

NEW MEXICO LAW

New Mexico laws provide that it is unlawful to present false claims or statements to receive payments under the Medicaid program and establish civil and criminal liability for persons that submit false or fraudulent claims. In addition, the New Mexico Medicaid False Claims Act (the “Act”), similar to the federal law, allows private persons to file civil lawsuits to recover monetary damages for violations of the laws prohibiting false or fraudulent claims to the Medicaid program, and protects employees from being discharged or discriminated against in terms of employment because of lawful acts taken by the employees under the Act.

New Mexico Medicaid False Claims Act

N.M. Stat. Ann. § 27-14-4 provides, in pertinent part:

A person commits an unlawful act and shall be liable to the state for three times the amount of damages that the state sustains as a result of the act if the person:

A. presents, or causes to be presented, to the state a claim for payment under the medicaid program knowing that such claim is false or fraudulent;

C. makes, uses or causes to be made or used a record or statement to obtain a false or fraudulent claim under the medicaid program paid for or approved by the state knowing such record or statement is false;

D. conspires to defraud the state by getting a claim allowed or paid under the medicaid program knowing that such claim is false or fraudulent;

E. makes, uses or causes to be made or used a record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state, relative to the medicaid program, knowing that such record or statement is false;

G. knowingly makes a false statement or misrepresentation of material fact concerning the conditions or operation of a health care facility in order that the facility may qualify for certification or recertification required by the medicaid program; ***

N.M Stat. Ann. § 27-14-7 requires the New Mexico Human Services Department (the “Department”) to diligently investigate suspected violations of the Act, and if the

department finds a person has violated or is violating the Act, the Department may bring a civil action with the approval of the Attorney General.

In addition, an affected person can bring a private civil action for a violation of the Act on behalf of the person bringing suit and for the state. A person bringing a private action is required to serve a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses on the Department. The complaint must remain under seal for at least 60 days, during which time the Department must conduct an investigation of the factual allegations and legal contentions made in the complaint, make a written determination of whether there is substantial evidence that a violation has occurred and provide the person against which the complaint has been made with a copy of the determination. If the Department determines that there is not substantial evidence a violation has occurred, the complaint will be dismissed.

Before the expiration of the 60 day period, or any extensions, the Department is required to either proceed with the action or notify the court and the person who brought the action that it declines to take over the action. If the Department declines to take over the action, the person bringing the action has the right to conduct the action if the Department determined that there is substantial evidence a violation of the Act occurred. (The person bringing such action is also referred to as the “qui tam plaintiff.”)

If the Department proceeds with the action, it has exclusive responsibility for prosecuting the action; the qui tam plaintiff has the right to continue as a nominal party but does not have the right to participate in the litigation except as a witness. The qui tam plaintiff, subject to certain exceptions contained in the law, is entitled to receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action, plus an amount for reasonable expenses necessarily incurred and reasonable attorney fees and costs.

If the Department does not proceed with the action, the qui tam plaintiff is entitled to receive an amount that the court decides is reasonable for collecting the civil recovery and damages recoverable by the state. The amount may be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement, plus an amount for reasonable expenses necessarily incurred and reasonable attorney fees and costs.

Whether or not the Department proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation upon which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action the person would otherwise receive, taking into account the person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of the Act, the person shall be dismissed from the civil action and the person may not receive any share of the proceeds of the action.

If the Department does not proceed with the action and the person bringing the action proceeds with the action, if the defendant prevails the court may award reasonable attorney fees and costs to the defendant if the court finds the claim of the person bringing the action was (1) filed for an improper purpose, (2) not warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law, or (3) was based on allegations or factual contentions not supported.

The Act includes protections for employees. N.M. Stat. Ann. § 27-14-12 provides that any employee who is discharged, demoted, suspended, threatened, harassed or otherwise discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the employee on behalf of the employee or others in disclosing information to the Department or in furthering a false claims action pursuant to the Act, including investigation for, initiation of, testimony for or assistance in an action filed or to be filed pursuant to the Act, is entitled to all relief necessary to make the employee whole. The employee can bring a suit for such relief, including reinstatement with the same seniority status that the employee 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 fees.

Medicaid Fraud Act

New Mexico's Medicaid Fraud Act, N.M. Stat. Ann. § 30-44-1 *et seq.*, imposes penalties on persons who submit false or fraudulent claims or documents in connection with the Medicaid program. A person committing Medicaid fraud is liable for a civil penalty of up to 3 times the amount of Medicaid payments to which he was not entitled, interest on the payments, a civil penalty of up to \$10,000 for each false or fraudulent claim and payment of legal fees and costs of investigation and enforcement of civil remedies. Medicaid fraud is also a crime punishable by a fine of up to \$20,000 and imprisonment for up to 9 years, depending on the nature of the offense and the amount of payment received as a result of the false or fraudulent claims or statements. If the person committing the Medicaid fraud is an entity rather than an individual, violations are subject to a fine of not more than \$50,000 for each misdemeanor violation, or not more than \$250,000 for each felony violation.

References:

Medicaid False Claims Act – N.M. Stat. Ann. §§ 27-14-1 to 27-14-15

Medicaid Fraud Act – N.M. Stat. Ann. §§ 30-44-1 to 30-44-8