

New Hampshire Medicaid Fraud and False Claims

As amended by 2011 Laws, Chapter 186.

RSA 167:61-a et seq.

167:61-a. Prohibited Acts.

I. No person shall:

(a) Knowingly make, present or cause to be made or presented, with intent to defraud, any false or fraudulent claim for payment for any good, service, or accommodation for which payment may be made in whole or in part under RSA 161 or RSA 167;

(b) Knowingly make, present, or cause to be made or presented, with intent to defraud, any false or fraudulent statement or representation for use in determining rights to benefits or payments which may be made in whole or in part under RSA 161 or RSA 167;

(c) Knowingly make, present, or cause to be made or presented, with intent to defraud, any false or fraudulent report or filing which is or may be used in computing or determining a rate of payment for goods, services, or accommodations for which payment may be made in whole or in part under RSA 161 or RSA 167; or make, present, or cause to be made or presented any false or fraudulent statement or representation in connection with any such report or filing;

(d) Knowingly make, present, or cause to be made or presented, with intent to defraud, any claim for payment, for any good, service, or accommodation for which payment may be made in whole or in part under RSA 161 or RSA 167, which is not medically necessary in accordance with professionally recognized standards;

(e) Knowingly make or cause to be made, with intent to defraud, any wholly or partially false or fraudulent book, record, document, data, or instrument, which is required to be kept or which is kept as documentation:

(1) For any good, service, or accommodation for which payment is or has been sought in whole or in part under RSA 161 or RSA 167; or

(2) Of any cost or expense claimed for reimbursement for any good, service, or accommodation for which payment is or has been sought in whole or in part under RSA 161 or RSA 167;

(f) Knowingly:

(1) Make or cause to be made, with intent to defraud, any false or fraudulent statement to; or

(2) Offer or present or cause to be offered or presented, with intent to defraud, any wholly or partially false or fraudulent record, document, data, or instrument to any law enforcement officer, including any employee or agent of the attorney general, or to any employee or agent of the department of health and human services, in connection with any audit or investigation involving

any claim for payment or rate of payment for any good, service, or accommodation payable in whole or in part under RSA 161 or RSA 167;

(g) Destroy or conceal or cause to be destroyed or concealed any book, record, document, data, or instrument required to be kept or which is kept as documentation:

(1) For any good, service, or accommodation for which payment is or has been sought in whole or in part under RSA 161 or RSA 167; or

(2) Of any cost or expense claimed for reimbursement for any good, service, or accommodation for which payment is or has been sought in whole or in part under RSA 161 or RSA 167; with the purpose of hindering or impeding any audit or investigation conducted by any law enforcement officer, including any employee or agent of the attorney general, or to any employee or agent of the department of health and human services;

(h) Knowingly make, present, or cause to be made or presented, with intent to defraud, any claim for payment for any good, service, or accommodation for which payment may be made in whole or in part under RSA 161 or RSA 167, which may only be furnished by a person who is licensed by an appropriate licensing authority, and the person who furnished the good, service, or accommodation:

(1) Was not licensed by the appropriate licensing authority; or

(2) Was licensed by the appropriate licensing authority but such license was obtained through a misrepresentation of material fact, including cheating on any examination required for licensing;

(i) Knowingly solicit or receive any remuneration, including any bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for purchasing, leasing, ordering, or arranging for or recommending the purchase, lease, or ordering of any good, service, accommodation or facility for which payment may be made in whole or in part under RSA 161 or RSA 167, or knowingly offer or pay any remuneration, including any bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to induce a person to purchase, lease, order, or arrange for or recommend the purchase, lease, or ordering of any good, service, accommodation or facility for which payment may be made in whole or in part under RSA 161 or RSA 167; or

(j) Knowingly charge, solicit, accept or receive, in addition to any amount otherwise required to be paid under RSA 161 or RSA 167, any gift, money, donation, or other consideration either as a precondition of admitting or expediting the admission of a patient to a hospital, skilled nursing facility, or intermediate care facility, when the cost of the services provided in such facility to the patient is paid for in whole or in part under RSA 161 or RSA 167.

II. (a) Any natural person who violates any provision of this section shall be guilty of a class B felony.

(b) Any other person who violates any provision of this section shall be guilty of a felony.

167:61-b. False Claims Against the Department; Definitions.

I. Any person shall be liable to the state for a civil penalty of not less than \$ 5,000 and not more than \$ 10,000, plus 3 times the amount of damages that the state sustains because of the act of that person, who:

(a) Knowingly presents, or causes to be presented, to an officer or employee of the department, a false or fraudulent claim for payment or approval.

(b) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the department.

(c) Conspires to defraud the department by getting a false or fraudulent claim allowed or paid.

(d) Has possession, custody, or control of property or money used, or to be used, by the department and, intending to defraud the department or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt.

(e) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the department.

(f) Is a beneficiary of an inadvertent submission of a false claim to the department, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the department within a reasonable time after discovery of the false claim.

II. (a) Notwithstanding the damages provisions of paragraph I, the court may assess not less than 2 or more than 3 times the amount of damages that the state sustains because of the act of the person and no civil penalty, if the court finds that a person who has violated paragraph I:

(1) Furnished officials of the state responsible for investigating false claims violations with all information known to the person about the violation within 30 days after the date on which the defendant first obtained the information;

(2) Fully cooperated with any state investigation of such violation; and

(3) At the time the person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this chapter with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

(b) A person violating paragraph I shall also be liable to the state for the costs and attorneys' fees arising from any civil action brought to recover the penalty or damages.

III. Liability under this section shall be joint and several for any act committed by 2 or more persons.

IV. This section shall not apply to any controversy involving damages to the department of less than \$ 5,000 in value. For purposes of this paragraph, "controversy" means the aggregate of any one or more false claims submitted by the same person.

V. In RSA 167:61-b through RSA 167:61-e:

(a) "Claim" means any request or demand, whether under a contract or otherwise, for money or property that is made to an officer, employee, agent, or other representative of the department or to a contractor, grantee, or other person, if the department provides any portion of the money or property that is requested or demanded, or if the department will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

(b) (1) "Knowing" and "knowingly" means that a person, with respect to information:

- (A) Has actual knowledge of the information;
- (B) Acts in deliberate ignorance of the truth or falsity of the information; or
- (C) Acts in reckless disregard of the truth or falsity of the information.

(2) No proof of specific intent to defraud is required for an act to be knowing.

(c) "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 RSA 167:61-c that is based on the information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure.

(d) "Person" means any natural person, corporation, firm, association, organization, partnership, business, or trust.

(e) "Relator" means an individual who brings an action under RSA 167:61-c.

VI. In any action brought under RSA 167:61-c, the state shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

VII. An action for false claims under RSA 167:61-c shall not be brought:

(a) More than 6 years after the date on which the violation of RSA 167:61-b is committed; or

(b) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official within the office of the attorney general charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

167:61-c. Actions by Attorney General and Private Persons.

I. The attorney general shall investigate violations under RSA 167:61-b. If the attorney general finds that a person has violated or is violating RSA 167:61-b, the attorney general may bring a civil action in superior court against the person.

II. (a) An individual, hereafter referred to as "relator," may bring a civil action for a violation of RSA 167:61-b, I on behalf of the relator and for the state. The action shall be brought in the name of the state against a defendant that (1) has its principal place of business within the state or (2) during the 12-month period immediately preceding the date the action is filed, received reimbursement from the Medicaid program of this state, as defined under RSA 167:63, V, equal to 10 percent or more of the defendant's aggregate reimbursement from all state medical assistance programs governed by Title XIX of the Social Security Act. No court shall have jurisdiction over an action brought by a relator under this paragraph, and no award shall be paid under RSA 167:61-e, I or V, unless the action satisfies the requirements of this paragraph.

(b) When a relator brings an action under this section, no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(c) A copy of the complaint and written disclosure of substantially all material evidence and information the relator possesses shall be served on the state in accordance with the New Hampshire rules of civil procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 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 60 days after it receives both the complaint and the material evidence and information.

(d) The state may, for good cause shown, move the court for one or more extensions of the 60-day time period during which the complaint shall remain under seal. Any such motion may be supported by affidavits or other submissions filed under seal.

(e) Before the expiration of the 60-day period or any extension obtained, the state shall:

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

(2) Notify the court that it declines to take over the action, in which case the relator who initiated the proceeding may conduct the action. If the state, having elected not to proceed with the action, so requests, it shall be served with copies of all pleadings filed in the action and shall receive copies of all deposition transcripts. The court, without limiting the status and rights of the relator, may subsequently permit the state to intervene upon a showing of good cause.

III. The defendant shall not be required to respond to any complaint filed under this section until after the complaint is unsealed and served upon the defendant in accordance with the New Hampshire rules of civil procedure.

IV. Notwithstanding any provision of RSA 275-E to the contrary, any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 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 may bring an action in the superior court for the relief provided in this paragraph. For purposes of this paragraph, "employee" has the same meaning as in RSA 275-E:1, I.

167:61-d. Rights of Parties to Actions.

I. If the state proceeds with an action under RSA 167:61-c, the state shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the relator bringing the action. The relator shall have the right to continue as a party to the action, subject to the following limitations:

(a) The state may dismiss the action notwithstanding the objections of the relator initiating the action if the court determines, after a hearing on the motion, that dismissal should be allowed.

(b) The state may settle the action with the defendant notwithstanding the objections of the relator initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

II. Notwithstanding RSA 167:61-c, the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil monetary

penalty. If any such alternate remedy is pursued in another proceeding, the relator initiating the action shall have the same rights in the proceeding as the relator would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section.

III. The parties to the action shall receive court approval of any settlements reached.

167:61-e. Award to Relator.

I. If the state proceeds with an action brought by a relator under RSA 167:61-c, the relator shall, except as otherwise provided in this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the relator 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 relator bringing the action, 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 award sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information furnished by the relator and the role of the relator bringing the action in advancing the case to litigation. Any payment to a relator under this paragraph shall be made from the proceeds. The relator shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

II. Whether or not the state proceeds with the action, if the court finds that the action was brought by a relator who planned and initiated the violation of RSA 167:61-b 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 relator would otherwise receive under paragraph I, taking into account the role of the relator in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the relator bringing the action is convicted of criminal conduct arising from the relator's role in the violation of RSA 167:61-b, the relator shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the state to continue the action represented by the attorney general.

III. No court shall have jurisdiction over an action brought under RSA 167:61-c:

(a) Against any department official or any division, board, bureau, commission or agency within the department;

(b) When the relator is a present or former employee of the state and the action is based upon information discovered by the employee during the course of the employee's employment, unless the employee first, in good faith, exhausted any existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the state failed to act on the information provided within a reasonable period of time;

(c) 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; or

(d) That is based upon the public disclosure of 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, unless the action is brought by the attorney general or the relator bringing the action is an original source of the information.

IV. The state shall not be liable for expenses or fees, including attorneys' fees, that a relator incurs in bringing an action under RSA 167:61-c and shall not elect to pay those expenses or fees.

V. If the state does not proceed with an action brought by a relator under RSA 167:61-c, the relator bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall not be less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of the proceeds. The relator shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

VI. If the state does not proceed with an action brought by a relator under RSA 167:61-c and the relator conducts the action, the court may award to the defendant reasonable attorneys fees and expenses if the defendant prevails in the action and the court finds that the claim was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.