

AN ACT

Bill 19-224
Act 19-549
effective
November 20,
2012

Codification
District of
Columbia
Official Code
2001 Edition

To amend the District of Columbia Procurement Practices Act of 1985 to make the District's false claims act consistent with federal law and thereby qualify the District for additional Medicaid recoveries under a federal financial incentive, to expand the liability of individuals and entities that submit false or fraudulent claims to the District, to facilitate qui tam actions for false and fraudulent claims by increasing the rights of qui tam plaintiffs and the reward to which they are entitled, and to authorize the Attorney General for the District of Columbia to promulgate rules to adjust civil penalties for inflation for the purpose of making the District's false claims law consistent with the federal false claims law.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Medicaid Fraud Enforcement and Recovery Amendment Act of 2012".

Medicaid
Fraud
Enforcement
and Recovery
Amendment
Act of 2012

Sec. 2. Part C of Title VIII of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-381.01 *et seq.*), is amended as follows:

(a) Section 813 (D.C. Official Code § 2-381.01) is amended to read as follows:

"Sec. 813. Definitions.

"For the purposes of this part, and unless otherwise defined, the term:

"(1) "Claim" means:

"(A) Any request or demand, whether under a contract or otherwise, for money or property, and whether or not the District has title to the money or property, that:

"(i) Is presented to an officer, employee, or agent of the District;

or

"(ii) Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the District's behalf or to advance a District program or interest, and if the District:

"(I) Provides or has provided any portion of the money or property requested or demanded; or

"(II) Will reimburse the contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(B) The term "claim" does not include requests or demands for money or property that the District has paid to an individual as compensation for District employment or as an income subsidy with no restrictions on that individual's use of the money or property.

"(2) "Custodian" means the custodian, or any deputy custodian, designated by the Attorney General for the District of Columbia pursuant to section 819(j)(1) of this Act.

Amend
§ 2-381.01

“(3) “Documentary material” includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

“(4) “False claims law” means this part.

“(5) “False claims law investigation” means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law.

“(6) “False claims law investigator” means any attorney or investigator employed by the Office of the Attorney General for the District of Columbia who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the District government acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation.

“(7) “Knowing” or “knowingly” means:

“(A) That a person, with respect to information, does any of the following:

“(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.

“(B) The terms “knowing” and “knowingly” do not require proof of specific intent to defraud.

“(8) “Material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

“(9) “Obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

“(10) “Original source” means an individual who:

“(A) Has voluntarily disclosed to the District, before a public disclosure under section 815(c-1)(1), the information on which allegations or transactions in a claim are based; or

“(B) Has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the District before filing an action under this section.

“(11) “Person” includes any natural person, corporation, firm, association, organization, partnership, business, or trust.

“(12) “Proceeds” means civil penalties as well as double or treble damages as provided in sections 814, and criminal fines as provided in section 821.

(b) Section 814 (D.C. Official Code § 2-381.02) is amended as follows:

Amend
§ 2-381.02

(1) Subsection (a) is amended to read as follows:

“(a) Any person who commits any of the following acts shall be liable to the District for 3 times the amount of damages which the District sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the District for the costs of a civil action brought to recover penalties or damages, and shall be liable to the District for a civil penalty of not less than \$5,500, and not more than \$11,000, for each false or fraudulent claim for which the person:

“(1) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

“(2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

“(3) Has possession, custody, or control of property or money used, or to be used, by the District and knowingly delivers, or causes to be delivered, less than all of that money or property;

“(4) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the District and, intending to defraud the District, makes or delivers the receipt without completely knowing that the information on the receipt is true;

“(5) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the District who lawfully may not sell or pledge property;

“(6) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the District, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the District;

“(7) Conspires to commit a violation of paragraph (1), (2), (3), (4), (5), or (6) of this subsection;

“(8) Is a beneficiary of an inadvertent submission of a false or fraudulent claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false or fraudulent claim to the District; or

“(9) Is the beneficiary of an inadvertent payment or overpayment by the District of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the District.”.

(2) Subsection (d) is amended to read as follows:

“(d) This section shall not apply to claims, records, or statements made pursuant to those portions of Title 47 of the District of Columbia Official Code that refer or relate to taxation.”.

(c) Section 815 (D.C. Official Code § 2-381.03) is amended as follows:

Amend
§ 2-381.03

(1) Strike the phrase “Corporation Counsel” wherever it appears and insert the phrase “Attorney General for the District of Columbia” in its place.

(2) Subsection (b) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

“(1) A person may bring a civil action for a violation of section 814 for the person and for the District. The action shall be brought in the name of the District. The person bringing the action shall be referred to as the qui tam plaintiff. The action may be dismissed only if the court and the Attorney General for the District of Columbia give written consent to the dismissal and their reasons for consenting.”.

(B) Paragraph (6) is amended to read as follows:

“(6) When a qui tam plaintiff brings an action pursuant to this subsection, no person other than the District may intervene or bring a related action based on the facts underlying the pending action.”.

(C) A new paragraph (7) is added to read as follows:

“(7) The District is not liable for expenses which a qui tam plaintiff incurs in bringing an action under this section.”.

(3) Subsection (c) is amended to read as follows:

“(c)(1) No person may bring an action pursuant to subsection (b) of this section against a member of the Council of the District of Columbia, a member of the District judiciary, or an elected official in the executive branch of the District, if the action is based on evidence or information known to the District when the action was brought.

“(2) No person may bring an action under subsection (b) of this section which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the District is already a party.”.

(4) A new subsection (c-1) is added to read as follows:

“(c-1)(1) Except as provided in paragraph (2) of this subsection, a court shall dismiss an action or claim under this section if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

“(A) In a criminal, civil, or administrative hearing in which the District or its agent is a party;

“(B) In a report, hearing, audit, or investigation by the Council of the District of Columbia, the Auditor of the District of Columbia, the Inspector General of the District of Columbia, or other District agency; or

“(C) By the news media.

“(2) A court shall not dismiss an action or claim as provided in paragraph (1) of this subsection if:

“(A) The action is brought by the Attorney General for the District of Columbia;

“(B) The District is opposed to the dismissal; or

“(C) The action is brought by a qui tam plaintiff and the qui tam plaintiff is an original source of the information.”.

(5) Subsection (d) is amended to read as follows:

“(d)(1) If the District proceeds with the action, it shall have the primary responsibility for 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 set

forth in paragraph (2) of this subsection.

“(2)(A) The District may dismiss the action notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the District of the filing of the motion to dismiss and the court has provided the qui tam plaintiff with an opportunity for a hearing on the motion.

“(B) The District may settle the action with the defendant, notwithstanding the objections of the qui tam plaintiff, if the court determines, after a hearing providing the qui tam plaintiff an opportunity to be heard, 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.

“(C) Upon a showing by the District that unrestricted participation during the course of the litigation by the qui tam plaintiff would interfere with or unduly delay the District’s prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the qui tam plaintiff’s participation, such as:

“(i) Limiting the number of witnesses the qui tam plaintiff may call;

“(ii) Limiting the length of the testimony of such witnesses;

“(iii) Limiting the qui tam plaintiff’s cross-examination of witnesses; or

“(iv) Otherwise limiting the participation by the qui tam plaintiff in the litigation.

“(D) Upon a showing by the defendant that unrestricted participation during the course of the 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, in its discretion, limit the participation by the qui tam plaintiff.”.

(6) Subsection (e)(2) is amended to read as follows:

“(2) When the qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may nevertheless permit the District to intervene at a later date upon a showing of good cause. ”.

(7) Subsection (f) is amended as follows:

(A) Paragraphs (1) and (2) are amended to read as follows:

“(1)(A) If the District proceeds with an action brought by a qui tam plaintiff pursuant to subsection (b) of this section, the qui tam plaintiff, subject to subparagraph (B) of this paragraph, shall receive at least 15%, but not more than 25%, of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action.

“(B) Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the qui tam plaintiff, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a report, hearing, audit, or investigation conducted by a District agency, or from the news media, the court

may award such sums as it considers appropriate, but in no case more than 10% of the proceeds, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation.

“(C) Any payment to a qui tam plaintiff under this paragraph shall be made from the proceeds of the judgment or the settlement of the claim. Any qui tam plaintiff receiving a payment under this paragraph shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney’s fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

“(2)(A) If the District does not proceed with an action brought by a qui tam plaintiff pursuant to subsection (b) of this section, the qui tam plaintiff shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages; provided, that the amount shall be not less than 25%, and not more than 30%, of the proceeds of the action or settlement of the claim.

“(B) Any payment to a qui tam plaintiff under this paragraph shall be made from the proceeds of the judgment or the settlement of the claim. Any qui tam plaintiff receiving a payment under this paragraph shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney’s fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.”.

(B) Paragraph (4) is amended to read as follows:

“(4)(A) Whether or not the District proceeds with the action, if the court finds that the action was brought by a qui tam plaintiff who planned and initiated the violation of section 814 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 which the qui tam plaintiff would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of the qui tam plaintiff in advancing the case to litigation and any relevant circumstances pertaining to the violation.

“(B) If the qui tam plaintiff is convicted of criminal conduct arising from his or her role in the violation of section 814, the qui tam plaintiff 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 District to continue the action, represented by the Attorney General for the District of Columbia.”.

(C) A new paragraph (6) is added to read as follows:

“(6)(A) Notwithstanding subsection (b) of this section, the District may elect to pursue a violation of section 814 through any alternate remedy available to the District, including an administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the qui tam plaintiff shall have the same rights in such proceeding as such person would have had if the qui tam 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.

“(B) For the purposes of this paragraph, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all time for filing such an

appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.”.

(8) Subsection (g) is amended to read as follows:

“(g)(1) Whether or not the District proceeds with the action, upon a showing by the District that certain actions of discovery by the qui tam plaintiff would interfere with the investigation or prosecution of a criminal or civil matter by the District or a criminal matter in the District of Columbia arising out of the same facts, the court may stay such discovery for a period of not more than 60 days.

“(2) Upon a further showing that the District or the United States Attorney’s Office for the District of Columbia has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the qui tam action will interfere with the ongoing criminal or civil investigation or proceedings, the court may extend the stay of discovery provided for in paragraph (1) of this subsection.

“(3) Any showing provided for under this subsection shall be conducted in camera.”.

(d) Section 816 (D.C. Official Code § 2-381.04) is amended to read as follows:

**Amend
§ 2-381.04**

“Sec. 816. Relief from retaliatory actions.

“(a) Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under this part or other efforts to stop one or more violations of this part.

“(b) The relief authorized under subsection (a) of this section shall include:

“(1) Reinstatement with the same seniority status that the employee, contractor, or agent would have had but for the discrimination;

“(2) Two times the amount of back pay;

“(3) Interest on the back pay; and

“(4) Compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.

“(c) An action seeking relief under this section may be brought in the Superior Court of the District of Columbia; provided, that a civil action seeking relief under this section may not be brought more than 3 years after the date when the retaliation occurred.”.

(e) Section 817 (D.C. Official Code § 2-381.05) is amended as follows:

**Amend
§ 2-381.05**

(1) Subsection (a) is amended to read as follows:

“(a) A civil action brought pursuant to section 815 may not be brought:

“(1) More than 6 years after the date on which the violation of section 814 is committed; or

“(2) 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 of the District charged with the responsibility to act in those circumstances, but in no event more than 10 years after the date on

which the violation of section 814 is committed, whichever occurs last.”.

(2) A new subsection (e) is added to read as follows:

“(e)(1) If the District elects to intervene and proceed with an action brought under section 815, the District may file its own complaint or amend the complaint of a qui tam plaintiff who has brought an action under section 815(b) to clarify or add detail to the claims in which the District is intervening and to add any additional claims with respect to which the District contends it is entitled to relief.

“(2) Any District pleading as provided for in this subsection shall relate back to the filing date of the complaint of the qui tam plaintiff who originally brought the action, and thereby comply with the statute of limitations as provided for in this part, to the extent that the claim of the District arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of the qui tam plaintiff.”.

(f) Section 819 (D.C. Official Code § 2-381.07) is amended as follows:

Amend
§ 2-381.07

(1) Strike the phrase “Corporation Counsel” wherever it appears and inserting the phrase “Attorney General for the District of Columbia” in its place.

(2) Subsection (j)(2)(C) is amended to read as follows:

“(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or officer or employee of the Office of the Attorney General for the District of Columbia authorized pursuant to subparagraph (B) of this paragraph; provided that nothing in this subparagraph is intended to prevent:

“(i) The availability of material, answers, or transcripts if consent is given by the person who produced such material, answers, or transcripts;

“(ii) Disclosure to the Council, including any committee of the Council;

“(iii) Disclosure to the United States Attorney’s Office;

“(iv) Disclosure to any other federal or state agency for use by such agency in furtherance of its statutory responsibilities; provided, that disclosure of information to any agency other than the Council or the United States Attorney’s Office shall be allowed only upon application, made by the Attorney General for the District of Columbia to the Superior Court of the District of Columbia, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities and after giving the individuals who provided the information an opportunity to be heard on the release of the information; or

“(v) Disclosure to any federal or state agency in connection with a joint case or investigation with the Office of the Attorney General for the District of Columbia provided that before disclosure, an official of the receiving agency agrees in writing to abide by the disclosure restrictions of this paragraph.”.

(3) Subsection (m) is amended to read as follows:

“(m) For the purposes of this section, the term “person” means any natural person,

partnership, corporation, association, or other legal entity, including any state or political subdivision of a state.”.

(g) Section 821 (D.C. Official Code § 2-381.09) is amended by striking the phrase “Corporation Counsel” and inserting the phrase “Attorney General for the District of Columbia” in its place.

Amend
§ 2-381.09

(h) A new section 822 is added to read as follows:

New
§ 2-381.10

“Sec. 822. Civil penalty inflation adjustment.

“The Attorney General for the District of Columbia is granted the authority to, at least once every 4 years, promulgate rules to adjust the amounts of the civil penalties listed in section 814 by the same amount that the Attorney General of the United States shall, from time to time, adjust the civil monetary penalties found in 31 U.S.C. § 3729 pursuant to the procedures described in the Federal Civil Penalties Inflation Adjustment Act of 1990, approved October 5, 1990 (104 Stat. 890; 28 U.S.C. § 2461, note). Any increase to a civil penalty as provided in this section shall only apply to violations which occur after the date the increase takes effect.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.