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MEDICAL ASSISTANCE PROGRAMS INTEGRITY LAW--CLAIMS REVIEW AND ADMINISTRATIVE

SANCTIONS; CIVIL ACTIONS; "QUI TAM" ACTIONS

Title 46 of the Louisiana Revised Statutes

PART VI-A. MEDICAL ASSISTANCE PROGRAMS INTEGRITY LAW

SUBPART A. GENERAL PROVISIONS

s 437.1. Short title

This Chapter may be cited as the "Medical Assistance Programs Integrity Law".

s 437.2. Legislative intent and purpose

A. This Part is enacted to combat and prevent fraud and abuse committed by some health care providers participating in the medical assistance programs and by other persons and to negate the adverse effects such activities have on fiscal and programmatic integrity.

B. The legislature intends the secretary of the Department of Health and Hospitals, the attorney general, and private citizens of Louisiana to be agents of this state with the ability, authority, and resources to pursue civil monetary penalties, liquidated damages, or other remedies to protect the fiscal and programmatic integrity of the medical assistance programs from health care providers and other persons who engage in fraud, misrepresentation, abuse, or other ill practices, as set forth in this Part, to obtain payments to which these health care providers or persons are not entitled.

s 437.3. Definitions

As used in this Part the following terms shall have the following meanings:

(1) "Administrative adjudication" means adjudication and the adjudication process contained in the Administrative Procedure Act.

(2) "Agent" means a person who is employed by or has a contractual relationship with a health care provider or who acts on behalf of the health care provider.

(3) "Billing agent" means an agent who performs any or all of the health care provider's billing functions.

(4) "Billing" or "bills" means submitting, or attempting to submit, a claim for goods, services, or supplies.

(5) "Claim" means any request or demand, whether under a contract or otherwise, for money or property, whether or not the state or department has title to the money or property, that is drawn in whole or in part on medical assistance programs funds that are either of the following:

(a) Presented to an officer, employee, or agent of the state or department.

(b) Made to a contractor, grantee, or other recipient, if the money or property is to be spent or used in any manner in any program administered by the department under the authority of federal or state law, rule, or regulation, and if the state or department does either of the following:

(i) Provides or has provided any portion of the money or property requested or demanded.

(ii) Reimburses the contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

A claim may be based on costs or projected costs and includes any entry or omission in a cost report or similar document, book of account, or any other document which supports, or attempts to support, the claim. A claim may be made through electronic means if authorized by the department. Each claim may be treated as a separate claim or several claims may be combined to form one claim.

(6) "Department" means the Department of Health and Hospitals.

(7) "False or fraudulent claim" means a claim which the health care provider or his billing agent submits knowing the claim to be false, fictitious, untrue, or misleading in regard to any material information. "False or fraudulent claim" shall include a claim which is part of a pattern of incorrect submissions in regard to material information or which is otherwise part of a pattern in violation of applicable federal or state law or rule.

(8) "Good, service, or supply" means any good, item, device, supply, or service for which a claim is made, or is attempted to be made, in whole or part.

(9) "Health care provider" means any person furnishing or claiming to furnish a good, service, or supply under the medical assistance programs, any other person defined as a health care provider by federal or state law or by rule, and a provider-in-fact.

(10) "Ineligible recipient" means an individual who is not eligible to receive health care through the medical assistance programs.

(11) "Knowing" or "knowingly" means that the person has actual knowledge of the information or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information.

(12) "Managing employee" means a person who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operations of a health care provider.

"Managing employee" shall include but is not limited to a chief executive officer, president, general manager, business manager, administrator, or director.

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

(14) "Medical assistance programs" means the Medical Assistance Program (Title XIX of the Social Security Act), commonly referred to as "Medicaid", and other programs operated by and funded in the department which provide payment to health care providers.

(15) "Misrepresentation" means the knowing failure to truthfully or fully disclose any and all information required, or the concealment of any and all information required on a claim or a provider agreement or the making of a false or misleading statement to the department relative to the medical assistance programs.

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

(17) "Order" means a final order imposed pursuant to an administrative adjudication.

(18) "Ownership interest" means the possession, directly or indirectly, of equity in the capital or the stock, or the right to share in the profits, of a health care provider.

(19) "Payment" means the payment to a health care provider from medical assistance programs funds pursuant to a claim, or the attempt to seek payment for a claim.

(20) "Property" means any and all property, movable and immovable, corporeal and incorporeal.

(21) "Provider agreement" means a document which is required as a condition of enrollment or participation as a health care provider under the medical assistance programs.

(22) "Provider-in-fact" means an agent who directly or indirectly participates in management decisions, has an ownership interest in the health care provider, or other persons defined as a provider-in-fact by federal or state law or by rule.

(23) "Recipient" means an individual who is eligible to receive health care through the medical assistance programs.

(24) "Recoupment" means recovery through the reduction, in whole or in part, of payment to a health care provider.

(25) "Recovery" means the recovery of overpayments, damages, fines, penalties, costs, expenses, restitution, attorney fees, or interest or settlement amounts.

(26) "Rule" means any rule or regulation promulgated by the department in accordance with the Administrative Procedure Act and any federal rule or regulation promulgated by the federal government in accordance with federal law.

(27) "Sanction" shall include but is not limited to any or all of the following:

(a) Recoupment.

(b) Posting of bond, other security, or a combination thereof.

(c) Exclusion as a health care provider.

(d) A monetary penalty.

(28) "Secretary" means the secretary of the Department of Health and Hospitals, or his authorized designee.

(29) "Secretary or attorney general" means that either party is authorized to institute a proceeding or take other authorized action as provided in this Part pursuant to a memorandum of understanding between the two so as to notify the public as to whether the secretary or the attorney general is the deciding or controlling party in the proceeding or other authorized matter.

(30) "Withhold payment" means to reduce or adjust the amount, in whole or in part, to be paid to a health care provider for a pending or future claim during the time of a criminal, civil, or departmental investigation or proceeding or claims review of the health care provider.

s 437.4. Claims review and administrative sanctions

A.(1) Pursuant to rules and regulations promulgated in accordance with the Administrative Procedure Act, the secretary shall establish a process to review a claim made by a health care provider to determine if the claim should be or should have been paid as required by federal or state law or by rule.

(2) Claims review may occur prior to or after payment is made to a health care provider.

(3) The secretary may withhold payment to a health care provider during claims review if necessary to protect the fiscal integrity of the medical assistance programs.

B. (1) The secretary may establish various types of administrative sanctions pursuant to rules and regulations promulgated in accordance with the Administrative Procedure Act which may be imposed on a health care provider or other person who violates any provision of this Part or any other applicable federal or state law or rule related to the medical assistance programs.

(2) "Sanction" shall include, but is not limited to, any or all of the following: recoupment; posting of bond, other security, or a combination thereof; exclusion as a health care provider; or a monetary penalty.

C. (1) The department shall conduct a hearing in compliance with the Administrative Procedure Act at the request of a person who wishes to contest an administrative sanction imposed on him by the secretary.

(2) A party aggrieved of an order may seek judicial review only in the Nineteenth Judicial District Court for the parish of East Baton Rouge.

(3) Judicial review of the order shall be conducted in compliance with the Administrative Procedure Act.

D. All state rules and regulations issued on or before the effective date of this Part shall be deemed to have been issued in compliance with and under the authority of this Section.

s 437.5. Settlement

A. The secretary or the attorney general may agree to settle a matter for which recovery may be sought on behalf of the medical assistance programs or for a violation of this Part. The terms of the settlement shall be reduced to writing and signed by the parties to the agreement. The terms of the settlement shall be public record.

B. At a minimum, the settlement shall ensure that the recovery agreed to by the parties covers the estimated loss sustained by the medical assistance programs. The settlement shall include the method and means of payment for recovery, including but not limited to, adequate security for the full amount of the settlement.

s 437.6. Injunctive relief; lis pendens; disclosure of property and liabilities

A. (1) Concurrently with a withholding of payment, a sanction being imposed, or the institution of a criminal, civil, or departmental proceeding against a health care provider or other person, the secretary or the attorney general may bring an action for a temporary restraining order or injunction under Code of Civil Procedure Articles 3601 through 3613 to prevent a health care provider or other person from whom recovery may be sought from transferring property or to protect the business.

(2) To obtain such relief, the secretary or the attorney general shall demonstrate all necessary requirements for the relief to be granted.

(3) If an injunction is granted, the court may appoint a receiver to protect the property and business of the health care provider or other person from whom recovery may be sought. The court shall assess the cost of the receiver to the nonprevailing party.

B. Pursuant to Code of Civil Procedure Articles 3751 through 3753, the secretary or the attorney general may place a notice of pendency of action, lis pendens, on the property of a health care provider or other person during the pendency of a criminal, civil, or departmental proceeding.

C. When requested by the court, the secretary, or the attorney general, a health care provider or other person from whom recovery may be sought shall have an affirmative duty to fully disclose all property and liabilities to the requester.

s 437.7. Forfeiture of property for payment of recovery

A. In accordance with the provisions of Subsection B of this Section, the court may order the forfeiture of property to satisfy recovery under the following circumstances:

(1) The court may order the health care provider or other person from whom recovery is due to forfeit property which constitutes or was derived directly or indirectly from gross proceeds traceable to the violation which forms the basis for the recovery.

(2) If the secretary or the attorney general shows that property was transferred to a third party to avoid paying of recovery, or in an attempt to protect the property from forfeiture, the court may order the third party to forfeit the transferred property.

B. Prior to the forfeiture of property, a contradictory hearing shall be held during which the secretary or the attorney general shall prove, by clear and convincing evidence, that the property in question is subject to forfeiture pursuant to Subsection A of this Section. No such contradictory hearing shall be required if the owner of the property in question agrees to the forfeiture.

C. If property is transferred to another person within six months prior to the occurrence or after the occurrence of the violation for which recovery is due or within six months prior to or after the institution of a criminal, civil, or departmental investigation or proceeding, it shall be prima facie evidence that the transfer was to avoid paying recovery or was an attempt to protect the property from forfeiture.

D. The health care provider or other person from whom recovery is due shall have an affirmative duty to fully disclose all property and liabilities, and all transfers of property which meet the criteria of Subsection C of this Section, to the court, the secretary and the attorney general.

s 437.8. Venue

An action instituted pursuant to R.S. 46:437.6 or 437.7 may be brought in any of the following courts:

(1) The Nineteenth Judicial District Court for the parish of

East Baton Rouge.

(2) A district court in the parish in which a health care provider or other person from whom recovery may be sought has its principle [FN1] place of business or is domiciled.

s 437.9. Privilege; nondischargeability

A. Recovery shall be granted a privilege under state law as to all property owned by the health care provider or other person from whom recovery is due and shall be effective as to third parties only if notice of pendency, lis pendens, is placed on the property, if recorded and reinscribed in accordance with Civil Code Articles 3320 through 3327, or if the conditions of Subsection C of this Section are applicable.

B. As to the property owned by the health provider, the privilege provided in Subsection A of this Section shall rank ahead of any other privilege, mortgage, or secured interest possessed by the health care provider, his agent, or his managing employee except the first mortgage executed upon the property.

C. If property is transferred to a third party to avoid paying of recovery, or in an attempt to protect the property from forfeiture, the privilege provided in Subsection A of this Section shall rank ahead of any other privilege, mortgage, or secured interest on the transferred property obtained or possessed by the person who obtains an ownership interest in the transferred property.

D. Recovery for a violation of R.S. 46:438.2 or R.S. 46:438.3 shall be considered a nondischargeable liability under the provisions of Title 11, U.S.C. Chapters 7, 11, and 13.

s 437.10. Continuing liability; assumption of liability

A. A health care provider or person from whom recovery is due shall remain liable for the recovery regardless of any sale, merger, consolidation, dissolution, or other disposition of the health care provider or person, provided the obligation is recorded and reinscribed in accordance with Civil Code Articles 3320 through 3337.

B. Any person who obtains an ownership interest, whether by sale, merger, consolidation, or other disposition, in a health care provider or other person from whom recovery is due shall assume the liability and be responsible for paying the amount of any outstanding recovery. Such person shall remain liable, provided the obligation is recorded and reinscribed in accordance with Civil Code Articles 3320 through 3337.

SUBPART B. CIVIL CAUSES OF ACTION

s 438.1. Civil actions authorized

A. The secretary or the attorney general may institute a civil action in the courts of this state to seek recovery from persons who violate the provisions of this Part. The contract of employment of any private counsel, including fee amounts, and all final fees and costs, shall be a public record.

B. An action to recover costs, expenses, fees, and attorney fees shall be ancillary to, and shall be brought and heard in the same court as, the civil action brought under the provision of Subsection A of this Section.

C. (1) A prevailing defendant may seek recovery for costs, expenses, fees, and attorney fees only if the court finds, following a contradictory hearing, that either of the following apply:

(a) The action was instituted by the secretary or attorney general pursuant to Subsection A of this Section after it should have been determined by the secretary or attorney general to be frivolous, vexatious, or brought primarily for the purpose of harassment.

(b) The secretary or attorney general proceeded with the action instituted pursuant to Subsection A of this Section after it should have been determined by the secretary or attorney general that proceeding would be frivolous, vexatious, or for the purpose of harassment.

(2) Recovery awarded to a prevailing defendant shall be awarded only for those reasonable, necessary, and proper costs, expenses, fees, and attorney fees actually incurred by the prevailing defendant.

D. An action to recover costs, expenses, fees, and attorney fees may be brought no later than sixty days after the rendering of judgment by the district court, unless the district court decision is appealed. If the district court decision is appealed, such action may be brought no later than sixty days after the rendering of the final opinion on appeal by the court of appeal or, if applicable, by the supreme court.

s 438.2. Illegal remuneration

A. No person shall solicit, receive, offer, or pay any remuneration, including but not limited to kickbacks, bribes, rebates, or bed hold payments, directly or indirectly, overtly or covertly, in cash or in kind, for the following:

(1) In return for referring an individual to a health care provider, or for referring an individual to another person for the purpose of referring an individual to a health care provider, for the furnishing or arranging to furnish any good, supply, or service for which payment may be made, in whole or in part, under the medical assistance programs.

(2) In return for purchasing, leasing, or ordering, or for arranging for or recommending purchasing, leasing, or ordering, any good, supply, or service, or facility for which payment may be made, in whole or in part, under the medical assistance programs.

(3) To a recipient of goods, services, or supplies, or his representative, for which payment may be made, in whole or in part, under the medical assistance programs.

(4) To obtain a recipient list, number, name, or any other identifying information.

B. An action brought pursuant to the provisions of this Section shall be instituted within one year of when the department knew that the prohibited conduct occurred. Such prohibited conduct shall be referred to in this Part as "illegal remuneration".

C. By rules and regulations promulgated in accordance with the Administrative Procedure Act, the secretary may provide for additional "safe harbor" exceptions to which the provisions of this Section shall not apply.

D. The following are "safe harbor" exceptions to which the provisions of this Section shall not apply:

(1) A discount or other reduction in price obtained by a health care provider under the medical assistance programs if the reduction in price is properly disclosed to the department and is reflected in the claim made by the health care provider.

(2) Any amount paid by an employer to an employee, who has a bona fide employment relationship with such employer, for the provision of covered goods, services, or supplies.

(3) Any discount amount paid by a vendor of goods, services, or supplies to a person authorized to act as a purchasing agent for a group of health care providers who are furnishing goods, services, or supplies paid or reimbursed under the medical assistance programs provided the following criteria are met:

(a) The person acting as the purchasing agent has a written contract with each health care provider specifying the amount to be paid to the purchasing agent, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such health care provider under the contract, or a combination of both.

(b) The health care provider discloses the information contained in the required written contract to the secretary in such form or manner as required under rules and regulations promulgated by the secretary in accordance with the Administrative Procedure Act.

(4) Any other "safe harbor" exception created by federal or state law or by rule.

s 438.3. False or fraudulent claim; misrepresentation

A. No person shall knowingly present or cause to be presented a false or fraudulent claim.

B. No person shall knowingly engage in misrepresentation or make, use, or cause to be made or used, a false record or statement material to a false or fraudulent claim.

C. No person shall 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 property to the medical assistance programs, or to knowingly conceal, avoid, or decrease an obligation to pay or transmit money or property to the medical assistance programs.

D. No person shall conspire to defraud, or attempt to defraud, the medical assistance programs through misrepresentation or by obtaining, or attempting to obtain, payment for a false or fraudulent claim.

E. (1) No person shall knowingly submit a claim for goods, services, or supplies which were medically unnecessary or which were of substandard quality or quantity.

(2) If a managed care health care provider or a health care provider operating under a voucher system under the medical assistance programs fails to provide medically necessary goods, services, or supplies or goods, services, or supplies which are of substandard quality or quantity to a recipient, and those goods, services, or supplies are covered under the managed care contract or voucher contract with the medical assistance programs, such failure shall constitute a violation of Paragraph (1) of this Subsection.

(3) "Substandard quality" in reference to services applicable to medical care as used in this Subsection shall mean substandard as to the appropriate standard of care as used to determine medical malpractice, including but not limited to the standard of care provided in R.S. 9:2794.

F. Each violation of this Section may be treated as a separate violation or may be combined into one violation at the option of the secretary or the attorney general.

G. No action shall be brought under this Section unless the amount of alleged actual damages is one thousand dollars or more.

H. No action brought pursuant to this Section shall be instituted later than ten years after the date upon which the alleged violation occurred.

s 438.4. Illegal acts regarding eligibility and recipient lists

A. No person shall knowingly make, use, or cause to be made or used a false, fictitious, or misleading statement on any form used for the purpose of certifying or qualifying any person for eligibility for the medical assistance programs or to receive any good, service, or supply under the medical assistance programs which that person is not eligible to receive.

B. No unauthorized person, or no authorized person for an unauthorized purpose, shall obtain a recipient list, number, name, or any other identifying information, nor shall that person use, possess, or distribute such information.

C. An action brought pursuant to the provisions of this Section shall be instituted within one year of when the department knew that the prohibited conduct occurred.

s 438.5. Civil monetary penalty

A. In a civil action instituted in the courts of this state pursuant to the provisions of this Part, the secretary or the attorney general may seek a civil monetary penalty provided in R.S. 46:438.6(C) from any of the following:

(1) A health care provider or other person sanctioned by order pursuant to an administrative adjudication.

(2) A health care provider or other person determined by a court to have violated any provision of this Part.

(3) A health care provider or other person who has violated a settlement agreement entered into pursuant to this Part.

(4) A health care provider or other person who has been charged with a violation of R.S. 14:70.1, R.S. 14:133, or R.S. 46:114.2.

(5) A health care provider or other person who has been found liable in a civil action filed in federal court pursuant to 18 U.S.C. 1347, et seq., 42 U.S.C. 1359nn(h)(6), or 42 U.S.C. 1320a-7(b).

(6) A health care provider or other person who has pled guilty to, pled nolo contendere to, or has been convicted in federal court of criminal conduct arising out of circumstances which would constitute a violation of this Part.

B. (1) If a health care provider is sanctioned by order pursuant to an administrative adjudication and if judicial review of the order is sought, a civil suit may be filed for imposition and recovery of the civil monetary penalty during the pendency of such judicial review. The reviewing court may consolidate both actions and hear them concurrently.

(2) If judicial review of an order is sought, the secretary or the attorney general shall file the action for recovery of the civil monetary penalty within one year of service on the secretary of the petition seeking judicial review of the order.

(3) If no judicial review of an order is sought, the secretary or the attorney general may file the action for recovery of the civil monetary penalty within one year of the date of the order.

(4) Any action brought under the provisions of this Subsection shall be filed in the Nineteenth Judicial District Court for the parish of East Baton Rouge.

C. In the instance of a state criminal action, the action for recovery of the civil monetary penalty may be brought as part of the criminal action or shall be brought within one year of the date of the criminal conviction or final plea.

D. (1) In the case of a civil judgment rendered in federal court, the action for recovery of the civil monetary penalty may be brought once the judgment becomes enforceable and no later than one year after written notification to the secretary of the enforceable judgment.

(2) In the case of a criminal conviction or plea in federal court, the action under this Section may be brought once the conviction or plea is final and no later than one year after written notification to the secretary of the rendering of the conviction or final plea.

(3) Any action brought under the provisions of this Subsection shall be filed in the Nineteenth Judicial District Court for the parish of East Baton Rouge.

E. If an action is brought pursuant to this Part, the request for the imposition of a civil monetary penalty shall only be considered if made part of the original or amended petition.

s 438.6. Recovery

A. Actual damages. --(1) Actual damages incurred as a result of a violation of the provisions of this Part shall be recovered only once by the medical assistance programs and shall not be waived by the court.

(2) Except as provided by Paragraph (3) of this Subsection, actual damages shall equal the difference between what the medical assistance programs paid, or would have paid, and the amount that should have been paid had not a violation of this Part occurred plus interest at the maximum rate of legal interest provided by R.S. 13:4202 from the date the damage occurred to the date of repayment.

(3) If the violator is a managed care health care provider or a health care provider under a voucher program, actual damages shall be determined in accordance with the violator's provider agreement.

B. Civil fine. --(1) Any person who is found to have violated R.S. 46:438.2 shall be subject to a civil fine in an amount not to exceed ten thousand dollars per violation, or an amount equal to three times the value of the illegal remuneration, whichever is greater.

(2) Except as limited by this Section, any person who is found to have violated R.S. 46:438.3 shall be subject to a civil fine in an amount not to exceed three times the amount of actual damages sustained by the medical assistance programs as a result of the violation.

C. Civil monetary penalty. --(1) In addition to the actual damages provided in Subsection A of this Section and the civil fine imposed pursuant to Subsection B of this Section, the following civil monetary penalties shall be imposed on the violator:

(a) Not less than five thousand five hundred dollars but not more than eleven thousand dollars for each false or fraudulent claim, misrepresentation, illegal remuneration, or other prohibited act as contained in R.S. 46:438.2, 438.3, or 438.4.

(b) Payment of interest on the amount of the civil fine imposed pursuant to Subsection B of this Section at the maximum rate of legal interest provided by R.S. 13:4202 from the date the damage occurred to the date of repayment.

(2) Prior to the imposition of a civil monetary penalty, the court shall consider if there are extenuating circumstances as provided in R.S. 46:438.7.

(3) The penalties provided in this Subsection shall be adjusted according to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461.

D. Costs, expenses, fees, and attorney fees. --(1) Any person who is found to have violated this Subpart shall be liable for all costs, expenses, and fees related to investigations and proceedings associated with the violation, including attorney fees.

(2) All awards of costs, expenses, fees, and attorney fees are subject to review by the court using a reasonable, necessary, and proper standard of review.

(3) The secretary or attorney general shall promptly remit awards for those costs, expenses, and fees incurred by the various clerks of court or sheriffs involved in the investigations or proceedings to the appropriate clerk or sheriff.

E. Damages. --(1) If recovery is due from a health care provider under the provisions of Subsections A and B of this Section, such recovery shall constitute civil liquidated damages for breach of the conditions and requirements of participation in the medical assistance programs which are and shall be construed by the courts to be remedial, but not retroactive, in nature.

(2) Any award of civil liquidated damages, costs, expenses, and attorney fees shall be in addition to criminal penalties and to the civil monetary penalty provided in Subsection C of this Section.

s 438.7. Reduced damages

If requested by the secretary or the attorney general, the court may reduce to not less than twice the actual damages or any recovery required to be imposed under the provisions of this Subpart if all of the following extenuating circumstances are found to be applicable:

(1) The violator furnished all the information known to him about the specific allegation to the secretary or attorney general no later than thirty days after the violator first obtained the information.

(2) The violator cooperated fully with all federal or state investigations concerning the specific allegation.

(3) At the time the violator furnished the information concerning the specific allegation to the department or the attorney general, no criminal, civil, or departmental investigation or proceeding had been commenced as to the alleged violation.

s 438.8. Burden of proof; prima facie evidence; standard of review

A. The burden of proof in an action instituted pursuant to this Part shall be on the medical assistance programs and by a preponderance of the evidence, except that the defendant shall carry the burden of proving that goods, services, or supplies were actually provided to an eligible recipient in the quantity and quality submitted on a claim. In all other aspects, the burden of proof shall be as set forth in the Code of Civil Procedure and other applicable laws.

B. Proof by a preponderance of the evidence of a false or fraudulent claim or illegal remuneration shall be deemed to exist under the following circumstances:

(1) If the defendant has pled guilty to, been convicted of, or entered a nolo contendere plea to a criminal charge in any federal or state court to charges arising out of the same circumstances as would be a violation of this Subpart.

(2) If an order has been rendered against a defendant finding the defendant to have violated this Subpart.

C. (1) The submission of a certified or true copy of an order, civil judgment, or criminal conviction or plea shall be prima facie evidence of the same.

(2) The submission of the bill of information or of the indictment and the minutes of the court shall be prima facie evidence as to the circumstances underlying a criminal conviction or plea.

D. (1) In determining whether a pattern of incorrect submissions exists in regard to an alleged false or fraudulent claim, the court shall give consideration as to whether the total amount of the incorrect submissions by a health care provider is material in relation to the total claims submitted by the health care provider.

(2) "Material" as used in this Subsection shall have the same meaning as defined by rules and regulation promulgated by the secretary in accordance with the Administrative Procedure Act which incorporate the same definition of "material" as recognized by the American Institute of Certified Public Accountants.

SUBPART C. QUI TAM ACTION

s 439.1. Qui Tam action, civil action filed by private person

A. A private person may institute a civil action in the courts of this state on behalf of the medical assistance programs and himself to seek recovery for a violation of R.S. 46:438.2, 438.3, or 438.4 pursuant to the provisions of this Subpart. The institutor shall be known as a "qui tam plaintiff" and the civil action shall be known as a "qui tam action".

B. No qui tam action shall be instituted more than six years after the date on which the violation of the Louisiana Medical Assistance Programs Integrity Law is committed or more than three years after the date the facts material to the right of action are known or reasonably should have been known by the official of the state of Louisiana charged with the responsibility to act in the circumstances, but no more than ten years after the date on which the violation is committed, whichever occurs last.

C. The burden of proof in a qui tam action instituted pursuant to this Subpart shall be the same as that set forth in R.S. 46:438.8.

D. (1) The court shall dismiss an action or claim in accordance with this Section, unless opposed by the government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in any of the following:

- (a) A criminal, civil, or administrative hearing in which the government or its agent is a party.
- (b) A congressional or government accountability office or other federal report, hearing, audit, or investigation.
- (c) The news media, unless the action is brought by the attorney general or the person bringing the action is an original source of the information.

(2) For the purposes of this Subsection, "original source" means an individual who, prior to a public disclosure in accordance with this Subsection, has voluntarily disclosed to the government the information on which 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 who has voluntarily provided the information to the government before filing an action in accordance with this Subpart.

E. Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if the employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action in accordance with this Part or other efforts to stop one or more violations of this Part.

(1) Relief in accordance with this Subsection shall include reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. An action in accordance with this Section may be brought in the appropriate district court of competent jurisdiction for the relief provided in this Section.

(2) A civil action in accordance with this Section may not be brought more than three years after the date the retaliation occurred.

F. The court shall allow the secretary or the attorney general to intervene and proceed with the qui tam action in the district court at any time during the qui tam action proceedings.

G. Notwithstanding any other law to the contrary, a qui tam complaint and information filed with the secretary or attorney general shall not be subject to discovery or become public record until judicial service of the qui tam action is made on any of the defendants, except that the information contained therein may be given to other governmental entities or their authorized agents for review and investigation. The entities and their authorized agents shall maintain the confidentiality of the information provided to them under this Subsection.

H., I. Repealed by Acts 2011, No. 185, § 2, effective August 15, 2011.

s 439.2. Qui Tam action procedures

A. The following procedures shall be applicable to a qui tam action:

(1) The complaint shall be captioned: "Medical Assistance Programs Ex Rel.: [insert name of qui tam plaintiff(s)] v. [insert name of defendant(s)]". The qui tam complaint shall be filed with the appropriate state or federal district court.

(2) A copy of the qui tam complaint and written disclosure of substantially all material evidence and information each qui tam plaintiff possesses shall be served upon the secretary or the attorney general in accordance with the applicable rules of civil procedure.

(3) When a person brings an action in accordance with this Subpart, no person other than the secretary or attorney general may intervene or bring a related action based on the same facts underlying the pending action.

(4) (a) The complaint and information filed with the court shall be made under seal, shall remain under seal for at least ninety days from the date of filing, and shall be served on the defendant when the seal is removed.

(b) For good cause shown, the secretary or the attorney general may move the court for extensions of time during which the petition remains under seal. Any such motions may be supported by affidavits or other submissions in camera and under seal.

B. (1) If the secretary or the attorney general elects to intervene in the action, the secretary or the attorney general shall not be bound by any act of a qui tam plaintiff. The secretary or the attorney general shall control the qui tam action proceedings on behalf of the state and the qui tam plaintiff may continue as a party to the action. For prescription purposes, any government complaint in intervention, whether filed separately or as an amendment to the relator's complaint, shall relate back to the filing date of the complaint, to the extent that the claim of the government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the relator's complaint.

(2) The qui tam plaintiff and his counsel shall cooperate fully with the secretary or the attorney general during the pendency of the qui tam action.

(3) If requested by the secretary or the attorney general and notwithstanding the objection of the qui tam plaintiff, the court may dismiss the qui tam action provided the qui tam plaintiff has been notified by the secretary or the attorney general of the filing of the motion to dismiss and the court has provided the qui tam plaintiff a contradictory hearing on the motion.

(4) (a) If the secretary or the attorney general does not intervene, the qui tam plaintiff may proceed with the qui tam action unless the secretary or the attorney general shows that proceeding would adversely affect the prosecution of any pending criminal actions or criminal investigations into the activities of the defendant. Such a showing shall be made to the court in camera and neither the qui tam plaintiff or the defendant shall be informed of the information revealed in camera. In which case, the qui tam action shall be stayed for no more than one year.

(b) When a qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may nevertheless permit the secretary or the attorney general to intervene at a later date upon a showing of good cause.

(5) If the qui tam plaintiff objects to a settlement of the qui tam action proposed by the secretary or the attorney general, the court may authorize the settlement only after a hearing to determine whether the proposed settlement is fair, adequate, and reasonable under the circumstances.

C. Repealed by Acts 2011, No. 185, § 2, effective August 15, 2011.

D. A defendant shall have thirty days from the time a qui tam complaint is served on him to file a responsive pleading.

E. The qui tam plaintiff and the defendant shall serve all pleadings and papers filed, as well as discovery, in the qui tam action on the secretary and the attorney general.

F. (1) Whether or not the secretary or the attorney general proceeds with the action, upon showing by the secretary or the attorney general that certain actions of discovery by the qui tam plaintiff or defendant would interfere with a criminal, civil, or departmental investigation or proceeding arising out of the same facts, the court shall stay the discovery for a period of not more than ninety days.

(2) Upon a further showing that federal or state authorities have pursued the criminal, civil, or departmental investigation or proceeding with reasonable diligence and any proposed discovery in the qui tam action would unduly interfere with the criminal, civil, or departmental investigation or proceeding, the court may stay the discovery for an additional period, not to exceed one year.

(3) Such showings shall be conducted in camera and neither the defendant nor the qui tam plaintiff shall be informed of the information presented to the court.

(4) If discovery is stayed pursuant to this Subsection, the trial and any motion for summary judgment in the qui tam action shall likewise be stayed.

s 439.3. Qui Tam action procedures; alternative remedies

Notwithstanding any other provision of this Subpart, the secretary or the attorney general may elect to pursue an administrative or civil action against a qui tam defendant through any alternative remedy available to the secretary or the attorney general. If an alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights he would have had if the action had continued in accordance with this Subpart. Any finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action in accordance with this Subpart. A finding or conclusion is final if it has been finally determined on appeal, if all delays for the filing of an appeal regarding the finding or conclusion have expired, or if the finding or conclusion is not subject to judicial review.

s 439.4. Recovery awarded to a Qui Tam plaintiff

A. (1) Except as provided by Subsection D of this Section and Paragraph (3) of this Subsection, if the secretary or the attorney general intervenes in the action brought by a qui tam plaintiff, the qui tam plaintiff shall receive at least fifteen percent, but not more than twenty-five percent, of recovery.

(2) In making a determination of award to the qui tam plaintiff, the court shall consider the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action.

(3) If the court finds the allegations in the qui tam action to be based primarily on disclosures of specific information, other than information provided by the qui tam plaintiff, relating to allegations or transactions in criminal, civil, or administrative hearings, or from the news media, the court may award such sum it considers appropriate, but in no case may the court award more than ten percent of the proceeds, considering the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person in accordance with this Subsection shall be made from the proceeds recovered.

B. Except as provided by Subsection D of this Section, if the secretary or the attorney general does not intervene in the qui tam action, the qui tam plaintiff shall receive an amount, not less than twenty-five but not more than thirty percent of recovery, which the court decides is reasonable for the qui tam plaintiff pursuing the action to judgment or settlement.

C. (1) In addition to all other recovery to which he is entitled and if he prevails in the qui tam action through litigation or settlement, the qui tam plaintiff shall be entitled to an award against the defendant for costs, expenses, fees, and attorney fees, subject to review by the court using a reasonable, necessary, and proper standard of review.

(2) If the secretary or the attorney general does not intervene and the qui tam plaintiff conducts the action, the court shall award costs, expenses, fees, and attorney fees to a prevailing defendant if the court finds that the allegations made by the qui tam plaintiff were meritless or brought primarily for the purposes of harassment. A finding by the court that qui tam allegations were meritless or brought primarily for the purposes of harassment may be used by the prevailing defendant in the qui tam action or any other civil proceeding to recover losses or damages sustained as a result of the qui tam plaintiff filing and pursuing such a qui tam action.

D. Whether or not the secretary or the attorney general intervenes, if the court finds that the action was brought by a person who planned and initiated the violation which is the subject of the action, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the qui tam plaintiff would otherwise receive under Subsection A or B of this Section, taking into account the role the qui tam plaintiff played in advancing the case to judgment or settlement and any relevant circumstances pertaining to the qui tam plaintiff's participation in the violation.

E. When more than one party serves as a qui tam plaintiff, the share of recovery each receives shall be determined by the court. In no case, however, shall the total award to multiple qui tam

plaintiffs be greater than the total award allowed to a single qui tam plaintiff under Subsection A or B of this Section.

F. In no instance shall the secretary, the medical assistance programs, the attorney general, or the state be liable for any costs, expenses, fees, or attorney fees incurred by the qui tam plaintiff or for any award entered against the qui tam plaintiff.

G. The percentage of the share awarded to or settled for by the qui tam plaintiff shall be determined using the total amount of the award or settlement.

SUBPART D. FRAUD AND ABUSE DETECTION AND PREVENTION

s 440.1. Medical Assistance Programs Fraud Detection Fund

A. The Medical Assistance Programs Fraud Detection Fund, hereafter referred to as the "fund", is created in the state treasury as a special fund. The monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund and interest earned on the investment of monies in the fund shall be credited to the fund. All unexpended and unencumbered monies in the fund at the end of each fiscal year shall remain in the fund.

B. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, all monies received by the state pursuant to a civil award granted or settlement under the provisions of this Part, except for the amount to make the medical assistance programs whole, shall be deposited into the fund.

C. Fifty percent of the monies collected and deposited into the fund shall be allocated to the Medicaid Fraud Control Unit within the office of the attorney general.

D. Fifty percent of the monies collected and deposited into the fund shall be allocated to the Department of Health and Hospitals to be used solely for Medicaid fraud detection and for the purposes specified in Subsection E of this Section.

E. The monies in the fund shall not be used to replace, displace, or supplant state general funds appropriated for the daily operation of the department or the medical assistance programs and may be appropriated by the legislature for the following purposes only:

(1) To pay costs or expenses incurred by the department or the attorney general relative to an action instituted pursuant to this Part.

(2) To enhance fraud and abuse detection and prevention activities related to the medical assistance programs.

(3) To pay rewards for information concerning fraud and abuse as provided in Subpart B of this Part.

(4) To provide a source of revenue for the Medical Assistance Program in the event of a change in federal policy which results in an increase in state participation or a shortfall in state general fund due to a decrease in the official forecast, as defined in R.S. 39:2(30), during a fiscal year.

§ 46:440.2. Rewards for fraud and abuse information

A. The secretary may provide a reward of up to two thousand dollars to an individual who submits information to the secretary which results in recovery pursuant to the provisions of this Part, provided such individual is not himself subject to recovery under this Part.

B. The secretary shall grant rewards only to the extent monies are appropriated for this purpose from the Medical Assistance Programs Fraud Detection Fund. The secretary shall determine the amount of a reward, not to exceed two thousand dollars per individual per action, and establish a process to grant the reward in accordance with rules and regulations promulgated in accordance with the Administrative Procedure Act.

§ 46:440.3. Whistleblower protection and cause of action

A. No employee shall be discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner in the terms and conditions of his employment because of any lawful act engaged in by the employee or on behalf of the employee in furtherance of any action taken pursuant to this Part in regard to a health care provider or other person from whom recovery is or could be sought. Such an employee may seek any and all relief for his injury to which he is entitled under state or federal law.

B. No individual shall be threatened, harassed, or discriminated against in any manner by a health care provider or other person because of any lawful act engaged in by the individual or on behalf of the individual in furtherance of any action taken pursuant to this Part in regard to a health care provider or other person from whom recovery is or could be sought except that a health care provider may arrange for a recipient to receive goods, services, or supplies from another health care provider if the recipient agrees and the arrangement is approved by the secretary. Such an individual may seek any and all relief for his injury to which he is entitled under state or federal law.

C. (1) An employee of a private entity may bring his action for relief against his employer or the health care provider in the same court as the action or actions were brought pursuant to this Part or as part of an action brought pursuant to this Part.

(2) A person aggrieved of a violation of Subsection A or B of this Section shall be entitled to exemplary damages.

D. A qui tam plaintiff shall not be entitled to recovery pursuant to this Section if the court finds that the qui tam plaintiff instituted or proceeded with an action that was frivolous, vexatious, or harassing.

