

MARYLAND FALSE CLAIMS ACT

MARYLAND FALSE HEALTH CLAIMS ACT OF 2010

2010 Maryland Laws Ch. 4 (S.B. 279)

MARYLAND 2010 SESSION LAWS

REGULAR SESSION

HEALTH GENERAL--MARYLAND FALSE HEALTH CLAIMS ACT OF 2010

AN ACT concerning

Maryland False Health Claims Act of 2010

FOR the purpose of prohibiting certain actions constituting false claims against a State health plan or a State health program; providing certain penalties for making false claims against a State health plan or a State health program; requiring the court to consider and give special attention to certain factors in determining the amount of fines and penalties provided for in this Act; authorizing the State to file a civil action against a person who makes a false claim against a State health plan or a State health program under certain circumstances; authorizing a person other than the State to file a civil action on behalf of the person and the State against a person who makes a false claim against a State health plan or a State health program; providing for the procedures to be followed in a civil action; providing for certain remedies under a civil action; requiring the State to investigate a civil action alleging a false claim against a State health plan or a State health program; requiring the State to make certain efforts to coordinate certain investigations and to establish a certain objective for the State; authorizing the State to intervene and proceed with the action with or without the person who initiated the action; authorizing the State to elect not to intervene and proceed with the action; requiring the court to dismiss the action if the State elects not to intervene; authorizing the court to limit the participation of the person who initiated the action under certain circumstances; authorizing the State pursue alternative remedies; providing for certain damages and payments to the person who initiated the action under certain circumstances; providing for certain payments to the person charged under certain circumstances if the person charged prevails; providing certain limitations on civil actions filed under this Act; prohibiting a person from taking retaliatory action against an employee, contractor, or agent under certain circumstances; authorizing an employee, contractor, or agent to file a civil action against a person who takes retaliatory action against the employee, contractor, or agent under certain circumstances; providing certain remedies for retaliatory action; requiring an employer to make certain disclosures to employees; requiring the Comptroller to deposit a certain penalty or damages in the General Fund of the State; requiring certain persons to report certain information annually to the General Assembly; authorizing the Department of Health and Mental Hygiene or the Inspector General of the Department to adopt certain regulations; defining certain terms; and generally relating to false claims against State health plans and State health programs.

BY adding to

Article--Health--General

Section 2-601 through 2-611 to be under the new subtitle "Subtitle 6. False

Claims Against State Health Plans and State Health Programs"

Annotated Code of Maryland

(2009 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article--Health--General

Subtitle 6--False Claims Against State Health Plans and State Health Programs

2-601.

(a) In this subtitle the following words have the meanings indicated.

(b)(1) "Claim" means a request or demand, under a contract or otherwise, for money or other property, whether or not the State has title to the money or property, that is:

- (i) Presented through a State health plan or a State health program to an officer, employee, or agent of the State; or
- (ii) Made to a contractor, grantee, or other recipient, if the money or other property is to be spent or used on the State's behalf or to advance a State interest through a State health plan or State health program, and the State:

1. Provides or has provided any portion of the money or other property requested or demanded; or
2. Will reimburse the contractor, grantee, or other recipient for any portion of the money or other property that is requested or demanded.

(2) "Claim" does not include requests or demands for money or other property that the State through a State health plan or State health program has paid to an individual as compensation for State employment or as an income subsidy with no restrictions on that individual's use of the money or other property.

(c) "Documentary material" includes:

(1) The original or a copy of:

- (i) A book;
- (ii) A record;
- (iii) A report;
- (iv) A memorandum;
- (v) A paper;
- (vi) A communication;
- (vii) A tabulation;
- (viii) A chart;
- (ix) A document; or

(x) Data compilation stored in or accessible through a computer or other information retrieval system, including instructions and all other materials necessary to use or interpret the data compilation; and

(2) Any product of discovery, including:

- (i) The original or duplicate of any deposition, interrogatory, document, thing, result of an inspection of land or other property, examination, or admission that is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;
- (ii) Any digest, analysis, selection, compilation, or derivation of any item listed in item (i) of this item; and
- (iii) Any index or other manner of access to any item listed in item (i) of this item.

(d) "Employee" means an individual who performs services:

- (1) For and under the control and direction of an employer; and
- (2) Under an employer's promise or implied promise of payment of wages or other remuneration.

(e) "Employer" means a person or group of persons who, acting directly or indirectly on behalf of another person or group of persons:

- (1) Allows an employee to perform services under the employer's control and direction; and
- (2) Promises or implies that the employee will receive wages or other remuneration in payment for the performance of those services.

(f)(1) "Knowing" or "knowingly" means, with respect to information and without requiring proof of specific intent to defraud, that a person:

- (i) Has actual knowledge of the information;
- (ii) Acts in deliberate ignorance of the truth or falsity of the information; or
- (iii) Acts in reckless disregard of the truth or falsity of the information.

(2) "Knowing" or "knowingly" does not mean, with respect to information, that a person acts in a manner that constitutes mistake or negligence.

(g) "Material" means having a natural tendency to influence or be capable of influencing the payment or receipt of money or other property.

(h) "Obligation" means an established duty, whether or not fixed, arising from:

(1) An express or implied:

(i) Contractual relationship;

(ii) Grantor-grantee relationship; or

(iii) Licensor-licensee relationship;

(2) A fee-based or similar relationship;

(3) Statute or regulation; or

(4) The retention of an overpayment.

(i) "Provider" has the meaning stated in § 2-501 of this title.

(j) "Public body" means:

(1) The General Assembly or any other elected body;

(2) A member or an employee of the General Assembly or other elected body;

(3) A State court;

(4) A member or an employee of a State court;

(5) A State or local regulatory, administrative, or public agency or authority;

(6) An instrumentality of a State or local regulatory, administrative, or public agency or authority;

(7) A State or local law enforcement agency, prosecutorial office, or police or peace officer;

(8) A State or local department of an executive branch of government; or

(9) A division, board, bureau, office, committee, or commission of any of the public bodies listed in this subsection.

(k) "Retaliatory action" means:

(1) Discharging, suspending, demoting, threatening, harassing, or discriminating against an employee, contractor, or agent; or

(2) Any other adverse action taken against an employee, contractor, or agent relating to the conditions of employment, contract, or agency.

(l)(1) "State health plan" means:

(i) The State Medical Assistance Plan established in accordance with the federal Social Security Act of 1939, as amended;

(ii) A medical assistance plan established by the State; or

(iii) A private health insurance carrier, health maintenance organization, managed care organization as defined in § 15-101 of this article, health care cooperative or alliance, or another person that provides or contracts to provide health care services that are wholly or partially reimbursed by, or are a required benefit of, a health plan established in accordance with the federal Social Security Act of 1939, as amended, or by the State.

(2) "State health plan" includes a person who provides or contracts or subcontracts to provide health care services for an entity described in paragraph (1) of this subsection.

(m) "State health program" means the Medical Assistance Program, the Cigarette Restitution Fund Program, the Mental Hygiene Administration, the Developmental Disabilities Administration, the Alcohol and Drug Abuse Administration, the Family Health Administration, the Infectious Disease and Environmental Health Administration, or any other unit of the Department that pays a provider for a service rendered or claimed to have been rendered to

a recipient.

(n) "Supervisor" means an individual within an employer's organization who has the authority to:

(1) Direct and control the work performance of an employee; or

(2) Take corrective action regarding the violation of a law or regulation that is the subject of a complaint or charge under this subtitle.

2-602.

(a) A person may not:

(1) Knowingly present or cause to be presented a false or fraudulent claim for payment or approval;

(2) Knowingly make, use, or cause to be made or used a false record or statement material to a false or fraudulent claim;

(3) Conspire to commit a violation under this subtitle;

(4) Have possession, custody, or control of money or other property used by or on behalf of the State under a State health plan or a State health program and knowingly deliver or cause to be delivered to the State less than all of that money or other property;

(5)(i) Be authorized to make or deliver a receipt or other document certifying receipt of money or other property used or to be used by the State under a State health plan or a State health program; and

(ii) Intending to defraud the State or the Department, make or deliver a receipt or document knowing that the information contained in the receipt or document is not true;

(6) Knowingly buy or receive as a pledge of an obligation or debt publicly owned property from an officer, employee, or agent of a State health plan or a State health program who lawfully may not sell or pledge the property;

(7) Knowingly make, use, or cause to be made or used, a false record or statement material to an obligation to pay or transmit money or other property to the State;

(8) Knowingly conceal, or knowingly and improperly avoid or decrease, an obligation to pay or transmit money or other property to the State; or

(9) Knowingly make any other false or fraudulent claim against a State health plan or a State health program.

(b)(1) A person who is found to have violated subsection (a) of this section is liable to the State for:

(i) A civil penalty of not more than \$10,000 for each violation of subsection (a) of this section; and

(ii) An additional amount of not more than three times the amount of damages that the State sustains as a result of the acts of that person in violation of subsection (a) of this section.

(2) The total amount owed by a person under paragraph (1) of this subsection may not be less than the amount of the actual damages the State health plan or State health program incurs as a result of the person's violation of subsection (a) of this section.

(c)(1) In determining the appropriate amount of fines and damages under subsection (b) of this section, the court shall consider:

(i) The number, nature, and severity of the violations of this subtitle for which the person has been found liable;

(ii) The number, nature, and severity of any previous violations of this subtitle;

(iii) The degree of loss suffered by the State health plan or State health program;

(iv) The person's history of billing compliance;

(v) Whether the person has a compliance program in place;

(vi) The extent to which the person has taken steps to address and correct the violation since the person became aware of the violation;

(vii) The extent to which the violation caused harm or detriment to patients or consumers of the State health plan or State health program;

(viii) Any funds previously returned to the State health plan or State health program in compliance with federal requirements regarding overpayments, to the extent the funds represented losses to the State health plan or State health program caused by the violation;

(ix) Whether the person self-reported the violation, the timeliness of the self-reporting, the extent to which the person otherwise cooperated in the investigation of the violation, and the extent to which the person had prior knowledge of an investigation or other action relating to the violation; and

(x) Any other factor as justice requires.

(2) In weighing the factors set forth in paragraph (1) of this subsection, the court shall, where appropriate, give special consideration to:

(i) The extent to which the person's size, operations, or financial condition may have affected each of the factors set forth in paragraph (1) of this subsection; and

(ii) The extent to which the person's size, operations, or financial condition may affect the person's ability to provide care and continue operations after payment of damages and fines.

(d) The penalties provided in subsection (b) of this section are in addition to any criminal, civil, or administrative penalties provided under any other State or federal statute or regulation.

2-603.

(a) If the State finds that a person has violated or is violating § 2-602(a) of this subtitle, the State may file a civil action in a court of competent jurisdiction within the State against the person.

(b) In filing a civil action under this section, the State may seek:

(1) The penalties provided under § 2-602(b) of this subtitle; and

(2) Subject to the guidelines set forth in § 2-605(a)(4) of this subtitle, court costs and attorney's fees.

2-604.

(a)(1)(i) A person may file a civil action on behalf of the person and the State in a court of competent jurisdiction within the State against a person who has acted or is acting in violation of § 2-602(a) of this subtitle.

(ii) A civil action filed under subparagraph (i) of this paragraph shall be brought in the name of the State.

(2) A person filing an action under this section may seek:

(i) The penalties provided under § 2-602(b) of this subtitle; and

(ii) Subject to the guidelines set forth in § 2-605(a)(4) of this subtitle, court costs and attorney's fees.

(3)(i) The person shall serve on the State a copy of the complaint and a written disclosure of substantially all material evidence and information that the person possesses, in accordance with the provisions of Title 2 of the Maryland Rules for serving process on the State.

(ii) 1. The complaint shall be filed in camera and shall remain under seal for at least 60 days.

2. The complaint may not be served on the defendant until the complaint is unsealed and the court orders the complaint served.

3. Within 60 days after the State receives the complaint and the material evidence and information, the State may elect to intervene and proceed with the action.

(4)(i) For good cause shown, the State may move the court for extensions of the time during which the complaint remains under seal under paragraph (3)(ii)1 of this subsection.

(ii) Any motions made under subparagraph (i) of this paragraph may be supported by affidavits or other submissions in camera.

(5)(i) The defendant may not be required to answer a complaint filed under this section until after the complaint is:

1. Unsealed and ordered by the court to be served; and

2. Served on the defendant in accordance with Title 2 of the Maryland Rules.

(ii) When answering a complaint filed under this section, a defendant shall follow the time frames and other provisions for filing answers to a complaint as required under Title 2, Chapter 300 of the Maryland Rules.

(iii) During the period in which the complaint is under seal, if the State's investigation reveals that the act, transaction, or occurrence that gave rise to the alleged violation of this subtitle is reasonably likely to be continuing, the State shall notify the defendant as soon as practicable without jeopardizing the course and conduct of the State's or the federal government's investigation of the violation, compromising the development of evidence, or violating any State or federal law.

(6) Before the later of the expiration of the 60-day period during which the complaint remains under seal under paragraph (3)(ii)1 of this subsection or any extension of the 60-day period obtained under paragraph (4) of this subsection, the State shall:

- (i) Intervene and proceed with the action in a court of competent jurisdiction within the State; or
- (ii) Notify the court that it will not intervene and proceed with the action.

(7) If the State does not elect to intervene and proceed with the action under paragraph (6) of this subsection, before unsealing the complaint, the court shall dismiss the action.

(8) If a person initiates an action under this section, no person other than the State may intervene in the action or initiate a related action based on the facts underlying the pending action.

(b)(1) If the State intervenes and proceeds with the action under subsection (a)(6)(i) of this section:

- (i) The State shall have the primary responsibility for proceeding with the action and may not be bound by any act of the person who initiated the action; and
- (ii) Subject to paragraphs (3) through (6) of this subsection, the person who initiated the action may continue as a party to the action.

(2)(i) During an investigation by the State conducted either independently or in conjunction with a civil action filed under this subtitle, the Attorney General shall have the same rights of discovery as a civil litigant in the circuit court under Title 2, Chapter 400 of the Maryland Rules.

(ii) A person from whom the Attorney General seeks discovery shall be considered a party under Title 2, Chapter 400 of the Maryland Rules.

(3)(i) Notwithstanding the objections of the person initiating the action, the State may elect at any point to withdraw its intervention as a party to the action.

(ii) If the State elects to withdraw as a party to the action:

1. The State shall notify the court and the party initiating the action; and
2. The court shall dismiss the action.

(4) Notwithstanding the objections of the person initiating the action, if the court determines after a hearing that a proposed settlement is fair, adequate, and reasonable under the circumstances, the State may settle a civil action filed under this section.

(5) On motion of the State or the defendant or on the court's own motion, the court may impose limitations on the participation of the person initiating an action under this section if:

(i) The State shows that the person's unrestricted participation in the action would:

1. Interfere with or unduly delay the State in its pursuit of the civil action; or
2. Be repetitious, irrelevant, or harassing to the defendant; or

(ii) The defendant shows that unrestricted participation by the person initiating the action would harass the defendant or cause the defendant undue burden or unnecessary expense.

(6) Limitations imposed by the court under paragraph (5) of this subsection may include:

- (i) A limitation on the number of witnesses the person may call to testify;
- (ii) A limitation on the length of the testimony of witnesses called by the person;
- (iii) A limitation on the person's cross-examination of witnesses; or
- (iv) A limitation on the participation of the person in the litigation.

(c)(1) Instead of proceeding with a civil action filed under this subtitle, the State may pursue any alternative remedy available to the State, including any

appropriate administrative proceeding to determine a civil money penalty.

(2) If the State seeks an alternative remedy in another proceeding after intervening in a civil action filed under this section, the person initiating the action shall have the same rights in the alternative proceeding as the person would have had if the civil action had continued under this section.

(3)(i) A finding of fact or conclusion of law made in any alternative proceeding that has become final shall be conclusive on all parties to an action filed under this subtitle.

(ii) For purposes of subparagraph (i) of this paragraph, a finding or conclusion is final if:

1. It has been finally determined on appeal to the appropriate court of the State;
2. All time for filing the appeal with respect to the finding or conclusion has expired; or
3. The finding or conclusion is not subject to judicial review.

(d)(1) On a showing in camera by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than 60 days.

(2) The court may extend the 60-day period on a further showing in camera that:

- (i) The State has pursued the criminal or civil investigation or proceeding with reasonable diligence; and
- (ii) Any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceeding.

2-605.

(a)(1) If the State intervenes and proceeds with an action filed under § 2-604 of this subtitle and the State prevails, the court shall award the person initiating the action an amount that is:

- (i) Not less than 15% and not more than 25% of the proceeds of the action or settlement of the claim; and
- (ii) Proportional to the amount of time and effort that the person substantially contributed to the final resolution of the civil action.

(2)(i) If the court finds that the action is based primarily on disclosures of specific information relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may make an award to the person initiating the action that:

1. The court considers appropriate, taking into account the significance of the information and the role of the person initiating the action in advancing the case to litigation; and
2. Does not exceed 10% of the proceeds of the action.

(ii) The information described in subparagraph (i) of this paragraph does not include information disclosed and provided by the person initiating the action.

(3) Any payment to a person under paragraph (1) or (2) of this subsection shall be made from the proceeds of the action.

(4)(i) In addition to the amount provided under paragraphs (1) and (2) of this subsection, a court may award the person initiating the action:

1. An amount for reasonable expenses that the court finds to have been necessarily incurred; and
2. Reasonable attorney's fees and costs.

(ii) In determining the amount of any award under subparagraph (i) of this paragraph, the court shall consider the amount of any penalties and damages recovered in the action and any other factor as justice may require.

(iii) Any expenses, fees, and costs awarded under this paragraph shall be awarded against the defendant.

(b)(1) If a court finds that the action is initiated by a person who planned and initiated or otherwise deliberately participated in the violation on which the action was based, the court may, to the extent it considers appropriate, reduce the share of the proceeds of the action that the person otherwise would have received under this section.

(2) In reducing the share of the proceeds of the person initiating the action under this subsection, the court shall consider:

(i) The role of the person in advancing the case to litigation; and

(ii) Any relevant circumstances relating to the underlying violation.

(3)(i) If the person initiating a civil action under § 2-604 of this subtitle is convicted of criminal conduct arising from the person's participation in the violation on which the action was based prior to a final determination of the action, the person:

1. Shall be dismissed from the action; and

2. May not receive any share of the proceeds of the action.

(ii) The dismissal of the person initiating the action in accordance with this paragraph does not prejudice the right of the State to continue the action.

(4) If the person initiating a civil action under § 2-604 of this subtitle is convicted of criminal conduct arising from the person's participation in the violation on which the action was based after the proceeds from the action are awarded to that person, the court shall order the person to repay the proceeds previously awarded.

(c) A court may award reasonable attorney's fees and expenses to a defendant and against the person initiating the action if:

(1) The defendant prevails in the action; and

(2) The court finds that the claim of the person initiating the action was brought primarily for purposes of harassment or otherwise brought in bad faith.

2-606.

(a) No court in this State shall have jurisdiction over an action filed under § 2-604 of this subtitle against any member of the Legislative Branch or the Judiciary of the State, any member of the Governor's Executive Council, the Attorney General, the Comptroller, or the State Treasurer if the action is based on evidence or information known to the State when the action was filed.

(b) A civil action may not be brought under this subtitle by a person who is or was a public employee or public official if the allegations of the action are based substantially on:

(1) Allegations of wrongdoing or misconduct that the person had a duty or obligation to report or investigate within the scope of the person's public employment or office; or

(2) Information or records to which the person had access as a result of the person's public employment or office.

(c) A person may not bring an action under § 2-604 of this subtitle that is based on 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.

(d)(1) Except as provided in paragraphs (2) and (3) of this subsection, no court in this State shall have jurisdiction over an action filed under § 2-604 of this subtitle that is based on the public disclosure of allegations or transactions:

(i) In a criminal, civil, or an administrative hearing;

(ii) In a legislative or an administrative report, a hearing, an audit, or an investigation; or

(iii) From the news media.

(2) Paragraph (1) of this subsection does not apply if the action is initiated by a person who:

(i) Has direct and independent knowledge of the information on which the allegations are based; and

(ii) Has voluntarily provided the information to the State before filing an action under § 2-604 of this subtitle that is based on the information.

(3) The State, through the Attorney General, may file a civil action under § 2-603 of this subtitle based on the public disclosure described in paragraph (1) of this subsection.

(e) The State is not liable for expenses that a person incurs in bringing an action under § 2-604 of this subtitle.

(f) A person who is or was employed by the State, a local government, or any other political subdivision of the State as an auditor, investigator, attorney, financial officer, or contracting officer may not bring an action under § 2-604 of this subtitle that is based on allegations or transactions that the person discovered or learned of while acting in the person's capacity as an auditor, investigator, attorney, financial officer, or contracting officer for the State, local government, or other political subdivision of the State.

2-607.

(a) A person may not take a retaliatory action against an employee, contractor, or grantee because the employee, contractor, or grantee:

- (1) Acts lawfully in furtherance of an action filed under this subtitle, including an investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this subtitle;
- (2) Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of the person that the employee, contractor, or grantee reasonably believes is in violation of § 2-602(a) of this subtitle or a regulation adopted under this subtitle;
- (3) Provides information to, or testifies before, a public body conducting an investigation, hearing, or inquiry into a violation of § 2-602(a) of this subtitle or a regulation adopted under this subtitle that is allegedly or actually committed by the person; or
- (4) Objects to or refuses to participate in any activity, policy, or practice that the employee, contractor, or grantee reasonably believes is in violation of § 2-602(a) of this subtitle or a regulation adopted under this subtitle.

(b)(1) An employee, contractor, or grantee may file a civil action against a person other than a supervisor in State government, an appointing authority in State government, or the head of a principal unit in State government if the person takes a retaliatory action against the employee, contractor, or grantee in violation of subsection (a) of this section.

(2) The employee, contractor, or grantee may seek in the civil action:

- (i) An injunction to restrain a continuing violation of subsection (a) of this section;
- (ii) Reinstatement to the same seniority status held before the retaliatory action;
- (iii) Reinstatement of full fringe benefits and seniority rights;
- (iv) Two times the amount of lost wages, benefits, and other remuneration, including any interest accumulated;
- (v) Payment by the person of reasonable costs and attorney's fees;
- (vi) Punitive damages;
- (vii) An assessment of a civil penalty:
 1. Not exceeding \$1,000 for the first violation; and
 2. Not exceeding \$5,000 for each subsequent violation; and
- (viii) Any other relief necessary to make the employee, contractor, or grantee whole.

(3) The remedies provided under this section do not diminish or affect the rights, privileges, or remedies available to the employee, contractor, or grantee under:

- (i) Any other federal or State statute or regulation; or
- (ii) Any collective bargaining agreement or employee contract.

(c) This section does not apply to an employee as defined in § 1-501 of the Health Occupations Article or a State employee.

(d)(1) An employee as defined in § 1-501 of the Health Occupations Article who is subject to retaliatory action in violation of subsection (a) of this section may file a civil action under Title 1, Subtitle 5 of the Health Occupations Article.

(2) A State employee who is subject to retaliatory action in violation of subsection (a) of this section may file a complaint under Title 5, Subtitle 3 of the State Personnel and Pensions Article.

2-608.

An employer shall:

- (1) Conspicuously display notices of the protections provided to and obligations required of its employees under this subtitle; and
- (2) Use any appropriate means to inform its employees of the protections and obligations provided under this subtitle.

2-609.

(a) A civil action filed under this subtitle may not be filed after the later of:

(1) 6 years after the date on which the underlying violation of § 2-602(a) of this subtitle occurred; or

(2) 3 years after the date when facts material to the right of action are known by the relator, the State's Inspector General, or the Director of the State's Medicaid Fraud Control Unit or reasonably should have been known, but in no event more than 10 years after the date on which the underlying violation of § 2-602(a) of this subtitle is committed.

(b) A civil action may be filed under this subtitle for activity that occurred prior to October 1, 2010, if the limitations period under subsection (a) of this section has not lapsed.

(c) If the State elects to intervene and proceed with an action brought under this subtitle, the State, through the office of the Attorney General, may:

(1) File its own complaint; or

(2) Amend the complaint of the person who brought the action to clarify, add detail to the complaint, or add additional claims to the complaint.

(d) To the extent that the claim of the State arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth by a person, a State pleading relates back to the filing date of the complaint of the person who originally brought the action.

(e) In an action filed under this subtitle, all essential elements of the cause of action, including damages, shall be proven by a preponderance of the evidence.

(f) Notwithstanding any other provision of law or rule of procedure or evidence in the Maryland Rules, a final judgment rendered in favor of the State in any criminal proceeding charging fraud or false statements, whether on a verdict after trial or on a plea of guilty or nolo contendere, shall stop the defendant from denying the essential elements of the offense in any action filed under this subtitle that involves the same act, transaction, or occurrence as in the criminal proceeding.

2-610.

(a) Any remedy provided under this subtitle is in addition to any other appropriate legal or equitable relief provided under any other applicable State or federal statute or regulation.

(b)(1) The State shall make all reasonable efforts to coordinate any investigation of an alleged violation under this subtitle with any investigation conducted by the federal government involving the same violation.

(2) The State's objective shall be to avoid unnecessary duplication of effort on the part of the person alleged to have committed the violation and to minimize the burden of the investigation on the person.

(c) The Comptroller shall deposit any civil penalty or damages collected under this subtitle in the General Fund of the State.

(d) The Department or the Inspector General of the Department may adopt regulations to carry out the provisions of this subtitle.

2-611.

(a) Beginning October 1, 2010, the Inspector General of the Department and the Director of the Medicaid Fraud Control Unit in the Office of the Attorney General shall report annually to the General Assembly, in accordance with § 2-1246 of the State Government Article, the following information for the previous fiscal year:

(1) The number of civil actions filed under this subtitle;

(2) The number of civil actions under this subtitle in which a judgment was entered, whether by settlement or adjudication; and

(3) The number of claims made by the State based on alleged violations of § 2-602(a) of this subtitle that are settled without the filing of a civil action under this subtitle.

(b) Unless the action is under seal in accordance with § 2-604 of this subtitle, for each civil action reported under subsection (a)(1) or (2) of this section, the report shall state:

(1) Whether the action was filed by the State or by a person on behalf of the State and, if filed by a person, whether the State intervened and proceeded

with the action;

(2) The name of the defendant and the following information about the defendant:

(i) The number of employees and any other data relevant to the size of the defendant;

(ii) The amount of payments made to the defendant in the year prior to the filing of the action from State health plans and, to the extent known by the Inspector General and the Medicaid Fraud Control Unit, from other sources; and

(iii) Whether the defendant is a minority-owned business enterprise as defined by § 14-301 of the State Finance and Procurement Article.

(3) A description of the violation or alleged violation of § 2-602 of this subtitle; and

(4) The amount sought in the action and, if applicable, the amount for which the defendant is liable under a settlement agreement or court order.

(c) For each claim reported under subsection (a)(3) of this section, the report shall state:

(1) A description of the violation or alleged violation of § 2-602 of this subtitle;

(2) The resolution of the claim;

(3) The amount, if any, the person against whom the claim was made agreed to pay in settlement of the claim; and

(4) The amount, if any, collected by the State.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2010.

Approved April 13, 2010.

Effective date: October 1, 2010.