

MAINE STATE LEGISLATURE

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Legislative Document

No. 1187

H.P. 868

House of Representatives, March 7, 2007

An Act To Recoup Health Care Funds through the Maine False Claims Act

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND

Clerk

Presented by Representative TREAT of Farmingdale.

Cosponsored by Representatives: BRAUTIGAM of Falmouth, CANAVAN of Waterville,
CONOVER of Oakland, HINCK of Portland, MILLS of Farmington, PERRY of Calais,
PRIEST of Brunswick.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §15**, as amended by PL 1995, c. 191, §§1 to 4, is further
3 amended by adding at the end a new paragraph to read:

4 Civil liability under this section is independent of liability under section 15-A.

5 **Sec. 2. 22 MRSA §15-A** is enacted to read:

6 **§15-A. Maine False Claims Act**

7 **1. Short title.** This section is known and may be cited as "the Maine False Claims
8 Act."

9 **2. Definitions.** As used in this section, unless the context otherwise indicates, the
10 following terms have the following meanings.

11 A. "Claim" means a request or demand for money, property or services made to an
12 employee, officer or agent of the State or to any contractor, grantee or other recipient,
13 whether under contract or not, if any portion of the money, property or services
14 requested or demanded issued from or was provided by the State, or if the State will
15 reimburse the contractor, grantee or other recipient for any portion of the money,
16 property or services requested or demanded.

17 B. "Employer" means any natural person, corporation, firm, association,
18 organization, partnership, business or trust or an entity affiliated with the State
19 involved in a nongovernmental function, including a postsecondary educational
20 institution or a hospital.

21 C. "False claims action" means a court action brought under this section.

22 D. "Hospital" means a state mental health institute as defined in Title 34-B, section
23 3801, subsection 9 and a hospital licensed under chapter 405.

24 E. "Knowing" and "knowingly" mean that a person, with respect to information:

25 (1) Has actual knowledge of the information;

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

27 (3) Acts in reckless disregard of the truth or falsity of the information.

28 Proof of specific intent to defraud is not required.

29 F. "MaineCare program" means the program of health coverage provided under
30 chapter 855.

31 G. "Original source" means a person who has direct and independent knowledge of
32 the information on which allegations are based and has voluntarily provided the
33 information to the State before filing an action under this section based on the
34 information.

35 H. "Person" means a natural person, corporation, firm, association, organization,
36 partnership, business or trust.

1 I. "Plaintiff" means the relator and, if the Attorney General elects to intervene and
2 prosecute the action, the State or both as determined in the action.

3 J. "Postsecondary educational institution" means the University of Maine System,
4 the Maine Maritime Academy and the Maine Community College System.

5 K. "Proceeds" means the amount awarded to the State against the defendant,
6 including but not limited to damages, civil penalties, payments for costs of
7 compliance and other economic benefit realized by the State as a result of the action.

8 L. "Qui tam action" means an action brought by a relator for the person and for the
9 benefit of the State in the name of the State and, at the election of the Attorney
10 General, in which the State is also a plaintiff.

11 M. "Relator" means a person who brings a qui tam action for a violation of this
12 section for the person and for the benefit of the State in the name of the State.

13 **3. Prohibited acts.** False claims against the State with regard to the MaineCare
14 program are prohibited and are penalized in accordance with this subsection.

15 A. A person who commits any of the acts listed in this paragraph is liable for
16 damages, costs and penalties as provided in this subsection.

17 (1) A person is liable under this subsection if the person:

18 (a) Knowingly presents or causes to be presented to any employee, officer or
19 agent of the State or to any contractor, grantee or other recipient of state
20 funds a false or fraudulent claim for payment or approval;

21 (b) Knowingly makes, uses or causes to be made or used a false record or
22 statement to conceal, avoid or decrease an obligation to pay or transmit
23 money or property to the State;

24 (c) Conspires to defraud the State by getting a false claim allowed or paid, or
25 conspires to defraud the State by knowingly making, using or causing to be
26 made or used a false record or statement to conceal, avoid or decrease an
27 obligation to pay or transmit money or property to the State;

28 (d) Has possession, custody or control of public property or money used or
29 to be used by the State and knowingly delivers or causes to be delivered less
30 property than the amount for which the person receives a certificate or
31 receipt;

32 (e) Is authorized to make or deliver a document certifying receipt of property
33 used or to be used by the State and knowingly makes or delivers a receipt that
34 falsely represents the property used or to be used;

35 (f) Knowingly buys, or receives as a pledge of an obligation or debt, public
36 property from any person who lawfully may not sell or pledge the property;

37 (g) Knowingly makes, uses or causes to be made or used a false record or
38 statement to conceal, avoid or decrease an obligation to pay or transmit
39 money or property to the State; or

1 (h) Is a beneficiary of an inadvertent submission of a false claim to an
2 employee, officer or agent of the State or to any contractor, grantee or other
3 recipient of state funds, subsequently discovers the falsity of the claim and
4 fails to disclose the false claim to the State within a reasonable time after the
5 discovery of the false claim.

6 (2) Liability to the State may be assessed against a person for a violation of this
7 paragraph:

8 (a) For damages in the amount of 3 times the amount of damages that the
9 State sustained because of the act;

10 (b) For the costs of a qui tam action brought to recover any penalties and
11 damages; and

12 (c) For a civil penalty of not less than \$5,000 and not more than \$10,000 for
13 each violation.

14 B. A court shall assess damages and civil liability for a person who commits an act
15 in violation of this subsection of at least 2 times the amount of damages that the State
16 sustains because of the act of the person, except that the court may not assess a civil
17 penalty if the court finds that:

18 (1) The person who committed the violation furnished officials of the State who
19 are responsible for investigating false claims violations with all information
20 known to the person about the violation within 30 days after the date on which
21 the person first obtained the information;

22 (2) The person fully cooperated with any investigation by the State; and

23 (3) At the time the person furnished the State with information about the
24 violation, no criminal prosecution, qui tam action or administrative action had
25 commenced with respect to the violation and the person did not have actual
26 knowledge of the existence of an investigation into the violation.

27 C. A person is liable to the State under this section for the acts of that person's agent
28 when the agent acted with apparent authority, regardless of whether the agent acted,
29 in whole or in part, to benefit the person and regardless of whether the person
30 adopted or ratified the agent's claims, representation, statement or other action or
31 conduct.

32 D. This subsection does not apply to claims, records or statements made to the State
33 under Title 36.

34 **4. False claims action; qui tam action.** A false claims action may be brought
35 against a person who violates subsection 3 in accordance with this subsection and
36 subsections 5 to 7.

37 A. The Attorney General shall diligently investigate a violation of this section. If the
38 Attorney General finds that a person has violated or is violating this section, the
39 Attorney General may bring a false claims action under this subsection against the
40 person or intervene in a qui tam action brought by a person under paragraph B.

41 B. A private person may bring a qui tam action for a violation of subsection 3.

1 (1) Once filed, the qui tam action may be dismissed only with the written
2 consent of the court, after taking into account the best interest of the parties
3 involved and the public purpose of this section.

4 (2) The relator shall serve on the Attorney General a copy of the complaint and
5 written disclosure of substantially all material evidence and information the
6 relator possesses as provided in the Maine Rules of Civil Procedure, Rule 5.

7 (3) The complaint must be filed in camera and must remain under seal for at
8 least 60 days and may not be served upon the defendant until the court so orders.

9 (4) The Attorney General may elect to intervene and proceed with the action on
10 behalf of the State within 60 days after the Attorney General receives both the
11 complaint and the material evidence and information from the relator.

12 (5) The Attorney General may, for good cause shown, move the court for
13 extensions of time during which the complaint remains under seal under
14 subparagraph (3) and the Attorney General may elect to intervene and proceed
15 with the action under subparagraph (4). A motion under this subparagraph must
16 be supported by an affidavit or other submission in camera.

17 (6) Before the expiration of the 60-day period under subparagraph (4) or any
18 extensions ordered under subparagraph (5), the Attorney General shall:

19 (a) Proceed with the action by intervention as plaintiff, in which case the
20 action must be conducted by the Attorney General as the attorney for the
21 plaintiff; or

22 (b) Notify the court that the Attorney General declines to take over the
23 action, in which case the relator has the right to conduct the action as
24 plaintiff.

25 (7) The defendant is not required to respond to any complaint filed under this
26 paragraph until after the complaint is unsealed and served upon the plaintiff as
27 provided in the Maine Rules of Civil Procedure, Rule 5.

28 (8) When a person brings an action as relator under this paragraph, a person
29 other than the Attorney General on behalf of the State may not intervene or bring
30 a related action based on the facts underlying the action while the action is
31 pending.

32 C. The rights of the parties to a qui tam action under this subsection are determined
33 under this paragraph.

34 (1) If the Attorney General elects not to intervene and proceed with the action,
35 the relator has the right to conduct the action as plaintiff.

36 (a) At the request of the Attorney General, and upon payment by the
37 Attorney General of the cost of transcription, copying and mailing, the relator
38 shall serve upon the Attorney General copies of all pleadings filed in the
39 action.

40 (b) The court, upon a showing of good cause and without limiting the status
41 and rights of the relator, may permit the Attorney General to intervene after

1 the expiration of the 60-day time period under paragraph B, subparagraph (4)
2 and any extension ordered under paragraph B, subparagraph (5).

3 (2) If the Attorney General intervenes and proceeds with the qui tam action, the
4 Attorney General has the primary responsibility for prosecuting the action and is
5 not bound by any acts of the relator.

6 (3) If the Attorney General intervenes and proceeds with the qui tam action, the
7 relator has the right to continue as a party to the action, subject to the limitations
8 of this paragraph.

9 (a) The Attorney General may move to dismiss the action for good cause
10 notwithstanding the objections of the relator if the relator has been notified
11 by the Attorney General of the filing of the motion and the court has
12 provided the relator with an opportunity to oppose the motion and present
13 evidence at a hearing.

14 (b) The Attorney General may settle the action with the defendant
15 notwithstanding the objections of the relator if the court determines, after a
16 hearing at which the relator has had an opportunity to present evidence, that
17 the proposed settlement is fair, adequate and reasonable under all of the
18 circumstances.

19 (c) Upon a showing by the Attorney General that unrestricted participation
20 during the course of the litigation by the relator would interfere with or
21 unduly delay the prosecution of the case by the Attorney General or would be
22 repetitious, irrelevant or for purposes of harassment, the court may, in its
23 discretion, impose limitations on the participation of the relator, including but
24 not limited to:

25 (i) Limiting the number of witnesses the relator may call;

26 (ii) Limiting the length of the testimony of the witnesses called by the
27 relator; and

28 (iii) Limiting the relator's cross-examination of witnesses.

29 (d) Upon a showing by the defendant that unrestricted participation during
30 the course of the litigation by the relator would be for purposes of harassment
31 or would cause the defendant undue burden or unnecessary expense, the
32 court may limit the participation of the relator in the litigation.

33 (4) Whether or not the Attorney General intervenes and proceeds with the action,
34 upon a showing by the Attorney General that certain actions of discovery by the
35 relator would interfere with the Attorney General's investigation or prosecution
36 of a criminal or civil matter arising out of the same facts, the court may stay such
37 discovery for a period of not more than 60 days. A showing under this
38 subparagraph must be conducted in camera. The court may extend a 60-day stay
39 granted under this subparagraph upon a further showing in camera that the
40 Attorney General has pursued the criminal or civil investigation or proceedings
41 with reasonable diligence and any proposed discovery in the qui tam action will
42 interfere with the ongoing criminal or civil investigation or proceedings. A
43 motion with regard to discovery in a qui tam action must be filed with the court

1 in accordance with the Maine Rules of Civil Procedure, Rules 26 to 37, as
2 applicable to the action.

3 (5) Notwithstanding the provisions of paragraph B, the Attorney General may
4 elect to pursue its claim through any alternate remedy available to the State,
5 including any administrative proceeding to determine a civil penalty or any
6 action under section 15. If an alternate remedy is pursued in another proceeding,
7 the relator has the same rights in such proceeding as the relator would have had if
8 the action had continued under this subsection. For the purposes of this
9 subparagraph, a finding or conclusion is final if it has been finally determined on
10 appeal to the appropriate court of the State if all time for filing such appeal with
11 respect to the finding or conclusion has expired or if the finding or conclusion is
12 not subject to judicial review.

13 D. If the Attorney General intervenes and proceeds with a qui tam action brought by
14 the relator and a judgment is entered in favor of the plaintiff or a settlement is entered
15 in the action, the court shall enter an order as follows.

16 (1) Except as provided in subparagraph (2), the court may award the relator at
17 least 15% but not more than 25% of the proceeds of the action or settlement of
18 the claim, including damages, civil penalties, payments for costs of compliance
19 and other economic benefit realized by the State as a result of the action,
20 depending on the extent to which the relator and the counsel for the relator
21 contributed to the prosecution of the action. Any payment to the relator under
22 this subparagraph must be made from the proceeds.

23 (2) If the court finds that the action is based primarily on disclosures of specific
24 information, other than information provided by the relator, relating to allegations
25 or transactions specifically in a criminal, civil or administrative hearing or in a
26 legislative or administrative report, hearing, audit or investigation or from the
27 news media, the court may award the relator such sums as it considers
28 appropriate, but in no case more than 10% of the proceeds, taking into account
29 the significance of the information and the role of the relator in advancing the
30 case to litigation. Any payment to the relator under this subparagraph must be
31 made from the proceeds.

32 (3) Whether or not the Attorney General intervenes and proceeds with the action,
33 if the court finds that the action was brought by a relator who planned and
34 initiated the violation of subsection 3 upon which the action was brought, then
35 the court may, to the extent the court considers appropriate, reduce the share of
36 the proceeds of the action that the person would otherwise receive under this
37 paragraph. The court shall take into account the role of the relator in advancing
38 the case to litigation and any relevant circumstances pertaining to the violation.
39 If the relator is convicted of criminal conduct arising from the role of the relator
40 in the violation of subsection 3, the relator must be dismissed from the qui tam
41 action and may not receive any share of the proceeds of the action. Dismissal of
42 the relator under this subparagraph does not prejudice the right of the State to
43 continue the action as plaintiff.

44 (4) If the Attorney General does not intervene and proceed with the action, the
45 relator must receive an amount that the court determines to be reasonable for

1 collecting the civil penalty and damages. The amount must be at least 25% but
2 not more than 30% of the proceeds of the action or settlement and must be paid
3 out of the proceeds, which include damages, civil penalties, payments for costs of
4 compliance and other economic benefit realized by the State as a result of the
5 action. The relator must also receive an amount for reasonable expenses that the
6 court determines to have been necessarily incurred, plus reasonable attorney's
7 fees and costs. All expenses, fees and costs must be awarded against the
8 defendant.

9 (5) The court shall order payment of the reasonable expenses of the relator that
10 the court finds to be necessarily incurred, plus reasonable attorney's fees and
11 costs. All expenses, fees and costs must be awarded against the defendant.

12 (6) No liability may be incurred by the State, the department or the Attorney
13 General for any expenses, attorney's fees or other costs incurred by any person in
14 bringing or defending an action under this section.

15 (7) All money collected from the defendant in an action under this section, with
16 the exception of money payable under this paragraph to another person, must be
17 paid to the State Controller for credit to the False Claims Act Fund under
18 subsection 8.

19 E. The following limitations apply to qui tam actions.

20 (1) No court has jurisdiction over an action brought under this section against a
21 member of the Legislature, a judge of the District Court or a justice of the
22 Superior Court or Supreme Judicial Court, or a senior executive branch official if
23 the action is based on evidence or information known to the State when the action
24 was brought.

25 (2) No court has jurisdiction over an action under this subsection based upon the
26 public disclosure of allegations or transactions in a criminal, civil or
27 administrative hearing, audit or investigation or from the news media, unless the
28 action is brought by the Attorney General or the relator is the original source of
29 the information.

30 (3) No court has jurisdiction over an action brought by a former or present
31 member of the Armed Forces of the United States under this section against
32 another member of the armed forces arising out of that other member's service in
33 the armed forces.

34 (4) A person may not bring an action under this section if the action is based
35 upon allegations or transactions that are the subject of a civil suit or an
36 administrative civil penalty proceeding in which the State is already a party.

37 (5) Upon motion of the Attorney General, the court may, in consideration of all
38 the equities, dismiss a relator as plaintiff if the elements of the actionable false
39 claims alleged in the complaint have been publicly disclosed specifically in the
40 news media or in a publicly disseminated governmental report at the time the
41 complaint is filed.

42 F. The State is not liable for the expenses, attorney's fees or costs incurred by a
43 relator in an action under this section.

1 G. In the furtherance of a qui tam action, the provisions of this paragraph apply as
2 protections for employees. An employee who is discharged, demoted, suspended,
3 threatened, harassed or in any other manner discriminated against in the terms and
4 conditions of employment by the employee's employer because of lawful acts done
5 by the employee on behalf of the employee or others in furtherance of an action under
6 this section, including investigation for, initiation of, testimony for or assistance in an
7 action filed or to be filed under this section, is entitled to all relief necessary to make
8 the employee whole. Relief under this paragraph includes reinstatement with the
9 same seniority status that the employee would have had but for the discriminatory
10 action of the employer, 2 times the amount of back pay, interest on the back pay and
11 compensation for any special damages sustained as a result of the employer's
12 discriminatory action, including litigation costs and reasonable attorney's fees. An
13 employee may bring an action in Superior Court in the county in which the employer
14 is located or the county of residence of the employee.

15 **5. Qui tam action procedures.** The following provisions apply to a qui tam action
16 under subsection 4.

17 A. An action under subsection 4 may not be brought more than 6 years after the date
18 on which the violation was committed, or 3 years after the date when facts material to
19 the right of action are known or reasonably should have been known by the state
20 official charged with the responsibility to act in such circumstances, but in no event
21 more than 10 years after the date on which the violation is committed, whichever
22 occurs last.

23 B. An action under subsection 4 may be brought for activity prior to the effective
24 date of this section if the limitation period in paragraph A has not ended.

25 C. An action under subsection 4 may be brought by the relator in the county in which
26 the relator resides, in the county in which the defendant has its principal place of
27 business or in the Superior Court of Kennebec County.

28 D. In any action brought under subsection 4 the State or the relator is required to
29 prove all essential elements of the cause of action, including damages, by a
30 preponderance of the evidence.

31 E. Notwithstanding any other provision of law, a guilty verdict rendered in a
32 criminal proceeding charging false statements or fraud, whether upon a verdict after
33 trial or upon a plea of guilty or nolo contendere, estops the defendant from denying
34 the essential elements of the offense in any action that involves the same transaction
35 as in the criminal proceeding and that is brought under subsection 4.

36 **6. Civil investigatory demands.** In an investigation of a violation under subsection
37 3, the provisions of Title 5, section 211 apply to civil investigatory demands and to
38 examination of books, records, papers and memoranda of whatever nature and persons
39 having knowledge regarding those materials.

40 **7. Applicable rules of civil procedure.** The Maine Rules of Civil Procedure apply
41 to all aspects of service, subpoena power, discovery and court procedure of an action filed
42 pursuant to subsection 4 unless inconsistent with the provisions of this section.

1 **8. False Claims Act Fund.** There is established within the department the False
2 Claims Act Fund to receive funds collected as a result of actions prosecuted under this
3 section and to provide funding for investigatory, enforcement and litigation expenses
4 within the department related to this section. The False Claims Act Fund is a nonlapsing
5 fund dedicated to the purposes of this section.

6 **9. Remedies under other laws; severability of provisions; liberality of legislative**
7 **construction; adoption of legislative history.** The provisions of this section are not
8 exclusive. The remedies provided for in this section are in addition to any other remedies
9 provided for under section 15, in any other law or available under common law. If any
10 provision of this section or the application thereof to any person or circumstance is held
11 to be unconstitutional, the remainder of the section and the application of the provision to
12 other persons and circumstances is not affected thereby. This section must be liberally
13 construed and applied to promote the public interest. This section also adopts the
14 congressional intent behind the federal False Claims Act, 31 United States Code, Sections
15 3729 to 3733, including the federal False Claims Amendments Act of 1986.

16

SUMMARY

17 This bill enacts the Maine False Claims Act in order to protect the state and federal
18 governments against false and fraudulent claims under the Medicaid program known in
19 the State as the MaineCare program under the Maine Revised Statutes, Title 22, chapter
20 855. This bill provides authorization for actions, referred to as qui tam actions, brought
21 by a person for the person and for the State in the name of the State. This bill designates
22 the person who brings the qui tam action as the relator. This bill provides protection from
23 discrimination for an employee who participates in a qui tam action in furtherance of the
24 action. This bill provides possible recoveries for the relator in addition to recoveries for
25 the State. This bill establishes the False Claims Act Fund to receive the proceeds payable
26 to the State as a result of false claims litigation.