

**THE WHISTLEBLOWERS' PROTECTION ACT**  
**Act 469 of 1980**

AN ACT to provide protection to employees who report a violation or suspected violation of state, local, or federal law; to provide protection to employees who participate in hearings, investigations, legislative inquiries, or court actions; and to prescribe remedies and penalties.

History: 1980, Act 469, Eff. Mar. 31, 1981.

*The People of the State of Michigan enact:*

**15.361 Definitions.**

Sec. 1. As used in this act:

(a) "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied. Employee includes a person employed by the state or a political subdivision of the state except state classified civil service.

(b) "Employer" means a person who has 1 or more employees. Employer includes an agent of an employer and the state or a political subdivision of the state.

(c) "Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.

(d) "Public body" means all of the following:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.

(ii) An agency, board, commission, council, member, or employee of the legislative branch of state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, a council, school district, special district, or municipal corporation, or a board, department, commission, council, agency, or any member or employee thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body.

(v) A law enforcement agency or any member or employee of a law enforcement agency.

(vi) The judiciary and any member or employee of the judiciary.

History: 1980, Act 469, Eff. Mar. 31, 1981.

**15.362 Discharging, threatening, or otherwise discriminating against employee reporting violation of law, regulation, or rule prohibited; exceptions.**

Sec. 2. An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

History: 1980, Act 469, Eff. Mar. 31, 1981.

**15.363 Civil action in circuit court for injunctive relief or actual damages; "damages" defined; clear and convincing evidence required.**

Sec. 3. (1) A person who alleges a violation of this act may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation of this act.

(2) An action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has his or her principal place of business.

(3) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of this act, including reasonable attorney fees.

(4) An employee shall show by clear and convincing evidence that he or she or a person acting on his or her behalf was about to report, verbally or in writing, a violation or a suspected violation of a law of this state, a political subdivision of this state, or the United States to a public body.

History: 1980, Act 469, Eff. Mar. 31, 1981;—Am. 1982, Act 146, Eff. Mar. 30, 1983.

**15.364 Court judgment; order; remedies; awarding costs of litigation.**

Sec. 4. A court, in rendering a judgment in an action brought pursuant to this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

History: 1980, Act 469, Eff. Mar. 31, 1981.

**15.365 Violation; civil fine.**

Sec. 5. (1) A person who violates this act shall be liable for a civil fine of not more than \$500.00.

(2) A civil fine which is ordered pursuant to this act shall be submitted to the state treasurer for deposit in the general fund.

History: 1980, Act 469, Eff. Mar. 31, 1981.

**15.366 Diminishment or impairment of rights; collective bargaining agreement; protection of confidentiality of communications; disclosures.**

Sec. 6. This act shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement, nor to permit disclosures which would diminish or impair the rights of any person to the continued protection of confidentiality of communications where statute or common law provides such protection.

History: 1980, Act 469, Eff. Mar. 31, 1981;—Am. 1982, Act 146, Eff. Mar. 30, 1983.

**15.367 Employer not required to compensate employee for participation in investigation, hearing, or inquiry.**

Sec. 7. This act shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with section 2 of this act.

History: 1980, Act 469, Eff. Mar. 31, 1981.

**15.368 Posting notices of protections and obligations required.**

Sec. 8. An employer shall post notices and use other appropriate means to keep his or her employees informed of their protections and obligations under this act.

History: 1980, Act 469, Eff. Mar. 31, 1981.

**15.369 Short title.**

Sec. 9. This act shall be known and may be cited as "the whistleblowers' protection act".

History: 1980, Act 469, Eff. Mar. 31, 1981.

February 8, 2006

**Medicaid Public Act 109-171 Title VI Medicaid and SCHIP Subtitle A – Medicaid**  
**CHAPTER 3—ELIMINATING FRAUD, WASTE, AND ABUSE IN MEDICAID**  
**SEC. 6032. EMPLOYEE EDUCATION ABOUT FALSE CLAIMS RECOVERY**

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) has been amended— by inserting after paragraph (67) the following:

**EFFECTIVE DATE.**—Except as provided in section 6035(e), the amendments made by subsection (a) take effect on January 1, 2007.

**NOTE - SEC. 6035, ENHANCING THIRD PARTY IDENTIFICATION AND PAYMENT.**

Applies to any organization that receives or makes annual payments under the State plan of at least \$5,000,000.

- As a condition of receiving such payments there must be:
1. Established written policies for all employees of the organization (including management), and of any contractor or agent of the organization.
  2. The written policies must provide detailed information about:
    - the False Claims Act;
    - State laws pertaining to civil or criminal penalties for false claims and statements; and
    - Whistleblower protections under such laws.
  3. The policies are to be written with respect to what the laws put into effect in preventing and detecting fraud, waste, and abuse in Federal health care programs.
  4. The written policies are to include:
    - detailed provisions regarding the organizations policies and procedures for detecting and preventing fraud, waste, and abuse; and
    - be included in any employee handbook for the organization.
  5. The employee information is to be:
    - a specific discussion of the False Claims Act,
    - State law pertaining to civil or criminal penalties for false claims and statements,
    - and the whistleblower protection law,
    - the rights of employees to be protected as whistleblowers,
    - and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.”

THE MEDICAID FALSE CLAIM ACT - Act 72 of 1977

Changes effective January 3, 2006 - 400.610a - b - c, and 400.611 pertain to requirements for employee training

AN ACT to prohibit fraud in the obtaining of benefits or payments in connection with the medical assistance program; to prohibit kickbacks or bribes in connection with the program; to prohibit conspiracies in obtaining benefits or payments; to authorize the attorney general to investigate alleged violations of this act; to provide for the appointment of investigators by the attorney general; to ratify prior appointments of attorney general investigators; to provide for civil actions to recover money received by reason of fraudulent conduct; to provide for receiverships of residential health care facilities; to prohibit retaliation; to provide for certain civil fines; and to prescribe remedies and penalties. *The People of the State of Michigan enact: History: 1977, Act 72, Imd. Eff. July 27, 1977; 1982, Act 518, Imd. Eff. Dec. 31, 1982; 1982, 3/4Am. 2005, Act 337, Imd. Eff. ~~Jan 3, 2006~~*

*Below are excerpted - Rendered Tuesday, April 18, 2006 Page 4 Michigan Compiled Laws Complete Through PA 109 and Acts*

**400.610a Civil action in name of state; initiation; complaint; intervention; pleadings; discovery; stay; alternative remedy; award; share of proceeds; court finding of frivolous claim; civil fine.**

610a(1) Any person may bring a civil action in the name of the State to recover losses that the State suffers from a violation of the Medicaid False Claims Act.

A suit filed under section 400.610a shall not be dismissed unless the attorney general has been notified and had an opportunity to appear and oppose the dismissal.

The attorney general waives the opportunity to oppose the dismissal if it is not exercised within 28-days of receiving the notice.

610a(2) If a person other than the attorney general initiates an action under 400.610a, the complaint shall remain under seal and the clerk shall not issue for service on the defendant until after the time for the attorney general's election under 10a(3) expires. At the time of filing the complaint, the person shall disclose, in writing, substantially all material evidence and information in the person's possession supporting the complaint to the attorney general.

610a(3) The attorney general may elect to intervene in any action under 400.610a. Before the expiration of the later of 90 days after service of the complaint and related materials or any extension of the 90 days that is requested by the attorney general and granted by the court, the attorney general shall notify the court and the person initiating the action of 1 of the following:

- (a) That the attorney general will proceed with the action for this state and have primary responsibility for proceeding with the action.
- (b) That the attorney general declines to take over the action and the person initiating the action has the right to proceed with the action.

610a(4) If an action is filed under section 400.610a a person other than the attorney general shall not intervene in the action or bring another action on behalf of this state based on the facts underlying the action.

610a(5) If the attorney general elects to proceed with the action under (3) above or (6) below, the attorney general has primary responsibility for prosecuting the action and may do all of the following:

- (a) Agree to dismiss the action, notwithstanding the objection of the person initiating the action, but only if that person has been notified of and offered the opportunity to participate in a hearing on the motion to dismiss.
- (b) Settle the action, notwithstanding the objection of the person initiating the action, but only if that person has been notified of and offered the opportunity to participate in a hearing on the settlement and if the court determines that the settlement is fair, adequate, and reasonable under the circumstances. Upon a showing of good cause, the settlement hearing may be held in camera.
- (c) Request the court to limit the participation of the person initiating the action. If the attorney general demonstrates that unrestricted participation by the person initiating the action during the litigation would interfere with or unduly delay the attorney general's prosecution of the case or would be repetitious, irrelevant, or unduly harassing, the court may do any of the following:

(Continued) t 400.610a Civil  
action in name of state;  
initiation; complaint;  
intervention; pleadings;  
discovery; stay; alternative  
remedy; award; share of  
proceeds; court finding of  
frivolous claim; civil fine.

- (i) Limit the number of the person's witnesses.
- (ii) Limit the length of the testimony of the person's witnesses.
- (iii) Limit the person's cross-examination of witnesses.
- (iv) Otherwise limit the person's participation in the litigation.

610a(6) If the attorney general notifies the court that he or she declines to take over the action under (3) above, the person who initiated the action may proceed with the action. At the attorney general's request and expense, the attorney general shall be provided with copies of all pleadings filed in the action and copies of all deposition transcripts.

Notwithstanding the attorney general's election not to take over the action, the court may permit the attorney general to intervene in the action at any time upon a showing of good cause and, subject to subsection (7), without affecting the rights or status of the person initiating the action.

610a(7) Upon showing, conducted in camera, that actions of the person initiating the action during discovery would interfere with the attorney general's investigation or prosecution of a criminal or civil matter, the court may stay the discovery for not more than 90 days. The court may extend the stay upon a further showing that the attorney general is pursuing the investigation or proceeding with reasonable diligence and the discovery would interfere with the ongoing investigation or proceeding.

610a(9) As an alternative to an action permitted under section 400.610a, the attorney general may pursue a violation of this act through any alternate remedy available to this state, including an administrative proceeding. If the attorney general pursues an alternate remedy, a person who initiated an action under this section shall have equivalent rights in that proceeding to the rights that the person would have had if the action had continued under this section to the extent consistent with the law governing that proceeding. Findings of fact and conclusions of law that become final in an alternate proceeding shall be conclusive on the parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

610a(9) Subject to (10) and (11) below, if a person other than the attorney general prevails in an action that the person initiates under section 400.610a, the court shall award the person necessary expenses, costs, reasonable attorney fees, and, based on the amount of effort involved, the following percentage of the monetary proceeds resulting from the action or any settlement of the claim:

- (a) If the attorney general intervenes, 15% to 25%.
- (b) If the attorney general does not intervene, 25% to 30%.

610a(10) If the court finds an action under section 400.610a to be based primarily on disclosure of specific information that was not provided by the person bringing the action, such as information from a criminal, civil, or administrative hearing in a state or federal department or agency, a legislative report, hearing, audit, or investigation, or the news media, and the attorney general proceeds with the action, the court shall award the person bringing the action no more than 10% of the monetary recovery in addition to reasonable attorney fees, necessary expenses, and costs.

610a(11) If the court finds that the person bringing an action under section 400.610a planned, initiated, or participated in the conduct upon which the action is brought, then the court may reduce or eliminate, as it considers appropriate, the share of the proceeds of the action that the person would otherwise be entitled to receive. A person who is convicted of criminal conduct arising from a violation of this act shall not initiate or remain a party to an action under this section and is not entitled to share in the monetary proceeds resulting from the action or any settlement under section 400.610a.

610a(12) A person other than the attorney general shall not bring an action under section 400.610a that is based on allegations or transactions that are already the subject of a civil suit, a criminal investigation or prosecution, or an administrative investigation or proceeding to which this state or the federal government is already a party. The court shall dismiss an action brought in violation of section 400.610a.

<p>(Continued) 400.610a Civil action in name of state; initiation; complaint; intervention; pleadings; discovery; stay; alternative remedy; award; share of proceeds; court finding of frivolous claim; civil fine.</p>	<p>610a(13) Unless the person is the original source of the information, a person, other than the attorney general, shall not initiate an action under section 400.610a based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a state or federal legislative, investigative, or administrative report, hearing, audit, or investigation, or from the news media. The person is the original source if he or she had direct and independent knowledge of the information on which the allegations are based and voluntarily provided the information to the attorney general before filing an action based on that information under this section</p> <p>610a(14) This state and the attorney general are not liable for any expenses, costs, or attorney fees that a person incurs in bringing an action under this section. Any amount awarded to a person initiating an action to enforce this act is payable solely from the proceeds of the action or settlement.</p> <p>610a(15) If a person proceeds with an action under this section after being notified that the attorney general has declined to intervene and the court finds that the claim was frivolous, as defined in section 2591 of the revised Judicature act of 1961, 1961 PA 236, MCL 600.2591, the court shall award the prevailing defendant actual and reasonable attorney fees and expenses and, in addition, shall impose a civil fine of not more than \$10,000.00. The civil fine shall be deposited into the Michigan medical aid benefits trust fund established in section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.</p>
<p>400.610b Recovery of costs by attorney general.</p>	<p>610b(1) The attorney general may recover all costs this state incurs in the litigation and recovery of medical restitution under this act, including the cost of investigation and attorney fees. The attorney general shall retain the amount received for activities under this act, excluding amounts for restitution, court costs, and fines, not to exceed the amount of this state's funding match for the medical fraud control unit</p> <p>610b(2) The attorney general shall not retain amounts under this section until all the restitution awarded in the proceeding has been paid.</p> <p>610b(3) Costs that the attorney general recovers in excess of the state's funding match for the medical fraud control unit shall be deposited in the Michigan medical aid benefits trust fund established in section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.</p>
<p>400.610c Employment action against employee initiating, assisting in, or participating in court action; prohibition; violation; liability of employer.</p>	<p>610c(1) An employer shall not discharge, demote, suspend, threaten, harass, or otherwise discriminate against an employee in the terms and conditions of employment because the employee initiates, assists in, or participates in a proceeding or court action under this act or because the employee cooperates with or assists in an investigation under this act. This prohibition does not apply to an employment action against an employee who the court finds brought a frivolous claim, as defined in section 2591 of the revised Judicature act of 1961, 1961 PA 236, MCL 600.2591, the court finds to have planned, initiated, or participated in the conduct upon which the action is brought, or is convicted of criminal conduct arising from a violation of this act.</p> <p>610c(2) An employer who violates this section is liable to the employee for all of the following:</p> <ul style="list-style-type: none"> <li>(a) Reinstatement to the employee's position without loss of seniority.</li> <li>(b) Two times the amount of lost back pay.</li> <li>(c) Interest on the back pay.</li> <li>(d) Compensation for any special damages.</li> <li>(e) Any other relief necessary to make the employee whole.</li> </ul>
<p>400.611 Filing and prosecution of action; jurisdiction; service of process.</p>	<p>611(1) Except as provided in subsection (2), an action brought in connection with a medical aid matter under this act shall be filed in Ingham county and may be prosecuted to final judgment in satisfaction there.</p> <p>611(2) A person may bring a civil action under section 10a in any county in which venue is proper. If the attorney general elects to intervene under section 10a(3) or (6) and the court grants the request, upon motion by the attorney general, the court shall transfer the action to the circuit court in Ingham county.</p> <p>611(3) Process issued by a court in which an action is filed may be served anywhere in the state.</p>

**THE WHISTLEBLOWERS' PROTECTION ACT Act 469 of 1980**

AN ACT to provide protection to employees who report a violation or suspected violation of state, local, or federal employees who participate in hearings, investigations, legislative inquiries, or court actions; and to prescribe remedies *The People of the State of Michigan enact:*

**15.361 Definitions.**

Sec. 1. As used in this act:

- (a) "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, writ Employee includes a person employed by the state or a political subdivision of the state except state classified civil se
- (b) "Employer" means a person who has 1 or more employees. Employer includes an agent of an employer and the st the state.
- (c) "Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.
- (d) "Public body" means all of the following:
  - (i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, branch of state government.
  - (ii) An agency, board, commission, council, member, or employee of the legislative branch of state governme
  - (iii) A county, city, township, village, intercounty, intercity, or regional governing body, a council, school distri corporation, or a board, department, commission, council, agency, or any member or employee thereof.
  - (iv) Any other body which is created by state or local authority or which is primarily funded by or through member or employee of that body.
  - (v) A law enforcement agency or any member or employee of a law enforcement agency.
  - (vi) The judiciary and any member or employee of the judiciary.

**15.362 Discharging, threatening, or otherwise discriminating against employee reporting violation of law, re exceptions.**

Sec. 2. An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the em conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employe verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to subdivision of this state, or the United States to a public body, unless the employee knows that the report is fals requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court ac

**15.363 Civil action in circuit court for injunctive relief or actual damages; "damages" defined; clear and convi**

Sec. 3.

- (1) A person who alleges a violation of this act may bring a civil action for appropriate injunctive relief, or actual dai after the occurrence of the alleged violation of this act.
- (2) An action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the county where the complainant resides, or the county where the person against whom the civil complaint is filed resi place of business.
- (3) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of this act, includ
- (4) An employee shall show by clear and convincing evidence that he or she or a person acting on his or her behalf in writing, a violation or a suspected violation of a law of this state, a political subdivision of this state, or the United St



**THE MEDICAID FALSE CLAIM ACT**  
**Act 72 of 1977**

AN ACT to prohibit fraud in the obtaining of benefits or payments in connection with the medical assistance program; to prohibit kickbacks or bribes in connection with the program; to prohibit conspiracies in obtaining benefits or payments; to authorize the attorney general to investigate alleged violations of this act; to provide for the appointment of investigators by the attorney general; to ratify prior appointments of attorney general investigators; to provide for civil actions to recover money received by reason of fraudulent conduct; to provide for receiverships of residential health care facilities; to prohibit retaliation; to provide for certain civil fines; and to prescribe remedies and penalties.

History: 1977, Act 72, Imd. Eff. July 27, 1977;—Am. 1982, Act 518, Imd. Eff. Dec. 31, 1982;—Am. 2005, Act 337, Imd. Eff. Jan. 3, 2006.

*The People of the State of Michigan enact:*

**400.601 Short title.**

Sec. 1. This act shall be known and may be cited as "the medicaid false claim act".

History: 1977, Act 72, Imd. Eff. July 27, 1977.

**400.602 Definitions.**

Sec. 2. As used in this act:

- (a) "Benefit" means the receipt of money, goods, or anything of pecuniary value.
- (b) "Claim" means any attempt to cause the department of social services to pay out sums of money under the social welfare act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.121 of the Michigan Compiled Laws.
- (c) "Deceptive" means making a claim or causing a claim to be made under the social welfare act, Act No. 280 of the Public Acts of 1939, which contains a statement of fact or which fails to reveal a material fact, which statement or failure leads the department to believe the represented or suggested state of affair to be other than it actually is.
- (d) "False" means wholly or partially untrue or deceptive.
- (e) "Health facility or agency" means a health facility or agency, as defined in section 20106 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.20106 of the Michigan Compiled Laws.
- (f) "Knowing" and "knowingly" means that a person is in possession of facts under which he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a medicaid benefit. Knowing or knowingly does not include conduct which is an error or mistake unless the person's course of conduct indicates a systematic or persistent tendency to cause inaccuracies to be present.
- (g) "Medicaid benefit" means a benefit paid or payable under a program for medical assistance for the medically indigent in accordance with the social welfare act, Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.121 of the Michigan Compiled Laws.
- (h) "Person" means an individual, corporation, association, partnership, or other legal entity.

History: 1977, Act 72, Imd. Eff. July 27, 1977;—Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984.

**400.603 Application for, or determining rights to, medicaid benefits; false statement or false representation of material facts; concealing or failing to disclose certain events; felony; penalty.**

Sec. 3. (1) A person shall not knowingly make or cause to be made a false statement or false representation of a material fact in an application for medicaid benefits.

(2) A person shall not knowingly make or cause to be made a false statement or false representation of a material fact for use in determining rights to a medicaid benefit.

(3) A person, who having knowledge of the occurrence of an event affecting his initial or continued right to receive a medicaid benefit or the initial or continued right of any other person on whose behalf he has applied for or is receiving a benefit, shall not conceal or fail to disclose that event with intent to obtain a 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.

(4) A person who violates this section is guilty of a felony, punishable by imprisonment of not more than 4 years, or a fine of not more than \$50,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977.

**400.604 Furnishing of goods or services; kickbacks or bribes; payments or rebates for referrals; felony; penalty.**

Sec. 4. A person who solicits, offers, or receives a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part pursuant to a program established under Act No. 280 of the Public Acts of 1939, as amended, who makes or receives the payment, or who receives a rebate of a fee or charge for referring an individual to another person for the furnishing of the goods and services is guilty of a felony, punishable by imprisonment for not more than 4 years, or by a fine of not more than \$30,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977.

**400.605 Conditions or operation of institution or facility; false statement or false representation of material fact to qualify for certification or recertification; felony; penalty.**

Sec. 5. (1) A person shall not knowingly and wilfully make, or 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 felony, punishable by imprisonment for not more than 4 years, or by a fine of not more than \$30,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977.

**400.606 Obtaining payment or allowance of false claim; felony; penalty.**

Sec. 6. (1) A person shall 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 claim under the social welfare act, Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.121 of the Michigan Compiled Laws.

(2) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 10 years, or by a fine of not more than \$50,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977;—Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984.

**400.607 Making or presenting false claims; violations as separate offenses; liability of health facility or agency; violation as felony; penalty.**

Sec. 7. (1) A person shall not make or present or cause to be made or presented to an employee or officer of this state a claim under the social welfare act, Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.121 of the Michigan Compiled Laws, upon or against the state, knowing the claim to be false.

(2) A person shall not make or present or cause to be made or presented a claim under the social welfare act, Act No. 280 of the Public Acts of 1939, which he or she knows falsely represents that the goods or services for which the claim is made were medically necessary in accordance with professionally accepted standards. Each claim violating this subsection shall constitute a separate offense. A health facility or agency shall not be liable under this subsection unless the health facility or agency, pursuant to a conspiracy, combination, or collusion with a physician or other provider, falsely represents the medical necessity of the particular goods or services for which the claim was made.

(3) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 4 years, or by a fine of not more than \$50,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977;—Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984.

**400.608 Prosecution; evidence; rebuttable presumptions.**

Sec. 8. (1) In a prosecution under this act, it shall not be necessary to show that the person had knowledge of similar acts having been performed in the past by a person acting on his or her behalf, nor to show that the person had actual notice that the acts by the persons acting on his or her behalf occurred to establish the fact that a false statement or representation was knowingly made.

(2) It shall be a rebuttable presumption that a person knowingly made a claim for a medicaid benefit if the person's actual, facsimile, stamped, typewritten, or similar signature is used on the form required for the making of a claim for a medicaid benefit.

(3) If a claim for a medicaid benefit is made by means of computer billing tapes or other electronic means, it shall be a rebuttable presumption that the person knowingly made the claim if the person has notified the

department of social services in writing that claims for medicaid benefits will be submitted by use of computer billing tapes or other electronic means.

(4) In any civil or criminal action under this act, the official certificate of the director of social services or the director's delegate setting forth that documentary material or any compilation of documentary material is an authentic record or a compilation of the records of the medical assistance program under the social welfare act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.121 of the Michigan Compiled Laws, shall create a rebuttable presumption that the record or compilation is authentic.

History: 1977, Act 72, Imd. Eff. July 27, 1977;—Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984.

#### **400.609 Persons convicted 3 or more times for offense and subsequently convicted of another offense; penalty.**

Sec. 9. (1) A person who is convicted 3 or more times for an offense under this act and who is subsequently convicted of another offense under this act may be sentenced to imprisonment for a term of not more than 10 years. To be subject to punishment under this section, it is not necessary to establish that the person was indicted and convicted as a previous offender, but the increased punishment provided in this section shall be imposed in accordance with the procedure prescribed in section 13 of chapter 9 of Act No. 175 of the Public Acts of 1927, as amended, being section 769.13 of the Michigan Compiled Laws.

(2) Sentences imposed for a conviction of separate offenses under this act may run consecutively.

History: 1977, Act 72, Imd. Eff. July 27, 1977.

#### **400.610 Investigation by attorney general or assistant attorney general; appointment and powers of investigators; ratification of appointments; written demand; noncompliance; action to enforce demand; service; order; confidentiality.**

Sec. 10. (1) The attorney general or an assistant attorney general on behalf of the attorney general may conduct an investigation of an alleged violation of this act.

(2) For purposes of enforcing this act, the attorney general may appoint investigators who shall be peace officers and whose powers shall include, but not be limited to, the following:

(a) The power to execute and serve search warrants, arrest warrants, subpoenas, administrative warrants, and summonses issued under the authority of the state.

(b) The power to seize property pursuant to the laws of this state.

(c) Investigators appointed by the attorney general may exercise the powers provided in this subsection when working in conjunction with local law enforcement agencies or the department of state police.

(3) All appointments of attorney general investigators by the attorney general on and after January 1, 1979 as peace officers are hereby ratified.

(4) If the attorney general has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation for violation of this act, the attorney general may serve upon the person, before bringing any action, a written demand to appear and be examined under oath, and to produce the document or object for inspection and copying. The demand shall include all of the following:

(a) Be served upon the person in the manner required for service of process in this state.

(b) Describe the nature of the conduct constituting the violation under investigation.

(c) Describe the document or object with sufficient definiteness to permit it to be fairly identified.

(d) Contain a copy of any written interrogatories.

(e) Prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories, and within which the document or object must be produced, and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general, on or before that time.

(f) Specify a place for the taking of testimony or for production and designate the person who shall be custodian of the document or object.

(g) Contain a copy of subsection (5).

(5) If a person objects to or otherwise fails to comply with the written demand served upon him or her under subsection (4), the attorney general may file in the circuit court of the county in which the person resides or in which the person maintains a principal place of business within this state an action to enforce the demand. Notice of hearing the action and a copy of all pleadings shall be served upon the person, who may appear in opposition. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been or is presently occurring a violation of this act, and that the information sought or document or object demanded is relevant to the investigation, the court shall order the person to comply with the demand, subject to modification the court may prescribe. Upon motion by the person and for good cause

shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

(6) Except as required by federal law, any procedure, testimony taken, or material produced shall be kept confidential by the attorney general before bringing an action against a person under this act for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or disclosure is authorized by the court.

History: 1977, Act 72, Imd. Eff. July 27, 1977;—Am. 1982, Act 518, Imd. Eff. Dec. 31, 1982;—Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984.

**400.610a Civil action in name of state; initiation; complaint; intervention; pleadings; discovery; stay; alternative remedy; award; share of proceeds; court finding of frivolous claim; civil fine.**

Sec. 10a. (1) Any person may bring a civil action in the name of this state under this section to recover losses that this state suffers from a violation of this act. A suit filed under this section shall not be dismissed unless the attorney general has been notified and had an opportunity to appear and oppose the dismissal. The attorney general waives the opportunity to oppose the dismissal if it is not exercised within 28 days of receiving notice.

(2) If a person other than the attorney general initiates an action under this section, the complaint shall remain under seal and the clerk shall not issue the summons for service on the defendant until after the time for the attorney general's election under subsection (3) expires. At the time of filing the complaint, the person shall serve a copy of the complaint on the attorney general and shall disclose, in writing, substantially all material evidence and information in the person's possession supporting the complaint to the attorney general.

(3) The attorney general may elect to intervene in an action under this section. Before the expiration of the later of 90 days after service of the complaint and related materials or any extension of the 90 days that is requested by the attorney general and granted by the court, the attorney general shall notify the court and the person initiating the action of 1 of the following:

(a) That the attorney general will proceed with the action for this state and have primary responsibility for proceeding with the action.

(b) That the attorney general declines to take over the action and the person initiating the action has the right to proceed with the action.

(4) If an action is filed under this section, a person other than the attorney general shall not intervene in the action or bring another action on behalf of this state based on the facts underlying the action.

(5) If the attorney general elects to proceed with the action under subsection (3) or (6), the attorney general has primary responsibility for prosecuting the action and may do all of the following:

(a) Agree to dismiss the action, notwithstanding the objection of the person initiating the action, but only if that person has been notified of and offered the opportunity to participate in a hearing on the motion to dismiss.

(b) Settle the action, notwithstanding the objection of the person initiating the action, but only if that person has been notified of and offered the opportunity to participate in a hearing on the settlement and if the court determines that the settlement is fair, adequate, and reasonable under the circumstances. Upon a showing of good cause, the settlement hearing may be held in camera.

(c) Request the court to limit the participation of the person initiating the action. If the attorney general demonstrates that unrestricted participation by the person initiating the action during the litigation would interfere with or unduly delay the attorney general's prosecution of the case or would be repetitious, irrelevant, or unduly harassing, the court may do any of the following:

(i) Limit the number of the person's witnesses.

(ii) Limit the length of the testimony of the person's witnesses.

(iii) Limit the person's cross-examination of witnesses.

(iv) Otherwise limit the person's participation in the litigation.

(6) If the attorney general notifies the court that he or she declines to take over the action under subsection (3), the person who initiated the action may proceed with the action. At the attorney general's request and expense, the attorney general shall be provided with copies of all pleadings filed in the action and copies of all deposition transcripts. Notwithstanding the attorney general's election not to take over the action, the court may permit the attorney general to intervene in the action at any time upon a showing of good cause and, subject to subsection (7), without affecting the rights or status of the person initiating the action.

(7) Upon a showing, conducted in camera, that actions of the person initiating the action during discovery would interfere with the attorney general's investigation or prosecution of a criminal or civil matter, the court may stay the discovery for not more than 90 days. The court may extend the stay upon a further showing that

the attorney general is pursuing the investigation or proceeding with reasonable diligence and the discovery would interfere with the ongoing investigation or proceeding.

(8) As an alternative to an action permitted under this section, the attorney general may pursue a violation of this act through any alternate remedy available to this state, including an administrative proceeding. If the attorney general pursues an alternate remedy, a person who initiated an action under this section shall have equivalent rights in that proceeding to the rights that the person would have had if the action had continued under this section to the extent consistent with the law governing that proceeding. Findings of fact and conclusions of law that become final in an alternative proceeding shall be conclusive on the parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(9) Subject to subsections (10) and (11), if a person other than the attorney general prevails in an action that the person initiates under this section, the court shall award the person necessary expenses, costs, reasonable attorney fees, and, based on the amount of effort involved, the following percentage of the monetary proceeds resulting from the action or any settlement of the claim:

(a) If the attorney general intervenes, 15% to 25%.

(b) If the attorney general does not intervene, 25% to 30%.

(10) If the court finds an action under this section to be based primarily on disclosure of specific information that was not provided by the person bringing the action, such as information from a criminal, civil, or administrative hearing in a state or federal department or agency, a legislative report, hearing, audit, or investigation, or the news media, and the attorney general proceeds with the action, the court shall award the person bringing the action no more than 10% of the monetary recovery in addition to reasonable attorney fees, necessary expenses, and costs.

(11) If the court finds that the person bringing an action under this section planned, initiated, or participated in the conduct upon which the action is brought, then the court may reduce or eliminate, as it considers appropriate, the share of the proceeds of the action that the person would otherwise be entitled to receive. A person who is convicted of criminal conduct arising from a violation of this act shall not initiate or remain a party to an action under this section and is not entitled to share in the monetary proceeds resulting from the action or any settlement under this section.

(12) A person other than the attorney general shall not bring an action under this section that is based on allegations or transactions that are already the subject of a civil suit, a criminal investigation or prosecution, or an administrative investigation or proceeding to which this state or the federal government is already a party. The court shall dismiss an action brought in violation of this section.

(13) Unless the person is the original source of the information, a person, other than the attorney general, shall not initiate an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a state or federal legislative, investigative, or administrative report, hearing, audit, or investigation, or from the news media. The person is the original source if he or she had direct and independent knowledge of the information on which the allegations are based and voluntarily provided the information to the attorney general before filing an action based on that information under this section.

(14) This state and the attorney general are not liable for any expenses, costs, or attorney fees that a person incurs in bringing an action under this section. Any amount awarded to a person initiating an action to enforce this act is payable solely from the proceeds of the action or settlement.

(15) If a person proceeds with an action under this section after being notified that the attorney general has declined to intervene and the court finds that the claim was frivolous, as defined in section 2591 of the revised judiciary act of 1961, 1961 PA 236, MCL 600.2591, the court shall award the prevailing defendant actual and reasonable attorney fees and expenses and, in addition, shall impose a civil fine of not more than \$10,000.00. The civil fine shall be deposited into the Michigan medicaid benefits trust fund established in section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

History: Add. 2005, Act 337, Imd. Eff. Jan. 3, 2006.

#### **400.610b Recovery of costs by attorney general.**

Sec. 10b. (1) The attorney general may recover all costs this state incurs in the litigation and recovery of medicaid restitution under this act, including the cost of investigation and attorney fees. The attorney general shall retain the amount received for activities under this act, excluding amounts for restitution, court costs, and fines, not to exceed the amount of this state's funding match for the medicaid fraud control unit.

(2) The attorney general shall not retain amounts under this section until all the restitution awarded in the proceeding has been paid.

(3) Costs that the attorney general recovers in excess of the state's funding match for the medicaid fraud control unit shall be deposited in the Michigan medicaid benefits trust fund established in section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

History: Add. 2005, Act 337, Imd. Eff. Jan. 3, 2006.

**400.610c Employment action against employee initiating, assisting in, or participating in court action; prohibition; violation; liability of employer.**

Sec. 10c. (1) An employer shall not discharge, demote, suspend, threaten, harass, or otherwise discriminate against an employee in the terms and conditions of employment because the employee initiates, assists in, or participates in a proceeding or court action under this act or because the employee cooperates with or assists in an investigation under this act. This prohibition does not apply to an employment action against an employee who the court finds brought a frivolous claim, as defined in section 2591 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2591; the court finds to have planned, initiated, or participated in the conduct upon which the action is brought; or is convicted of criminal conduct arising from a violation of this act.

(2) An employer who violates this section is liable to the employee for all of the following:

- (a) Reinstatement to the employee's position without loss of seniority.
- (b) Two times the amount of lost back pay.
- (c) Interest on the back pay.
- (d) Compensation for any special damages.
- (e) Any other relief necessary to make the employee whole.

History: Add. 2005, Act 337, Imd. Eff. Jan. 3, 2006.

**400.611 Filing and prosecution of action; jurisdiction; service of process.**

Sec. 11. (1) Except as provided in subsection (2), an action brought in connection with a medicaid matter under this act shall be filed in Ingham county and may be prosecuted to final judgment in satisfaction there.

(2) A person may bring a civil action under section 10a in any county in which venue is proper. If the attorney general elects to intervene under section 10a(3) or (6) and the court grants the request, upon motion by the attorney general, the court shall transfer the action to the circuit court in Ingham county.

(3) Process issued by a court in which an action is filed may be served anywhere in the state.

History: 1977, Act 72, Imd. Eff. July 27, 1977;—Am. 2005, Act 337, Imd. Eff. Jan. 3, 2006.

**400.612 Civil penalty for receiving benefit by reason of fraud, making fraudulent statement, or knowingly concealing material fact; criminal action not required.**

Sec. 12. (1) A person who receives a benefit which the person is not entitled to receive by reason of fraud or making a fraudulent statement or knowingly concealing a material fact shall forfeit and pay to the state a civil penalty equal to the full amount received plus triple the amount of damages suffered by the state as a result of the conduct by the person.

(2) A criminal action need not be brought against the person for that person to be civilly liable under this section.

History: 1977, Act 72, Imd. Eff. July 27, 1977.

**400.613 Revocation of license of residential health care facility; petition for appointment of receiver; order; appointment, compensation, and powers and duties of receiver.**

Sec. 13. (1) As a means of protecting the health, safety, and welfare of patients in a residential health care facility, including hospitals, nursing homes, and other institutions reimbursed for resident or patient care by the medical assistance program established by Act No. 280 of the Public Acts of 1939, as amended, if the license of a residential health care facility is revoked for violation of this act, the attorney general may file a petition with the circuit court for the county of Ingham or the circuit court in the county in which the residential health care facility is located for the appointment of a receiver.

(2) The circuit court shall issue an order to show cause why a receiver should not be appointed returnable within 5 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 residential health care 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 not inconsistent with section 2926 of Act No. 236 of the Public Acts of 1961, being section 600.2926 of the Michigan Compiled Laws. The receiver may correct an act prohibited by this act or required under Act No. 280 of the Public Acts of 1939, as amended.