

SENATE BILL No. 326

By Special Committee on Medicaid Reform

1-5

10 AN ACT concerning civil actions and civil penalties; relating to false or
11 fraudulent claims; **amending K.S.A. 21-3910 and repealing the ex-**
12 **isting section.**
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. (a) As used in this act: (1) “Claim” means an electronic,
16 electronic impulse, facsimile, magnetic, oral, telephonic or written com-
17 munication that is utilized to identify any goods, services, item, facility or
18 accommodation as reimbursable ~~to~~ **by** the state of Kansas, or its fiscal
19 agents, or which states income or expense and is or may be used to de-
20 termine a rate of payment by the state of Kansas, or a fiscal agent of the
21 state;

22 (2) “knowing” and “knowingly” means that a person, with respect to
23 information has actual knowledge of this information, acts in deliberate
24 ignorance of the truth or falsity of the information, or acts in reckless
25 disregard of the truth or falsity of the information. The terms “knowing”
26 and “knowingly” do not require proof of specific intent to defraud.

27 (b) (1) Except as otherwise provided, any person who: (A) Knowingly
28 presents, or causes to be presented, to the state of Kansas, or a fiscal
29 agent of the state, a false or fraudulent claim for payment or approval;
30 (B) knowingly makes, uses, or causes to be made or used, a false record
31 or statement to get a false or fraudulent claim paid or approved by the
32 state of Kansas, or a fiscal agent of the state; (C) conspires to defraud the
33 state of Kansas; (D) is a beneficiary of an inadvertent submission of a
34 false claim to the state of Kansas, or a fiscal agent of the state, subse-
35 quently discovers the falsity of the claim, and fails to disclose the false
36 claim to the state of Kansas, or a fiscal agent of the state; or (E) is the
37 beneficiary of an inadvertent payment or overpayment by the state of
38 Kansas of moneys not due and knowingly fails to repay the inadvertent
39 payment or overpayment to the state of Kansas is liable to the state for a
40 civil penalty of not less than \$5,000 and not more than \$10,000, plus three
41 times the amount of damages which the state sustains because of the act
42 of such person.

43 (2) If the court finds that: (A) The person committing the violation

1 of this act furnished officials of the state responsible for investigating false
2 claims violations with all information known to such person about the
3 violation within 30 days after the date on which the defendant first ob-
4 tained the information, (B) such person fully cooperated with any state
5 investigation of such violation, and (C) at the time such person furnished
6 the state with the information about the violation, no criminal prosecu-
7 tion, civil action or administrative action **had commenced pursuant to**
8 **this act** with respect to such violation, and the person did not have actual
9 knowledge of the existence of an investigation into such violation, the
10 court may assess not less than two times the amount of damages which
11 the state sustains because of the act of the person.

12 (3) A person violating this act shall also be liable to the state for the
13 costs of a civil action brought to recover any such penalty or damages.

14 (c) The attorney general shall investigate violations under this act. If
15 the attorney general finds a violation of this act, the attorney general may
16 bring a civil action under this act. Nothing in this act shall be construed
17 to create a private cause of action.

18 (d) The attorney general may simultaneously conduct criminal inves-
19 tigations and proceedings while conducting civil investigations and pro-
20 ceedings concerning the same subject matter for violations as described
21 in this act.

22 (e) Upon a showing by the state that certain actions of discovery in a
23 proceeding under this act may interfere with the state's investigation or
24 court proceeding of a criminal matter arising out of the same facts, the
25 court may stay all proceedings under this act. Such showing shall be con-
26 ducted *in camera*.

27 (f) Any action pursuant to this act must be commenced within five
28 years from the date when the falsity or fraud is discovered.

29 (g) In any action brought under this act, the state shall be required
30 to prove all essential elements of the cause of action, including damages,
31 by preponderance of the evidence.

32 (h) Any pleading filed claiming relief pursuant to this act is not sub-
33 ject to the requirements of subsection (b) of K.S.A. 60-209, and amend-
34 ments thereto, except that such pleading shall set forth the period of time
35 of the allegedly false or fraudulent claims and shall generally describe the
36 false or fraudulent nature of the claims or scheme composed of several
37 claims.

38 (i) Any action under this act may be brought in any district court
39 where the defendant, or in the case of multiple defendants, any one de-
40 fendant can be found, resides, transacts business, or in which any act
41 prohibited by this act occurred, or in the district court of Shawnee county.

42 (j) Whenever the attorney general has reason to believe that any per-
43 son may be in possession, custody or control of any documentary material

1 or information relevant to an investigation under this act, the attorney
2 general, before commencing a civil proceeding, may issue in writing and
3 cause to be served upon such person, a civil investigative demand. Such
4 demand shall require such person to: (1) Produce such documentary ma-
5 terial for inspection and copying, (2) answer in writing written interro-
6 gatories with respect to such documentary material or information, (3) give
7 oral testimony concerning such documentary material or information, or
8 (4) furnish any combination of such material, answers or testimony.

9 (k) Whenever any person fails to comply with any civil investigative
10 demand issued under subsection (j), or whenever satisfactory copying or
11 reproduction of any material requested in such demand cannot be done
12 and such person refuses to surrender such material, the attorney general
13 may file a petition for an order of such court for the enforcement of the
14 civil investigative demand in the district court.

15 (l) A final judgment rendered in favor of the state in any criminal
16 proceeding, whether upon a verdict after a trial or upon a plea of guilty
17 or *nolo contendere*, shall estop the defendant from denying the elements
18 of the offense in any action brought under this act which involves the
19 same facts or circumstances as in the criminal proceeding.

20 (m) Intent to repay or repayment of any amounts obtained by a per-
21 son as a result of any acts prohibited in subsection (b) shall not be a
22 defense to or grounds for dismissal of an action brought pursuant to this
23 act. However, a court may consider any repayment in mitigation of the
24 amount of any penalties assessed.

25 **Sec. 2. K.S.A. 21-3910 is hereby amended to read as follows:**
26 **21-3910. (a) Misuse of public funds is knowingly:**

27 (1) **Using, lending or permitting another to use, public money**
28 **in a manner not authorized by law, by a custodian or other person**
29 **having control of public money by virtue of such person's official**
30 **position;**

31 (2) *attempting to obtain, authorizing, attempting to authorize or al-*
32 *lowing any payment for medicaid services that exceeds the limitations of*
33 *federal laws, rules and regulations, Kansas laws, rules and regulations, or*
34 *the terms of the Kansas medicaid plan or the provider manual; or*

35 (3) *by-passing or overriding an edit, attempting to by-pass or over-*
36 *ride an edit or allowing an edit to be by-passed or overridden, including,*
37 *but not limited to, deactivation of any edit, in any claims submission or*
38 *processing system used by the Kansas medicaid program or any of its*
39 *contractors, unless such conduct is consistent with existing written excep-*
40 *tions established by, or with the express written approval of, an official*
41 *of the Kansas single state medicaid agency who is authorized to make*
42 *such exceptions.*

43 (b) **As used in this section, "public money," means any money**

1 **or negotiable instrument which belongs to the state of Kansas or**
2 **any political subdivision thereof**, including money provided to the state
3 of Kansas by the federal government.

4 ~~(c) Misuse of public funds is a severity level 8, nonperson felony.~~
5 (1) Misuse of public funds where the aggregate amount of money paid or
6 claimed in violation of this section is \$100,000 or more is a severity level
7 5, nonperson felony.

8 (2) Misuse of public funds where the aggregate amount of money paid
9 or claimed in violation of this section is at least \$25,000 but less than
10 \$100,000 is a severity level 7, nonperson felony.

11 (3) Misuse of public funds where the aggregate amount of money paid
12 or claimed in violation of this section is at least \$1,000 but less than
13 \$25,000 is a severity level 9, nonperson felony.

14 (4) Misuse of public funds where the aggregate amount of money paid
15 or claimed in violation of this section is less than \$1,000 is a class A
16 nonperson misdemeanor. **Upon conviction of misuse of public funds,**
17 **the convicted person shall forfeit the person's official position,** and
18 shall thereafter be prohibited from holding any official, employee or con-
19 tract position with the state of Kansas or any political or taxing subdivi-
20 sion, when such convicted person would have control of public money by
21 virtue of such person's official position.

22 **Sec. 3. K.S.A. 21-3910 is hereby repealed.**

23 Sec. ~~2~~ 4. This act shall take effect and be in force from and after its
24 publication in the statute book.