

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.

## AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

### §437.3. Definitions

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

\* \* \*

~~(6) "Claim" includes any request or demand, including any and all documents or information required by federal or state law or by rule, made against~~

~~medical assistance programs funds for payment.~~ 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.

\* \* \*

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

(30) "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.

\* \* \*

§438.3. False or fraudulent claim; misrepresentation

\* \* \*

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

~~or fraudulent claim from the medical assistance programs' funds~~ 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 ~~to~~ 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.

\* \* \*

§438.6. Recovery

\* \* \*

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, ~~one or more of~~ the following civil monetary penalties ~~may~~ shall be imposed on the violator:

(a) Not less than five thousand five hundred dollars but not more than ~~ten~~ 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.

\* \* \*

(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.

\* \* \*

§438.7. ~~Waivers, extenuating circumstances~~ Reduced damages

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

\* \* \*

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

\* \* \*

D.(1) ~~No court shall have jurisdiction over a qui tam action based upon a public disclosure of allegations or transactions in a criminal, civil, or administrative~~

1 ~~hearing or as the result of disclosure of a governmental audit report, investigation,~~  
2 ~~or hearing or from the news media unless the person bringing the action is an~~  
3 ~~original source of the information.~~ The court shall dismiss an action or claim in  
4 accordance with this Section, unless opposed by the government, if substantially the  
5 same allegations or transactions as alleged in the action or claim were publicly  
6 disclosed in any of the following:

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

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

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

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

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

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

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

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

23                  G. ~~Any employee who is discharged, demoted, suspended, threatened,~~  
24                  ~~harassed, or in any other manner discriminated against in the terms and conditions~~  
25                  ~~of employment by an employer due to lawful acts committed in furtherance of an~~  
26                  ~~action, including investigation, initiation, testimony, or assistance in an action filed~~  
27                  ~~or to be filed in accordance with this Subpart, shall be entitled to relief necessary to~~  
28                  ~~make the employee whole. Relief shall include reinstatement with the same seniority~~  
29                  ~~status, 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 employee may bring an action for relief in a district court where the violation occurred.~~

~~H. 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.

~~I. 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. ~~Such~~ The entities and their authorized agents shall maintain the confidentiality of the information provided to them under this Subsection.

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

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

~~(3)(a) At least thirty days after filing with the secretary or the attorney general, whichever occurs first, the qui tam complaint and information may be filed with the appropriate state district court. On the same date as the qui tam action is filed, the qui tam plaintiff shall serve the secretary and the attorney general with notice of the filing.~~ When a person brings an action in accordance with this Subpart,

1        no person other than the secretary or attorney general may intervene or bring a  
2        related action based on the same facts underlying the pending action.

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

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

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

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

26                                \*                \*                \*

27        §439.4. Recovery awarded to a qui tam plaintiff

28                A.

29                                \*                \*                \*

(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 ~~investigations and proceedings related to the qui tam action~~ 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 ~~less than~~ fifteen percent of recovery, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the qui tam action to judgment or settlement. 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.

\* \* \*

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 ~~or~~ 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 ~~that~~ 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.

\* \* \*

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

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

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_