

CHAPTER 276

HEALTH CARE POLICY AND FINANCING

SENATE BILL 13-205

BY SENATOR(S) Hodge and Roberts, Aguilar, Carroll, Giron, Guzman, Jahn, Kefalas, King, Newell, Schwartz, Tochtrop, Todd, Morse;
 also REPRESENTATIVE(S) Gardner and Young, Conti, Ginal, Labuda, May, Pabon, Rosenthal, Schafer, Scott, Stephens, Williams.

AN ACT**CONCERNING REVISIONS TO THE COLORADO MEDICAID FALSE CLAIMS ACT TO COMPLY WITH FEDERAL LAW.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 13-80-102.5, **amend** (1) as follows:

13-80-102.5. Limitation of actions - medical or health care. (1) Except as otherwise provided in this section OR SECTION 25.5-4-307, C.R.S., no action alleging negligence, breach of contract, lack of informed consent, or other action arising in tort or contract to recover damages from any health care institution, as defined in paragraph (a) of subsection (2) of this section, or any health care professional, as defined in paragraph (b) of subsection (2) of this section, shall be maintained unless such action is instituted within two years after the date that such action accrues pursuant to section 13-80-108 (1), but in no event shall an action be brought more than three years after the act or omission which gave rise to the action.

SECTION 2. In Colorado Revised Statutes, 13-80-103.5, **repeal** (1) (e) as follows:

13-80-103.5. General limitation of actions - six years. (1) The following actions shall be commenced within six years after the cause of action accrues and not thereafter:

(e) ~~All actions brought for restitution and civil penalties pursuant to section 25.5-4-306, C.R.S.~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 3. In Colorado Revised Statutes, 25.5-4-304, **amend** (5) as follows:

25.5-4-304. Definitions. As used in sections 25.5-4-303.5 to 25.5-4-309, unless the context otherwise requires:

(5) "Obligation" means a fixed or contingent duty arising from an express or implied contractual, quasi-contractual, grantor-grantee, licensor-licensee, statutory, fee-based, or similar relationship, ~~and~~ OR the retention of overpayment.

SECTION 4. In Colorado Revised Statutes, 25.5-4-305, **amend** (1) introductory portion and (1) (a) as follows:

25.5-4-305. False medicaid claims - liability for certain acts. (1) Except as otherwise provided in subsection (2) of this section, a person is liable to the state for a civil penalty of not less than five thousand FIVE HUNDRED dollars and not more than ~~ten~~ ELEVEN thousand dollars, PROVIDED THAT THESE UPPER AND LOWER LIMITS ON LIABILITY SHALL AUTOMATICALLY INCREASE TO EQUAL THE CIVIL PENALTY ALLOWED UNDER THE FEDERAL "FALSE CLAIMS ACT", 31 U.S.C. SEC. 3729, ET SEQ., IF AND AS THE PENALTIES IN SUCH FEDERAL ACT MAY BE ADJUSTED FOR INFLATION AS DESCRIBED IN SAID ACT IN ACCORDANCE WITH THE FEDERAL "CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1990", PUB. L. NO. 101-410, plus three times the amount of damages that the state sustains because of the act of that person, if the person:

(a) Knowingly presents, or causes to be presented, ~~to an officer or employee of the state~~ a false or fraudulent claim for payment or approval;

SECTION 5. In Colorado Revised Statutes, 25.5-4-306, **amend** (2) (e), (5), and (7) as follows:

25.5-4-306. Civil actions for false medicaid claims. (2) **Actions by private persons.** (e) When a relator brings an action under this subsection (2), ~~the federal false claims act, or any similar provision of the laws of any other state,~~ no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(5) **Certain actions barred.** (a) A court shall not have jurisdiction over an action brought under this section against a member of the general assembly, a member of the state judiciary, or an elected official in the executive branch of the state of Colorado IF THE ACTION IS BASED ON EVIDENCE OR INFORMATION KNOWN TO THE STATE WHEN THE ACTION WAS BROUGHT.

(b) A relator shall not bring an action under subsection (2) of this section that is based upon allegations or transactions that are the subject of a civil suit ~~in a court of this state~~ or an administrative civil money penalty proceeding in which the state is already a party.

(c) (I) A court shall ~~not have jurisdiction over~~ DISMISS an action OR CLAIM brought under subsection (2) of this section ~~if the action is based upon the public disclosure of allegations or transactions in a~~ UNLESS OPPOSED BY THE STATE, IF SUBSTANTIALLY THE SAME ALLEGATIONS OR TRANSACTIONS AS ALLEGED IN THE

ACTION OR CLAIM WERE PUBLICLY DISCLOSED IN A STATE criminal, civil, or administrative hearing IN WHICH THE STATE OR ITS AGENT IS A PARTY, in a legislative, administrative, or state auditor's report, hearing, audit, or investigation, or ~~from~~ BY the news media, unless the action is brought by the state or the relator is an original source of the information. ~~that is the basis for the action.~~

(II) For purposes of this paragraph (c), "original source" means an individual who ~~has direct and independent knowledge of the information on which the allegations are based~~ PRIOR TO A PUBLIC DISCLOSURE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) HAS VOLUNTARILY DISCLOSED TO THE STATE THE INFORMATION ON WHICH THE ALLEGATIONS OR TRANSACTIONS IN A CLAIM ARE BASED, OR WHO HAS KNOWLEDGE THAT IS INDEPENDENT OF AND MATERIALLY ADDS TO THE PUBLICLY DISCLOSED ALLEGATIONS OR TRANSACTIONS, and has voluntarily provided the information to the state before filing an action under subsection (2) of this section. ~~that is based on the information.~~

(7) **Private action for retaliation.** (a) ~~A relator~~ AN EMPLOYEE, CONTRACTOR, OR AGENT shall be entitled to all relief necessary to make the ~~relator~~ EMPLOYEE, CONTRACTOR, OR AGENT whole, if the ~~relator~~ EMPLOYEE, CONTRACTOR, OR AGENT is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of ~~the relator's~~ employment by the defendant or by any other person because of lawful acts done by the ~~relator~~ EMPLOYEE, CONTRACTOR, OR AGENT, OR ASSOCIATED OTHERS in furtherance of an action under this section or in furtherance of an effort to stop any violations of section 25.5-4-305.

(b) (I) ~~A relator~~ AN EMPLOYEE, CONTRACTOR, OR AGENT who seeks relief pursuant to this subsection (7) shall be entitled to all relief necessary to make the ~~relator~~ EMPLOYEE, CONTRACTOR, OR AGENT whole. Such relief shall include:

(A) ~~If the relator is an employee,~~ Reinstatement with the same seniority status the ~~relator~~ EMPLOYEE, CONTRACTOR, OR AGENT would have had but for the discrimination, twice the amount of back pay, and interest on the back pay; and

(B) Compensation for any special damages sustained as a result of the discrimination or retaliation, including litigation costs and reasonable attorney fees.

(II) ~~A relator~~ AN EMPLOYEE, CONTRACTOR, OR AGENT may bring an action in the appropriate court of the state for the relief provided in this subsection (7).

SECTION 6. In Colorado Revised Statutes, 25.5-4-307, **add** (5) as follows:

25.5-4-307. False medicaid claims procedures. (5) A PRIVATE ACTION FOR RETALIATION UNDER SECTION 25.5-4-306 (7) MAY NOT BE BROUGHT MORE THAN THREE YEARS AFTER THE DATE WHEN THE RETALIATION OCCURRED.

SECTION 7. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of

this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 24, 2013