

## **NEVADA LAW**

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

### **Nevada False Claims Act**

Nev. Rev. Stat. § 357.040, among other things, provides that a person who, with or without specific intent to defraud, knowingly presents or causes to be presented a false claim for payment; knowingly makes, uses, or causes to be made or used, a false record or statement to obtain payment or approval of a false claim; conspires to defraud by obtaining allowance or payment of a false claim; or is a beneficiary of an inadvertent submission of a false claim and after discovering the falsity or the claim fails to disclose the falsity to the state within a reasonable time is liable to the state for a civil penalty of not less than \$5,000 or more than \$10,000 for each act, plus three times the amount of damages sustained by the state because of the act and the costs of a civil action brought to recover those damages. The Attorney General is required to investigate any alleged liability pursuant to the NFCA and may bring a civil action pursuant to the NFCA against the person liable.

A private plaintiff may bring a civil action for a violation of the NFCA on his own account and on account of the state. On the date the private plaintiff files his complaint, he is required to send a copy of the complaint to the Attorney General by mail with return receipt requested, and include with the copy of the complaint a written disclosure of substantially all material evidence and information he possesses. The complaint must be placed under seal and is not served on the defendant for at least 60 days or until the Attorney General elects whether to intervene. The Attorney General may intervene and proceed with the action, with the private plaintiff remaining a party to the action. If the Attorney General elects not to intervene, the private plaintiff may proceed with the action and has the same rights in conducting the action as the Attorney General would have had. The NFCA contains detailed provisions regarding participation by the private plaintiff, procedures, and dismissal or settlement of the civil action which are beyond the scope of this summary.

If the Attorney General intervenes at the outset in a civil action brought by a private plaintiff under the NFCA, the private plaintiff is entitled to receive not less than 15 percent or more than 33 percent of any recovery, according to the extent of his contribution to the conduct of the action, plus a reasonable amount for expenses necessarily incurred, including reasonable costs and attorney’s fees.

If the Attorney General does not intervene in the action at the outset, the private plaintiff is entitled to receive not less than 25 percent or more than 50 percent of any recovery, as the court determines to be reasonable, plus a reasonable amount for expenses necessarily incurred, including reasonable costs and attorney's fees.

If the defendant prevails in the action, the court may award him reasonable expenses and attorney's fees against the party or parties who participated in the action if it finds that the action was clearly frivolous or vexatious or brought solely for harassment.

An employer cannot adopt or enforce any rule or policy forbidding an employee to disclose information to the state or a law enforcement agency or to act in furtherance of an action pursuant to the NFCA, including investigation for, bringing or testifying in such an action.

The NFCA provides protections for "whistleblower" employees. An employer cannot discharge, demote, suspend, threaten, harass, deny promotion to or otherwise discriminate against an employee in the terms or conditions of his employment because of lawful acts done by him on his own behalf or on behalf of others in disclosing information to the state or a law enforcement agency in furtherance of an action pursuant to the NFCA, including investigation for, bringing or testifying in such an action.

An employer who violates the employee protection provisions of the NFCA is liable to the affected employee in a civil action for all relief necessary to make him whole, including, without limitation, reinstatement with the same seniority as if the discrimination had not occurred or damages in lieu of reinstatement if appropriate, twice the amount of lost compensation, interest on the lost compensation, any special damage sustained as a result of the discrimination and punitive damages if appropriate. An employee is only entitled to these remedies if he voluntarily disclosed information to the state or voluntarily acted in furtherance of an action pursuant to the NFCA, and he was harassed, threatened with termination or demotion, or otherwise coerced by his employer into any participation in fraudulent activity.

### Medicaid False Claims and Statements

Nevada law imposes penalties on persons making false claims or representations to secure payment from the Medicaid program. Nev. Rev. Stat. § 422.540 states in pertinent part:

A person, with the intent to defraud, commits an offense if with respect to the [Medicaid] plan he:

- (a) Makes a claim or causes it to be made, knowing the claim to be false, in whole or in part, by commission or omission;
- (b) Makes or causes to be made a statement or representation for use in obtaining or seeking to obtain authorization to provide specific goods or services, knowing the statement or representation to be false, in whole or in part, by commission or omission;

- (c) Makes or causes to be made a statement or representation for use by another in obtaining goods or services pursuant to the plan, knowing the statement or representation to be false, in whole or in part, by commission or omission; or
- (d) Makes or causes to be made a statement or representation for use in qualifying as a provider, knowing the statement or representation to be false, in whole or in part, by commission or omission.

If the violation of § 422.540 involves a claim or value of goods or services greater than or equal to \$250, the offense is a Category D felony punishable by a term of imprisonment of not less than 1 year or more than 4 years, with a possible fine of not more than \$5,000. If the offense involves less than \$250, it is punished as a misdemeanor with a term of imprisonment of not more than 6 months or by a fine of not more than \$1,000, or both.

References:

False Claims Act – Nev. Rev. Stat. § 357.010 *et seq.*

Medicaid false claims and statements – Nev. Rev. Stat. § 422.540

Categories of crimes and punishment – Nev. Rev. Stat. §§ 193.130 and 193.150