

ASSEMBLY BILL NO. 15—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 4, 2024

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to Medicaid fraud.
(BDR 18-446)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to Medicaid fraud; revising the authority of the Attorney General, acting through the Medicaid Fraud Control Unit, to issue subpoenas; setting forth procedures for the enforcement of such a subpoena; revising provisions governing certain actions for false or fraudulent claims; revising the penalties for failing to maintain certain records relating to Medicaid claims; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law establishes the Medicaid Fraud Control Unit within the Office of
2 the Attorney General as the agency responsible for the investigation and
3 prosecution of violations or offenses relating to the State Plan for Medicaid. (NRS
4 228.410) In carrying out those duties and responsibilities, existing law authorizes
5 the Attorney General, acting through the chief executive of the Medicaid Fraud
6 Control Unit or his or her designee, to issue a subpoena for documents, records or
7 materials. (NRS 228.411) **Section 1** of this bill additionally authorizes such a
8 subpoena to compel a person to: (1) appear and be examined under oath; and (2)
9 answer written interrogatories under oath. **Section 1** sets forth procedures by which
10 the Attorney General may petition a court for the issuance of an order to compel
11 compliance with such a subpoena.

12 Existing federal law provides financial incentives for states that enact laws
13 establishing liability for false or fraudulent claims made to the State Plan for
14 Medicaid. (42 U.S.C. § 1396h) To be eligible for these financial incentives, the
15 laws of a state must contain provisions that are at least as effective at rewarding and
16 facilitating certain qui tam actions for false or fraudulent claims as those described
17 in the federal False Claims Act. (31 U.S.C. §§ 3729-3732) Existing federal law



18 prohibits a private person from bringing a qui tam action against a person for false
19 or fraudulent claims if the action is based upon allegations or transactions which are
20 the subject of a civil suit or an administrative civil money penalty proceeding in
21 which the Federal Government is already a party. (31 U.S.C. § 3730(e)(3)) Existing
22 state law contains similar provisions, but prohibits a private plaintiff from
23 maintaining, rather than bringing, a qui tam action for false or fraudulent claims if
24 the action is based upon allegations or transactions that are the subject of a civil
25 action or administrative proceeding for a monetary penalty to which the State or
26 political subdivision is already a party. (NRS 357.080) **Section 2** of this bill revises
27 that prohibition, consistent with federal law, to prohibit a person from bringing,
28 rather than maintaining, such an action under those circumstances.

29 Existing law makes it a gross misdemeanor for a person to intentionally fail to
30 maintain certain records relating to a claim for payment for goods or services
31 pursuant to the State Plan for Medicaid. (NRS 422.570) **Section 3** of this bill
32 instead makes the punishment for such an offense: (1) a misdemeanor if the amount
33 of the claim was less than \$650; and (2) a gross misdemeanor if the amount of the
34 claim was \$650 or more.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 228.411 is hereby amended to read as follows:
2 228.411 1. In carrying out the duties and responsibilities
3 under NRS 228.410, the Attorney General, acting through the chief
4 executive of the Medicaid Fraud Control Unit or his or her designee,
5 may issue a subpoena ~~for~~ *to compel a person to:*

- 6 (a) *Produce* documents, records or materials ~~for~~;
7 (b) *Appear and be examined under oath;*
8 (c) *Answer written interrogatories under oath; or*
9 (d) *Perform any combination of the actions described in*
10 *paragraphs (a), (b) and (c).*

11 2. The Attorney General may use any documents, records, ~~for~~
12 materials, *testimony or answers* produced pursuant to a subpoena
13 issued under this section in the course of a civil action brought
14 pursuant to NRS 228.410.

15 3. ~~Any~~ *If a* person ~~who willfully~~ fails or refuses to comply
16 with a subpoena issued pursuant to this section ~~is guilty of a~~
17 ~~misdemeanor~~, *the Attorney General may petition the district*
18 *court in the county in which the person resides or has his or her*
19 *principal place of business. Upon the filing of such a petition, the*
20 *court shall set a time for a hearing on the petition and provide*
21 *notice of the petition and hearing to the parties.*

22 4. *Except as otherwise provided in subsection 5, the court*
23 *shall enter an order compelling compliance with the subpoena if,*
24 *at the hearing, the court finds that:*

- 25 (a) *The subpoena was properly issued;*



1 (b) *There is reasonable cause to believe that a violation of*
2 *NRS 422.540 to 422.570, inclusive, or any fraud in the*
3 *administration of the Plan or in the provision of medical*
4 *assistance pursuant to the Plan has occurred or is occurring; and*

5 (c) *The document, record, material, testimony or answer is*
6 *relevant to the investigation of the Attorney General.*

7 5. *The court may, on motion by the person upon whom the*
8 *subpoena was served and upon a showing of good cause, modify*
9 *the order issued pursuant to subsection 4 or issue any further*
10 *order that justice may require to protect the person from*
11 *unreasonable annoyance, embarrassment, oppression, burden or*
12 *expense.*

13 ~~[4.]~~ 6. A subpoena issued pursuant to this section must include
14 a copy of the provisions of subsections 1 ~~[, 2 and 3.]~~ to 5, inclusive.

15 7. *As used in this section, "Plan" has the meaning ascribed to*
16 *it in NRS 228.410.*

17 **Sec. 2.** NRS 357.080 is hereby amended to read as follows:

18 357.080 1. Except as otherwise provided in this section and
19 NRS 357.100, a private plaintiff may bring an action pursuant to
20 this chapter for a violation of NRS 357.040 on his or her own
21 account and that of the State or a political subdivision, or both the
22 State and a political subdivision. The action must be brought in the
23 name of the State or the political subdivision, or both. After such an
24 action is commenced, it may be dismissed only with written consent
25 of the court and the Attorney General. The court and the Attorney
26 General shall take into account the public purposes of this chapter
27 and the best interests of the parties in dismissing the action or
28 consenting to the dismissal, as applicable, and provide the reasons
29 for dismissing the action or consenting to the dismissal, as
30 applicable.

31 2. If a private plaintiff brings an action pursuant to this chapter,
32 no person other than the Attorney General or the Attorney General's
33 designee may intervene or bring a related action pursuant to this
34 chapter based on the facts underlying the first action.

35 3. An action may not be ~~maintained~~ brought by a private
36 plaintiff pursuant to this chapter:

37 (a) Against a member of the Legislature or the Judiciary, an
38 elected officer of the Executive Department of the State
39 Government, or a member of the governing body of a political
40 subdivision, if the action is based upon evidence or information
41 known to the State or political subdivision at the time the action was
42 brought.

43 (b) If the action is based upon allegations or transactions that are
44 the subject of a civil action or an administrative proceeding for a



1 monetary penalty to which the State or political subdivision is
2 already a party.

3 4. A complaint filed pursuant to this section must be placed
4 under seal and so remain for at least 60 days or until the Attorney
5 General or a designee of the Attorney General pursuant to NRS
6 357.070 has elected whether to intervene. No service may be made
7 upon the defendant until so ordered by the court.

8 5. On the date the private plaintiff files a complaint, he or she
9 shall send a copy of the complaint to the Attorney General by mail
10 with return receipt requested. The private plaintiff shall send with
11 each copy of the complaint a written disclosure of substantially all
12 material evidence and information he or she possesses. If a district
13 attorney or city attorney has accepted a designation from the
14 Attorney General pursuant to NRS 357.070, the Attorney General
15 shall forward a copy of the complaint to the district attorney or city
16 attorney, as applicable.

17 6. An action pursuant to this chapter may be brought in any
18 judicial district in this State in which the defendant can be found,
19 resides, transacts business or in which any of the alleged fraudulent
20 activities occurred.

21 **Sec. 3.** NRS 422.570 is hereby amended to read as follows:

22 422.570 1. A person ~~[is guilty of a gross misdemeanor if,]~~
23 *who*, upon submitting a claim for or upon receiving payment for
24 goods or services pursuant to the Plan, ~~[the person]~~ intentionally
25 fails to maintain such records as are necessary to disclose fully the
26 nature of the goods or services for which a claim was submitted or
27 payment was received, or such records as are necessary to disclose
28 fully all income and expenditures upon which rates of payment were
29 based, for at least 5 years after the date on which payment was
30 received ~~[.]~~ *is guilty of:*

31 *(a) If the amount of the claim is less than \$650, a*
32 *misdemeanor.*

33 *(b) If the amount of the claim is \$650 or more, a gross*
34 *misdemeanor.*

35 2. A person who intentionally destroys such records within 5
36 years after the date payment was received is guilty of a category D
37 felony and shall be punished as provided in NRS 193.130.

38 **Sec. 4.** This act becomes effective upon passage and approval.

