

Regular Session, 2011

HOUSE BILL NO. 382

BY REPRESENTATIVE ANDERS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/ACTIONS: Provides relative to the Medical Assistance Program Integrity Law

1 AN ACT

2 To amend and reenact R.S. 46:437.3(6), 438.3(B) and (C), 438.6(C)(1)(introductory
3 paragraph) and (a), 438.7(introductory paragraph), 439.1(D), (E), (F), and (G),
4 439.2(A) and (B)(1), and 439.4(A)(2) and (3) and (D), to enact R.S. 46:437.3(29)
5 and (30) and 438.6(C)(3), and to repeal R.S. 46:439.1(H) and (I) and 439.2(C),
6 relative to the Medical Assistance Programs Integrity Law; to provide definitions;
7 to provide for false or fraudulent claims; to provide qui tam actions; to provide for
8 recovery awarded; to comply with the Federal Social Security Act; and to provide
9 for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 46:437.3(6), 438.3(B) and (C), 438.6(C)(1)(introductory paragraph)
12 and (a), 438.7(introductory paragraph), 439.1(D), (E), (F), and (G), 439.2(A) and (B)(1), and
13 439.4(A)(2) and (3) and (D) are hereby amended and reenacted and R.S. 46:437.3(29) and
14 (30) and 438.6(C)(3) are hereby enacted to read as follows:

15 §437.3. Definitions

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

17 * * *

18 (6) "Claim" ~~includes any request or demand, including any and all~~
19 ~~documents or information required by federal or state law or by rule, made against~~
20 ~~medical assistance programs funds for payment.~~ means any request or demand,

1 whether under a contract or otherwise, for money or property, whether or not the
2 state or department has title to the money or property, that is drawn in whole or in
3 part on medical assistance programs funds that are either of the following:

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

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

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

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

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

18 * * *

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

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

25 * * *

26 §438.3. False or fraudulent claim; misrepresentation

27 * * *

28 B. No person shall knowingly engage in misrepresentation or make, use, or
29 cause to be made or used, a false record or statement to ~~obtain payment for a false~~

1 §439.1. Qui tam action, civil action filed by private person

2 * * *

3 ~~D.(1) No court shall have jurisdiction over a qui tam action based upon a~~
4 ~~public disclosure of allegations or transactions in a criminal, civil, or administrative~~
5 ~~hearing or as the result of disclosure of a governmental audit report, investigation,~~
6 ~~or hearing or from the news media unless the person bringing the action is an~~
7 ~~original source of the information. The court shall dismiss an action or claim in~~
8 ~~accordance with this Section, unless opposed by the government, if substantially the~~
9 ~~same allegations or transactions as alleged in the action or claim were publicly~~
10 ~~disclosed in any of the following:~~

11 (a) A criminal, civil, or administrative hearing in which the government or
12 its agent is a party.

13 (b) A congressional or government accountability office or other federal
14 report, hearing, audit, or investigation.

15 (c) The news media, unless the action is brought by the attorney general or
16 the person bringing the action is an original source of the information.

17 (2) For the purposes of this Subsection, "original source" means an
18 individual who, ~~has direct and independent knowledge of the information on which~~
19 ~~the allegations are based and has voluntarily provided the information to the~~
20 ~~secretary or attorney general before filing an action in accordance with this Subpart.~~
21 prior to a public disclosure in accordance with this Subsection, has voluntarily
22 disclosed to the government the information on which allegations or transactions in
23 a claim are based or who has knowledge that is independent of and materially adds
24 to the publicly disclosed allegations or transactions, and who has voluntarily
25 provided the information to the government before filing an action in accordance
26 with this Subpart.

27 E. Any employee, contractor, or agent shall be entitled to all relief necessary
28 to make that employee, contractor, or agent whole, if the employee, contractor, or
29 agent is discharged, demoted, suspended, threatened, harassed, or in any other

1 manner discriminated against in the terms and conditions of employment because of
2 lawful acts done by the employee, contractor, agent, or associated others in
3 furtherance of an action in accordance with this Part or other efforts to stop one or
4 more violations of this Part.

5 (1) ~~A person who is or was a public employee or public official or a person~~
6 ~~who is or was acting on behalf of the state shall not bring a qui tam action if the~~
7 ~~person has or had a duty or obligation to report, investigate, or pursue allegations of~~
8 ~~wrongdoing or misconduct by health care providers.~~ Relief in accordance with this
9 Subsection shall include reinstatement with the same seniority status the employee,
10 contractor, or agent would have had but for the discrimination, two times the amount
11 of back pay, interest on the back pay, and compensation for any special damages
12 sustained as a result of the discrimination, including litigation costs and reasonable
13 attorney fees. An action in accordance with this Section may be brought in the
14 appropriate district court of competent jurisdiction for the relief provided in this
15 Section.

16 (2) ~~A person who is or was a public employee or public official or a person~~
17 ~~who is or was acting on behalf of the state shall not bring a qui tam action if the~~
18 ~~person has or had access to records of the state through the normal course and scope~~
19 ~~of his employment relative to activities of health care providers.~~ A civil action in
20 accordance with this Section may not be brought more than three years after the date
21 the retaliation occurred.

22 ~~F. No employer of a qui tam plaintiff shall discharge, demote, suspend,~~
23 ~~threaten, harass, or discriminate against a qui tam plaintiff at any time arising out of~~
24 ~~the fact that the qui tam plaintiff brought an action pursuant to this Subpart unless~~
25 ~~the court finds that the qui tam plaintiff has instituted or proceeded with an action~~
26 ~~that is frivolous, vexatious, or harassing.~~

27 ~~G. Any employee who is discharged, demoted, suspended, threatened,~~
28 ~~harassed, or in any other manner discriminated against in the terms and conditions~~
29 ~~of employment by an employer due to lawful acts committed in furtherance of an~~

1 ~~action, including investigation, initiation, testimony, or assistance in an action filed~~
2 ~~or to be filed in accordance with this Subpart, shall be entitled to relief necessary to~~
3 ~~make the employee whole. Relief shall include reinstatement with the same seniority~~
4 ~~status, two times the amount of back pay, interest on the back pay, and compensation~~
5 ~~for any special damages sustained as a result of the discrimination, including~~
6 ~~litigation costs and reasonable attorney fees. An employee may bring an action for~~
7 ~~relief in a district court where the violation occurred.~~

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

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

18 §439.2. Qui tam action procedures

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

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

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

27 (~~b~~) ~~No qui tam action shall be instituted by a qui tam plaintiff if he fails to~~
28 ~~timely file a complaint with the secretary or the attorney general.~~

1 ~~(3)(a) At least thirty days after filing with the secretary or the attorney~~
2 ~~general, whichever occurs first, the qui tam complaint and information may be filed~~
3 ~~with the appropriate state district court. On the same date as the qui tam action is~~
4 ~~filed, the qui tam plaintiff shall serve the secretary and the attorney general with~~
5 ~~notice of the filing. When a person brings an action in accordance with this Subpart,~~
6 ~~no person other than the secretary or attorney general may intervene or bring a~~
7 ~~related action based on the same facts underlying the pending action.~~

8 ~~(b) If more than one qui tam action arising out of the same information and~~
9 ~~allegations is filed, the court shall dismiss all qui tam actions where the complaint~~
10 ~~and information filed with the secretary or attorney general were filed thirty days or~~
11 ~~more after the first qui tam complaint and information which serves as the basis for~~
12 ~~the alleged violation were filed with the secretary or attorney general.~~

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

16 (b) For good cause shown, the secretary or the attorney general may **request**
17 ~~one extension of the ninety-day time period for the complaint and information to~~
18 ~~remain under seal and unserved on the defendant. This request shall be supported~~
19 ~~by affidavit or other submission in camera and under seal. move the court for~~
20 ~~extensions of time during which the petition remains under seal. Any such motions~~
21 ~~may be supported by affidavits or other submissions in camera and under seal.~~

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

1 government arises out of the conduct, transactions, or occurrences set forth, or
2 attempted to be set forth, in the relator's complaint.

3 * * *

4 §439.4. Recovery awarded to a qui tam plaintiff

5 A.

6 * * *

7 (2) In making a determination of award to the qui tam plaintiff, the court
8 shall consider the extent to which the qui tam plaintiff substantially contributed to
9 ~~investigations and proceedings related to the qui tam action~~ the prosecution of the
10 action.

11 (3) If the court finds the allegations in the qui tam action to be based
12 primarily on disclosures of specific information, other than information provided by
13 the qui tam plaintiff, relating to allegations or transactions in criminal, civil, or
14 administrative hearings, or from the news media, the court may award ~~less than~~
15 ~~fifteen percent of recovery, taking into account the significance of the information~~
16 ~~and the role of the qui tam plaintiff in advancing the qui tam action to judgment or~~
17 ~~settlement.~~ such sum it considers appropriate, but in no case may the court award
18 more than ten percent of the proceeds, considering the significance of the
19 information and the role of the person bringing the action in advancing the case to
20 litigation. Any payment to a person in accordance with this Subsection shall be
21 made from the proceeds recovered.

22 * * *

23 D. Whether or not the secretary or the attorney general intervenes, if the
24 court finds that the action was brought by a person who planned ~~or~~ and initiated the
25 violation which is the subject of the action, then the court may, to the extent the court
26 considers appropriate, reduce the share of the proceeds of the action which the qui
27 tam plaintiff would otherwise receive under Subsection A or B of this Section, taking
28 into account the role ~~that~~ the qui tam plaintiff played in advancing the case to

1 judgment or settlement and any relevant circumstances pertaining to the qui tam
2 plaintiff's participation in the violation.

3 * * *

4 Section 2. R.S. 46:439.1(H) and (I) and 439.2(C) are hereby repealed in their
5 entirety.

6 Section 3. The Louisiana State Law Institute is hereby directed to alphabetize and
7 renumber R.S. 46:437.3.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Anders

HB No. 382

Abstract: Provides procedures for a qui tam action in the Medical Assistance Program Integrity Law.

Present law provides for the Medical Assistance Programs Integrity Law to combat and prevent fraud and abuse committed by some health care providers and others.

Proposed law retains present law and additionally defines "claim", "material", "obligation", and "original source".

Present law provides for civil monetary penalties to be imposed on the violator of not less than \$5,000 but not more than \$10,000 for each false claim.

Proposed law increases the penalties from \$5,000 to \$5,500 and from \$10,000 to \$11,000 and provides that the penalties shall be adjusted according to the federal penalties inflation law.

Present law provides that when a waiver is requested, the court may waive any recovery, except from actual damages.

Proposed law provides that the court may reduce to not less than twice the actual damages, if requested.

Present law provides that no court shall have jurisdiction over a qui tam action based on the public disclosure of allegations.

Proposed law provides that the court shall dismiss an action if the same allegations were publicly disclosed.

Present law provides that a public employee with a duty to report wrongdoing or who had access to records relative to the activities of a health care provider shall not bring a qui tam action.

Proposed law deletes present law.

Present law prohibits employers from discharging, demoting, suspending, or otherwise discriminating against a qui tam plaintiff.

Proposed law provides that any employee, contractor, or agent shall be entitled to all relief necessary to make him whole if he is discharged, demoted, suspended, or discriminated against in any manner.

Proposed law provides that action may be brought in the appropriate state or federal district court and may not be brought more than three years after the date the retaliation occurred.

Present law requires the qui tam plaintiff to file a copy of his complaint with the attorney general before filing with the appropriate court and if more than one action arises out of the same information, the court shall dismiss any action filed more than 30 days after the first qui tam complaint.

Proposed law only requires that a copy of the complaint be served upon the attorney general in accordance with the rules of civil procedure, and only the attorney general or secretary may intervene or bring a related action based on the same facts.

Present law provides that the attorney general may request one 90-day extension for the complaint to remain under seal and not served on the defendant.

Proposed law provides that the attorney general may move the court for extensions during which the petition remains under seal.

Proposed law provides that any government intervention shall relate back to the date the complaint was filed, for prescription purposes.

Present law provides that the court may award less than 15% recovery if it finds that the allegations are not primarily based on information provided by the qui tam plaintiff.

Proposed law provides that if the court finds the allegations are based on information related to criminal, civil, or administrative hearings or the media, it may award a sum it considers appropriate, but in no case more than 10% of the proceeds.

Present law provides that if the qui tam plaintiff fails to comply with the procedures in present law, the court may dismiss the plaintiff after a contradictory hearing.

Proposed law deletes present law.

(Amends R.S. 46:437.3(6), 438.3(B) and (C), 438.6(C)(1)(intro. para.) and (a), 438.7(intro. para.), 439.1(D), (E), (F), and (G), 439.2(A) and (B)(1), and 439.4(A)(2) and (3) and (D); Adds R.S. 46:437.3(29) and (30) and 438.6(C)(3); Repeals R.S. 46:439.1(H) and (I) and 439.2(C))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Health and Welfare to the original bill.

1. Deleted a proposed law provision that specified that a claim could be based on a request or demand for payment from a coordinated care network, health maintenance organization, or any other type of managed care organization or entity, which received any medical assistance program funds for the purpose of managing or coordinating the health care of medical assistance programs recipients.