

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2018-41
SENATE BILL 368**

AN ACT TO ALIGN THE NORTH CAROLINA FALSE CLAIMS ACT WITH THE FEDERAL FALSE CLAIMS ACT; TO EXTEND THE TERMS FOR THE CURRENT MEMBERS OF THE ADVISORY COUNCIL ON RARE DISEASES; AND TO EXTEND PARTICIPATION IN THE HIE NETWORK FOR CERTAIN PROVIDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-606(7) is repealed.

SECTION 2. G.S. 1-607(a) reads as rewritten:

"§ 1-607. False claims; acts subjecting persons to liability for treble damages; costs and civil penalties; exceptions.

(a) **Liability.** – Any person who commits any of the following acts shall be liable to the State for three times the amount of damages that the State sustains because of the act of that person. A person who commits any of the following acts also shall be liable to the State for the costs of a civil action brought to recover any of those penalties or damages and shall be liable to the State for a civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than eleven thousand dollars ~~(\$11,000)~~ (\$11,000), as may be adjusted by Section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990, P.L. 101-410, as amended, for each violation:

...."

SECTION 3. G.S. 1-608(b) reads as rewritten:

"(b) **Actions by Private Persons.** – A person may bring a civil action for a violation of G.S. 1-607 for the person and for the State, as follows:

- (1) The action shall be brought in the name of the State, and the person bringing the action shall be referred to as the qui tam plaintiff. ~~Once filed, the~~ The action may be dismissed ~~voluntarily by the person bringing the action~~ only if the court and Attorney General have given written consent to the ~~dismissal~~ dismissal and the reasons for consenting.
- (2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General pursuant to applicable rules of the North Carolina Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.
- (3) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 30 days after the complaint is unsealed



and served upon the defendant pursuant to the North Carolina Rules of Civil Procedure.

- (4) Before the expiration of the 120-day period or any extensions obtained under subdivision (3) of this subsection, the State shall:
 - a. Proceed with the action, in which case the action shall be conducted by the State; or
 - b. Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.
- (5) ~~When a person brings an action under this subsection, the federal False Claims Act, 31 U.S.C. § 3729 et seq., or any similar provision of law in any other state, no person other than the State may intervene or bring a related action based on the facts underlying the pending action; provided, however, that nothing in this subdivision prohibits a person from amending a pending action in another jurisdiction to allege a claim under this subsection.~~

When a person brings an action under this subsection, no person other than the State may intervene or bring a related action based on the facts underlying the pending action."

SECTION 4. G.S. 1-610(b) reads as rewritten:

"(b) Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the qui tam plaintiff, relating to allegations or transactions (i) in a State criminal, civil, or administrative ~~hearing at the State or federal level, hearing,~~ (ii) in a congressional, State legislative, ~~administrative, General Accounting Office, or Office of the State Auditor's Auditor, or other State~~ report, hearing, audit, or investigation, or (iii) from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation."

SECTION 5. G.S. 1-611 reads as rewritten:

"§ 1-611. Certain actions barred.

(a) No court shall have jurisdiction over an action brought under G.S. 1-608(b) against a member of the General Assembly, a member of the judiciary, or a senior executive branch official acting in their official capacity if the action is based on evidence or information known to the State when the action was brought.

(b) In no event may a person bring an action under G.S. 1-608(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party.

~~(c) No civil action may be brought under this Article by a person who is or was a public employee or public official if the allegations of such action are based substantially upon either of the following:~~

- ~~(1) Allegations of wrongdoing or misconduct which such person had a duty or obligation to report or investigate within the scope of his or her public employment or office.~~
- ~~(2) Information or records to which the person had access as a result of his or her public employment or office.~~

~~(d) No court shall have jurisdiction over an action under G.S. 1-608(b) based upon the public disclosure of allegations or transactions (i) in a criminal, civil, or administrative hearing at the State or federal level, (ii) in a congressional, legislative, administrative, General Accounting Office, or State Auditor's report, hearing, audit, or investigation, or (iii) from the news media, unless the action is brought by the Attorney General, or the person bringing the action is an original source of the information. For purposes of this section, "original source" means an individual who has direct and independent knowledge of the information on which the~~

~~allegations are based and has voluntarily provided the information to the State before filing an action under G.S. 1-608(b) that is based on the information.~~

(e) Unless opposed by the State, the court shall dismiss an action or claim under this Article if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed by any of the following:

- (1) A State criminal, civil, or administrative hearing in which the State or its agent is a party.
- (2) A State legislative, Office of the State Auditor, or other State report, hearing, audit, or investigation.
- (3) The news media.

This subsection shall not apply to any action brought by the Attorney General or when the person bringing the action is an original source of the information.

(f) For the purposes of this section, the term "original source" means an individual who meets one of the following descriptions:

- (1) Prior to public disclosure under subsection (e) of this section, the individual has voluntarily disclosed to the State the information on which allegations or transactions in a claim are based.
- (2) The individual (i) has knowledge that is independent of, and materially adds to, the publicly disclosed allegations or transactions and (ii) has voluntarily provided the information to the State before filing an action under this Article."

SECTION 6. G.S. 1-613 reads as rewritten:

"§ 1-613. Private action for retaliation action.

Any employee, contractor, or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, ~~or agent on behalf of the employee, contractor, or agent or agent,~~ or associated others in furtherance of an action under this Article, ~~or in furtherance of Article or~~ other efforts to stop one or more violations of G.S. 1-607, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this Article, G.S. 1-607 shall be entitled to all relief necessary to make the ~~employee~~ employee, contractor, or agent whole. Such relief shall include reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, 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 attorneys' fees. An ~~employee, contractor, or agent may bring an action~~ may be brought in North Carolina superior court for the relief provided in this section. A civil action under this section may not be brought more than three years after the date when the retaliation occurred."

SECTION 7. G.S. 126-84(a) reads as rewritten:

"§ 126-84. Statement of policy.

(a) It is the policy of this State that State employees shall ~~be encouraged~~ have a duty to report verbally or in writing to their supervisor, department head, or other appropriate authority, evidence of activity by a State agency or State employee ~~constituting; constituting any of the following:~~

- (1) A violation of State or federal law, rule or ~~regulation;~~ regulation.
- (2) ~~Fraud;~~ Fraud.
- (3) Misappropriation of State ~~resources;~~ resources.
- (4) Substantial and specific danger to the public health and ~~safety;~~ or safety.
- (5) Gross mismanagement, a gross waste of monies, or gross abuse of authority."

SECTION 8.(a) Notwithstanding the provisions of G.S. 130A-33.65(c) or any other provision of law, the terms of the current members of the Advisory Council on Rare Diseases are extended until July 31, 2023.

SECTION 8.(b) This section is effective when it becomes law.

SECTION 9.(a) G.S. 90-414.4 reads as rewritten:

"§ 90-414.4. Required participation in HIE Network for some providers.

(a) Findings. – The General Assembly makes the following findings:

- (1) That controlling escalating health care costs of the Medicaid program and other State-funded health services is of significant importance to the State, its taxpayers, its Medicaid recipients, and other recipients of State-funded health services.
- (2) That the State needs timely access to certain demographic and clinical information pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds in order to assess performance, improve health care outcomes, pinpoint medical expense trends, identify beneficiary health risks, and evaluate how the State is spending money on Medicaid and other State-funded health services.
- (3) That making demographic and clinical information available to the State by secure electronic means as set forth in subsection (b) of this section will, with respect to Medicaid and other State-funded health care programs, improve care coordination within and across health systems, increase care quality for such beneficiaries, enable more effective population health management, reduce duplication of medical services, augment syndromic surveillance, allow more accurate measurement of care services and outcomes, increase strategic knowledge about the health of the population, and facilitate health care cost containment.

(a1) Mandatory Connection to HIE Network. – Notwithstanding the voluntary nature of the HIE Network under G.S. 90-414.2, the following providers and entities shall be connected to the HIE Network and begin submitting data through the HIE Network pertaining to services rendered to Medicaid beneficiaries and to other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds in accordance with the following time line:

- (1) The following providers of Medicaid services that have an electronic health record system shall begin submitting demographic and clinical data by June 1, 2018:
 - a. Hospitals as defined in G.S. 131E-176(13).
 - b. Physicians licensed to practice under Article 1 of Chapter 90 of the General Statutes.
 - c. Physician assistants as defined in 21 NCAC 32S.0201.
 - d. Nurse practitioners as defined in 21 NCAC 36.0801.
- (2) Except as provided in ~~subdivision (3)~~ subdivisions (3), (4), and (5) of this subsection, all other providers of Medicaid and State-funded health care services shall begin submitting demographic and clinical data by June 1, 2019.
- (3) The following entities shall submit encounter and claims data, as appropriate, in accordance with the following time line:
 - a. Prepaid Health Plans, as defined in S.L. 2015-245, by the commencement date of a capitated contract with the Division of Health Benefits for the delivery of Medicaid and NC Health Choice services as specified in S.L. 2015-245.
 - b. Local management entities/managed care organizations, as defined in G.S. 122C-3, by June 1, 2020.
- (4) The following entities shall begin submitting demographic and clinical data by June 1, 2021:

- a. Ambulatory surgical centers as defined in G.S. 131E-146.
- b. Dentists licensed under Article 2 of Chapter 90 of the General Statutes.
- (5) The following entities shall begin submitting claims data by June 1, 2021:
 - a. Pharmacies registered with the North Carolina Board of Pharmacy under Article 4A of Chapter 90 of the General Statutes.

(a2) Extensions of Time for Establishing Connection to the HIE Network. – The Department of Information Technology, in consultation with the Department of Health and Human Services, may establish a process to grant limited extensions of the time for providers and entities to connect to the HIE Network and begin submitting data as required by this section upon the request of a provider or entity that demonstrates an ongoing good-faith effort to take necessary steps to establish such connection and begin data submission as required by this section. The process for granting an extension of time must include a presentation by the provider or entity to the Department of Information Technology and the Department of Health and Human Services on the expected time line for connecting to the HIE Network and commencing data submission as required by this section. Neither the Department of Information Technology nor the Department of Health and Human Services shall grant an extension of time (i) to any provider or entity that fails to provide this information to both ~~Departments or~~ Departments, (ii) that would result in the provider or entity connecting to the HIE Network and commencing data submission as required by this section later than June 1, ~~2020~~2020, or (iii) that would result in any provider or entity specified in subdivisions (4) and (5) of subsection (a1) of this section connecting to the HIE Network and commencing data submission as required by this section later than June 1, 2021. The Department of Information Technology shall consult with the Department of Health and Human Services to review and decide upon a request for an extension of time under this section within 30 days after receiving a request for an extension.

(b) Mandatory Submission of Demographic and Clinical Data. – Notwithstanding the voluntary nature of the HIE Network under G.S. 90-414.2 and, except as otherwise provided in subsection (c) of this section, as a condition of receiving State funds, including Medicaid funds, the following entities shall submit at least twice daily, through the HIE network, demographic and clinical information pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds, solely for the purposes set forth in subsection (a) of this section:

- (1) Each hospital, as defined in G.S. 131E-176(13) that has an electronic health record system.
- (2) Each Medicaid provider.
- (3) Each provider that receives State funds for the provision of health services.
- (4) Each local management entity/managed care organization, as defined in G.S. 122C-3.

(c) Exemption for Certain Records. – Providers with patient records that are subject to the disclosure restrictions of 42 C.F.R. § 2 are exempt from the requirements of subsection (b) of this section but only with respect to the patient records subject to these disclosure restrictions. Providers shall comply with the requirements of subsection (b) of this section with respect to all other patient records. A pharmacy shall only be required to submit claims data pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds.

(c1) Exemption from Twice Daily Submission. – A pharmacy shall only be required to submit claims data once daily through the HIE Network using pharmacy industry standardized formats.

(d) Method of Data Submissions. – The data submissions required under this section shall be by connection to the HIE Network periodic asynchronous secure structured file transfer or any other secure electronic means commonly used in the industry and consistent with document

exchange and data submission standards established by the Office of the National Coordinator for Information Technology within the U.S. Department of Health and Human Services."

SECTION 9.(b) This section is effective when it becomes law.

SECTION 10. Except as otherwise provided, this act is effective when it becomes law and applies to actions brought on or after that date.

In the General Assembly read three times and ratified this the 14th day of June, 2018.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 9:24 a.m. this 22nd day of June, 2018