

Georgia State False Medicaid Claims Act

(Ga. Code Ann. §§ 49-4-168 to 168.6)ⁱ

§ 49-4-168. Definitions

As used in this article, the term:

(1) "Claim" includes any request or demand, whether under a contract or otherwise, for money or property, whether or not the Georgia Medicaid program or this state has title to such money or property, which is made to the Georgia Medicaid program, to any officer, employee, fiscal intermediary, grantee, agent, or contractor of the Georgia Medicaid program, or to other persons or entities if it results in payments by the Georgia Medicaid program, if the Georgia Medicaid program provides, has provided, or will provide any portion of the money or property requested or demanded; if the Georgia Medicaid program will reimburse the contractor, grantee, or other recipient for any portion of the money or property requested or demanded; or if the money or property is to be spent or used on behalf of or to advance the Georgia Medicaid program. A claim includes a request or demand made orally, in writing, electronically, or magnetically. Each claim may be treated as a separate claim.

(2) "Knowing" and "knowingly" require no proof of specific intent to defraud and mean that a person, with respect to information:

(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.

(3) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(4) "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee based or similar relationship, from statute or regulation, or from retention of any overpayment.

(5) "Person" means any natural person, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity with capacity to sue or be sued.

§ 49-4-168.1. Civil penalties for false or fraudulent Medicaid claims

(a) Any person who:

(1) Knowingly presents or causes to be presented to the Georgia Medicaid program a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;

(3) Conspires to defraud the Georgia Medicaid program by getting a false or fraudulent claim allowed or paid;

(4) Has possession, custody, or control of property or money used or to be used by the Georgia Medicaid program and knowingly delivers, or causes to be delivered, less than all of such property or money;

(5) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Georgia Medicaid program who lawfully may not sell or pledge the property; or

(7) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit property or money to the Georgia Medicaid program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit property or money to the Georgia Medicaid program,

shall be liable to the State of Georgia for a civil penalty of not less than \$5,500.00 and not more than \$11,000.00 for each false or fraudulent claim, plus three times the amount of damages which the Georgia Medicaid program sustains because of the act of such person.

(b) The provisions of subsection (a) of this Code section notwithstanding, if the court finds that:

(1) The person committing the violation of this subsection furnished officials of the Georgia Medicaid program with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(2) Such person fully cooperated with any government investigation of such violation; and

(3) At the time such person furnished the Georgia Medicaid program with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this article with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not more than two times the amount of the actual damages which the Georgia Medicaid program sustained because of the act of such person.

(c) A person violating any provision of subsection (a) of this Code section shall also be liable to this state for all costs of any civil action brought to recover the damages and penalties provided under this article.

§ 49-4-168.2. Role of Attorney General in pursuing cases; civil actions by private persons; special procedures for civil actions by private persons; limitation on participation; stay of discovery; receipt of proceeds

(a) The Attorney General shall be authorized to investigate suspected, alleged, and reported violations of this article. If the Attorney General finds that a person has violated or is violating this article, then the Attorney General may bring a civil action against such person under this article.

(b) Subject to the exclusions set forth in this Code section, a civil action under this article may also be brought by a private person. A civil action shall be brought in the name of the State of Georgia. The civil action may be dismissed only if the court and the Attorney General give written consent to the dismissal and state the reasons for consenting to such dismissal.

(c) Where a private person brings a civil action under this article, such person shall follow the following special procedures:

(1) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General;

(2) The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The purpose of the period under seal shall be to allow the Attorney General to investigate the allegations of the complaint. The Attorney General may elect to intervene and proceed with the civil action within 60 days after it receives both the complaint and the material evidence and information;

(3) The Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera;

(4) Before the expiration of the 60 day period or any extensions obtained under paragraph (3) of this subsection, the Attorney General shall:

(A) Proceed with the civil action, in which case the civil action shall be conducted by the Attorney General; or

(B) Notify the court that it declines to take over the civil action, in which case the person bringing the civil action shall have the right to proceed with the civil action;

(5) The defendant shall not be required to respond to any complaint filed under this Code section until 30 days after the complaint is unsealed and served upon the defendant; and

(6) When a person brings a civil action under this subsection, no person other than the Attorney General may intervene or bring a related civil action based on the facts underlying the pending civil action.

(d) (1) If the Attorney General elects to intervene and proceed with the civil action, he or she shall have the primary responsibility for prosecuting the civil action and shall not be bound by an act of the person bringing such civil action. Such person shall have the right to continue as a party to the civil action, subject to the limitations set forth in this subsection.

(2) The Attorney General may dismiss the civil action, notwithstanding the objections of the person initiating the civil action, if the person has been notified by the Attorney General of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(3) The Attorney General may settle the civil action with the defendant notwithstanding the objections of the person initiating the civil action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(4) Upon a showing by the Attorney General that unrestricted participation during the course of the litigation by the person initiating the civil action would interfere with or unduly delay the Attorney General's litigation of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(A) Limiting the number of witnesses the person may call;

(B) Limiting the length of the testimony of such witnesses;

(C) Limiting the person's cross-examination of witnesses; or

(D) Otherwise limiting the participation by the person in the litigation.

(e) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the civil action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(f) If the Attorney General elects not to proceed with the civil action, the person who initiated the civil action shall have the right to conduct the civil action. If the Attorney General so requests, he or she shall be served with copies of all pleadings filed in the civil action and shall be supplied with copies of all deposition transcripts. When a person proceeds with the civil action, the court may nevertheless permit the Attorney General to intervene at a later date for any purpose, including, but not limited to, dismissal of the civil action notwithstanding the objections of the person initiating the civil action if such person has been notified by the Attorney General of the filing of such motion and the court has provided such person with an opportunity for a hearing on such motion.

(g) Whether or not the Attorney General proceeds with the civil action, upon a showing by the Attorney General that certain actions of discovery by the person initiating the civil action would interfere with the Attorney General's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60 day period upon a further showing in camera that the Attorney General has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(h) Notwithstanding subsections (b) and (c) of this Code section, the Attorney General may elect to pursue this state's claim through any alternate remedy available to the Attorney General, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the civil action shall have the same rights in such proceeding as such person would have had if the civil action had continued under this Code section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to a civil action under this Code section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State of Georgia, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(i) (1) If the Attorney General proceeds with a civil action brought by a private person under subsection (b) of this Code section, such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the civil action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the civil action. Where the civil action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the civil action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Attorney General hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing such civil action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. The remaining proceeds shall be payable to the State of Georgia, by and through the Department of Community Health, for the purposes of operating, sustaining, protecting, and administering the Georgia Medicaid program. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Attorney General does not proceed with a civil action under this Code section, the person bringing the civil action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. Such amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the civil action or settlement and shall be paid out of such proceeds. The remaining proceeds shall be payable to the State of Georgia, by and through the Department of Community Health, for the purposes of operating, sustaining, protecting, and administering the Georgia Medicaid program. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Attorney General proceeds with the civil action, if the court finds that the civil action was brought by a person who planned and initiated the violation of *Code Section 49-4-168.1* upon which the civil action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the civil action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the civil action is convicted of criminal conduct arising from his or her role in the violation of *Code Section 49-4-168.1*, such person shall be dismissed from the civil action and shall not receive any share of the proceeds of the civil action. Such dismissal shall not prejudice the right of the State of Georgia to continue the civil action, represented by the Attorney General.

(4) If the Attorney General does not proceed with the civil action and the person bringing the civil action conducts the civil action, the court may award to the defendant its reasonable attorney's fees and expenses against the person bringing the civil action if the defendant prevails in the civil action and the court finds that the claim of the person bringing the civil action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(5) The State of Georgia shall not be liable for expenses which a private person incurs in bringing a civil action under this article.

(j) In no event may a person bring a civil action under this article which is based upon allegations or transactions which are the subject of a civil or administrative proceeding to which the State of Georgia is already party.

(k) No civil action may be brought under this article with respect to any claim relating to the assessment, payment, nonpayment, refund, or collection of taxes pursuant to any provisions of Title 48.

(l) (1) As used in this subsection, the term "original source" means an individual who:

(A) Prior to public disclosure, has voluntarily disclosed to the Attorney General the information on which allegations or transactions in a claim are based; or

(B) Has knowledge that is independent of and materially adds to publicly disclosed allegations or transactions and who has voluntarily provided such information to the Attorney General before filing a civil action under this Code section.

(2) The court shall dismiss a civil action or claim under this Code section, unless opposed by the Attorney General, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

(A) In any criminal, civil, or administrative hearing in which the State of Georgia or its employee, agent, or contractor is a party;

(B) In a congressional, legislative, or other state or federal report, hearing, audit, or investigation; or

(C) From the news media,

unless the civil action is brought by the Attorney General or the person bringing the civil action is an original source of the information.

§ 49-4-168.3. Standard of proof; procedure; intervention by Attorney General

(a) In any civil action brought under this article, the State of Georgia or person bringing the civil action shall be required to prove all essential elements of the cause of civil action, including damages, by a preponderance of the evidence.

(b) Except as otherwise provided in this article, all civil actions brought under this article shall be governed by the provisions of Chapter 11 of Title 9, the "Georgia Civil Practice Act."

(c) If the Attorney General elects to intervene and proceed with a civil action brought pursuant to this article, the Attorney General may file his or her own complaint or amend the complaint of a person who has brought a civil action under this article to clarify or add detail to the claims in which the Attorney General is intervening and to add any additional claims with respect to which the State of Georgia contends it is entitled to relief. For purposes of the statute of limitations, any such pleading by the Attorney General shall relate back to the filing date of the complaint of the person who originally brought the civil action, to the extent that the claim of the State of Georgia arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the original complaint by such person.

§ 49-4-168.4. Protection of employees from discrimination; relief; statute of limitations

(a) Any employee, contractor, or agent shall be entitled to all relief necessary to make such 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 such employee, contractor, agent or associated others in furtherance of a civil action under this Code section or other efforts to stop one or more violations of this article.

(b) Relief under subsection (a) of this Code section shall include reinstatement with the same seniority status that such employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. A civil action under this subsection may be brought in an appropriate court of this state for the relief provided in this Code section.

(c) Notwithstanding *Code Section 49-4-168.5*, a civil action under this Code section may not be brought more than three years after the date when the discrimination occurred.

§ 49-4-168.5. Statute of limitations

All civil actions under this article shall be filed pursuant to *Code Section 49-4-168.2* within six years after the date the violation was committed, or four years after the date when facts material to the right of civil action are known or reasonably should have been known by the state official charged with the responsibility to act in the circumstances, whichever occurs last; provided, however, that in no event shall any civil action be filed more than ten years after the date upon which the violation was committed.

§ 49-4-168.6. Venue

All civil actions brought against natural persons under this article shall be brought in the county where the defendant or, in the case of multiple defendants or of defendants who are not residents of the State of Georgia, in any county where any one defendant resides, can be found, transacts business, or commits an act in furtherance of the submittal of a false or fraudulent claim to the Georgia Medicaid program.

ⁱ Last updated June 26, 2014.