

Nebraska False Medicaid Claims Act

68-934.

False Medicaid Claims Act; act, how cited.

Sections [68-934](#) to [68-947](#) shall be known and may be cited as the False Medicaid Claims Act.

68-935.

Terms, defined.

For purposes of the False Medicaid Claims Act:

(1) Attorney General means the Attorney General, the office of the Attorney General, or a designee of the Attorney General;

(2) Claim means any request or demand, whether under a contract or otherwise, for money or property, and whether or not the state has title to the money or property, that:

(a) Is presented to an officer, employee, or agent of the state; or

(b) Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and if the state:

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

(ii) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded;

(3) Good or service includes (a) any particular item, device, medical supply, or service claimed to have been provided to a recipient and listed in an itemized claim for payment and (b) any entry in the cost report, books of account, or other documents supporting such good or service;

(4)(a) Knowing and knowingly means that a person, with respect to information:

(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.

(b) Acts committed in a knowing manner or committed knowingly shall not require proof of a specific intent to defraud;

(5) Material means having a natural tendency to influence or be capable of influencing the payment or receipt of money or property;

(6) Obligation means an established duty, whether or not fixed, arising from (a) an express or implied contractual, grantor-grantee, or licensor-licensee relationship, (b) a fee-based or similar relationship, (c) statute or rule or regulation, or (d) the retention of any overpayment;

(7) Person means any body politic or corporate, society, community, the public generally, individual, partnership, limited liability company, joint-stock company, or association; and

(8) Recipient means an individual who is eligible to receive goods or services for which payment may be made under the medical assistance program.

68-936.

Presentation of false medicaid claim; civil liability; violation of act; civil penalty; damages; costs and attorney's fees.

(1) A person presents a false medicaid claim and is subject to civil liability if such person:

(a) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

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

(c) Conspires to commit a violation of the False Medicaid Claims Act;

(d) Has possession, custody, or control of property or money used, or to be used, by the state and knowingly delivers, or causes to be delivered, less than all of the money or property;

(e) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, makes or delivers the receipt knowing that the information on the receipt is not true;

(f) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the state who may not lawfully sell or pledge such property; or

(g) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state or knowingly conceals, avoids, or decreases an obligation to pay or transmit money or property to the state.

(2) A person who commits a violation of the False Medicaid Claims Act is subject to, in addition to any other remedies that may be prescribed by law, a civil penalty of not more than ten thousand dollars. In addition to any civil penalty, any such person may be subject to damages in the amount of three times the amount of the false claim because of the act of that person.

(3) If the state is the prevailing party in an action under the False Medicaid Claims Act, the defendant, in addition to penalties and damages, shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages under the act.

(4) Liability under this section is joint and several for any act committed by two or more persons.

68-937.

Failure to report.

A person violates the False Medicaid Claims Act, and is subject to civil liability as provided in section [68-936](#), if such person is a beneficiary of an inadvertent submission of a false medicaid claim to the state, and subsequently discovers and, knowing the claim is false, fails to report the claim to the department within sixty days of such discovery. The beneficiary is not obliged to make such a report to the department if more than six years have passed since submission of the claim.

68-938.

Charge, solicitation, acceptance, or receipt; unlawful; when.

A person violates the False Medicaid Claims Act, and a claim submitted with regard to a good or service is deemed to be false and subjects such person to civil liability as provided in section [68-936](#), if he or she, acting on behalf of a provider providing such good or service to a recipient under the medical assistance program, charges, solicits, accepts, or receives anything of value in addition to the amount legally payable under the medical assistance program in connection with a provision of such good or service knowing that such charge, solicitation, acceptance, or receipt is not legally payable.

68-939.

Records; duties; acts prohibited; liability; costs and attorney's fees.

(1) A person violates the False Medicaid Claims Act and is subject to civil liability as provided in section [68-936](#) and damages as provided in subsection (2) of this section if he or she:

(a) Having submitted a claim or received payment for a good or service under the medical assistance program, knowingly fails to maintain such records as are necessary to disclose fully the nature of all goods or services for which a claim was submitted or payment was received, or such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based, for a period of at least six years after the date on which payment was received; or

(b) Knowingly destroys such records within six years from the date payment was received.

(2) A person who knowingly fails to maintain records or who knowingly destroys records within six years from the date payment for a claim was received shall be subject to damages in the amount of three times the amount of the claim submitted for which records were knowingly not maintained or knowingly destroyed.

(3) If the state is the prevailing party in an action under this section, the defendant, in addition to penalties and damages, shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages under the act.

68-940.

Penalties or damages; considerations; liability; costs and attorney's fees.

(1) In determining the amount of any penalties or damages awarded under the False Medicaid Claims Act, the following shall be taken into account:

- (a) The nature of claims and the circumstances under which they were presented;
- (b) The degree of culpability and history of prior offenses of the person presenting the claims;
- (c) Coordination of the total penalties and damages arising from the same claims, goods, or services, whether based on state or federal statute; and
- (d) Such other matters as justice requires.

(2)(a) Any person who presents a false medicaid claim is subject to civil liability as provided in section [68-936](#), except when the court finds that:

- (i) The person committing the violation of the False Medicaid Claims Act furnished officials of the state responsible for investigating violations of the act with all information known to such person about the violation within thirty days after the date on which the defendant first obtained the information;
- (ii) Such person fully cooperated with any state investigation of such violation; and
- (iii) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under the act with respect to such violation and the person did not have actual knowledge of the existence of an investigation into such violation.

(b) The court may assess not more than two times the amount of the false medicaid claims submitted because of the action of a person coming within the exception under subdivision (2)(a) of this section, and such person is also liable for the state's costs and attorney's fees for a civil action brought to recover any penalty or damages.

(3) Amounts recovered under the False Medicaid Claims Act shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund, except that (a) amounts recovered for the state's costs and attorney's fees pursuant to subdivision (2)(b) of this section and sections [68-936](#) and [68-939](#) shall be remitted to the State Treasurer for credit to the State Medicaid Fraud Control Unit Cash Fund and (b) the State Treasurer shall distribute civil penalties in accordance with Article VII, section 5, of the Constitution of Nebraska.

68-940.01.

State Medicaid Fraud Control Unit Cash Fund; created; use; investment.

The State Medicaid Fraud Control Unit Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. The fund shall consist of any recovery for the state's costs and attorney's fees received pursuant to subdivision (2)(b) of section [68-940](#) and sections [68-936](#) and [68-939](#), except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy under such subdivision or sections. Money in the fund shall be used to pay the salaries and related expenses of the Department of Justice for the state medicaid fraud control unit.

The State Treasurer shall transfer five hundred thousand dollars from the State Medicaid Fraud Control Unit Cash Fund to the General Fund on or before June 30, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

68-941.

Limitation of actions; burden of proof.

(1) A civil action under the False Medicaid Claims Act shall be brought within six years after the date the claim is discovered or should have been discovered by exercise of reasonable diligence and, in any event, no more than ten years after the date on which the violation of the act was committed.

(2) In an action brought under the act, the state shall prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

68-942.

Investigation and prosecution.

(1) In any case involving allegations of civil violations or criminal offenses under the False Medicaid Claims Act, the Attorney General may take full charge of any investigation or advancement or prosecution of the case.

(2) The department shall cooperate with the state medicaid fraud control unit in conducting such investigations, civil actions, and criminal prosecutions and shall provide such information for such purposes as may be requested by the Attorney General.

68-943.

State medicaid fraud control unit; certification.

The Attorney General shall:

(1) Establish a state medicaid fraud control unit that meets the standards prescribed by 42 U.S.C. 1396b(q); and

(2) Apply to the Secretary of Health and Human Services for certification of the unit under 42 U.S.C. 1396b(q).

68-944.

State medicaid fraud control unit; powers and duties.

The state medicaid fraud control unit shall employ such attorneys, auditors, investigators, and other personnel as authorized by law to carry out the duties of the unit in an effective and efficient manner. The purpose of the state medicaid fraud control unit is to conduct a statewide program for the investigation and prosecution of medicaid fraud and violations of all applicable state laws relating to the providing of medical assistance and the activities of providers. The state medicaid fraud control unit may review and act on complaints of abuse and neglect of patients at health care facilities that receive payments under the medical assistance program and may provide for collection or referral for collection of overpayments made under the medical assistance program that are discovered by the unit.

68-945.

Attorney General; powers and duties.

In carrying out the duties and responsibilities under the False Medicaid Claims Act, the Attorney General may:

(1) Enter upon the premises of any provider participating in the medical assistance program (a) to examine all accounts and records that are relevant in determining the existence of fraud in the medical assistance program, (b) to investigate alleged abuse or neglect of patients, or (c) to investigate alleged misappropriation of patients' private funds. The accounts or records of a nonmedicaid patient may not be reviewed by, or turned over to, the Attorney General without the patient's written consent or a court order;

(2) Subpoena witnesses or materials, including medical records relating to recipients, within or outside the state and, through any duly designated employee, administer oaths and affirmations and collect evidence for possible use in either civil or criminal judicial proceedings;

(3) Request and receive the assistance of any prosecutor or law enforcement agency in the investigation and prosecution of any violation of this section; and

(4) Refer to the department for collection each instance of overpayment to a provider under the medical assistance program which is discovered during the course of an investigation.

68-946.

Attorney General; access to records.

(1) Notwithstanding any other provision of law, the Attorney General, upon reasonable request, shall have full access to all records held by a provider, or by any other person on his or her behalf, that are relevant to the determination of (a) the existence of civil violations or criminal offenses under the False Medicaid Claims Act or related offenses, (b) the existence of patient abuse, mistreatment, or neglect, or (c) the theft of patient funds.

(2) In examining such records, the Attorney General shall safeguard the privacy rights of recipients, avoiding unnecessary disclosure of personal information concerning named recipients. The Attorney General may transmit such information as he or she deems appropriate to the department and to other agencies concerned with the regulation of health care facilities or health professionals.

(3) No person holding such records may refuse to provide the Attorney General access to such records for the purposes described in the act on the basis that release would violate (a) a recipient's right of privacy, (b) a recipient's privilege against disclosure or use, or (c) any professional or other privilege or right.

68-947.

Contempt of court.

Any person who, after being ordered by a court to comply with a subpoena issued under the False Medicaid Claims Act, fails in whole or in part to testify or to produce evidence, documentary or otherwise, shall be in contempt of court as if the failure was committed in the presence of the court. The court may assess a fine of not less than one hundred dollars nor more than one thousand dollars for each day such person fails to comply. No person shall be found to be in contempt of court nor shall any fine be assessed if compliance with such subpoena violates such person's right against self-incrimination.