

NEW MEXICO MEDICAID FALSE CLAIMS ACT

§§ 27-14-1 to 27-14-15, as enacted by Laws 2004, ch. 49

AND

NEW MEXICO FRAUD AGAINST TAXPAYERS ACT

§§ 44-9-1 to 44-9-14, as amended by Laws 2015, ch 128

NEW MEXICO MEDICAID FALSE CLAIMS ACT

§ 27-14-1. Short title

This [act] [*27-14-1 to 27-14-15 NMSA 1978*] may be cited as the “Medicaid False Claims Act”.

§ 27-14-2. Purpose

The purpose of the Medicaid False Claims Act [*27-14-1 NMSA 1978*] is to deter persons from causing or assisting to cause the state to pay medicaid claims that are false and to provide remedies for obtaining treble damages and civil recoveries for the state when money is obtained from the state by reason of a false claim.

§ 27-14-3. Definitions

As used in the Medicaid False Claims Act [*27-14-1 NMSA 1978*]:

- A. “claim” means a written or electronically submitted request for payment of health care services pursuant to the medicaid program;
- B. “department” means the human services department;
- C. “medicaid” means the federal-state program administered by the human services department pursuant to Title 19 or Title 21 of the federal Social Security Act;
- D. “medicaid recipient” means an individual on whose behalf a person claims or receives a payment from the medicaid program, regardless of whether the individual was eligible for the medicaid program; and
- E. “qui tam” means an action brought under a statute that allows a private person to sue for a recovery, part of which the state will receive.

§ 27-14-4. False claims against the state; liability for certain acts

A person commits an unlawful act and shall be liable to the state for three times the amount of damages that the state sustains as a result of the act if the person:

- A. presents, or causes to be presented, to the state a claim for payment under the medicaid program knowing that such claim is false or fraudulent;
- B. presents, or causes to be presented, to the state a claim for payment under the medicaid program knowing that the person receiving a medicaid benefit or payment is not authorized or is not eligible for a benefit under the medicaid program;
- C. makes, uses or causes to be made or used a record or statement to obtain a false or fraudulent claim under the medicaid program paid for or approved by the state knowing such record or statement is false;
- D. conspires to defraud the state by getting a claim allowed or paid under the medicaid program knowing that such claim is false or fraudulent;
- E. makes, uses or causes to be made or used a record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state, relative to the medicaid program, knowing that such record or statement is false;
- F. knowingly applies for and receives a benefit or payment on behalf of another person, except pursuant to a lawful assignment of benefits, under the medicaid program and converts that benefit or payment to his own personal use;
- G. knowingly makes a false statement or misrepresentation of material fact concerning the conditions or operation of a health care facility in order that the facility may qualify for certification or recertification required by the medicaid program; or
- H. knowingly makes a claim under the medicaid program for a service or product that was not provided.

§ 27-14-5. Documentary material in possession of state agency

- A. The department shall have access to all documentary materials of persons and medicaid recipients to which a state agency has access. Documentary material provided pursuant to this subsection is provided to allow investigation of an alleged unlawful act or for use or potential use in an administrative or judicial proceeding.
- B. Except for disclosure to any person under investigation or who is the subject of allegations made pursuant to the Medicaid False Claim Act [27-14-1 NMSA 1978] or as ordered by a court for good cause shown, the department shall not produce for inspection or copying or otherwise disclose the contents of documentary material obtained pursuant to this section to a person other than:
 - (1) an authorized employee of the attorney general;
 - (2) an agency of this state, the United States or another state;

(3) a district attorney, city attorney or county attorney of this state;

(4) the United States attorney general; or

(5) a state or federal grand jury.

§ 27-14-6. Immunity

Notwithstanding any other law, a person is not civilly or criminally liable for providing access to documentary material pursuant to the Medicaid False Claims Act [27-14-1 NMSA 1978] to a person identified in Subsection B of Section 5 [27-14-5 NMSA 1978] of that act.

§ 27-14-7. Civil action for false claims

A. The department shall diligently investigate suspected violations. If the department finds that a person has violated or is violating the provisions of the Medicaid False Claims Act [27-14-1 NMSA 1978], the department may bring a civil action pursuant to Subsection F of this section.

B. A private civil action may be brought by an affected person for a violation of the Medicaid False Claims Act [27-14-1 NMSA 1978] on behalf of the person bringing suit and for the state. The action shall be brought in the name of the state. The action may be dismissed if the court and the department, pursuant to Subsection F of this section, give written consent to the dismissal and their reasons for consenting.

C. For private civil actions, a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the department. The complaint shall be filed in writing and shall remain under seal for at least sixty days. The complaint shall not be served on the defendant until the expiration of sixty days or any extension approved. Within sixty days after receiving a copy of the complaint, the department shall conduct an investigation of the factual allegations and legal contentions made in the complaint, shall make a written determination of whether there is substantial evidence that a violation has occurred and shall provide the person against which a complaint has been made with a copy of the determination. If the department determines that there is not substantial evidence that a violation has occurred, the complaint shall be dismissed.

D. The department may, for good cause shown, move the court for extensions of time during which the complaint remains under seal. Any such motion may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to a complaint filed pursuant to this section until twenty days after the complaint is unsealed and served to the defendant. The complaint shall be deemed unsealed at the expiration of the sixty-day period in the absence of a court-approved extension.

E. Before the expiration of the sixty-day period or any extensions obtained, the department, pursuant to Subsection F of this section, shall:

(1) proceed with the action, in which case the action shall be conducted by the department; or

(2) notify the court and the person who brought the action that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action if the department determined that there is substantial evidence that a violation of the Medicaid False Claims Act [27-14-1 NMSA 1978] has occurred.

F. The department shall notify the attorney general prior to filing a civil action pursuant to the Medicaid False Claims Act [27-14-1 NMSA 1978] and shall not proceed with the action except with the written approval of the attorney general. The attorney general shall, within twenty working days from the notification by the department, notify the department whether it may proceed with the civil action. Failure by the attorney general to notify the department of its determination within the specified time period shall be construed as consent to proceed. The department shall, after filing the civil action, notify the attorney general of any proposed dismissal or settlement and the department shall not proceed with the dismissal or settlement except with the written approval of the attorney general.

§ 27-14-8. Rights of the parties to qui tam actions

A. If the department proceeds with the action, it shall have the exclusive responsibility for prosecuting the action and shall not be bound by an act of the person bringing the action. The person bringing the action shall have the right to continue as a nominal party to the action and shall not have the right to participate in the litigation except as a witness.

B. The department may dismiss the action, pursuant to Subsection F of Section 7 [27-14-7 NMSA 1978] of the Medicaid False Claims Act, notwithstanding the objections of the person bringing the action if the person has been notified by the department of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

C. The department may settle the action with the defendant, pursuant to Subsection F of Section 7 [27-14-7 NMSA 1978] of the Medicaid False Claims Act, notwithstanding the objections of the person bringing the action if the court determines, after the hearing, that the proposed settlement is fair, adequate and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

D. If the state elects not to proceed with the action, the person bringing the action shall have the right to conduct the action. If the department requests, it shall be served with copies of the pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the department's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person bringing the action, may allow the department to intervene at a later date upon a showing of good cause.

E. Whether or not the department proceeds with the action, upon a showing by the department that certain actions of discovery by the person bringing the action would interfere with the department's investigation or prosecution of a civil matter arising out of the same facts, the court may stay such discovery for a period not to exceed sixty days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the department has pursued the civil investigation or proceedings with reasonable

diligence and any proposed discovery in the civil action will interfere with the ongoing civil investigation or proceedings.

§ 27-14-9. Award to qui tam plaintiff

A. If the department proceeds with an action brought by a person pursuant to the Medicaid False Claims Act [27-14-1 NMSA 1978], the person shall, subject to the limitations in this subsection, receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information other than information provided by the party bringing the action relating to allegations or transactions in a criminal, civil or administrative hearing or from the news media, the court shall award a sum as it considers appropriate; provided that the sum does not exceed ten percent of the proceeds and takes into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. A payment to a person pursuant to this subsection shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. In determining the amount of reasonable attorney fees and costs, the court shall consider whether such fees and costs were necessary to the prosecution of the action, were incurred for activities that were duplicative of the activities of the department in prosecuting the case or were repetitious, irrelevant or for purposes of harassment or caused the defendant undue burden or unnecessary expense. All such expenses, fees and costs shall be awarded against the defendant.

B. If the department does not proceed with an action pursuant to the Medicaid False Claims Act [27-14-1 NMSA 1978], the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil recovery and damages recoverable by the state. The amount shall be not less than twenty-five percent and not more than thirty percent of the proceeds of the action or settlement and shall be paid out of such proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. In determining the amount of reasonable attorney fees and costs, the court shall consider whether such fees and costs were necessary to the prosecution of the action, were incurred for activities, which were repetitious, irrelevant or for purposes of harassment or caused the defendant undue burden or unnecessary expense. All such expenses, fees and costs shall be awarded against the defendant.

C. Whether or not the department proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the party would otherwise receive pursuant to Subsection A or B of this section, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of the Medicaid False Claims Act [27-14-1 NMSA 1978], that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action represented by the department. If the department does not proceed with the

action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorney fees and costs if the defendant prevails in the action and the court finds that the claim of the party bringing the action was:

- (1) filed for an improper purpose;
- (2) not warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law; or
- (3) was based on allegations or factual contentions not supported.

§ 27-14-10. Certain actions barred

A. A court shall not have jurisdiction of an action brought pursuant to the Medicaid False Claims Act [27-14-1 NMSA 1978] against a department official if the action is substantially based on evidence or information known to the department when the action was brought.

B. A person shall not bring an action pursuant to the Medicaid False Claims Act [27-14-1 NMSA 1978] that is substantially based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the department is already a party.

C. A court shall not have jurisdiction over an action pursuant to the Medicaid False Claims Act [27-14-1 NMSA 1978] substantially based upon the public disclosure of allegations or actions in a criminal, civil or administrative hearing or from the news media, unless the action is brought by the department or the person bringing the action is an original source of the information. For the purposes of this subsection, “original source” means the person bringing suit that has independent knowledge, including knowledge based on the person’s own investigation of the defendant’s conduct, of the information on which the allegations are based and has voluntarily provided or verified the information on which the allegations are based or has voluntarily provided the information to the department before filing an action pursuant to this section that is based on the information.

§ 27-14-11. Department not liable for certain expenses

The department shall not be liable for expenses that a person incurs in bringing an action pursuant to the Medicaid False Claims Act [27-14-1 NMSA 1978].

§ 27-14-12. Employee protection

Any employee who is discharged, demoted, suspended, threatened, harassed or otherwise discriminated against in the terms and conditions of employment by the employer because of lawful acts done by the employee on behalf of the employee or others in disclosing information to the department or in furthering a false claims action pursuant to the Medicaid False Claims Act [27-14-1 NMSA 1978], including investigation for, initiation of, testimony for or assistance in an action filed or to be filed pursuant to that act, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status

that the employee 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 attorney fees. An employee may bring an action in the appropriate court of the state for the relief provided in this subsection.

§ 27-14-13. False claims and reporting procedure

A. A civil action shall be brought within the limitations set forth in *Section 37-1-4 NMSA 1978*.

B. In any action brought pursuant to the Medicaid False Claims Act [*27-14-1 NMSA 1978*], the department or the person bringing the action shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

C. Notwithstanding any other provision of law, a final judgment rendered in favor of the department in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, shall preclude the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought pursuant to the Medicaid False Claims Act [*27-14-1 NMSA 1978*].

§ 27-14-14. Application of other law

The application of a civil remedy pursuant to this law does not preclude the application of other laws, statutes or regulatory remedy, except that a person may not be liable for a civil remedy pursuant to the Medicaid False Claims Act [*27-14-1 NMSA 1978*] and civil damages or recovery pursuant to the Medicaid Fraud Act [*30-44-1 NMSA 1978*] if the civil remedy and the civil damages or recoveries are assessed for the same conduct by another government agency.

§ 27-14-15. Use of funds

A. Damages collected pursuant to the Medicaid False Claims Act [*27-14-1 NMSA 1978*] on behalf of the state shall be remitted to the state treasurer for deposit in the general fund to be used for the state's medicaid program.

B. Penalties, legal fees or costs of investigation recovered pursuant to the Medicaid False Claims Act [*27-14-1 NMSA 1978*] on behalf of the state shall be remitted to the state treasurer for deposit in the general fund to be used for the state's medicaid program.

C. Pursuant to Subsection C of *Section 30-44-8 NMSA 1978*, penalties recovered pursuant to the Medicaid False Claims Act [*27-14-1 NMSA 1978*] on behalf of the state may be claimed by the attorney general pursuant to procedures established by the department and the attorney general.

HISTORY: Laws 2004, ch. 49, § 15.

Approved by the Governor March 3, 2004. Effective May 19, 2004.

NEW MEXICO FRAUD AGAINST TAXPAYERS ACT

§§ 44-9-1 to 44-9-14, as amended by Laws 2015, ch 128

§ 44-9-1. Short title.

This act [44-9-1 to 44-9-14 NMSA 1978] may be cited as the “Fraud Against Taxpayers Act”.

§ 44-9-2. As used in the Fraud Against Taxpayers Act:

A. “claim” means a request or demand for money, property or services when all or a portion of the money, property or services requested or demanded issues from or is provided or reimbursed by the state or a political subdivision;

B. “employer” includes an individual, corporation, firm, association, business, partnership, organization, trust, charter school and the state and any of its agencies, institutions or political subdivisions;

C. “knowingly” means that a person, with respect to information, acts:

(1) with actual knowledge of the truth or falsity of the information;

(2) in deliberate ignorance of the truth or falsity of the information; or

(3) in reckless disregard of the truth or falsity of the information;

D. “person” means an individual, corporation, firm, association, organization, trust, business, partnership, limited liability company, joint venture or any legal or commercial entity;

E. “political subdivision” means a political subdivision of the state or a charter school; and

F. “state” means the state of New Mexico or any of its branches, agencies, departments, boards, commissions, officers, institutions or instrumentalities, including the New Mexico finance authority, the New Mexico mortgage finance authority and the New Mexico lottery authority. Definitions.

§ 44-9-3. False claims; liability; penalties; exception

A. A person shall not:

(1) knowingly present, or cause to be presented, to an employee, officer or agent of the state or a political subdivision or to a contractor, grantee or other recipient of state or political subdivision funds a false or fraudulent claim for payment or approval;

(2) knowingly make or use, or cause to be made or used, a false, misleading or fraudulent record or statement to obtain or support the approval of or the payment on a false or fraudulent claim;

(3) conspire to defraud the state or a political subdivision by obtaining approval or payment on a false or fraudulent claim;

(4) conspire to make, use or cause to be made or used, a false, misleading or fraudulent record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state or a political subdivision;

(5) when in possession, custody or control of property or money used or to be used by the state or a political subdivision, knowingly deliver or cause to be delivered less property or money than the amount indicated on a certificate or receipt;

(6) when authorized to make or deliver a document certifying receipt of property used or to be used by the state or a political subdivision, knowingly make or deliver a receipt that falsely represents a material characteristic of the property;

(7) knowingly buy, or receive as a pledge of an obligation or debt, public property from any person that may not lawfully sell or pledge the property;

(8) knowingly make or use, or cause to be made or used, a false, misleading or fraudulent record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state or a political subdivision; or

(9) as a beneficiary of an inadvertent submission of a false claim and having subsequently discovered the falsity of the claim, fail to disclose the false claim to the state or political subdivision within a reasonable time after discovery.

B. Proof of specific intent to defraud is not required for a violation of Subsection A of this section.

C. A person who violates Subsection A of this section shall be liable for:

(1) three times the amount of damages sustained by the state or political subdivision because of the violation;

(2) a civil penalty of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000) for each violation;

(3) the costs of a civil action brought to recover damages or penalties; and

(4) reasonable attorney fees, including the fees of the attorney general, state agency or political subdivision counsel.

D. A court may assess not less than two times the amount of damages sustained by the state or a political subdivision if the court finds all of the following:

(1) the person committing the violation furnished the attorney general or political subdivision with all information known to that person about the violation within thirty days after the date on which the person first obtained the information;

(2) at the time that the person furnished the attorney general or political subdivision with information about the violation, a criminal prosecution, civil action or administrative action had not been commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation; and

(3) the person fully cooperated with any investigation by the attorney general or political subdivision.

E. This section does not apply to claims, records or statements made pursuant to the provisions of Chapter 7 NMSA 1978.

§ 44-9-4. Investigation by the attorney general; delegation; civil action

A. The attorney general shall diligently investigate suspected violations of Section 44-9-3 NMSA 1978, and if the attorney general finds that a person has violated or is violating that section, the attorney general may bring a civil action against that person pursuant to the Fraud Against Taxpayers Act.

B. The attorney general may in appropriate cases delegate the authority to investigate or to bring a civil action to the state agency or political subdivision to which a false claim was made, and when this occurs, the state agency or political subdivision shall have every power conferred upon the attorney general pursuant to the Fraud Against Taxpayers Act. If the attorney general has delegated authority to a state agency or political subdivision, all references to the attorney general in the Fraud Against Taxpayers Act shall apply to the delegee.

§ 44-9-5. Civil action by qui tam plaintiff; state may intervene

A. A person may bring a civil action for a violation of Section 44-9-3 NMSA 1978 on behalf of the person and the state or political subdivision. The action shall be brought in the name of the state or political subdivision. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interest of the parties involved and the public purposes behind the Fraud Against Taxpayers Act.

B. A complaint filed by a qui tam plaintiff shall be filed in camera in district court and shall remain under seal for at least sixty days. No service shall be made on a defendant and no response is required from a defendant until the seal has been lifted and the complaint served pursuant to the rules of civil procedure.

C. On the same day as the complaint is filed, the qui tam plaintiff shall serve the attorney general, and the political subdivision, if applicable, with a copy of the complaint and written disclosure of substantially all material evidence and information the qui tam plaintiff possesses. The attorney general on behalf of the state or the political subdivision, or the political subdivision on its own behalf, may intervene and proceed with the action within sixty days after receiving the complaint and the material evidence and information. Upon a showing of good cause and reasonable diligence in the state's or political subdivision's investigation, the state or political subdivision may move the court for an extension of time during which the complaint shall remain under seal.

D. Before the expiration of the sixty-day period or any extensions of time granted by the court, the attorney general or political subdivision shall notify the court that the state or the political subdivision:

(1) intends to intervene and proceed with the action; in which case, the seal shall be lifted and the action shall be conducted by the attorney general on behalf of the state or the political subdivision, or the political subdivision shall conduct the action on its own behalf; or

(2) declines to take over the action; in which case the seal shall be lifted and the qui tam plaintiff may proceed with the action.

E. When a person brings an action pursuant to this section, no person other than the attorney general on behalf of the state or a political subdivision, or a political subdivision on its own behalf, may intervene or bring a related action based on the facts underlying the pending action.

§ 44-9-6. Rights of the qui tam plaintiff and the state

A. If the state or political subdivision proceeds with the action, it shall have the primary responsibility of prosecuting the action and shall not be bound by an act of the qui tam plaintiff. The qui tam plaintiff shall have the right to continue as a party to the action, subject to the limitations of this section.

B. The state or political subdivision may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and to present evidence at a hearing.

C. The state or political subdivision may settle the action with the defendant notwithstanding any objection by the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate and reasonable under all of the circumstances.

D. Upon a showing by the state or political subdivision that unrestricted participation during the course of the litigation by the qui tam plaintiff would interfere with or unduly delay the prosecution of the case, or would be repetitious, irrelevant or for the purpose of harassment, the court may, in its discretion, impose limitations on the qui tam plaintiff's participation, such as:

- (1) limiting the number of witnesses the qui tam plaintiff may call;
- (2) limiting the length of testimony of such witnesses;
- (3) limiting the qui tam plaintiff's cross examination of witnesses; or
- (4) otherwise limiting the qui tam plaintiff's participation in the litigation.

E. Upon a showing by a defendant that unrestricted participation during the course of litigation by the qui tam plaintiff would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the qui tam plaintiff in the litigation.

F. If the state or political subdivision elects not to proceed with the action, the qui tam plaintiff shall have the right to conduct the action. If the attorney general or political subdivision so requests, the qui tam plaintiff shall serve the attorney general or political subdivision with copies of all pleadings filed in the action and all deposition transcripts in the case, at the state's or political subdivision's expense. When the qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may permit the attorney general or political subdivision to intervene at a later date upon a showing of good cause.

G. Whether or not the state or political subdivision proceeds with the action, upon a showing by the attorney general on behalf of the state or political subdivision, or a political subdivision on its own behalf, that certain actions of discovery by the qui tam plaintiff would interfere with an investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. The showing by the state or political subdivision shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state or political subdivision has pursued the criminal or civil investigation or proceeding with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceeding.

H. Notwithstanding the provisions of Section 44-9-5 NMSA 1978, the attorney general or political subdivision may elect to pursue the state's or political subdivision's claim through any alternate remedy available, including an administrative proceeding to determine a civil money penalty. If an alternate remedy is pursued, the qui tam plaintiff shall have the same rights in such a proceeding as the qui tam plaintiff would have had if the action had continued pursuant to this section. A finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action under the Fraud Against Taxpayers Act. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all 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.

§ 44-9-7. Awards to qui tam plaintiff and the state

A. Except as otherwise provided in this section, if the state or a political subdivision proceeds with an action brought by a qui tam plaintiff and the state or political subdivision prevails in the action, the qui tam plaintiff shall receive:

(1) at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action; or

(2) no more than ten percent of the proceeds of the action or settlement if the court finds that the action was based primarily on disclosures of specific information, not provided by the qui tam plaintiff, relating to allegations or transactions in a criminal, civil, administrative or legislative hearing, proceeding, report, audit or investigation or from the news media, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation. However, if the attorney general or political subdivision determines and certifies in writing that the qui tam plaintiff provided a significant contribution in advancing the case, then the qui tam plaintiff shall receive the share of proceeds set forth in Paragraph (1) of this subsection.

B. If the state or political subdivision does not proceed with an action brought by a qui tam plaintiff and the state or political subdivision prevails in the action, the qui tam plaintiff shall receive an amount that is not less than twenty-five percent or more than thirty percent of the proceeds of the action or settlement, as the court deems reasonable for collecting the civil penalty and damages.

C. Whether or not the state or political subdivision proceeds with an action brought by a qui tam plaintiff:

(1) if the court finds that the action was brought by a person that planned or initiated the violation of Section 44-9-3 NMSA 1978 upon which the action was based, the court may reduce the share of the proceeds that the person would otherwise receive under Subsection A or B of this section, taking into account the role of the person as the qui tam plaintiff in advancing the case to litigation and any relevant circumstances pertaining to the violation; or

(2) if the person bringing the action is convicted of criminal conduct arising from that person's role in the violation of Section 44-9-3 NMSA 1978 upon which the action was based, that person shall be dismissed from the civil action and shall not receive a share of the proceeds. The dismissal shall not prejudice the right of the state or political subdivision to continue the action.

D. Any award to a qui tam plaintiff shall be paid out of the proceeds of the action or settlement, if any. The qui tam plaintiff shall also receive an amount for reasonable expenses incurred in the action plus reasonable attorney fees that shall be paid by the defendant.

E. The state or political subdivision is entitled to all proceeds collected in an action or settlement not awarded to a qui tam plaintiff. The state or political subdivision is also entitled to reasonable expenses incurred in the action plus reasonable attorney fees, including the fees of the attorney

general or state agency counsel or counsel employed by the political subdivision that shall be paid by the defendant.

F. Proceeds and penalties collected by the state or political subdivision shall be deposited as follows:

(1) proceeds in the amount of the false claim paid and attorney fees and costs shall be returned to the fund or funds from which the money, property or services came;

(2) civil penalties shall be deposited in the current school fund pursuant to Article 12, Section 4 of the constitution of New Mexico;

(3) except as provided in Paragraph (4) of this subsection, all remaining proceeds shall be deposited as follows:

(a) one-half into a fund for the use of the attorney general in furtherance of the obligations imposed upon that office by the Fraud Against Taxpayers Act; and

(b) one-half into the general fund; or

(4) remaining proceeds collected by counties or municipalities as political subdivisions acting on their own behalf shall be disposed of in accordance with the direction of the governing body of the county or municipality.

§ 44-9-8. Award of attorney fees and costs to defendant

If the state or political subdivision does not proceed with the action and the qui tam plaintiff conducts the action, the court may award a defendant reasonable attorney fees and costs if the defendant prevails and the court finds the action clearly frivolous, clearly vexatious or brought primarily for the purpose of harassment.

§ 44-9-9. Certain actions barred

A. No court shall have jurisdiction over an action brought pursuant to Section 44-9-5 NMSA 1978 by a present or former employee of the state or political subdivision unless the employee, during employment with the state or political subdivision and in good faith, exhausted existing internal procedures for reporting false claims and the state or political subdivision failed to act on the information provided within a reasonable period of time.

B. No court shall have jurisdiction over an action brought pursuant to Section 44-9-5 NMSA 1978 against an elected or appointed state official, a member of the state legislature or a member of the judiciary if the action is based on evidence or information known to the state agency to which the false claim was made or to the attorney general when the action was filed.

C. Unless the attorney general or political subdivision determines and certifies in writing that the action is in the interest of the state or political subdivision, no court shall have jurisdiction over

an action brought pursuant to Section 44-9-5 NMSA 1978 when that action is based on allegations or transactions that are the subject of a criminal, civil or administrative proceeding in which the state or political subdivision is a party.

D. Upon motion of the attorney general or political subdivision, a court may, in its discretion, dismiss an action brought pursuant to Section 44-9-5 NMSA 1978 if the elements of the alleged false or fraudulent claim have been publicly disclosed in the news media or in a publicly disseminated governmental report at the time the complaint is filed.

§ 44-9-10. State not liable

The state or political subdivision shall not be liable for expenses or fees that a qui tam plaintiff may incur in investigating or bringing an action pursuant to the Fraud Against Taxpayers Act.

§ 44-9-11. Employer interference with employee disclosure; private action for retaliation

A. An employer shall not make, adopt or enforce a rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a fraud against taxpayers action, including investigating, initiating, testifying or assisting in an action filed or to be filed pursuant to the Fraud Against Taxpayers Act.

B. An employer shall not discharge, demote, suspend, threaten, harass, deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the lawful acts of the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a fraud against taxpayers action, including investigating, initiating, testifying or assisting in an action filed or to be filed pursuant to the Fraud Against Taxpayers Act.

C. An employer that violates Subsection B of this section shall be liable to the employee for all necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the violation, two times the amount of back pay with interest on the back pay, compensation for any special damage sustained as a result of the violation and, if appropriate, punitive damages. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee. An employee may bring an action pursuant to this section in any court of competent jurisdiction.

§ 44-9-12. Limitation of actions; estoppel; standard of proof

A. A civil action pursuant to the Fraud Against Taxpayers Act may be brought at any time. A civil action pursuant to the Fraud Against Taxpayers Act may be brought for conduct that occurred prior to the effective date of that act, but not for conduct that occurred prior to July 1, 1987.

B. Notwithstanding any other provision of law, a final judgment rendered in a criminal proceeding charging fraud or false statement, whether upon a guilty verdict after trial or upon a

plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of a fraud against taxpayers action where the criminal proceeding concerns the same transaction that is the subject of the fraud against taxpayers action.

C. In an action brought pursuant to the Fraud Against Taxpayers Act, the state or political subdivision or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

§ 44-9-13. Joint and several liability

Liability shall be joint and several for any act committed by two or more persons in violation of the Fraud Against Taxpayers Act.

§ 44-9-14. Remedy not exclusive

The remedies provided for in the Fraud Against Taxpayers Act are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law.

HISTORY: Laws 2007, ch. 40. Amended by Laws 2015, ch 128.

EFFECTIVE DATES. –Laws 2007, ch. 40, § 16 makes the act effective July 1, 2007. 2015 amendments effective June 19, 2015.