

MASSACHUSETTS LAW

Massachusetts laws provide that a person presenting a false claim for payment to the Massachusetts Medicaid program is liable to the commonwealth for damages and civil penalties, and provide that making false statements to the Medicaid program is a criminal act. In addition, the Massachusetts False Claims Act (the “MFCA”), similar to federal law, allows private individuals to file civil lawsuits to recover monetary damages against violators of the laws against false and fraudulent Medicaid claims and protects employees from being discharged or discriminated against because they initiated or participated in proceedings brought under the MFCA.

Massachusetts False Claims Act

Mass. Gen. Laws ch. 12 § 5B, among other things, provides that a person who knowingly presents or causes to be presented a false claim for payment, or who knowingly makes, uses, or causes to be made or used, a false record or statement to obtain payment or approval of a claim by the commonwealth is liable for a civil penalty on not less than \$5,000 and not more than \$10,000 per violation, plus three times the amount of damages, including consequential damages, sustained by the commonwealth because of the act of that person, plus the expenses of the civil action brought to recover a penalty or damages. The Attorney General is authorized to investigate a violation of the MFCA and, if a violation is discovered, may bring a civil action under procedures specified in the MFCA against a person who may be liable for the violation.

An individual, referred to as a “relator,” may bring a civil action for a violation of the MFCA on his own behalf and on behalf of the commonwealth. The relator must serve a copy of the complaint and written disclosure of substantially all material evidence and information the relator possesses on the Attorney General. The complaint in the civil action remains under seal and is not served on the defendant while the Attorney General determines whether to intervene and proceed with the action. The Attorney General may assume control of the action, in which case the action is conducted by the Attorney General. If the Attorney General declines to take over the action, the relator has the right to conduct the action. The MFCA contains detailed provisions regarding participation by the relator, procedures, and dismissal or settlement of the civil action which are beyond the scope of this summary.

If the Attorney General proceeds with the civil action brought by the relator, the relator is entitled to receive at least 15 percent and not more than 25 percent of the proceeds recovered and collected in the action or in settlement of the claim depending upon the extent to which the relator substantially contributed to the prosecution of the action, plus reasonable expenses necessarily incurred, including reasonable attorney’s fees and costs. If the court finds the action to be based primarily on disclosures of specific information, other than information provided by the relator, relating to allegations or transactions in a criminal, civil or administrative hearing; in a legislative, administrative, auditor or inspector general hearing, hearing, audit or investigation; or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10

percent of the proceeds, taking in to account the significance of the information and the role of the relator bringing the action in advancing the case to litigation.

If the Attorney General did not intervene in the action, the relator bringing the action or settling the claim is entitled to receive an amount which the court decides is reasonable for collecting the civil penalty and damages on behalf of the commonwealth. The amount awarded is at least 25 percent and not more than 30 percent of the proceeds recovered and collected in the action of settlement of the claim and is paid out of such proceeds. The relator is also entitled to receive an amount for reasonable expenses the court finds were necessarily incurred, including reasonable attorney's fees and costs, all of which are awarded against the defendant.

Whether or not the Attorney general proceeds with the action, if the court finds that the relator bringing the civil action planned, initiated or knowingly participated in the violation of the MFCA, the court may to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action which the relator would otherwise receive, taking into account the role of the relator in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the relator is convicted of criminal conduct arising from his role in the violation, the relator shall be dismissed from the civil action and shall not receive any share of the proceeds of the action.

If the Attorney General does not proceed with an action pursuant to the MFCA and the defendant is the prevailing party, the court may award the defendant reasonable attorney's fees and costs against the relator upon a written finding that such action was pursued in bad faith or was wholly insubstantial, frivolous, and advanced for the purpose of causing the defendant undue burden, unnecessary expense or harassment.

An employer cannot make, adopt or enforce any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting to further a false claims action. An employer cannot require as a condition of employment or at termination of employment that any employee agree to, accept or sign any agreement that limits or denies the employee's rights to bring an action or provide information to a government or law enforcement agency pursuant to the MFCA.

The MFCA provides protections for employees. No employer can discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms or conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed pursuant to the MFCA. An employer who violates these provisions is liable for such damages or equitable relief as a court shall deem appropriate, including reinstatement with the same seniority status such employee would have had but for the employer's violation, two times the amount of back pay, interest on the back pay, and compensation for any special

damage sustained as a result of the employer's violation. In addition, the violating employer will be required to pay litigation costs and reasonable attorney's fees.

Medicaid Fraud

Massachusetts law imposes penalties on persons making false representations to secure payment from the Medicaid program. Mass. Gen. Law ch 118E § 40 states in pertinent part:

Any person who furnishes items or services for which payment may be made under this chapter, who: (1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under this chapter; or (2) knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment; or (3) having knowledge of the occurrence of any event affecting his or her initial or continued right to any such benefit or payment, or the benefit of any other individual in whose behalf he or she has applied for or is receiving such benefit or payment, conceals or fails to disclose such an event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized; or (4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefits or payment other than for the use and benefit of such person, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one-half years, or by both such fine and imprisonment.

References:

False Claims Act – Mass. Gen. Laws ch 12 §§ 5A through 5O

Medicaid false statements – Mass. Gen. Laws ch 118E § 40