

Chapter 20

Utah False Claims Act

26-20-1 Title.

This chapter is known as the "Utah False Claims Act."

Amended by Chapter 48, 2007 General Session

26-20-2 Definitions.

As used in this chapter:

- (1) "Benefit" means the receipt of money, goods, or any other thing of pecuniary value.
- (2) "Claim" means any request or demand for money or property:
 - (a) made to any:
 - (i) employee, officer, or agent of the state;
 - (ii) contractor with the state; or
 - (iii) grantee or other recipient, whether or not under contract with the state; and
 - (b) if:
 - (i) any portion of the money or property requested or demanded was issued from or provided by the state; or
 - (ii) the state will reimburse the contractor, grantee, or other recipient for any portion of the money or property.
- (3) "False statement" or "false representation" means a wholly or partially untrue statement or representation which is:
 - (a) knowingly made; and
 - (b) a material fact with respect to the claim.
- (4) "Knowing" and "knowingly":
 - (a) for purposes of criminal prosecutions for violations of this chapter, is one of the culpable mental states described in Subsection 26-20-9(1); and
 - (b) for purposes of civil prosecutions for violations of this chapter, is the required culpable mental state as defined in Subsection 26-20-9.5(1).
- (5) "Medical benefit" means a benefit paid or payable to a recipient or a provider under a program administered by the state under:
 - (a) Titles V and XIX of the federal Social Security Act;
 - (b) Title X of the federal Public Health Services Act;
 - (c) the federal Child Nutrition Act of 1966 as amended by P.L. 94-105; and
 - (d) any programs for medical assistance of the state.
- (6) "Person" means an individual, corporation, unincorporated association, professional corporation, partnership, or other form of business association.

Amended by Chapter 48, 2007 General Session

26-20-3 False statement or representation relating to medical benefits.

- (1) A person may not make or cause to be made a false statement or false representation of a material fact in an application for medical benefits.
- (2) A person may not make or cause to be made a false statement or false representation of a material fact for use in determining rights to a medical benefit.

- (3) A person, who having knowledge of the occurrence of an event affecting the person's initial or continued right to receive a medical benefit or the initial or continued right of any other person on whose behalf the person has applied for or is receiving a medical benefit, may not conceal or fail to disclose that event with intent to obtain a medical benefit to which the person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled.

Amended by Chapter 297, 2011 General Session

26-20-4 Kickbacks or bribes prohibited.

- (1) For purposes of this section, kickback or bribe:
 - (a) includes rebates, compensation, or any other form of remuneration which is:
 - (i) direct or indirect;
 - (ii) overt or covert; or
 - (iii) in cash or in kind; and
 - (b) does not include a rebate paid to the state under 42 U.S.C. Sec. 1396r-8 or any state supplemental rebates.
- (2) A person may not solicit, offer, pay, or receive a kickback or bribe in return for or to induce:
 - (a) the purchasing, leasing, or ordering of any goods or services for which payment is or may be made in whole or in part pursuant to a medical benefit program; or
 - (b) the referral of an individual to another person for the furnishing of any goods or services for which payment is or may be made in whole or in part pursuant to a medical benefit program.

Repealed and Re-enacted by Chapter 48, 2007 General Session

26-20-5 False statements or false representations relating to qualification of health institution or facility prohibited -- Felony.

- (1) A person may not knowingly, intentionally, or recklessly make, induce, or seek to induce, the making of a false statement or false representation of a material fact with respect to the conditions or operation of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, or home health agency.
- (2) A person who violates this section is guilty of a second degree felony.

Amended by Chapter 48, 2007 General Session

26-20-6 Conspiracy to defraud prohibited.

A person may not enter into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false, fictitious, or fraudulent claim for a medical benefit.

Amended by Chapter 297, 2011 General Session

26-20-7 False claims for medical benefits prohibited.

- (1) A person may not make or present or cause to be made or presented to an employee or officer of the state a claim for a medical benefit:
 - (a) which is wholly or partially false, fictitious, or fraudulent;
 - (b) for services which were not rendered or for items or materials which were not delivered;

- (c) which misrepresents the type, quality, or quantity of items or services rendered;
 - (d) representing charges at a higher rate than those charged by the provider to the general public;
 - (e) for items or services which the person or the provider knew were not medically necessary in accordance with professionally recognized standards;
 - (f) which has previously been paid;
 - (g) for services also covered by one or more private sources when the person or provider knew of the private sources without disclosing those sources on the claim; or
 - (h) where a provider:
 - (i) unbundles a product, procedure, or group of procedures usually and customarily provided or performed as a single billable product or procedure into artificial components or separate procedures; and
 - (ii) bills for each component of the product, procedure, or group of procedures:
 - (A) as if they had been provided or performed independently and at separate times; and
 - (B) the aggregate billing for the components exceeds the amount otherwise billable for the usual and customary single product or procedure.
- (2) In addition to the prohibitions in Subsection (1), a person may not:
- (a) fail to credit the state for payments received from other sources;
 - (b) recover or attempt to recover payment in violation of the provider agreement from:
 - (i) a recipient under a medical benefit program; or
 - (ii) the recipient's family;
 - (c) falsify or alter with intent to deceive, any report or document required by state or federal law, rule, or Medicaid provider agreement;
 - (d) retain any unauthorized payment as a result of acts described by this section; or
 - (e) aid or abet the commission of any act prohibited by this section.

Amended by Chapter 48, 2007 General Session

26-20-8 Knowledge of past acts not necessary to establish fact that false statement or representation knowingly made.

In prosecution under this chapter, it is not necessary to show that the person had knowledge of similar acts having been performed in the past on the part of persons acting on his behalf nor to show that the person had actual notice that the acts by the persons acting on his behalf occurred to establish the fact that a false statement or representation was knowingly made.

Amended by Chapter 297, 2011 General Session

26-20-9 Criminal penalties.

- (1)
 - (a) Except as provided in Subsection (1)(b) the culpable mental state required for a criminal violation of this chapter is knowingly, intentionally, or recklessly as defined in Section 76-2-103.
 - (b) The culpable mental state required for a criminal violation of this chapter for kickbacks and bribes under Section 26-20-4 is knowingly and intentionally as defined in Section 76-2-103.
- (2) The punishment for a criminal violation of any provision of this chapter, except as provided under Section 26-20-5, is determined by the cumulative value of the funds or other benefits received or claimed in the commission of all violations of a similar nature, and not by each separate violation.

- (3) Punishment for criminal violation of this chapter, except as provided under Section 26-20-5, is a felony of the second degree, felony of the third degree, class A misdemeanor, or class B misdemeanor based on the dollar amounts as prescribed by Subsection 76-6-412(1) for theft of property and services.

Amended by Chapter 48, 2007 General Session

26-20-9.5 Civil penalties.

- (1) The culpable mental state required for a civil violation of this chapter is "knowing" or "knowingly" which:
 - (a) means that 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; and
 - (b) does not require a specific intent to defraud.
- (2) Any person who violates this chapter shall, in all cases, in addition to other penalties provided by law, be required to:
 - (a) make full and complete restitution to the state of all damages that the state sustains because of the person's violation of this chapter;
 - (b) pay to the state its costs of enforcement of this chapter in that case, including the cost of investigators, attorneys, and other public employees, as determined by the state; and
 - (c) pay to the state a civil penalty equal to:
 - (i) three times the amount of damages that the state sustains because of the person's violation of this chapter; and
 - (ii) not less than \$5,000 or more than \$10,000 for each claim filed or act done in violation of this chapter.
- (3) Any civil penalties assessed under Subsection (2) shall be awarded by the court as part of its judgment in both criminal and civil actions.
- (4) A criminal action need not be brought against a person in order for that person to be civilly liable under this section.

Amended by Chapter 297, 2011 General Session

26-20-10 Revocation of license of assisted living facility -- Appointment of receiver.

- (1) If the license of an assisted living facility is revoked for violation of this chapter, the county attorney may file a petition with the district court for the county in which the facility is located for the appointment of a receiver.
- (2) The district court shall issue an order to show cause why a receiver should not be appointed returnable within five days after the filing of the petition.
- (3) If the court finds that the facts warrant the granting of the petition, the court shall appoint a receiver to take charge of the facility. The court may determine fair compensation for the receiver.
- (4) A receiver appointed pursuant to this section shall have the powers and duties prescribed by the court.

Amended by Chapter 192, 1998 General Session

26-20-11 Presumption based on paid state warrant -- Value of medical benefits -- Repayment of benefits.

- (1) In any civil or criminal action brought under this chapter, a paid state warrant, made payable to the order of a party, creates a presumption that the party received funds from the state.
- (2) In any civil or criminal action brought under this chapter, the value of the benefits received shall be the ordinary or usual charge for similar benefits in the private sector.
- (3) In any criminal action under this chapter, the repayment of funds or other benefits obtained in violation of the provisions of this chapter does not constitute a defense to, or grounds for dismissal of that action.

Enacted by Chapter 46, 1986 General Session

26-20-12 Violation of other laws.

- (1) The provisions of this chapter are:
 - (a) not exclusive, and the remedies provided for in this chapter are in addition to any other remedies provided for under:
 - (i) any other applicable law; or
 - (ii) common law; and
 - (b) to be liberally construed and applied to:
 - (i) effectuate the chapter's remedial and deterrent purposes; and
 - (ii) serve the public interest.
- (2) If any provision of this chapter or the application of this chapter to any person or circumstance is held unconstitutional:
 - (a) the remaining provisions of this chapter are not affected; and
 - (b) the application of this chapter to other persons or circumstances are not affected.

Amended by Chapter 297, 2011 General Session

26-20-13 Medicaid fraud enforcement.

- (1) This chapter shall be enforced in accordance with this section.
- (2) The department is responsible for:
 - (a)
 - (i) investigating and prosecuting suspected civil violations of this chapter; or
 - (ii) referring suspected civil violations of this chapter to the attorney general for investigation and prosecution; and
 - (b) promptly referring suspected criminal violations of this chapter to the attorney general for criminal investigation and prosecution.
- (3) The attorney general has:
 - (a) concurrent jurisdiction with the department for investigating and prosecuting suspected civil violations of this chapter; and
 - (b) exclusive jurisdiction to investigate and prosecute all suspected criminal violations of this chapter.
- (4) The department and the attorney general share concurrent civil enforcement authority under this chapter and may enter into an interagency agreement regarding the investigation and prosecution of violations of this chapter in accordance with this section, the requirements of Title XIX of the federal Social Security Act, and applicable federal regulations.
- (5) Any violation of this chapter which comes to the attention of any state government officer or agency shall be reported to the attorney general or the department. All state government

officers and agencies shall cooperate with and assist in any prosecution for violation of this chapter.

Amended by Chapter 48, 2007 General Session

26-20-14 Investigations -- Civil investigative demands.

- (1) The attorney general may take investigative action under Subsection (2) if the attorney general has reason to believe that:
 - (a) a person has information or custody or control of documentary material relevant to the subject matter of an investigation of an alleged violation of this chapter;
 - (b) a person is committing, has committed, or is about to commit a violation of this chapter; or
 - (c) it is in the public interest to conduct an investigation to ascertain whether or not a person is committing, has committed, or is about to commit a violation of this chapter.
- (2) In taking investigative action, the attorney general may:
 - (a) require the person to file on a prescribed form a statement in writing, under oath or affirmation describing:
 - (i) the facts and circumstances concerning the alleged violation of this chapter; and
 - (ii) other information considered necessary by the attorney general;
 - (b) examine under oath a person in connection with the alleged violation of this chapter; and
 - (c) in accordance with Subsections (7) through (18), execute in writing, and serve on the person, a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying of the material.
- (3) The attorney general may not release or disclose information that is obtained under Subsection (2)(a) or (b), or any documentary material or other record derived from the information obtained under Subsection (2)(a) or (b), except:
 - (a) by court order for good cause shown;
 - (b) with the consent of the person who provided the information;
 - (c) to an employee of the attorney general or the department;
 - (d) to an agency of this state, the United States, or another state;
 - (e) to a special assistant attorney general representing the state in a civil action;
 - (f) to a political subdivision of this state; or
 - (g) to a person authorized by the attorney general to receive the information.
- (4) The attorney general may use documentary material derived from information obtained under Subsection (2)(a) or (b), or copies of that material, as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.
- (5)
 - (a) If a person fails to file a statement as required by Subsection (2)(a) or fails to submit to an examination as required by Subsection (2)(b), the attorney general may file in district court a complaint for an order to compel the person to within a period stated by court order:
 - (i) file the statement required by Subsection (2)(a); or
 - (ii) submit to the examination required by Subsection (2)(b).
 - (b) Failure to comply with an order entered under Subsection (5)(a) is punishable as contempt.
- (6) A civil investigative demand shall:
 - (a) state the rule or statute under which the alleged violation of this chapter is being investigated;
 - (b) describe the:
 - (i) general subject matter of the investigation; and
 - (ii) class or classes of documentary material to be produced with reasonable specificity to fairly indicate the documentary material demanded;

- (c) designate a date within which the documentary material is to be produced; and
 - (d) identify an authorized employee of the attorney general to whom the documentary material is to be made available for inspection and copying.
- (7) A civil investigative demand may require disclosure of any documentary material that is discoverable under the Utah Rules of Civil Procedure.
- (8) Service of a civil investigative demand may be made by:
- (a) delivering an executed copy of the demand to the person to be served or to a partner, an officer, or an agent authorized by appointment or by law to receive service of process on behalf of that person;
 - (b) delivering an executed copy of the demand to the principal place of business in this state of the person to be served; or
 - (c) mailing by registered or certified mail an executed copy of the demand addressed to the person to be served:
 - (i) at the person's principal place of business in this state; or
 - (ii) if the person has no place of business in this state, to the person's principal office or place of business.
- (9) Documentary material demanded in a civil investigative demand shall be produced for inspection and copying during normal business hours at the office of the attorney general or as agreed by the person served and the attorney general.
- (10) The attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained pursuant to a civil investigative demand except:
- (a) by court order for good cause shown;
 - (b) with the consent of the person who produced the information;
 - (c) to an employee of the attorney general or the department;
 - (d) to an agency of this state, the United States, or another state;
 - (e) to a special assistant attorney general representing the state in a civil action;
 - (f) to a political subdivision of this state; or
 - (g) to a person authorized by the attorney general to receive the information.
- (11)
- (a) With respect to documentary material obtained pursuant to a civil investigative demand, the attorney general shall prescribe reasonable terms and conditions allowing such documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person.
 - (b) The attorney general may use such documentary material or copies of it as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.
- (12) A person may file a complaint, stating good cause, to extend the return date for the demand or to modify or set aside the demand. A complaint under this Subsection (12) shall be filed in district court before the earlier of:
- (a) the return date specified in the demand; or
 - (b) the 20th day after the date the demand is served.
- (13) Except as provided by court order, a person who has been served with a civil investigative demand shall comply with the terms of the demand.
- (14)
- (a) A person who has committed a violation of this chapter in relation to the Medicaid program in this state or to any other medical benefit program administered by the state has submitted to the jurisdiction of this state.

- (b) Personal service of a civil investigative demand under this section may be made on the person described in Subsection (14)(a) outside of this state.
- (15) This section does not limit the authority of the attorney general to conduct investigations or to access a person's documentary materials or other information under another state or federal law, the Utah Rules of Civil Procedure, or the Federal Rules of Civil Procedure.
- (16) The attorney general may file a complaint in district court for an order to enforce the civil investigative demand if:
 - (a) a person fails to comply with a civil investigative demand; or
 - (b) copying and reproduction of the documentary material demanded:
 - (i) cannot be satisfactorily accomplished; and
 - (ii) the person refuses to surrender the documentary material.
- (17) If a complaint is filed under Subsection (16), the court may determine the matter presented and may enter an order to enforce the civil investigative demand.
- (18) Failure to comply with a final order entered under Subsection (17) is punishable by contempt.

Amended by Chapter 297, 2011 General Session

26-20-15 Limitation of actions -- Civil acts antedating this section -- Civil burden of proof -- Estoppel -- Joint civil liability -- Venue.

- (1) An action under this chapter may not be brought after the later of:
 - (a) six years after the date on which the violation was committed; or
 - (b) three years after the date an official of the state charged with responsibility to act in the circumstances discovers the violation, but in no event more than 10 years after the date on which the violation was committed.
- (2) A civil action brought under this chapter may be brought for acts occurring prior to the effective date of this section if the limitations period set forth in Subsection (1) has not lapsed.
- (3) In any civil action brought under this chapter the state shall be required to prove by a preponderance of evidence, all essential elements of the cause of action including damages.
- (4) Notwithstanding any other provision of law, a final judgment rendered in favor of the state in any criminal proceeding under this chapter, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any civil action under this chapter which involves the same transaction.
- (5) Civil liability under this chapter shall be joint and several for a violation committed by two or more persons.
- (6) Any action brought by the state under this chapter shall be brought in district court in Salt Lake County or in any county where the defendant resides or does business.

Enacted by Chapter 48, 2007 General Session