

---

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alan Miller.

---

DIGEST

SB 391 Original

2020 Regular Session

Fred Mills

Present law provides for the Medical Assistance Programs Integrity Law. Present law provides that it was enacted to combat and prevent fraud and abuse committed by some healthcare 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. Present law provides that the legislature intends the secretary of the La. Department of Health (LDH), the attorney general, and private citizens of La. 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 healthcare providers and other persons who engage in fraud, misrepresentation, abuse, or other ill practices, as set forth in present law, to obtain payments to which these healthcare providers or persons are not entitled.

Present law authorizes either the secretary or the attorney general to institute a proceeding or take other authorized action regarding the Medical Assistance Programs Integrity Law 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.

Proposed law provides that the secretary may only pursue an action pursuant to Medical Assistance Programs Integrity Law only if LDH referred the matter to the attorney general and the attorney general notified the secretary in writing that he declines to proceed with the matter.

Proposed law prohibits any person from defrauding or attempting to defraud the medical assistance programs through misrepresentation.

Proposed law prohibits any person from obtaining or attempting to obtain payment for a false or fraudulent claim.

Proposed law prohibits any person from knowingly making, causing to be made, inducing, or seeking to induce the making of a false statement or misrepresentation of material fact concerning:

- (1) The conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program including but not limited to certification or recertification as:
  - (a) A hospital.
  - (b) A nursing facility or skilled nursing facility.

- (c) A hospice.
  - (d) An intermediate care facility for the developmentally disabled.
  - (e) An assisted living facility.
  - (f) A home health agency.
- (2) Information the person is required to produce to LDH by a federal or state law, rule, regulation, or provider agreement.

Proposed law prohibits any provider or provider-in-fact from failing to provide to LDH, attorney general, or legislative auditor or other appropriate state agency, information required to be provided by law, rule, or contractual provision.

Proposed law prohibits any person from knowingly making or causing to be made a claim under the Medicaid program for:

- (1) A service or product that has not been approved or prescribed by a treating physician or healthcare practitioner.
- (2) A service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the healthcare industry; or used in a manner inconsistent with its approved labeling or generally recognized standard of care within the healthcare industry.
- (3) A product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate.

Proposed law prohibits a managed care organization or a subcontractor to a managed care organization that contracts with LDH or other state agency to provide or arrange to provide healthcare benefits or services to individuals eligible under the medical assistance programs and knowingly:

- (1) Failing to provide to an individual a healthcare benefit or service that the organization is required to provide under the contract.
- (2) Failing to provide to the LDH, attorney general or legislative auditor or other appropriate state agency information required to be provided by law, rule, or contractual provision.
- (3) Engaging in a fraudulent activity in connection with the enrollment of an individual eligible under the Medicaid program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the Medicaid program.

Proposed law prohibits making a claim under the medical assistance programs and knowingly misrepresenting the healthcare provider who actually provided the service when such identification

is necessary to obtain payment for the claim.

Proposed law provides that a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere prevents the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought by the secretary or the attorney general as a qui tam plaintiff in a qui tam action.

Present law provides that a "qui tam plaintiff" is a private person that 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.

Proposed law provides that upon a showing by the state that unrestricted participation during the course of the litigation by the person (the qui tam plaintiff) initiating the action would interfere with or unduly delay the government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitation on the person's participation such as:

- (1) Limiting the number of witnesses the person may call.
- (2) Limiting the length of the testimony of such witnesses.
- (3) Limiting the person's cross examination of witnesses.
- (4) Otherwise limiting the participation by the person in the litigation.

Proposed law provides that whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court is authorized to stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation proceedings.

Proposed law authorizes the state to settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

Proposed law provides that if the state elects not to proceed with the action, the qui tam plaintiff has the right to conduct the action. Further, if the state requests, the qui tam plaintiff and the defendant are required to serve the state with all pleadings filed in the action, and supply the state with all copies of all deposition transcripts at the state's expense.

Effective August 1, 2020.

(Amends R.S. 46:437.3(7)-(11) and (14)-(28), 437.5, 438.1(A) and (C)(1), 438.3(A), (B), and (D)-(H), 438.6(A) and (D)(3), 438.7(3), 438.8(D), 439.1(A), (D)(1) and (F), 439.2(A), (B), and (E), and 439.4(A)(1), (C)(2), (F) and (G); adds R.S. 46:437.6(D), 437.7(E), 438.3(I)-(N), 438.5(F), and 438.8(B)(3); repeals R.S. 46:437.3(29) and (30), 439.1(G), 439.2(F), and 440.3)