

SENATE BILL No. 271

By Committee on Judiciary

1-16

1 AN ACT concerning the Kansas medicaid fraud control act; relating to
2 penalties and fines; amending K.S.A. 2013 Supp. 21-5926, 21-5927,
3 21-5933 and 75-7508 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2013 Supp. 21-5926 is hereby amended to read as
7 follows: 21-5926. As used in K.S.A. 2013 Supp. 21-5925 through 21-
8 5934 and K.S.A. 2013 Supp. 75-725 and 75-726, and amendments thereto:

9 (a) *"Aggregate amount of payments illegally claimed" means the*
10 *greater of: (1) The actual pecuniary harm resulting from the offense; (2)*
11 *the pecuniary harm that was intended to result from the offense; or (3) the*
12 *intended pecuniary harm that would have been impossible or unlikely to*
13 *occur, such as in a government sting operation or a fraud in which the*
14 *claim exceeded the allowed value. The aggregate dollar amount of*
15 *fraudulent claims submitted to the medicaid program shall constitute*
16 *prima facie evidence of the amount of intended loss and is sufficient to*
17 *establish the aggregate amount of payments illegally claimed, if not*
18 *rebutted;*

19 (a) (b) "attorney general" means the attorney general, employees of
20 the attorney general or authorized representatives of the attorney general;

21 (b) (c) "benefit" means the receipt of money, goods, items, facilities,
22 accommodations or anything of pecuniary value;

23 (c) (d) "claim" means an electronic, electronic impulse, facsimile,
24 magnetic, oral, telephonic or written communication that is utilized to
25 identify any goods, service, item, facility or accommodation as
26 reimbursable to the ~~Kansas~~ medicaid program, or its fiscal agents, or
27 which states income or expense and is or may be used to determine a rate
28 of payment by the ~~Kansas~~ medicaid program, or its fiscal agent;

29 (d) (e) "fiscal agent" means any corporation, firm, individual,
30 organization, partnership, professional association or other legal entity
31 which, through a contractual relationship with the ~~department of social and~~
32 ~~rehabilitation services~~ *Kansas department of health and environment*
33 *division of health care finance* and thereby, the state of Kansas, receives,
34 processes and pays claims under the ~~Kansas~~ medicaid program;

35 (e) (f) "family member" means spouse, child, grandchild of any
36 degree, parent, mother-in-law, father-in-law, grandparent of any degree,

1 brother, brother-in-law, sister, sister-in-law, half-brother, half-sister, uncle,
2 aunt, nephew or niece, whether biological, step or adoptive;

3 ~~(f)~~ (g) "medicaid program" means the Kansas program of medical
4 assistance for which federal or state moneys, or any combination thereof,
5 are expended as administered by the ~~department of social and~~
6 ~~rehabilitation services~~ *Kansas department of health and environment*
7 *division of health care finance*, or its fiscal agent, or any successor federal
8 or state, or both, health insurance program or waiver granted thereunder;

9 ~~(g)~~ (h) "medically necessary" means for the purposes of K.S.A. 2013
10 Supp. 21-5925 through 21-5934 and K.S.A. 2013 Supp. 75-725 and 75-
11 726, and amendments thereto, only, any goods, service, item, facility, or
12 accommodation, that a reasonable and prudent provider under similar
13 circumstances would believe is appropriate for diagnosing or treating a
14 recipient's condition, illness or injury;

15 (i) "*pecuniary harm*" means *harm that is monetary or that otherwise*
16 *is readily measurable in money, and does not include emotional distress,*
17 *harm to reputation or other non-economic harm;*

18 ~~(h)~~ (j) "person" means any agency, association, corporation, firm,
19 limited liability company, limited liability partnership, natural person,
20 organization, partnership or other legal entity, the agents, employees,
21 independent contractors, and subcontractors, thereof, and the legal
22 successors thereto, and any official, employee or agent of a state or federal
23 agency having regulatory or administrative authority over the medicaid
24 program;

25 ~~(i)~~ (k) "provider" means a person who has applied to participate in,
26 who currently participates in, who has previously participated in, who
27 attempts or has attempted to participate in the medicaid program, by
28 providing or claiming to have provided goods, services, items, facilities or
29 accommodations;

30 ~~(j)~~ (l) "recipient" means an individual, either real or fictitious, in
31 whose behalf any person claimed or received any payment or payments
32 from the medicaid program, or its fiscal agent, whether or not any such
33 individual was eligible for benefits under the medicaid program;

34 ~~(k)~~ (m) "records" mean all written documents and electronic or
35 magnetic data, including, but not limited to, medical records, X-rays,
36 professional, financial or business records relating to the treatment or care
37 of any recipient; goods, services, items, facilities or accommodations
38 provided to any such recipient; rates paid for such goods, services, items,
39 facilities or accommodations; and goods, services, items, facilities, or
40 accommodations provided to nonmedicaid recipients to verify rates or
41 amounts of goods, services, items, facilities or accommodations provided
42 to medicaid recipients, as well as any records that the medicaid program,
43 or its fiscal agents require providers to maintain;

1 (+) (n) "sign" means to affix a signature, directly or indirectly, by
2 means of handwriting, typewriter, stamp, computer impulse or other
3 means; and

4 ~~(m)~~ (o) "statement or representation" means an electronic, electronic
5 impulse, facsimile, magnetic, oral, telephonic, or written communication
6 that is utilized to identify any goods, service, item, facility or
7 accommodation as reimbursable to the medicaid program, or its fiscal
8 agent, or that states income or expense and is or may be used to determine
9 a rate of payment by the medicaid program, or its fiscal agent.

10 Sec. 2. K.S.A. 2013 Supp. 21-5927 is hereby amended to read as
11 follows: 21-5927. (a) ~~Making a false claim, statement or representation~~
12 ~~to the medicaid program is; Medicaid fraud is:~~

13 (1) With intent to defraud, making, presenting, submitting, offering or
14 causing to be made, presented, submitted or offered:

15 (+) (A) Any false or fraudulent claim for payment for any goods,
16 service, item, facility accommodation for which payment may be made, in
17 whole or in part, under the medicaid program, whether or not the claim is
18 allowed or allowable;

19 (2) (B) any false or fraudulent statement or representation for use in
20 determining payments which may be made, in whole or in part, under the
21 medicaid program, whether or not the claim is allowed or allowable;

22 (3) (C) any false or fraudulent report or filing which is or may be
23 used in computing or determining a rate of payment for any goods,
24 service, item, facility or accommodation, for which payment may be made,
25 in whole or in part, under the medicaid program, whether or not the claim
26 is allowed or allowable;

27 (4) (D) any false or fraudulent statement or representation made in
28 connection with any report or filing which is or may be used in computing
29 or determining a rate of payment for any goods, service, item, facility or
30 accommodation for which payment may be made, in whole or in part,
31 under the medicaid program, whether or not the claim is allowed or
32 allowable;

33 (5) (E) any statement or representation for use by another in obtaining
34 any goods, service, item, facility or accommodation for which payment
35 may be made, in whole or in part, under the medicaid program, knowing
36 the statement or representation to be false, in whole or in part, by
37 commission or omission, whether or not the claim is allowed or allowable;

38 (6) (F) any claim for payment, for any goods, service, item, facility,
39 or accommodation, which is not medically necessary in accordance with
40 professionally recognized parameters or as otherwise required by law, for
41 which payment may be made, in whole or in part, under the medicaid
42 program, whether or not the claim is allowed or allowable;

43 (7) (G) any wholly or partially false or fraudulent book, record,

1 document, data or instrument, which is required to be kept or which is kept
 2 as documentation for any goods, service, item, facility or accommodation
 3 or of any cost or expense claimed for reimbursement for any goods,
 4 service, item, facility or accommodation for which payment is, has been,
 5 or can be sought, in whole or in part, under the medicaid program, whether
 6 or not the claim is allowed or allowable;

7 ~~(8)~~ *(H)* any wholly or partially false or fraudulent book, record,
 8 document, data or instrument to any properly identified law enforcement
 9 officer, any properly identified employee or authorized representative of
 10 the attorney general, or to any properly identified employee or agent of the
 11 department of social and rehabilitation services, or its fiscal agent, in
 12 connection with any audit or investigation involving any claim for
 13 payment or rate of payment for any goods, service, item, facility or
 14 accommodation payable, in whole or in part, under the medicaid program;
 15 or

16 ~~(9)~~ *(I)* any false or fraudulent statement or representation made, with
 17 the intent to influence any acts or decision of any official, employee or
 18 agent of a state or federal agency having regulatory or administrative
 19 authority over the Kansas medicaid program; or

20 *(2) intentionally executing or attempting to execute a scheme or*
 21 *artifice to defraud the medicaid program or any contractor or*
 22 *subcontractor thereof.*

23 ~~(b) Making a false claim, statement or representation to the medicaid~~
 24 ~~programs defined in:~~

25 ~~(1) Subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6) or (a)(7),~~
 26 ~~where the aggregate amount of payments illegally claimed is:~~

27 ~~(A) \$25,000 or more is a severity level 7, nonperson felony;~~

28 ~~(B) at least \$1,000 but less than \$25,000 is a severity level 9,~~
 29 ~~nonperson felony; and~~

30 ~~(C) less than \$1,000 is a class A misdemeanor; and~~

31 *(1) For each individual count of medicaid fraud as defined in*
 32 *subsection (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F),*
 33 *(a)(1)(G) or (a)(2), where the aggregate amount of payments illegally*
 34 *claimed is:*

35 *(A) \$1,000,000 or more, medicaid fraud is a severity level 2,*
 36 *nonperson felony;*

37 *(B) at least \$250,000 but less than \$1,000,000, medicaid fraud is a*
 38 *severity level 3, nonperson felony;*

39 *(C) at least \$100,000 but less than \$250,000, medicaid fraud is a*
 40 *severity level 4, nonperson felony;*

41 *(D) at least \$25,000 but less than \$100,000, medicaid fraud is a*
 42 *severity level 5, nonperson felony;*

43 *(E) at least \$1,000 but less than \$25,000, medicaid fraud is a severity*

1 *level 7, nonperson felony;*

2 *(F) less than \$1,000, medicaid fraud is a class A nonperson*
3 *misdemeanor, except as provided in subsection (b)(1)(G); and*

4 *(G) less than \$1,000 and committed by a person who has been*
5 *convicted of a violation of this section within five years immediately*
6 *preceding commission of the crime, medicaid fraud is a severity level 7,*
7 *nonperson felony; and*

8 (2) ~~subsection (a)(8) or (a)(9)~~ *(a)(1)(H) or (a)(1)(I)* is a severity level
9 9, nonperson felony.

10 (c) In determining what is medically necessary pursuant to subsection
11 ~~(a)(6)~~ *(a)(1)(F)*, the attorney general may contract with or consult with
12 qualified health care providers and other qualified individuals to identify
13 professionally recognized parameters for the diagnosis or treatment of the
14 recipient's condition, illness or injury.

15 Sec. 3. K.S.A. 2013 Supp. 21-5933 is hereby amended to read as
16 follows: 21-5933. (a) *In addition to any other criminal penalties*
17 *provided by law, any person convicted of a violation of K.S.A. 2013 Supp.*
18 *21-5925 through 21-5934 and K.S.A. 2013 Supp. 75-725 and 75-726, and*
19 *amendments thereto, the Kansas medicaid fraud control act may be liable;*
20 *in addition to any other criminal penalties provided by law, for all of the*
21 *following:*

22 (1) Payment of full restitution of the amount of the excess payments;

23 (2) payment of interest on the amount of any excess payments at the
24 maximum legal rate in effect on the date the payment was made to the
25 person for the period from the date upon which payment was made, to the
26 date upon which repayment is made; and

27 (3) payment of all reasonable expenses that have been necessarily
28 incurred in the enforcement of ~~K.S.A. 2013 Supp. 21-5925 through 21-~~
29 ~~5934 and K.S.A. 2013 Supp. 75-725 and 75-726, and amendments thereto,~~
30 *the Kansas medicaid fraud control act* including, but not limited to, the
31 costs of the investigation, litigation and attorney fees.

32 (b) *In addition to any other criminal penalties provided by law, any*
33 *person convicted of a violation of the Kansas medicaid fraud control act*
34 *shall, upon request of the attorney general at any time prior to sentencing,*
35 *be subject to a fine of not less than \$1,000 and not more than \$11,000 for*
36 *each violation of such act.*

37 ~~(b)~~ (c) All moneys recovered pursuant to subsection (a)(1) and (2),
38 shall be remitted to the state treasurer in accordance with the provisions of
39 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
40 remittance, the state treasurer shall deposit the entire amount in the state
41 treasury to the credit of the medicaid fraud reimbursement fund, which is
42 hereby established in the state treasury. Moneys in the medicaid fraud
43 reimbursement fund shall be divided and payments made from such fund

1 to the federal government and affected state agencies for the refund of
2 moneys falsely obtained from the federal and state governments.

3 ~~(e)~~ (d) All moneys recovered pursuant to subsection (a)(3) shall be
4 remitted to the state treasurer in accordance with the provisions of K.S.A.
5 75-4215, and amendments thereto. Upon receipt of each such remittance,
6 the state treasurer shall deposit the entire amount in the state treasury to
7 the credit of the medicaid fraud prosecution revolving fund, which is
8 hereby established in the state treasury. Moneys in the medicaid fraud
9 prosecution revolving fund may be appropriated to the attorney general, or
10 to any county or district attorney who has successfully prosecuted an
11 action for a violation of K.S.A. 2013 Supp. 21-5925 through 21-5934 and
12 K.S.A. 2013 Supp. 75-725 and 75-726, and amendments thereto, and been
13 awarded such costs of prosecution, in order to defray the costs of the
14 attorney general and any such county or district attorney in connection
15 with their duties provided by K.S.A. 2013 Supp. 21-5925 through 21-5934
16 and K.S.A. 2013 Supp. 75-725 and 75-726, and amendments thereto. No
17 moneys shall be paid into the medicaid fraud prosecution revolving fund
18 pursuant to this section unless the attorney general or appropriate county
19 or district attorney has commenced a prosecution pursuant to this section,
20 and the court finds in its discretion that payment of attorney fees and
21 investigative costs is appropriate under all the circumstances, and the
22 attorney general, or county or district attorney has proven to the court that
23 the expenses were reasonable and necessary to the investigation and
24 prosecution of such case, and the court approves such expenses as being
25 reasonable and necessary.

26 (e) *All moneys recovered pursuant to subsection (b) shall be remitted*
27 *to the state treasurer in accordance with the provisions of K.S.A. 75-4215,*
28 *and amendments thereto. Upon receipt of each such remittance, the state*
29 *treasurer shall deposit the entire amount in the state treasury to the credit*
30 *of the false claims litigation revolving fund established by K.S.A. 2013*
31 *Supp. 75-7508, and amendments thereto.*

32 Sec. 4. K.S.A. 2013 Supp. 75-7508 is hereby amended to read as
33 follows: 75-7508. (a) Proceeds recovered as a result of an action filed
34 pursuant to ~~this~~ *the Kansas false claims act* shall be distributed in the
35 following order:

36 (1) To refund moneys falsely obtained from the federal government,
37 state government or political subdivision thereof pursuant to subsection
38 (b); and

39 (2) to the state treasurer for deposit in the state general fund pursuant
40 to subsection (c).

41 (b) A portion of the recovery equal to the amount of moneys falsely
42 obtained from the federal government, state government, affected political
43 subdivision thereof or state agencies, or a combination thereof, shall be

1 remitted to the appropriate entity shown to be defrauded, subject to any
2 further requirements established by federal or state law.

3 (c) That portion of any recovery remitted to the state treasurer
4 pursuant to subsection (a) shall be remitted to the state treasurer in
5 accordance with the provisions of K.S.A. 75-4215, and amendments
6 thereto. Upon receipt of such remittance, the state treasurer shall deposit
7 the entire amount in the state general fund and, subject to any relevant
8 guidelines of the federal department of health and human services' office
9 of inspector general regarding repayment of fees or recoveries, shall credit
10 10% of such remittance to the false claims litigation revolving fund, which
11 is hereby established in the state treasury. Moneys in the false claims
12 litigation revolving fund may be expended by the attorney general for the
13 purpose of hiring necessary staff and to defray the costs of investigating
14 and litigating ongoing false claims cases and may be shared at the
15 direction of the attorney general with the Kansas medicaid fraud ~~control~~
16 ~~unit~~ and abuse division, Kansas bureau of investigation or any county, city
17 or private attorneys who may be utilized or contracted with pursuant to
18 K.S.A. 2013 Supp. 75-7504, and amendments thereto, in carrying out the
19 purposes of this act and any other operating expenses incurred in
20 administering the Kansas false claims act. All expenditures from the false
21 claims litigation revolving fund shall be made in accordance with
22 appropriation acts upon warrants of the director of accounts and reports
23 issued pursuant to vouchers approved by the attorney general or the
24 attorney general's designee.

25 Sec. 5. K.S.A. 2013 Supp. 21-5926, 21-5927, 21-5933 and 75-7508
26 are hereby repealed.

27 Sec. 6. This act shall take effect and be in force from and after its
28 publication in the statute book.

29