

## HOUSE BILL NO. 77

INTRODUCED BY E. CLARK

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING MEDICAID PROVISIONS OF THE FEDERAL DEFICIT REDUCTION ACT OF 2005 BY ALLOWING RECOVERY OF PAYMENTS OWED TO MEDICAID RECIPIENTS; AND REQUIRING COORDINATION OF ELIGIBILITY INFORMATION ABOUT MEDICAID RECIPIENTS, ~~AND PROVIDING PENALTIES FOR FALSE MEDICAID CLAIMS~~; AMENDING SECTIONS SECTION ~~17-8-403, 17-8-410, AND~~ 33-35-306, MCA; AND PROVIDING AN EFFECTIVE ~~DATES~~ DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Eligibility requirements of health insurance issuers.** As a condition of doing business in the state of Montana, a health insurance issuer, a multiple employer welfare arrangement, a third-party administrator, a health maintenance organization, a pharmacy benefit manager, a health services corporation, or any other party that by statute, contract, or agreement is legally responsible for payment of a claim for a health-care item or service shall:

(1) upon request, provide to the department of public health and human services eligibility information for individuals who are eligible for or receiving medicaid, including but not limited to:

(a) data ~~regarding the~~ TO DETERMINE DURING WHAT period ~~for which~~ the medicaid recipient or medicaid-eligible individual or the spouse or dependents of the recipient or eligible individual may be or may have been covered by any of the entities listed in this section; and

(b) data regarding the nature of the coverage that is or was provided, including but not limited to the name, address, and identifying information of the entity providing coverage;

(2) respond to any inquiry from the department of public health and human services regarding a claim for payment for any health-care item or service submitted not later than 3 years after the date the item or service was provided;

(3) accept the department of public health and human services' right of recovery and the assignment from the medicaid recipient to the department of public health and human services of any right of an individual or other entity to payment from any of the entities listed in this section for an item or service for which medicaid has paid; and

(4) agree not to deny a claim submitted by the department of public health and human services solely on the basis of the date of submission of the claim, the type or format of the claim FORM, or a failure to present proper documentation at the ~~time the service or item that is the basis of the claim is provided~~ POINT OF SALE THAT IS THE BASIS OF THE CLAIM if:

(a) the claim is submitted by the department of public health and human services within ~~3 years after the~~ THE 3-YEAR PERIOD BEGINNING ON THE date on which the service or item was provided; and

(b) any action by the department of public health and human services to enforce its rights with respect to the claim is commenced within 6 years after the department submitted the claim.

(5) THIS SECTION MAY NOT BE CONSTRUED TO:

(A) REQUIRE THAT A THIRD PARTY PAY ANY DEPARTMENT CLAIM FOR SERVICES OR ITEMS THAT ARE NOT COVERED UNDER THE APPLICABLE HEALTH CARE PLAN;

(B) REQUIRE THAT ANY THIRD-PARTY ADMINISTRATOR, FISCAL INTERMEDIARY, OR OTHER CONTRACTOR PAY A DEPARTMENT CLAIM FROM ITS OWN FUNDS UNLESS THE ENTITY ALSO BEARS THE FINANCIAL OBLIGATION FOR THE CLAIM UNDER THE APPLICABLE PLAN DOCUMENTS;

(C) IMPOSE ANY LIABILITY ON AN ENTITY TO PAY CLAIMS THAT THE ENTITY DOES NOT OTHERWISE BEAR; OR

(D) NEGATE ANY RIGHT OF INDEMNIFICATION AGAINST A PLAN SPONSOR OR OTHER ENTITY WITH ULTIMATE LIABILITY FOR HEALTH CARE CLAIMS BY A THIRD-PARTY ADMINISTRATOR, FISCAL INTERMEDIARY, OR OTHER CONTRACTOR THAT PAYS THE CLAIMS.

~~NEW SECTION. Section 2. Medicaid false claims -- penalties. (1) In a civil action initiated by a private citizen as provided in 17-8-406 asserting a violation of the Montana False Claims Act, Title 17, chapter 8, part 4, that pertains to medicaid, the court shall assess a civil penalty of not less than \$5,000 or more than \$10,000 for each act, plus three times the amount of damages that a governmental entity sustains because of the violation, along with costs and attorney fees, except that the court shall assess two times the amount of damages that a governmental entity sustains because of the violation, along with costs and attorney fees, if the court finds all of the following:~~

~~(a) The person or entity committing the violation furnished the government attorney with all information known to that person about the violation within 30 days after the date on which the person first obtained the information.~~

~~(b) The person or entity fully cooperated with any investigation of the violation by the government attorney.~~

~~———— (c) At the time the person or entity furnished the government attorney with information about the violation, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the violation and the person did not have actual knowledge of the existence of an investigation into the violation.~~

~~———— (2) The penalties provided by this section are cumulative to the penalties available under all other laws of the state.~~

~~———— (3) The provisions of the Montana False Claims Act, Title 17, chapter 8, part 4, apply to this section.~~

~~———— **NEW SECTION. Section 3. Medicaid false claims -- distribution of damages and civil penalty.** (1) Except as provided in subsection (1)(d), any damages and civil penalties recovered in a civil action initiated by a private citizen as provided in 17-8-406 asserting a violation of the Montana False Claims Act, Title 17, chapter 8, part 4, that pertains to medicaid must be distributed as follows:~~

~~———— (a) If the action was filed by a governmental entity under 17-8-406(2) and the private citizen elected not to enter the action as a coplaintiff, the private citizen is entitled to at least 15% but not more than 25%, as determined by the court, of any damages and civil penalty awarded to the governmental entity in the settlement or judgment.~~

~~———— (b) If the action was filed by a private citizen as plaintiff, the private citizen is entitled to at least 25% but not more than 50%, as determined by the court, of any damages and civil penalty awarded to the governmental entity in the settlement or judgment.~~

~~———— (c) If the action was filed by a private citizen as coplaintiff, the private citizen is entitled to at least 15% but not more than 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment.~~

~~———— (d) If a private citizen referred to in subsection (1) participated in the act or acts found to be in violation of 17-8-403, an award of damages and civil penalty to the private citizen are at the discretion of the court.~~

~~———— (e) The governmental entity is entitled to any damages and civil penalty not awarded to a private citizen and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a fund of the governmental entity suffered a loss as a result of the defendant's actions, the fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.~~

~~———— (2) The provisions of the Montana False Claims Act, Title 17, chapter 8, part 4, apply to this section.~~

~~———— **Section 4.** Section 17-8-403, MCA, is amended to read:~~

~~"17-8-403. False claims -- procedures -- penalties. (1) A person causing damages in excess of \$500 to a governmental entity is liable, as provided in 17-8-410 and 17-8-411, for any of the following acts:~~

~~(a) knowingly presenting or causing to be presented to an officer or employee of the governmental entity a false claim for payment or approval;~~

~~(b) knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved by the governmental entity;~~

~~(c) conspiring to defraud the governmental entity by getting a false claim allowed or paid by the governmental entity;~~

~~(d) having possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt;~~

~~(e) being authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering a receipt that falsely represents the property used or to be used;~~

~~(f) knowingly buying or receiving as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;~~

~~(g) knowingly making, 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 governmental entity or its contractors;~~  
or

~~(h) as a beneficiary of an inadvertent submission of a false claim to the governmental entity, subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim.~~

~~(2) In a civil action brought under 17-8-405 or 17-8-406, a court shall assess not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may impose a civil penalty of up to \$10,000 for each act. The court may not assess a civil penalty if the court finds all of the following:~~

~~(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.~~

~~(b) The person fully cooperated with any investigation of the act by the government attorney.~~

~~(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and~~

the person did not have actual knowledge of the existence of an investigation into the act.

~~—— (3) Liability under this section is joint and several for any act committed by two or more persons.~~

~~—— (4) This section does not apply to:~~

~~—— (a) claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71;~~

~~—— (b) claims, records, or statements made in relation to claims filed with the department of public health and human services under Title 53, chapter 6; or~~

~~—— (c) to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.~~

~~—— (5) A private citizen may not file a complaint or civil action:~~

~~—— (a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;~~

~~—— (b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;~~

~~—— (c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or~~

~~—— (d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time."~~

~~—— **Section 5.** Section 17-8-410, MCA, is amended to read:~~

~~—— **"17-8-410. Distribution of damages and civil penalty.** (1) If ~~Except as provided in [section 3],~~ if an action is settled or the governmental entity or private citizen prevails in an action:~~

~~—— (a) filed by a governmental entity under 17-8-406(2) and the private citizen elected not to enter the action~~

as a coplaintiff, except as provided in subsection (1)(c), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded to the governmental entity in the settlement or judgment;

~~———— (b) filed by a private citizen either as plaintiff or as coplaintiff, except as provided in subsection (1)(c), the private citizen is entitled to between 15% and 50%, as determined by the court, of any damages and civil penalty awarded to the governmental entity in the settlement or judgment;~~

~~———— (c) and if a private citizen referred to in subsection (1)(a) or (1)(b) participated in the act or acts found to be in violation of 17-8-403, an award of damages and civil penalty to the private citizen are at the discretion of the court;~~

~~———— (d) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity;~~

~~———— (2) Unless otherwise provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of the state."~~

**Section 2.** Section 33-35-306, MCA, is amended to read:

**"33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(b) Title 33, chapter 1, part 7;

(c) [section 1];

~~(c)(d)~~ 33-3-308;

~~(d)(e)~~ Title 33, chapter 18, except 33-18-242;

~~(e)(f)~~ Title 33, chapter 19;

~~(f)(g)~~ 33-22-107, 33-22-131, 33-22-134, and 33-22-135; and

~~(g)(h)~~ 33-22-525 and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

NEW SECTION. Section 3. Codification instruction. ~~(1)~~ [Section 1] is intended to be codified as an integral part of Title 33, chapter 1, and the provisions of Title 33 apply to [section 1].

~~(2)~~ [Sections 2 and 3] are intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, apply to [sections 2 and 3].

NEW SECTION. Section 4. Effective date. ~~(1)~~ Except as provided in subsection ~~(2)~~, ~~[this act]~~ is effective on passage and approval.

~~————~~ ~~(2)~~ [Section 1] [THIS ACT] is effective July 1, 2007.

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