

## The Maryland False Claims Act

(Md. Code Gen. Provisions §§ 8-101–111)<sup>i</sup>

### § 8-101. Definitions

In general

(a) In this title the following words have the meanings indicated.

Claim

(b)

(1) “Claim” means a request or demand, under a contract or otherwise, for money or other property, whether or not the governmental entity has title to the money or property, that is:

(i) presented to an officer, employee, or agent of a governmental entity; or

(ii) made to a contractor, a grantee, or another recipient, if the money or other property is to be spent or used on a governmental entity’s behalf or to advance an interest of a governmental entity, and the governmental entity:

1. provides or has provided any portion of the money or other property requested or demanded; or

2. will reimburse the contractor, grantee, or other recipient for any portion of the money or other property that is requested or demanded.

(2) “Claim” does not include requests or demands for money or other property that a governmental entity has paid to an individual as compensation for employment or as an income subsidy with no restrictions on that individual’s use of the money or other property.

Employee

(c) “Employee” means an individual who performs services:

(1) for and under the control and direction of an employer; and

(2) under an employer’s promise or implied promise of payment of wages or other remuneration.

Employer

(d) “Employer” means a person or group of persons that, acting directly or indirectly on behalf of another person or group of persons:

(1) allows an employee to perform services under the employer’s control and direction; and

(2) promises or implies that the employee will receive wages or other remuneration in payment for the performance of those services.

Governmental entity

(e) “Governmental entity” means:

(1) the State;

- (2) a county; or
- (3) a municipal corporation.

#### Knowing or knowingly

(f)

- (1) “Knowing” or “knowingly” means, with respect to information and without requiring proof of specific intent to defraud, that a person:
  - (i) has actual knowledge that the information is false;
  - (ii) acts in deliberate ignorance of the truth or falsity of the information; or
  - (iii) acts in reckless disregard of the truth or falsity of the information.
- (2) “Knowing” or “knowingly” does not mean, with respect to information, that a person acts in a manner that constitutes a mistake or negligence.

#### Material

(g) “Material” means having a natural tendency to influence or be capable of influencing the payment or receipt of money or other property.

#### Obligation

- (h) “Obligation” means an established duty, whether or not fixed, arising from:
- (1) an express or implied:
    - (i) contractual relationship;
    - (ii) grantor-grantee relationship; or
    - (iii) licensor-licensee relationship;
  - (2) a fee-based or similar relationship;
  - (3) statute or regulation; or
  - (4) the retention of an overpayment.

#### Public body

- (i) “Public body” means:
- (1) the General Assembly or any other elected body;
  - (2) a member or an employee of the General Assembly or any other elected body;
  - (3) a State court;
  - (4) a member or an employee of a State court;
  - (5) a State or local regulatory, administrative, or public agency or authority;
  - (6) an instrumentality of a State or local regulatory, administrative, or public agency or authority;
  - (7) a State or local law enforcement agency, prosecutorial office, or police or peace officer;
  - (8) a State or local department of an executive branch of government; or
  - (9) a division, a board, a bureau, an office, a committee, or a commission of any of the public bodies listed in this subsection.

#### Retaliatory action

(j) “Retaliatory action” means discharging, suspending, demoting, threatening, harassing, or discriminating against an employee, a contractor, or an agent as a result of an activity described in § 8-107(a) of this title.

## Supervisor

(k) “Supervisor” means an individual within an employer’s organization who has the authority to:

- (1) direct and control the work performance of an employee; or
- (2) take corrective action regarding the violation of a law or regulation that is the subject of a complaint or charge under this title.

## **§ 8-102. False or fraudulent claims prohibited**

### Application of section

(a) This section does not apply to claims, records, or statements related to State or local taxes.

### Actions subject to discipline

(b) A person may not:

- (1) knowingly present or cause to be presented a false or fraudulent claim for payment or approval;
- (2) knowingly make, use, or cause to be made or used a false record or statement material to a false or fraudulent claim;
- (3) conspire to commit a violation under this title;
- (4) have possession, custody, or control of money or other property used or to be used by or on behalf of a governmental entity and knowingly deliver or cause to be delivered to the governmental entity less than all of that money or other property;
- (5)
  - (i) be authorized to make or deliver a receipt or other document certifying receipt of money or other property used or to be used by a governmental entity; and
  - (ii) make or deliver a receipt or document intending to defraud the governmental entity, knowing that the information contained in the receipt or document is not true;
- (6) knowingly buy or receive as a pledge of an obligation or a debt publicly owned property from an officer, employee, or agent of a governmental entity who lawfully may not sell or pledge the property;
- (7) knowingly make, use, or cause to be made or used a false record or statement material to an obligation to pay or transmit money or other property to a governmental entity;
- (8) knowingly conceal, or knowingly and improperly avoid or decrease, an obligation to pay or transmit money or other property to a governmental entity, including misrepresenting the time at which a trade was made to make the transaction appear less favorable; or
- (9) knowingly make any other false or fraudulent claim against a governmental entity.

### Fines and damages

(c)

- (1) A person that is found to have violated subsection (b) of this section is liable to the governmental entity for:
  - (i) a civil penalty of not more than \$10,000 for each violation; and

- (ii) an additional amount of not more than three times the amount of damages that the governmental entity sustains as a result of the acts of that person in violation of subsection (b) of this section.
- (2) The total amount owed by a person under paragraph (1) of this subsection may not be less than the amount of the actual damages the governmental entity incurs as a result of the person's violation of subsection (b) of this section.

#### Factors in determining amount of fines or damages

(d) In determining the appropriate amount of fines and damages under subsection (c) of this section, the court shall consider:

- (1) the number, nature, and severity of the violations of this title for which the person has been found liable;
- (2) the number, nature, and severity of any previous violations of this title;
- (3) the degree of loss suffered by the governmental entity;
- (4) the person's history of billing compliance;
- (5) whether the person has a compliance program in place;
- (6) the extent to which the person has taken steps to address and correct the violation since the person became aware of the violation;
- (7) any funds previously returned to the governmental entity in compliance with federal requirements regarding overpayments, to the extent the funds represented losses to the governmental entity caused by the violation;
- (8)
  - (i) whether the person self-reported the violation;
  - (ii) the timeliness of the self-reporting;
  - (iii) the extent to which the person otherwise cooperated in the investigation of the violation; and
  - (iv) the extent to which the person had prior knowledge of an investigation or other action relating to the violation; and
- (9) any other factor as justice requires.

#### Construction with criminal, civil, and administrative penalties

(e) The penalties provided in subsection (c) of this section are in addition to any criminal, civil, or administrative penalties provided under any other State or federal statute or regulation.

### **§ 8-103. Civil actions filed by governmental entity**

#### In general

(a) If a governmental entity finds that a person has violated or is violating § 8-102 of this title, the governmental entity may file a civil action in a court of competent jurisdiction within the State against the person.

#### Penalties

(b) In filing a civil action under this section, the governmental entity may seek the penalties provided under § 8-102(c) of this title.

Filing certain other actions based on same underlying act prohibited

(c) A governmental entity may not maintain an action under this section if the governmental entity has filed a civil action based on the same underlying act under § 2-603 of the Health-General Article or has sought enforcement by the Attorney General under § 11-205 or § 11-205.1 of the State Finance and Procurement Article.

#### **§ 8-104. Civil actions filed by persons**

In general

(a)

(1)

(i) A person may file a civil action on behalf of the person and the governmental entity in a court of competent jurisdiction within the State against a person who has acted or is acting in violation of § 8-102 of this title.

(ii) A civil action filed under subparagraph (i) of this paragraph shall be brought in the name of the governmental entity.

(2) A person filing an action under this section may seek:

(i) the penalties provided under § 8-102(c) of this title; and

(ii) subject to the guidelines set forth in § 8-105(a)(4) of this title, court costs and attorney's fees.

(3)

(i) The person shall serve on the governmental entity a copy of the complaint and a written disclosure of substantially all material evidence and information that the person possesses, in accordance with the provisions of Title 2 of the Maryland Rules for serving process on the State or a local entity.

(ii)

1. The complaint shall be filed in camera and shall remain under seal for at least 60 days.

2. The complaint may not be served on the defendant until the complaint is unsealed and the court orders the complaint served.

3. Within 60 days after the governmental entity is served with the complaint and the material evidence and information, the governmental entity may elect to intervene and proceed with the action.

(4)

(i) For good cause shown, the governmental entity may move the court for extensions of the time during which the complaint remains under seal under paragraph (3)(ii)1 of this subsection.

(ii) Any motions made under subparagraph (i) of this paragraph may be supported by affidavits or other submissions in camera.

(5)

(i) The defendant may not be required to answer a complaint filed under this section until after the complaint is:

1. unsealed and ordered by the court to be served;  
and

2. served on the defendant in accordance with Title 2 of the Maryland Rules.

(ii) When answering a complaint filed under this section, a defendant shall follow the time frames and other provisions for filing answers to a complaint as required under Title 2, Chapter 300 of the Maryland Rules.

(iii) During the period in which the complaint is under seal, if the governmental entity's investigation reveals that the act, transaction, or occurrence that gave rise to the alleged violation of this title is reasonably likely to be continuing, the governmental entity shall notify the defendant as soon as practicable without jeopardizing the course and conduct of the governmental entity's or the federal government's investigation of the violation, compromising the development of evidence, or violating any State or federal law.

(6) Before the later of the expiration of the 60-day period during which the complaint remains under seal under paragraph (3)(ii)1 of this subsection or any extension of the 60-day period obtained under paragraph (4) of this subsection, the governmental entity shall:

(i) intervene and proceed with the action in a court of competent jurisdiction within the State; or

(ii) notify the court that it will not intervene and proceed with the action.

(7) If the governmental entity does not elect to intervene and proceed with the action under paragraph (6) of this subsection, before unsealing the complaint, the court shall dismiss the action.

(8) If a person initiates an action under this section, no person other than the governmental entity may intervene in the action or initiate a related action based on the facts underlying the pending action.

#### Intervention by governmental entity

(b)

(1) If the governmental entity intervenes and proceeds with the action under subsection (a)(6)(i) of this section:

(i) the governmental entity shall have the primary responsibility for proceeding with the action and may not be bound by any act of the person who initiated the action; and

(ii) subject to paragraphs (3) through (6) of this subsection, the person who initiated the action may continue as a party to the action.

(2)

(i) During an investigation by the governmental entity conducted either independently or in conjunction with a civil action filed under this title, the governmental entity shall have the same rights of discovery as a civil litigant in the circuit court under Title 2, Chapter 400 of the Maryland Rules.

(ii) A person from whom the governmental entity seeks discovery shall be considered a party under Title 2, Chapter 400 of the Maryland Rules.

(3)

(i) Notwithstanding the objections of the person initiating the action, the governmental entity may elect at any point to withdraw its intervention as a party to the action.

(ii) If the governmental entity elects to withdraw as a party to the action:

1. the governmental entity shall notify the court and the party initiating the action; and
  2. the court shall dismiss the action.
- (4) Notwithstanding the objections of the person initiating the action, if the court determines after a hearing that a proposed settlement is fair, adequate, and reasonable under the circumstances, the governmental entity may settle a civil action filed under this section.
- (5) On motion of the governmental entity or the defendant or on the court's own motion, the court may impose limitations on the participation of the person initiating an action under this section if:
- (i) the governmental entity shows that the person's unrestricted participation in the action would:
    1. interfere with or unduly delay the governmental entity in its pursuit of the civil action; or
    2. be repetitious, irrelevant, or harassing to the defendant; or
  - (ii) the defendant shows that unrestricted participation by the person initiating the action would harass the defendant or cause the defendant undue burden or unnecessary expense.
- (6) Limitations imposed by the court under paragraph (5) of this subsection may include:
- (i) a limitation on the number of witnesses the person may call to testify;
  - (ii) a limitation on the length of the testimony of witnesses called by the person;
  - (iii) a limitation on the person's cross-examination of witnesses; and
  - (iv) a limitation on the participation of the person in the litigation.

#### Stay of discovery

(c)

- (1) On a showing in camera by the governmental entity that certain actions of discovery by the person initiating the action would interfere with the governmental entity's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than 60 days.
- (2) The court may extend the 60-day period on a further showing in camera that:
  - (i) the governmental entity has pursued the criminal or civil investigation or proceeding with reasonable diligence; and
  - (ii) any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceeding.

#### **§ 8-105. Damages**

Award to person initiating action in which governmental entity intervened and prevailed

(a)

- (1) If the governmental entity intervenes and proceeds with an action filed under § 8-104 of this title and the governmental entity prevails, the court shall award the person initiating the action an amount that is:
  - (i) not less than 15% and not more than 25% of the proceeds of the action or settlement of the claim; and

- (ii) proportional to the amount of time and effort that the person substantially contributed to the final resolution of the civil action.
- (2)
  - (i) If the court finds that the action is based primarily on disclosures of specific information relating to allegations or transactions in a criminal, a civil, or an administrative hearing, in a legislative or an administrative report, a hearing, an audit, or an investigation, or from the news media, the court may make an award to the person initiating the action that:
    - 1. the court considers appropriate, taking into account the significance of the information and the role of the person initiating the action in advancing the case to litigation; and
    - 2. does not exceed 10% of the proceeds of the action.
  - (ii) The information described in subparagraph (i) of this paragraph does not include information disclosed and provided by the person initiating the action.
- (3) Any payment to a person under paragraph (1) or (2) of this subsection shall be made from the proceeds of the action.
- (4)
  - (i) In addition to the amount provided under paragraphs (1) and (2) of this subsection, a court may award the person initiating the action:
    - 1. an amount for reasonable expenses that the court finds to have been necessarily incurred; and
    - 2. reasonable attorney's fees and costs.
  - (ii) In determining the amount of any award under subparagraph (i) of this paragraph, the court shall consider the amount of any penalties and damages recovered in the action and any other factor as justice may require.
  - (iii) Any expenses, fees, and costs awarded under this paragraph shall be awarded against the defendant.

#### Reduction of share of proceeds

- (b)
  - (1) If a court finds that the action is initiated by a person who planned and initiated or otherwise deliberately participated in the violation on which the action was based, the court may, to the extent it considers appropriate, reduce the share of the proceeds of the action that the person otherwise would have received under this section.
  - (2) In reducing the share of the proceeds of the person initiating the action under this subsection, the court shall consider:
    - (i) the role of the person in advancing the case to litigation; and
    - (ii) any relevant circumstances relating to the underlying violation.
  - (3)
    - (i) If the person initiating a civil action under § 8-104 of this title is convicted of criminal conduct arising from the person's participation in the violation on which the action was based prior to a final determination of the action, the person:
      - 1. shall be dismissed from the action; and
      - 2. may not receive any share of the proceeds of the action.



(ii) The dismissal of the person initiating the action in accordance with this paragraph does not prejudice the right of the governmental entity to continue the action.

(4) If the person initiating a civil action under § 8-104 of this title is convicted of criminal conduct arising from the person's participation in the violation on which the action was based after the proceeds from the action are awarded to that person, the court shall order the person to repay the proceeds previously awarded.

Attorney's fees and expenses

(c) A court may award reasonable attorney's fees and expenses to a defendant and against the person initiating the action if:

- (1) the defendant prevails in the action; and
- (2) the court finds that the claim of the person initiating the action was brought primarily for purposes of harassment or otherwise was brought in bad faith.

### **§ 8-106. Jurisdiction over specific claims and governmental liability for expenses of civil actions filed by persons prohibited**

Actions against certain state officers

(a) No court in this State shall have jurisdiction over an action filed under § 8-104 of this title against any member of the Legislative Branch or the Judiciary of the State, any member of the Governor's Executive Council, the Attorney General, the Comptroller, or the State Treasurer if the action is based on evidence or information known to the governmental entity when the action was filed.

Actions brought by public employee or official based upon knowledge gained during employment

(b) A civil action may not be brought under this title by a person who is or was a public employee or public official if the allegations of the action are based substantially on:

- (1) allegations of wrongdoing or misconduct that the person had a duty or an obligation to report or investigate within the scope of the person's public employment or office; or
- (2) information or records to which the person had access as a result of the person's public employment or office.

Actions based upon claims subject to existing proceedings

(c) A person may not bring an action under § 8-104 of this title that is based on allegations or transactions that are the subject of a civil action or an administrative civil money penalty proceeding in which the governmental entity is already a party.

Actions based upon certain public disclosures

(d)

(1) Except as provided in paragraphs (2) and (3) of this subsection, no court in this State shall have jurisdiction over an action filed under § 8-104 of this title that is based on the public disclosure of allegations or transactions:

- (i) in a criminal, a civil, or an administrative hearing;

- (ii) in a legislative or an administrative report, a hearing, an audit, or an investigation; or
  - (iii) from the news media.
- (2) Paragraph (1) of this subsection does not apply if the action is initiated by a person that:
- (i) has direct and independent knowledge of the information on which the allegations are based; and
  - (ii) has voluntarily provided the information to the governmental entity before filing an action under § 8-104 of this title that is based on the information.
- (3) A governmental entity, through the Attorney General, may file a civil action under § 8-103 of this title based on a public disclosure described in paragraph (1) of this subsection.

#### Expenses incurred by person bringing action

(e) The governmental entity is not liable for expenses that a person incurs in bringing an action under § 8-104 of this title.

#### Actions brought by public employee or officer based upon oversight duties

(f) A person that is or was employed by the State, a local government, or any other political subdivision of the State as an auditor, an investigator, an attorney, a financial officer, or a contracting officer may not bring an action under § 8-104 of this title that is based on allegations or transactions that the person discovered or learned of while acting in the person's capacity as an auditor, an investigator, an attorney, a financial officer, or a contracting officer for the State, local government, or other political subdivision of the State.

### **§ 8-107. Retaliatory actions against employees, contractors, or grantees prohibited**

#### Actions protected by section

- (a) A person may not take a retaliatory action against an employee, a contractor, or a grantee because the employee, contractor, or grantee:
- (1) acts lawfully in furtherance of an action filed under this title, including an investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this title;
  - (2) discloses or threatens to disclose to a supervisor or to a public body an activity, a policy, or a practice of the person that the employee, contractor, or grantee reasonably believes is in violation of § 8-102 of this title or a regulation adopted under this title;
  - (3) provides information to, or testifies before, a public body conducting an investigation, a hearing, or an inquiry into a violation of § 8-102 of this title or a regulation adopted under this title that is allegedly or actually committed by the person; or
  - (4) objects to or refuses to participate in any activity, policy, or practice that the employee, contractor, or grantee reasonably believes is in violation of § 8-102 of this title or a regulation adopted under this title.

#### Remedies available

(b)

- (1) An employee, a contractor, or a grantee may file a civil action against a person other than a supervisor in State government, an appointing authority in State government, or the head of a principal unit in State government if the person takes a retaliatory action against the employee, contractor, or grantee in violation of subsection (a) of this section.
- (2) The employee, contractor, or grantee may seek in the civil action:
  - (i) an injunction to restrain a continuing violation of subsection (a) of this section;
  - (ii) reinstatement to the same seniority status held before the retaliatory action;
  - (iii) reinstatement of full fringe benefits and seniority rights;
  - (iv) two times the amount of lost wages, benefits, and other remuneration, including any interest accumulated;
  - (v) payment by the person of reasonable costs and attorney's fees;
  - (vi) punitive damages;
  - (vii) an assessment of a civil penalty:
    1. not exceeding \$1,000 for the first violation; and
    2. not exceeding \$5,000 for each subsequent violation; and
  - (viii) any other relief necessary to make the employee, contractor, or grantee whole.
- (3) The remedies provided under this section do not diminish or affect the rights, privileges, or remedies available to the employee, contractor, or grantee under:
  - (i) any other federal or State statute or regulation; or
  - (ii) any collective bargaining agreement or employee contract.

#### Article governing complaint

(c) A State employee who is subject to retaliatory action in violation of subsection (a) of this section may file a complaint under Title 5, Subtitle 3 of the State Personnel and Pensions Article.

### **§ 8-108. Limitations, pleadings, and burden of proof**

#### In general

- (a) A civil action filed under this title may not be filed after the later of:
  - (1) 6 years after the date on which the underlying violation of § 8-102 of this title occurred; or
  - (2) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the person initiating the action or the official of the governmental entity charged with responsibility for acting under the circumstances, but in no event more than 10 years after the date on which the underlying violation of § 8-102 of this title occurred.

#### Filing or amending complaint by governmental entity

- (b) If the governmental entity elects to intervene and proceed with an action brought under this title, the governmental entity, through the Office of the Attorney General or the attorney for the local governmental entity, may:
  - (1) file its own complaint; or
  - (2) amend the complaint of the person that brought the action to clarify, add detail to the complaint, or add additional claims to the complaint.

Relation back of pleading by governmental entity

(c) To the extent that the claim of the governmental entity arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth by a person, a pleading by the governmental entity relates back to the filing date of the complaint of the person that originally brought the action.

Burden of proof

(d) In an action filed under this title, all essential elements of the cause of action, including damages, shall be proven by a preponderance of the evidence.

Effect of guilty plea or verdict

(e) Notwithstanding any other provision of law or rule of procedure or evidence in the Maryland Rules, a final judgment rendered in favor of the governmental entity in any criminal proceeding charging fraud or false statements, whether on a verdict after trial or on a plea of guilty or nolo contendere, shall stop the defendant from denying the essential elements of the offense in any action filed under this title that involves the same act, transaction, or occurrence as in the criminal proceeding.

#### **§ 8-109. Remedies and coordination of investigations by governmental entity**

Available remedies

(a) Any remedy provided under this title is in addition to any other appropriate legal or equitable relief provided under any other applicable State or federal statute or regulation.

Coordination of investigations

(b)

(1) The governmental entity shall make all reasonable efforts to coordinate any investigation of an alleged violation under this title with any investigation conducted by the federal government involving the same violation.

(2) The governmental entity's objective shall be to avoid unnecessary duplication of effort on the part of the person alleged to have committed the violation and to minimize the burden of the investigation on the person.

Penalties or damages deposited into General Fund

(c) The Comptroller shall deposit any civil penalty or damages collected by the State under this title into the General Fund of the State.

#### **§ 8-110. Reporting requirements**

Number of civil actions, judgments, and claims

(a) Beginning October 1, 2016, the Office of the Attorney General shall report annually to the General Assembly, in accordance with § 2-1257 of the State Government Article, the following information for the previous fiscal year:

(1) the number of civil actions filed under this title;

(2) the number of civil actions under this title in which a judgment was entered, whether by settlement or adjudication; and

(3) the number of claims made by the governmental entity based on alleged violations of § 8-102 of this title that are settled without the filing of a civil action under this title.

Information relating to filing, defendants, and violations or alleged violations

(b) Unless the action is under seal in accordance with § 8-104 of this title, for each civil action reported under subsection (a)(1) or (2) of this section, the report shall state:

(1) whether the action was filed by the governmental entity or by a person on behalf of the governmental entity and, if filed by a person, whether the governmental entity intervened and proceeded with the action;

(2) the name of the defendant;

(3) a description of the violation or alleged violation of § 8-102 of this title; and

(4) the amount sought in the action and, if applicable, the amount for which the defendant is liable under a settlement agreement or court order. Information relating to resolution and amount paid and collected by governmental entity

(c) For each claim reported under subsection (a)(3) of this section, the report shall state:

(1) a description of the violation or alleged violation of § 8-102 of this title;

(2) the resolution of the claim;

(3) the amount, if any, the person against whom the claim was made agreed to pay in settlement of the claim; and

(4) the amount, if any, collected by the governmental entity.

#### Submission of other information

(d) The attorney for each county and the attorney for each municipal corporation shall submit to the Office of the Attorney General any information the Office determines is necessary to complete the report required under this section.

### **§ 8-111. Short title**

This title may be cited as the Maryland False Claims Act.

## **False Claims Against State Health Plans and State Health Programs**

(Md. Code Health-General §§ 2-601–611)<sup>ii</sup>

### **§ 2-601. Definitions**

In general

(a) In this subtitle the following words have the meanings indicated.

Claim

(b)

(1) “Claim” means a request or demand, under a contract or otherwise, for money or other property, whether or not the State has title to the money or property, that is:

(i) Presented through a State health plan or a State health program to an officer, employee, or agent of the State; or

(ii) Made to a contractor, grantee, or other recipient, if the money or other property is to be spent or used on the State’s behalf or to advance a State interest through a State health plan or State health program, and the State:

1. Provides or has provided any portion of the money or other property requested or demanded; or

2. Will reimburse the contractor, grantee, or other recipient for any portion of the money or other property that is requested or demanded.

(2) “Claim” does not include requests or demands for money or other property that the State through a State health plan or State health program has paid to an individual as compensation for State employment or as an income subsidy with no restrictions on that individual’s use of the money or other property.

Documentary material

(c) “Documentary material” includes:

(1) The original or a copy of:

(i) A book;

(ii) A record;

(iii) A report;

(iv) A memorandum;

(v) A paper;

(vi) A communication;

(vii) A tabulation;

(viii) A chart;

(ix) A document; or

(x) Data compilation stored in or accessible through a computer or other information retrieval system, including instructions and all other materials necessary to use or interpret the data compilation; and (2) Any product of discovery, including:

(i) The original or duplicate of any deposition, interrogatory, document, thing, result of an inspection of land or other property, examination, or

- admission that is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;
- (ii) Any digest, analysis, selection, compilation, or derivation of any item listed in item (i) of this item; and
- (iii) Any index or other manner of access to any item listed in item (i) of this item.

#### Employee

- (d) “Employee” means an individual who performs services:
- (1) For and under the control and direction of an employer; and
  - (2) Under an employer’s promise or implied promise of payment of wages or other remuneration.

#### Employer

- (e) “Employer” means a person or group of persons who, acting directly or indirectly on behalf of another person or group of persons:
- (1) Allows an employee to perform services under the employer’s control and direction; and
  - (2) Promises or implies that the employee will receive wages or other remuneration in payment for the performance of those services.

#### Knowing or knowingly

- (f)
- (1) “Knowing” or “knowingly” means, with respect to information and without requiring proof of specific intent to defraud, that a person:
    - (i) Has actual knowledge of the information;
    - (ii) Acts in deliberate ignorance of the truth or falsity of the information; or
    - (iii) Acts in reckless disregard of the truth or falsity of the information.
  - (2) “Knowing” or “knowingly” does not mean, with respect to information, that a person acts in a manner that constitutes mistake or negligence.

#### Material

- (g) “Material” means having a natural tendency to influence or be capable of influencing the payment or receipt of money or other property.

#### Obligation

- (h) “Obligation” means an established duty, whether or not fixed, arising from:
- (1) An express or implied:
    - (i) Contractual relationship;
    - (ii) Grantor-grantee relationship; or
    - (iii) Licensor-licensee relationship;
  - (2) A fee-based or similar relationship;
  - (3) Statute or regulation; or
  - (4) The retention of an overpayment.

#### Provider

(i) “Provider” has the meaning stated in § 2-501 of this title.

#### Public body

(j) “Public body” means:

- (1) The General Assembly or any other elected body;
- (2) A member or an employee of the General Assembly or other elected body;
- (3) A State court;
- (4) A member or an employee of a State court;
- (5) A State or local regulatory, administrative, or public agency or authority;
- (6) An instrumentality of a State or local regulatory, administrative, or public agency or authority;
- (7) A State or local law enforcement agency, prosecutorial office, or police or peace officer;
- (8) A State or local department of an executive branch of government; or
- (9) A division, board, bureau, office, committee, or commission of any of the public bodies listed in this subsection.

#### Retaliatory action

(k) “Retaliatory action” means:

- (1) Discharging, suspending, demoting, threatening, harassing, or discriminating against an employee, contractor, or agent; or
- (2) Any other adverse action taken against an employee, contractor, or agent relating to the conditions of employment, contract, or agency.

#### State health plan

(l)

(1) “State health plan” means:

- (i) The State Medical Assistance Plan established in accordance with the federal Social Security Act of 1939, as amended;
- (ii) A medical assistance plan established by the State; or
- (iii) A private health insurance carrier, health maintenance organization, managed care organization as defined in § 15-101 of this article, health care cooperative or alliance, or another person that provides or contracts to provide health care services that are wholly or partially reimbursed by, or are a required benefit of, a health plan established in accordance with the federal Social Security Act of 1939, as amended, or by the State.

(2) “State health plan” includes a person who provides or contracts or subcontracts to provide health care services for an entity described in paragraph (1) of this subsection.

#### State health program

(m) “State health program” means the Medical Assistance Program, the Cigarette Restitution Fund Program, the Developmental Disabilities Administration, the Behavioral Health Administration, the Prevention and Health Promotion Administration, or any other unit of the Department that pays a provider for a service rendered or claimed to have been rendered to a recipient.



## Supervisor

(n) “Supervisor” means an individual within an employer’s organization who has the authority to:

- (1) Direct and control the work performance of an employee; or
- (2) Take corrective action regarding the violation of a law or regulation that is the subject of a complaint or charge under this subtitle.

## **§ 2-602. False or fraudulent claims prohibited**

### Actions subject to discipline

(a) A person may not:

- (1) Knowingly present or cause to be presented a false or fraudulent claim for payment or approval;
- (2) Knowingly make, use, or cause to be made or used a false record or statement material to a false or fraudulent claim;
- (3) Conspire to commit a violation under this subtitle;
- (4) Have possession, custody, or control of money or other property used by or on behalf of the State under a State health plan or a State health program and knowingly deliver or cause to be delivered to the State less than all of that money or other property;
- (5)
  - (i) Be authorized to make or deliver a receipt or other document certifying receipt of money or other property used or to be used by the State under a State health plan or a State health program; and
  - (ii) Intending to defraud the State or the Department, make or deliver a receipt or document knowing that the information contained in the receipt or document is not true;
- (6) Knowingly buy or receive as a pledge of an obligation or debt publicly owned property from an officer, employee, or agent of a State health plan or a State health program who lawfully may not sell or pledge the property;
- (7) Knowingly make, use, or cause to be made or used, a false record or statement material to an obligation to pay or transmit money or other property to the State;
- (8) Knowingly conceal, or knowingly and improperly avoid or decrease, an obligation to pay or transmit money or other property to the State; or
- (9) Knowingly make any other false or fraudulent claim against a State health plan or a State health program.

### Fines and penalties

(b)

- (1) A person who is found to have violated subsection (a) of this section is liable to the State for:
  - (i) A civil penalty of not more than \$10,000 for each violation of subsection (a) of this section; and
  - (ii) An additional amount of not more than three times the amount of damages that the State sustains as a result of the acts of that person in violation of subsection (a) of this section.

(2) The total amount owed by a person under paragraph (1) of this subsection may not be less than the amount of the actual damages the State health plan or State health program incurs as a result of the person's violation of subsection (a) of this section.

#### Factors in determining amount of fines or damages

(c)

(1) In determining the appropriate amount of fines and damages under subsection (b) of this section, the court shall consider:

- (i) The number, nature, and severity of the violations of this subtitle for which the person has been found liable;
- (ii) The number, nature, and severity of any previous violations of this subtitle;
- (iii) The degree of loss suffered by the State health plan or State health program;
- (iv) The person's history of billing compliance;
- (v) Whether the person has a compliance program in place;
- (vi) The extent to which the person has taken steps to address and correct the violation since the person became aware of the violation;
- (vii) The extent to which the violation caused harm or detriment to patients or consumers of the State health plan or State health program;
- (viii) Any funds previously returned to the State health plan or State health program in compliance with federal requirements regarding overpayments, to the extent the funds represented losses to the State health plan or State health program caused by the violation;
- (ix) Whether the person self-reported the violation, the timeliness of the self-reporting, the extent to which the person otherwise cooperated in the investigation of the violation, and the extent to which the person had prior knowledge of an investigation or other action relating to the violation; and
- (x) Any other factor as justice requires.

(2) In weighing the factors set forth in paragraph (1) of this subsection, the court shall, where appropriate, give special consideration to:

- (i) The extent to which the person's size, operations, or financial condition may have affected each of the factors set forth in paragraph (1) of this subsection; and
- (ii) The extent to which the person's size, operations, or financial condition may affect the person's ability to provide care and continue operations after payment of damages and fines. Construction with criminal, civil, or administrative penalties

(d) The penalties provided in subsection (b) of this section are in addition to any criminal, civil, or administrative penalties provided under any other State or federal statute or regulation.

### **§ 2-603. Civil actions filed by State**

#### In general

(a) If the State finds that a person has violated or is violating § 2-602(a) of this subtitle, the State may file a civil action in a court of competent jurisdiction within the State against the person.

Penalties, court costs, and attorney's fees

(b) In filing a civil action under this section, the State may seek:

- (1) The penalties provided under § 2-602(b) of this subtitle; and
- (2) Subject to the guidelines set forth in § 2-605(a)(4) of this subtitle, court costs and attorney's fees.

## **§ 2-604. Civil actions filed by persons**

Actions brought on behalf of person and State

(a)

(1)

(i) A person may file a civil action on behalf of the person and the State in a court of competent jurisdiction within the State against a person who has acted or is acting in violation of § 2-602(a) of this subtitle.

(ii) A civil action filed under subparagraph (i) of this paragraph shall be brought in the name of the State.

(2) A person filing an action under this section may seek:

(i) The penalties provided under § 2-602(b) of this subtitle; and

(ii) Subject to the guidelines set forth in § 2-605(a)(4) of this subtitle, court costs and attorney's fees.

(3)

(i) The person shall serve on the State a copy of the complaint and a written disclosure of substantially all material evidence and information that the person possesses, in accordance with the provisions of Title 2 of the Maryland Rules for serving process on the State.

(ii)

1. The complaint shall be filed in camera and shall remain under seal for at least 60 days.

2. The complaint may not be served on the defendant until the complaint is unsealed and the court orders the complaint served.

3. Within 60 days after the State receives the complaint and the material evidence and information, the State may elect to intervene and proceed with the action.

(4)

(i) For good cause shown, the State may move the court for extensions of the time during which the complaint remains under seal under paragraph (3)(ii)1 of this subsection.

(ii) Any motions made under subparagraph (i) of this paragraph may be supported by affidavits or other submissions in camera.

(5)

(i) The defendant may not be required to answer a complaint filed under this section until after the complaint is:

1. Unsealed and ordered by the court to be served;
- and

2. Served on the defendant in accordance with Title 2 of the Maryland Rules.

(ii) When answering a complaint filed under this section, a defendant shall follow the time frames and other provisions for filing answers to a complaint as required under Title 2, Chapter 300 of the Maryland Rules.

(iii) During the period in which the complaint is under seal, if the State's investigation reveals that the act, transaction, or occurrence that gave rise to the alleged violation of this subtitle is reasonably likely to be continuing, the State shall notify the defendant as soon as practicable without jeopardizing the course and conduct of the State's or the federal government's investigation of the violation, compromising the development of evidence, or violating any State or federal law.

(6) Before the later of the expiration of the 60-day period during which the complaint remains under seal under paragraph (3)(ii)1 of this subsection or any extension of the 60-day period obtained under paragraph (4) of this subsection, the State shall:

(i) Intervene and proceed with the action in a court of competent jurisdiction within the State; or

(ii) Notify the court that it will not intervene and proceed with the action.

(7) If the State does not elect to intervene and proceed with the action under paragraph (6) of this subsection, before unsealing the complaint, the court shall dismiss the action.

(8) If a person initiates an action under this section, no person other than the State may intervene in the action or initiate a related action based on the facts underlying the pending action.

#### Intervention by State

(b)

(1) If the State intervenes and proceeds with the action under subsection (a)(6)(i) of this section:

(i) The State shall have the primary responsibility for proceeding with the action and may not be bound by any act of the person who initiated the action; and

(ii) Subject to paragraphs (3) through (6) of this subsection, the person who initiated the action may continue as a party to the action.

(2)

(i) During an investigation by the State conducted either independently or in conjunction with a civil action filed under this subtitle, the Attorney General shall have the same rights of discovery as a civil litigant in the circuit court under Title 2, Chapter 400 of the Maryland Rules.

(ii) A person from whom the Attorney General seeks discovery shall be considered a party under Title 2, Chapter 400 of the Maryland Rules.

(3)

(i) Notwithstanding the objections of the person initiating the action, the State may elect at any point to withdraw its intervention as a party to the action.

(ii) If the State elects to withdraw as a party to the action:

1. The State shall notify the court and the party initiating the action; and

2. The court shall dismiss the action.

(4) Notwithstanding the objections of the person initiating the action, if the court determines after a hearing that a proposed settlement is fair, adequate, and reasonable under the circumstances, the State may settle a civil action filed under this section.

(5) On motion of the State or the defendant or on the court's own motion, the court may impose limitations on the participation of the person initiating an action under this section if:

(i) The State shows that the person's unrestricted participation in the action would:

1. Interfere with or unduly delay the State in its pursuit of the civil action; or
2. Be repetitious, irrelevant, or harassing to the defendant; or

(ii) The defendant shows that unrestricted participation by the person initiating the action would harass the defendant or cause the defendant undue burden or unnecessary expense.

(6) Limitations imposed by the court under paragraph (5) of this subsection may include:

- (i) A limitation on the number of witnesses the person may call to testify;
- (ii) A limitation on the length of the testimony of witnesses called by the person;
- (iii) A limitation on the person's cross-examination of witnesses; or
- (iv) A limitation on the participation of the person in the litigation.

#### Alternative remedies pursued by State

(c)

(1) Instead of proceeding with a civil action filed under this subtitle, the State may pursue any alternative remedy available to the State, including any appropriate administrative proceeding to determine a civil money penalty.

(2) If the State seeks an alternative remedy in another proceeding after intervening in a civil action filed under this section, the person initiating the action shall have the same rights in the alternative proceeding as the person would have had if the civil action had continued under this section.

(3)

(i) A finding of fact or conclusion of law made in any alternative proceeding that has become final shall be conclusive on all parties to an action filed under this subtitle.

(ii) For purposes of subparagraph (i) of this paragraph, a finding or conclusion is final if:

1. It has been finally determined on appeal to the appropriate court of the State;
2. All time for filing the appeal with respect to the finding or conclusion has expired; or
3. The finding or conclusion is not subject to judicial review.

Stay of discovery due to interference with State actions

(d)

(1) On a showing in camera by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than 60 days.

- (2) The court may extend the 60-day period on a further showing in camera that:
  - (i) The State has pursued the criminal or civil investigation or proceeding with reasonable diligence; and
  - (ii) Any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceeding.

## **§ 2-605. State intervention of proceedings**

### Awards to persons initiating the action

(a)

- (1) If the State intervenes and proceeds with an action filed under § 2-604 of this subtitle and the State prevails, the court shall award the person initiating the action an amount that is:
  - (i) Not less than 15% and not more than 25% of the proceeds of the action or settlement of the claim; and
  - (ii) Proportional to the amount of time and effort that the person substantially contributed to the final resolution of the civil action.
- (2)
  - (i) If the court finds that the action is based primarily on disclosures of specific information relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may make an award to the person initiating the action that:
    - 1. The court considers appropriate, taking into account the significance of the information and the role of the person initiating the action in advancing the case to litigation; and
    - 2. Does not exceed 10% of the proceeds of the action.
  - (ii) The information described in subparagraph (i) of this paragraph does not include information disclosed and provided by the person initiating the action.
- (3) Any payment to a person under paragraph (1) or (2) of this subsection shall be made from the proceeds of the action.
- (4)
  - (i) In addition to the amount provided under paragraphs (1) and (2) of this subsection, a court may award the person initiating the action:
    - 1. An amount for reasonable expenses that the court finds to have been necessarily incurred; and
    - 2. Reasonable attorney's fees and costs.
  - (ii) In determining the amount of any award under subparagraph (i) of this paragraph, the court shall consider the amount of any penalties and damages recovered in the action and any other factor as justice may require.
  - (iii) Any expenses, fees, and costs awarded under this paragraph shall be awarded against the defendant.

### Reduction in persons' share of proceeds

(b)

- (1) If a court finds that the action is initiated by a person who planned and initiated or otherwise deliberately participated in the violation on which the action was based, the court may, to the extent it considers appropriate, reduce the share of the proceeds of the action that the person otherwise would have received under this section.
- (2) In reducing the share of the proceeds of the person initiating the action under this subsection, the court shall consider:
  - (i) The role of the person in advancing the case to litigation; and
  - (ii) Any relevant circumstances relating to the underlying violation.
- (3)
  - (i) If the person initiating a civil action under § 2-604 of this subtitle is convicted of criminal conduct arising from the person's participation in the violation on which the action was based prior to a final determination of the action, the person:
    1. Shall be dismissed from the action; and
    2. May not receive any share of the proceeds of the action.
  - (ii) The dismissal of the person initiating the action in accordance with this paragraph does not prejudice the right of the State to continue the action.
- (4) If the person initiating a civil action under § 2-604 of this subtitle is convicted of criminal conduct arising from the person's participation in the violation on which the action was based after the proceeds from the action are awarded to that person, the court shall order the person to repay the proceeds previously awarded.

Attorney's fees and expenses

(c) A court may award reasonable attorney's fees and expenses to a defendant and against the person initiating the action if:

- (1) The defendant prevails in the action; and
- (2) The court finds that the claim of the person initiating the action was brought primarily for purposes of harassment or otherwise brought in bad faith.

## **§ 2-606. Civil actions by or against government employees**

In general

(a) No court in this State shall have jurisdiction over an action filed under § 2-604 of this subtitle against any member of the Legislative Branch or the Judiciary of the State, any member of the Governor's Executive Council, the Attorney General, the Comptroller, or the State Treasurer if the action is based on evidence or information known to the State when the action was filed.

Actions based on reports or investigations by public employees or officials

(b) A civil action may not be brought under this subtitle by a person who is or was a public employee or public official if the allegations of the action are based substantially on:

- (1) Allegations of wrongdoing or misconduct that the person had a duty or obligation to report or investigate within the scope of the person's public employment or office; or
- (2) Information or records to which the person had access as a result of the person's public employment or office.

Civil suits or administrative proceedings in which State a party

(c) A person may not bring an action under § 2-604 of this subtitle that is based on allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party.

Actions based on public disclosure of allegations or transactions

(d)

(1) Except as provided in paragraphs (2) and (3) of this subsection, no court in this State shall have jurisdiction over an action filed under § 2-604 of this subtitle that is based on the public disclosure of allegations or transactions:

(i) In a criminal, civil, or an administrative hearing;

(ii) In a legislative or an administrative report, a hearing, an audit, or an investigation; or

(iii) From the news media.

(2) Paragraph (1) of this subsection does not apply if the action is initiated by a person who:

(i) Has direct and independent knowledge of the information on which the allegations are based; and

(ii) Has voluntarily provided the information to the State before filing an action under § 2-604 of this subtitle that is based on the information.

(3) The State, through the Attorney General, may file a civil action under § 2-603 of this subtitle based on the public disclosure described in paragraph (1) of this subsection.

State not liable for expenses

(e) The State is not liable for expenses that a person incurs in bringing an action under § 2-604 of this subtitle.

Restrictions

(f) A person who is or was employed by the State, a local government, or any other political subdivision of the State as an auditor, investigator, attorney, financial officer, or contracting officer may not bring an action under § 2-604 of this subtitle that is based on allegations or transactions that the person discovered or learned of while acting in the person's capacity as an auditor, investigator, attorney, financial officer, or contracting officer for the State, local government, or other political subdivision of the State.

### **§ 2-607. Retaliatory actions against employees, contractors, or grantees prohibited**

Actions protected by section

(a) A person may not take a retaliatory action against an employee, contractor, or grantee because the employee, contractor, or grantee:

(1) Acts lawfully in furtherance of an action filed under this subtitle, including an investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this subtitle;

(2) Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of the person that the employee, contractor, or grantee reasonably



believes is in violation of § 2-602(a) of this subtitle or a regulation adopted under this subtitle;

(3) Provides information to, or testifies before, a public body conducting an investigation, hearing, or inquiry into a violation of § 2-602(a) of this subtitle or a regulation adopted under this subtitle that is allegedly or actually committed by the person; or

(4) Objects to or refuses to participate in any activity, policy, or practice that the employee, contractor, or grantee reasonably believes is in violation of § 2-602(a) of this subtitle or a regulation adopted under this subtitle.

#### Remedies available

(b)

(1) An employee, contractor, or grantee may file a civil action against a person other than a supervisor in State government, an appointing authority in State government, or the head of a principal unit in State government if the person takes a retaliatory action against the employee, contractor, or grantee in violation of subsection (a) of this section.

(2) The employee, contractor, or grantee may seek in the civil action:

(i) An injunction to restrain a continuing violation of subsection (a) of this section;

(ii) Reinstatement to the same seniority status held before the retaliatory action;

(iii) Reinstatement of full fringe benefits and seniority rights;

(iv) Two times the amount of lost wages, benefits, and other remuneration, including any interest accumulated;

(v) Payment by the person of reasonable costs and attorney's fees;

(vi) Punitive damages;

(vii) An assessment of a civil penalty:

1. Not exceeding \$1,000 for the first violation; and

2. Not exceeding \$5,000 for each subsequent violation; and

(viii) Any other relief necessary to make the employee, contractor, or grantee whole.

(3) The remedies provided under this section do not diminish or affect the rights, privileges, or remedies available to the employee, contractor, or grantee under:

(i) Any other federal or State statute or regulation; or

(ii) Any collective bargaining agreement or employee contract.

#### Application of section

(c) This section does not apply to an employee as defined in § 1-501 of the Health Occupations Article or a State employee. Article governing civil action or complaint

(d)

(1) An employee as defined in § 1-501 of the Health Occupations Article who is subject to retaliatory action in violation of subsection (a) of this section may file a civil action under Title 1, Subtitle 5 of the Health Occupations Article.

(2) A State employee who is subject to retaliatory action in violation of subsection (a) of this section may file a complaint under Title 5, Subtitle 3 of the State Personnel and Pensions Article.

## **§ 2-608. Notice provided to employees**

An employer shall:

- (1) Conspicuously display notices of the protections provided to and obligations required of its employees under this subtitle; and
- (2) Use any appropriate means to inform its employees of the protections and obligations provided under this subtitle.

## **§ 2-609. Limitations, pleadings, and burden of proof for civil actions filed by State**

In general

(a) A civil action filed under this subtitle may not be filed after the later of:

- (1) 6 years after the date on which the underlying violation of § 2-602(a) of this subtitle occurred; or
- (2) 3 years after the date when facts material to the right of action are known by the relator, the State's Inspector General, or the Director of the State's Medicaid Fraud Control Unit or reasonably should have been known, but in no event more than 10 years after the date on which the underlying violation of § 2-602(a) of this subtitle is committed.

Activities occurring prior to October 1, 2010

(b) A civil action may be filed under this subtitle for activity that occurred prior to October 1, 2010, if the limitations period under subsection (a) of this section has not lapsed.

Filing or amending complaint by State

(c) If the State elects to intervene and proceed with an action brought under this subtitle, the State, through the Office of the Attorney General, may:

- (1) File its own complaint; or
- (2) Amend the complaint of the person who brought the action to clarify, add detail to the complaint, or add additional claims to the complaint.

Relation back of State pleading

(d) To the extent that the claim of the State arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth by a person, a State pleading relates back to the filing date of the complaint of the person who originally brought the action.

Burden of proof

(e) In an action filed under this subtitle, all essential elements of the cause of action, including damages, shall be proven by a preponderance of the evidence.

Effect of guilty plea or verdict

(f) Notwithstanding any other provision of law or rule of procedure or evidence in the Maryland Rules, a final judgment rendered in favor of the State in any criminal proceeding charging fraud or false statements, whether on a verdict after trial or on a plea of guilty or nolo contendere, shall stop the defendant from denying the essential elements of the offense in any

action filed under this subtitle that involves the same act, transaction, or occurrence as in the criminal proceeding.

### **Md. Code Health-General § 2-610. Remedies, coordination of investigations by State, and regulations**

Available remedies

(a) Any remedy provided under this subtitle is in addition to any other appropriate legal or equitable relief provided under any other applicable State or federal statute or regulation.

Coordination of investigations

(b)

(1) The State shall make all reasonable efforts to coordinate any investigation of an alleged violation under this subtitle with any investigation conducted by the federal government involving the same violation.

(2) The State's objective shall be to avoid unnecessary duplication of effort on the part of the person alleged to have committed the violation and to minimize the burden of the investigation on the person.

Penalties or damages deposited into General Fund

(c) The Comptroller shall deposit any civil penalty or damages collected under this subtitle in the General Fund of the State.

Regulations

(d) The Department or the Inspector

General of the Department may adopt regulations to carry out the provisions of this subtitle.

### **Md. Code Health-General § 2-611. Reporting requirements**

Number of civil actions filed, judgments, and claims by State

(a) Beginning October 1, 2010, the Inspector General of the Department and the Director of the Medicaid Fraud Control Unit in the Office of the Attorney General shall report annually to the General Assembly, in accordance with § 2-1257 of the State Government Article, the following information for the previous fiscal year:

(1) The number of civil actions filed under this subtitle;

(2) The number of civil actions under this subtitle in which a judgment was entered, whether by settlement or adjudication; and

(3) The number of claims made by the State based on alleged violations of § 2-602(a) of this subtitle that are settled without the filing of a civil action under this subtitle.

Information relating to filing, defendants, and alleged violation or violation

(b) Unless the action is under seal in accordance with § 2-604 of this subtitle, for each civil action reported under subsection (a)(1) or (2) of this section, the report shall state:

(1) Whether the action was filed by the State or by a person on behalf of the State and, if filed by a person, whether the State intervened and proceeded with the action;

- (2) The name of the defendant and the following information about the defendant:
  - (i) The number of employees and any other data relevant to the size of the defendant;
  - (ii) The amount of payments made to the defendant in the year prior to the filing of the action from State health plans and, to the extent known by the Inspector General and the Medicaid Fraud Control Unit, from other sources; and
  - (iii) Whether the defendant is a minority-owned business enterprise as defined by § 14-301 of the State Finance and Procurement Article;
- (3) A description of the violation or alleged violation of § 2-602 of this subtitle; and
- (4) The amount sought in the action and, if applicable, the amount for which the defendant is liable under a settlement agreement or court order.

Information relating to resolution and amount paid and collected by State

- (c) For each claim reported under subsection (a)(3) of this section, the report shall state:
  - (1) A description of the violation or alleged violation of § 2-602 of this subtitle;
  - (2) The resolution of the claim;
  - (3) The amount, if any, the person against whom the claim was made agreed to pay in settlement of the claim; and
  - (4) The amount, if any, collected by the State.

## **Maryland Whistleblower Law: The Maryland Whistleblower Reward Program<sup>iii</sup>**

### **Md. Code Tax-General § 1-401. Definitions**

#### In general

(a) In this subtitle the following words have the meanings indicated. Covered enforcement action

(b) “Covered enforcement action” means an enforcement action brought by the Comptroller under this article that concerns:

(1)

(i) the State and county income tax liability of an individual taxpayer or a couple that is married and files jointly whose federal adjusted gross income is at least \$250,000; or

(ii) the State and county tax liability of a business, including those persons who are jointly and severally liable for the State tax liability of a business under this article, the annual gross receipts or sales of which are at least \$2,000,000; and

(2) taxes in dispute exceeding \$250,000.

#### Original information

(c) “Original information” means information that:

(1) is derived from the independent knowledge or analysis of a whistleblower;

(2) is not known to the Comptroller from any other source, unless the whistleblower is the original source of the information;

(3) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation or from the news media, unless the whistleblower is a source of the information; and

(4) is provided to the Comptroller in a sworn affidavit for the first time on or after October 1, 2021.

#### Related action

(d) “Related action” means any judicial or administrative action brought by a State or local agency or entity based on the original information provided by a whistleblower to the Comptroller under this subtitle.

#### Whistleblower

(e)

(1) “Whistleblower” means an individual or entity who provides, or two or more individuals or entities acting jointly who provide, in accordance with this subtitle, information to the Comptroller in a sworn affidavit relating to a violation of State tax law, including a rule or regulation, that has occurred, is ongoing, or is about to occur.

(2) “Whistleblower” includes an individual who provides information to a law enforcement agency before providing the information to the Comptroller.

### **§ 1-402. Eligibility for award; allocation of awards**

#### In general

(a) Subject to the limitations of this subtitle and except as provided in subsection (b) of this section, a whistleblower who voluntarily provides original information to the Comptroller in a sworn affidavit that, because of the original information, results in a final assessment in a covered enforcement action, or a successful outcome against a taxpayer in a related action, shall be entitled to receive a monetary award of at least 15% but not exceeding 30% of the taxes, penalties, and interest collected through the enforcement action or related action.

#### Material addition to information

(b) A whistleblower who provides information to the Comptroller in a sworn affidavit that is related to original information previously reported to the Comptroller by another whistleblower who is eligible for an award under subsection (a) of this section may not be entitled to an award unless the information provided by the whistleblower materially adds to the information previously reported to the Comptroller.

#### Two or more whistleblowers

(c) If two or more whistleblowers are eligible for an award under subsection (a) of this section arising out of the same covered enforcement action or related action:

- (1) the total award may not exceed 30% of the taxes, penalties, and interest collected through the enforcement action or related action; and
- (2) the Comptroller shall determine the allocation of the award among the eligible whistleblowers.

### **§ 1-403. Amount of award; exceptions to eligibility**

#### Amount of award

(a)

- (1) The determination of the amount of an award made in accordance with § 1-402 of this subtitle shall be solely in the discretion of the Comptroller.
- (2) In determining the amount of the award, the Comptroller shall consider:
  - (i) the significance of the information provided by the whistleblower to the success of the covered enforcement action or related action;
  - (ii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered enforcement action or related action;
  - (iii) the amount of the unpaid taxes owed the State that may be recovered under the covered enforcement action or related action;
  - (iv) the interest of the State in deterring violations of this article and promoting the reporting by whistleblowers of information relating to those violations; and
  - (v) any additional relevant factors that the Comptroller may establish by regulation.

#### Exceptions to eligibility

(b) An award may not be provided to a whistleblower if the Comptroller determines that the whistleblower:

(1) is, or was at the time that the whistleblower acquired the original information provided to the Comptroller, a member, an officer, or an employee of a federal, state, or local law enforcement agency responsible for the enforcement of tax-related matters; (2) was convicted of a criminal violation related to the covered enforcement action or related action for which the whistleblower otherwise could receive an award under this section; (3) could have been convicted of a criminal violation or held personally liable for the tax liability related to the covered enforcement action or related action for which the whistleblower otherwise could receive an award under this section had the whistleblower provided the original information before the expiration of any applicable statute of limitations for prosecution or assessment of the whistleblower; or (4) when submitting information under this subtitle, knowingly and willfully made false, fictitious, or fraudulent statements to the Comptroller or used any false writing or document knowing the writing or document contained a false, fictitious, or fraudulent statement or entry.

#### Challenges to determinations

(c)

(1) A determination of the Comptroller under this section may be challenged in accordance with Title 10, Subtitle 2 of the State Government Article if the challenge is brought within 45 days of the date of the determination.

(2) In bringing a challenge in accordance with paragraph (1) of this subsection, the whistleblower may not challenge:

- (i) the decision to conduct or the method of conducting an investigation arising from the original information provided by the whistleblower;
- (ii) the amount of any unpaid taxes, penalties, or interest due to the State arising from the original information provided by the whistleblower;
- (iii) the result of a covered enforcement action or related action arising from the original information provided by the whistleblower; or
- (iv) any settlement between the State and a person having a tax liability that arises from the original information provided by the whistleblower.

#### **§ 1-404. Contract; counsel; notice; disclosure of information**

##### Contract not required

(a) A contract with the Comptroller, the Office of the Attorney General, or any other agency may not be required in order for a whistleblower to receive an award under this subtitle.

##### Representation by counsel

(b)

(1) A whistleblower who makes a claim for an award under this subtitle may be represented by counsel.

(2)

- (i) A whistleblower who anonymously makes a claim for an award under this subtitle shall be represented by counsel if the whistleblower anonymously submits the information on which the claim is based.

(ii) Before payment of an award claimed in accordance with subparagraph (i) of this paragraph, the whistleblower shall disclose the whistleblower's identity and provide any other information that the Comptroller may require, directly or through counsel.

(3) Nothing in this subsection may be construed to imply or infer that a whistleblower is entitled to compensation for any costs or attorney's fees incurred to claim an award under this subtitle.

#### Notice

(c) Within 15 days after receiving original information provided by a whistleblower, the Comptroller shall provide written notice to the whistleblower or, if the whistleblower is represented by counsel, the whistleblower's attorney that:

- (1) acknowledges that the original information has been received by the Comptroller; and
- (2) indicates the name of the individual in the Comptroller's Office who shall serve as a contact with the whistleblower.

#### Disclosure of information

(d)

- (1) Information that could reasonably be expected to reveal the identity of the whistleblower is not subject to disclosure under the Public Information Act.
- (2) Except as provided in paragraph (3) of this subsection, the Comptroller may not disclose any information that could reasonably be expected to reveal the identity of the whistleblower unless that information is required to be disclosed to a party in connection with an action or proceeding brought by the Comptroller or otherwise by court order.
- (3)
  - (i) Subject to subparagraph (ii) of this paragraph, as determined by the Comptroller to be necessary to accomplish the purposes of this article, information that could be expected to reveal the identity of a whistleblower may be made available to appropriate regulatory and law enforcement authorities of this State, another state, the federal government, a foreign government, or self-regulatory organizations.
  - (ii) An authority to which the Comptroller makes information available in accordance with subparagraph (i) of this paragraph shall agree to maintain that information in accordance with any assurances of confidentiality that the Comptroller deems appropriate.

### **§ 1-405. Retaliation**

#### Retaliation prohibited

(a) A current or prospective employer, contractor, or agent may not discharge, demote, suspend, threaten, or harass, directly or indirectly, or in any other manner discriminate or retaliate against an individual in the terms and conditions of employment because of a lawful act done by that individual:



- (1) in providing information to the Comptroller or a law enforcement agency concerning a possible violation of State tax law, including a rule or regulation, that has occurred, is ongoing, or is about to occur;
- (2) in initiating, testifying in, or assisting in an investigation or judicial or administrative action of the Comptroller or law enforcement agency or a related action;
- (3) in reporting a violation of this title to another governmental entity or to a director, supervisor, or compliance officer of the employer, contractor, or agent; or
- (4) in refusing or declining any agreement that would provide for arbitration of claims arising under this article.

#### Relief

##### (b)

- (1) An individual who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated or retaliated against in the terms and conditions of employment or is otherwise harmed or penalized by an employer or a prospective employer in violation of subsection (a) of this section shall be entitled to all relief necessary to make the individual whole, including:
  - (i) an injunction to restrain continued discrimination;
  - (ii) hiring, contracting, or reinstatement to the position that the individual would have had but for the discrimination or to an equivalent position;
  - (iii) reinstatement of full fringe benefits and seniority rights;
  - (iv) compensation for lost wages, benefits, and other remuneration, plus interest;
  - (v) removal of any adverse personnel record entries based on or related to the violation; and
  - (vi) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.
- (2) An individual seeking relief under this subsection may bring an action in the appropriate circuit court for relief.
- (3) Nothing in this subsection may be construed to limit the rights, privileges, or remedies of a whistleblower under federal or State law or under a collective bargaining agreement.

#### Waiver; recovery of salary and wages

##### (c)

- (1) The rights and remedies provided for under this section may not be waived by an agreement, a policy form, or a condition of employment.
- (2) Salary and wages earned by a whistleblower during the whistleblower's employment and any consideration provided to the whistleblower in connection with the whistleblower's severance from employment may not be recovered by any action brought by the employer if the salary, wages, or consideration is related to original information provided by the whistleblower or the covered enforcement action.

#### **§ 1-406. Construction of subtitle**

Nothing in this subtitle may be construed to:

- (1) preempt, limit, or restrict the authority or discretion of the Comptroller to investigate or enforce a violation of this article;

- (2) limit any power otherwise granted in this article or other laws to the Comptroller, Attorney General, State agencies, or local governments to investigate or enforce possible violations of this article;
- (3) authorize a private right of action involving a violation of this article, except as specifically authorized in this article;
- (4) prevent or prohibit a person from voluntarily disclosing any information concerning a violation of this article to any law enforcement agency or self-regulatory organization; or
- (5) preempt, limit, restrict, or otherwise affect the rights and rewards provided to qui tam plaintiffs under the Maryland False Claims Act.

#### **§ 1-407. Reports**

On or before December 31, 2022, and each December 31 thereafter, the Comptroller shall report to the Governor and, in accordance with § 2-1257 of the State Government Article, the General Assembly on:

- (1) the total number of cases reported by whistleblowers during the previous fiscal year;
- (2) the number of cases that resulted in a payout to a whistleblower during the previous fiscal year;
- (3) the total amount of taxes collected by the State during the previous fiscal year as a result of the original information provided by whistleblowers; and
- (4) the total amount of rewards paid to whistleblowers under this subtitle during the previous fiscal year.

#### **§ 1-408. Regulations**

The Comptroller shall adopt regulations to implement this subtitle, including regulations establishing procedures for the submission of original information by whistleblowers and protocols governing the determination of awards in accordance with this subtitle and the timely payment of awards to whistleblowers.

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- i Last updated August 2023.
  - ii Last updated August 2023.
  - iii Last updated August 2023.