstanding objection of the person bringing the action, if the court determines, after affording to the person bringing the action the right to a hearing at which the person is afforded the opportunity to present evidence in opposition to the proposed settlement, that the proposed settlement is fair, adequate, and reasonable considering the relevant circumstances pertaining to the violation.

(c) Upon a showing by the state that unrestricted participation in the prosecution of an action under sub. (5) or an alternate proceeding to which the state is a party by the person bringing the action would interfere with or unduly delay the prosecution of the action or proceeding, or would result in consideration of repetitious or irrelevant evidence or evidence presented for purposes of harassment, the court may limit the person's participation in the prosecution, such as:

1. Limiting the number of witnesses that the person may call.
2. Limiting the length of the testimony of the witnesses.
3. Limiting the cross-examination of witnesses by the person.
4. Otherwise limiting the participation by the person in the prosecution of the action or proceeding.

(d) Upon showing by a defendant that unrestricted participation in the prosecution of an action under sub. (5) or alternate proceeding under sub. (10) to which the state is a party by the person bringing the action would result in harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the person's participation in the prosecution.

(8) Except as provided in sub. (7), if the state elects not to participate in an action filed under sub. (5), the person bringing the action may prosecute the action. If the attorney general so requests, the attorney general shall, at the state's expense, be served with copies of all pleadings

and deposition transcripts in the action. If the person bringing the action initiates prosecution of the action, the court, without limiting the status and rights of that person, may permit the state to intervene at a later date upon showing by the state of good cause for the proposed intervention.

**(9)** Whether or not the state participates in an action under sub. (5), upon showing in camera by the attorney general that discovery by the person bringing the action would interfere with the state's ongoing investigation or prosecution of a criminal or civil matter arising out of the same facts as the facts upon which the action is based, the court may stay such discovery in whole or in part for a period of not more than 60 days. The court may extend the period of any such stay upon further showing in camera by the attorney general that the state has pursued the criminal or civil investigation of the matter with reasonable diligence and the proposed discovery in the action brought under sub. (5) will interfere with the ongoing criminal or civil investigation or prosecution.

**(10)** The attorney general may pursue a claim relating to an alleged violation of sub. (2) through an alternate remedy available to the state or any state agency, including an administrative proceeding to assess a civil forfeiture. If the attorney general elects any such alternate remedy, the attorney general shall serve timely notice of his or her election upon the person bringing the action under sub. (5), and that person has the same rights in the alternate venue as the person would have had if the action had continued under sub. (5). Any finding of fact or conclusion of law made by a court or by a state agency in the alternate venue that has become final is conclusive upon all parties named in an action under sub. (5). For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal, if all time for filing an appeal or petition for review with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

**(11)** (a) Except as provided in pars. (b) and (e), if the state proceeds with an action brought by a person under sub. (5) or the state pursues an alternate remedy relating to the same acts under sub. (10), the person who brings the action shall receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person contributed to the prosecution of the action or claim.

(b) Except as provided in par. (e), if an action or claim is one in which the court or other adjudicator finds to be based primarily upon disclosures of specific information not provided by the person who brings an action under sub. (5) 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 report made by the news media, the court or other adjudicator may award such amount as it considers appropriate, but not more than 10 percent of the proceeds of the action or settlement of the claim, depending upon the significance of the information and the role of the person bringing the action in advancing the prosecution of the action or claim.

(c) Except as provided in par. (e), in addition to any amount received under par. (a) or (b), a person bringing an action under sub. (5) shall be awarded his or her reasonable expenses necessarily incurred in bringing the action together with the person's costs and reasonable actual attorney fees. The court or other adjudicator shall assess any award under this paragraph against the defendant.

(d) Except as provided in par. (e), if the state does not proceed with an action or an alternate proceeding under sub. (10), the person bringing the action shall receive an amount that the court decides is reasonable for collection of the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action and shall be paid from the proceeds. In addition, the person shall be paid his or her expenses, costs, and fees under par. (c).

(e) Whether or not the state proceeds with the action or an alternate proceeding under sub. (10), if the court or other adjudicator finds that an action under sub. (5) was brought by a person who planned or initiated the violation upon which the action or proceeding is based, then the court may, to the extent that the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under par. (a), (b), or (d), taking into account the role of that person in advancing the prosecution of the action or claim and any other relevant circumstance pertaining to the violation, except that if the person bringing the action is convicted of criminal conduct arising from his or her role in a violation of sub. (2), the court or other adjudicator shall dismiss the person as a party and the person shall not receive any share of the proceeds of the action or claim or any expenses, costs, and fees under par. (c).

**(12)** (a) No court has jurisdiction over an action brought by a private person under sub. (5) against a state public official if the action is based upon information known to the attorney general at the time that the action is brought.

(b) No person may bring an action under sub. (5) that is based upon allegations or transactions that are the subject of a civil action or an administrative proceeding to assess a civil forfeiture in which the state is a party if that action or proceeding was commenced prior to the date that the action is filed.

**(13)** The state is not liable for any expenses incurred by a private person in bringing an action under sub. (5).

**(14)** Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by his or her employer because of lawful actions taken by the employee, on behalf of the employee, or by others in furtherance of an action or claim filed under this section, including investigation for, initiation of, testimony for, or assistance in an action or claim filed or to be filed under sub. (5) is entitled to all necessary relief to make the employee whole. Such relief shall in each case include reinstatement with the same seniority status that the employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay at the legal rate, and compensation for any special damages sustained as a result of the discrimination, including costs and reasonable actual attorney fees. An employee may bring an action to obtain the relief to which the employee is entitled under this subsection.

**(15)** A civil action may be brought based upon acts occurring prior to October 27, 2007, if the action is brought within the period specified in s. 893.981.

**(16)** A judgment of guilty entered against a defendant in a criminal action in which the defendant is charged with fraud or making false statements estops the defendant from denying the essential elements of the offense in any action under sub. (5) that involves the same elements as in the criminal action.

**(17)** The remedies provided for under this section are in addition to any other remedies provided for under any other law or available under the common law.

**(18)** This section shall be liberally construed and applied to promote the public interest and to effect the congressional intent in enacting 31 USC 3279 to 3733, as reflected in the act and the legislative history of the act.

History: 2007 a. 20.