Colorado

C.R.S. § 25.5-4-300.4

§ 25.5-4-300.4. Last resort for payment--legislative intent

It is the intent of the general assembly that medicaid be the last resort for payment for medically necessary goods and services furnished to recipients and that all other sources of payment are primary to medical assistance provided by medicaid.

C.R.S. § 25.5-4-300.7

§ 25.5-4-300.7. Prevention of coding errors--prepayment review of claims

(1) The state department shall implement and maintain a system for reducing medical services coding errors in medicaid claims submitted to the state department for reimbursement. The system shall include automatic, prepayment review of medicaid claims through the use of nationally recognized correct coding methods in the medicaid management information system, in accordance with 42 U.S.C. sec. 1396b(r) and regulations thereunder, as amended by Pub.L. 111-148, and any other subsequent acts of congress. The state department shall acquire and maintain any information technology necessary to implement the automated, prepayment review of medicaid claims.

(2) Repealed by Laws 2016, Ch. 22, § 2, eff. Aug. 10, 2016.

C.R.S. § 25.5-4-300.9

§ 25.5-4-300.9. Explanation of benefits--medicaid recipients--legislative declaration

(1)(a) The general assembly finds and declares that:

(I) Colorado's medicaid program provides critical medical services to the state's poorest and most vulnerable residents;

(II) Funding for these services is provided through a financial partnership between Colorado and the federal government;

(III) For the 2015-16 state budget year, the general assembly appropriated $8,891,000,000 for Colorado's medicaid program, of which $2,508,000,000 is from the general fund and $677,000,000 is from the hospital provider fee, with the remainder from federal money;

(IV) It is in the best interest of Colorado to do everything possible to minimize error, inefficiency, and fraud in providing medicaid services to ensure the long-term viability of this safety net program;

(V) In the private sector, as well as the medicare program, insurers routinely provide an explanation of benefits to their clients, listing claims submitted by providers for services rendered to the client even when the insurer is not seeking a co-payment for the service and the provider is not claiming an amount due from the client;

(VI) While creating an explanation of benefits is not without cost to the health care system, only the client receiving medical services or his or her authorized representative is in the position to verify whether the claimed medical services were actually provided and for whom they were provided, which is a necessary first step in containing health care costs;

(VII) While medicaid clients may not appear to be affected financially by billing errors or fraudulent claims, medicaid clients who rely on these services for survival and independence are most severely affected by the inappropriate use of scarce resources; and

(VIII) Further, medicaid clients and medicaid advocates for low-income and vulnerable Coloradans want the opportunity to partner with the state department and providers to ensure a well-run and fraud-free medicaid program in Colorado.

(b) Therefore, the general assembly declares that creating an explanation of benefits for recipients of medicaid-funded services is a necessary step in managing the state's medicaid program and in safeguarding the significant public investment, both state and federal, in meeting the health care needs of low-income and vulnerable Coloradans.

(2) By or before July 1, 2017, the state department shall develop and implement an explanation of benefits for recipients of medical services pursuant to articles 4 to 6 of this title. The purpose of the explanation of benefits is to inform a medicaid client of a claim for reimbursement made for services provided to the client or on his or her behalf, so that the client may discover and report administrative or provider errors or fraudulent claims for reimbursement.

(3) The explanation of benefits is required for all acute and long-term care services for which a provider is seeking reimbursement under a fee-for-service model.

(4) The explanation of benefits must include, at a minimum:

(a) The name of the medicaid client receiving the service;

(b) The name of the service provider;

(c) A description of the service provided;

(d) The billing code for the service;

(e) The date of service, or range of dates for services, if multiple services are provided in a set period of time, such as personal care services;

(f) A clear statement to the medicaid client that the explanation of benefits is not a bill, but is only provided for the client's information and to make sure that a provider is being reimbursed only for services actually provided;

(g) Information regarding at least one verbal and one written method for the medicaid client to report errors in the explanation of benefits that are relevant to provider reimbursement; and

(h) Any other information that the state department determines is useful to the medicaid client or for purposes of discovering administrative or provider error or fraud.

(5) The state department shall develop the form and content of the explanation of benefits in conjunction with medicaid clients and medicaid advocates to ensure that medicaid clients understand the information provided and the purpose of the explanation of benefits. The state department shall also work with medicaid clients and medicaid advocates to develop educational materials for the state department's website and for distribution by advocacy and nonprofit organizations that explain the process for reporting errors and encourage clients to take responsibility for reporting errors.

(6) The state department shall provide the explanation of benefits to a medicaid client not less frequently than once every two months, if services have been provided to or on behalf of the client during that time period. The state department shall determine the most cost-effective means for producing and distributing the explanation of benefits to medicaid clients, which may include e-mail or web-based distribution, with mailed copies by request only. Further, the state department may include the explanation of benefits with an existing mailing or existing electronic or web-based communication to medicaid clients.

(7) Nothing in this section requires the state department to produce an explanation of benefits form if the information required to be included in the explanation of benefits pursuant to subsection (4) of this section is already included in another format that is understandable to the medicaid client.

C.R.S. § 25.5-4-301

§ 25.5-4-301. Recoveries--overpayments--penalties--interest--adjustments--liens--review or audit procedures

(1)(a)(I) Except as provided in section 25.5-4-302 and subparagraph (III) of this paragraph (a), no recipient or estate of the recipient shall be liable for the cost or the cost remaining after payment by medicaid, medicare, or a private insurer of medical benefits authorized by Title XIX of the social security act,[1] by this title, or by rules promulgated by the state board, which benefits are rendered to the recipient by a provider of medical services authorized to render such service in the state of Colorado, except those contributions required pursuant to section 25.5-4-209(1). However, a recipient may enter into a documented agreement with a provider under which the recipient agrees to pay for items or services that are nonreimbursable under the medical assistance program. Under these circumstances, a recipient is liable for the cost of such services and items.

(II) The provisions of subparagraph (I) of this paragraph (a) shall apply regardless of whether medicaid has actually reimbursed the provider and regardless of whether the provider is enrolled in the Colorado medical assistance program.

(II.5)(A) A provider of medical services who bills or seeks collection through a third party from a recipient or the estate of a recipient for medical services authorized by Title XIX of the social security act in an amount in violation of subsection (1)(a)(I) of this section is liable for and subject to the following: A refund to the recipient of any amount unlawfully received from the recipient, plus statutory interest from the date of the receipt until the date of repayment; a civil monetary penalty of one hundred dollars for each violation of subsection (1)(a)(I) of this section; and all amounts submitted to a collection agency in the name of the medicaid recipient. When determining income or resources for purposes of determining eligibility or benefit amounts for any state-funded program under this title 25.5, the state department shall exclude from consideration any money received by a recipient pursuant to this subsection (1)(a)(II.5). The imposition of a civil monetary penalty by the state department may be appealed administratively.

(A.5) A provider of medical services who, within thirty days of notification by the state department, or longer if approved by the state department, voids the bill, returns any amount unlawfully received, and makes every reasonable effort to resolve any collection actions so that the recipient or the estate of the recipient has no adverse financial consequences is not subject to the provisions of subsection (1)(a)(II.5)(A) of this section.

(B) In order to establish a claim for the civil monetary penalty established by subsection (1)(a)(II.5)(A) of this section, a recipient or the estate of a recipient, or a person acting on behalf of a recipient or the estate of a recipient, shall notify the state department.

(C) The provisions of this subparagraph (II.5) shall not apply to a long-term care facility licensed pursuant to section 25-3-101, C.R.S.

(D) The provisions of subsection (1)(a)(II.5)(A) of this section shall not apply if a recipient knowingly misrepresents his or her medicaid coverage status to a provider of medical services and the provider submits documentation to the state department that the recipient knowingly misrepresented his or her medicaid coverage status and the documentation clearly establishes a good cause basis for granting an exception to the provider.

(III)(A) When a third party is primarily liable for the payment of the costs of a recipient's medical benefits, prior to receiving nonemergency medical care, the recipient shall comply with the protocols of the third party, including using providers within the third party's network or receiving a referral from the recipient's primary care physician. Any recipient failing to follow the third party's protocols is liable for the payment or cost of any care or services that the third party would have been liable to pay; except that, if the third party or the service provider substantively fails to communicate the protocols to the recipient, the items or services are nonreimbursable under this article and articles 5 and 6 of this title and the recipient is not liable to the provider.

(B) A recipient may enter into a written agreement with a third party or provider under which the recipient agrees to pay for items provided or services rendered that are outside of the network or plan protocols. The recipient's agreement to be personally liable for such nonemergency, nonreimbursable items shall be recorded on forms approved by the state board and signed and dated by both the recipient and the provider in advance of the services being rendered.

(b) Recipient income applied pursuant to section 25.5-4-209(1) shall not disqualify any recipient, as defined in section 26-2-103(8), C.R.S., from receiving benefits under this article, article 5 or 6 of this title, or public assistance under article 2 of title 26, C.R.S. If, at any time during the continuance of medical benefits, the recipient becomes possessed of property having a value in excess of that amount set by law or by the rules of the state department or receives any increase in income, it is the duty of the recipient to notify the county department thereof, and the county department may, after investigation, either revoke such medical benefits or alter the amount thereof, as the circumstances may require.

(c) Any medical assistance paid to which a recipient was not lawfully entitled shall be recoverable from the recipient or the estate of the recipient by the county as a debt due the state pursuant to section 25.5-1-115, but no lien may be imposed against the property of a recipient on account of medical assistance paid or to be paid on the recipient's behalf under this article or article 5 or 6 of this title, except pursuant to the judgment of a court of competent jurisdiction or as provided by section 25.5-4-302.

(d) If any such medical assistance was obtained fraudulently, interest shall be charged and paid to the county department on the amount of such medical assistance calculated at the legal rate and calculated from the date that payment for medical services rendered on behalf of the recipient is made to the date such amount is recovered.

(2) Any overpayment to a provider, including those of personal needs funds made pursuant to section 25.5-6-206, are recoverable regardless of whether the overpayment is the result of an error by the state department, a county department of human or social services, an entity acting on behalf of either department, or by the provider or any agent of the provider as follows:

(a)(I) If the state department makes a determination that such overpayment has been made as a result of the provider's false representation, the state department may collect the overpayment, plus a civil monetary penalty equal to one-half the amount of the overpayment, and interest on the sum of the two amounts accruing at the statutory rate from the date the overpayment is identified, by the means specified in this subsection (2). Such sum may be collected for up to the amount of time prescribed in section 13-80-103.5, C.R.S., after the overpayment is identified. Amounts remaining uncollected for more than the time period prescribed in section 13-80-103.5, C.R.S., after the last repayment was made may be considered uncollectible. For the purposes of this subparagraph (I), "false representation" means an inaccurate statement that is relevant to a claim for reimbursement and is made by a provider who has actual knowledge of the truth of false nature of the statement or by a provider acting in deliberate ignorance of or with reckless disregard for the truth of the statement. A provider acts with reckless disregard for truth if the provider fails to maintain records required by the department or if the provider fails to become familiar with rules, manuals, and bulletins issued by the department, board, or the department's fiscal agent.

(II) If the state department makes a determination that such overpayment has been made for some other reason than a false representation by the provider specified in subparagraph (I) of this paragraph (a), the state department may collect the amount of overpayment, plus interest accruing at the statutory rate from the date the provider is notified of such overpayment, by the means specified in this subsection (2). Pursuant to the criteria established in rules promulgated by the state board, the state department may waive the recovery or adjustment of all or part of the overpayment and accrued interest specified in this subparagraph (II) if it would be inequitable, uncollectible or administratively impracticable; except that no action shall be taken against a recipient of medical services initially determined to be eligible pursuant to section 25.5-4-205 if the overpayment occurred through no fault of the recipient. Amounts remaining uncollected for more than five years after the last repayment was made may be considered uncollectible.

(b) In order to collect the amounts specified in paragraph (a) of this subsection (2), the state department may withhold subsequent payments to which the provider is or becomes entitled and apply the amount withheld as an offset. The state

board shall establish in rules the rate at which an overpayment may be offset, with provision for a reduction of such rate upon a good cause shown by the provider that the rate at which payment will be withheld will result in an undue hardship for the provider. In determining whether to grant a good cause reduction, the state department shall consider the impact of collecting the amount provided by state board rules on the quality of patient care and the financial viability of the provider. The state department may also take such other steps administratively as are available for the collection of the amounts specified in paragraph (a) of this subsection (2).

(c) If a provider defaults on repayment of the amounts specified in paragraph (a) of this subsection (2), the state department may bring a suit against the provider in the appropriate court. Court costs shall not be assessed against the state department but shall be assessed against the provider if the court finds in favor of the state department. Any costs collected by the state department shall be paid into the registry of the court. Once the amount has been reduced to judgment, the state department may proceed with all available postjudgment remedies.

(d) Repealed by Laws 2021, (S.B. 21-055), § 14, eff. March 21, 2021.

(e) Any provider adversely affected by actions taken pursuant to this subsection (2), except when a suit is filed against the provider pursuant to paragraph (c) of this subsection (2), may appeal the determination of the state department pursuant to the provisions in section 24-4-105, C.R.S.

(f) If the state department, either directly or through a contracting agent, undertakes a review or an audit of a provider to determine whether an overpayment has been made to that provider, the review or audit shall be subject to the procedures required in subsection (3) of this section.

(3)(a) A review or audit of a provider is subject to the following procedures:

(I) The reviewer or auditor shall conduct a review or audit in accordance with applicable state and federal law.

(II) The reviewer or auditor shall apply uniform standards and procedures to each class of providers subject to a review or an audit to determine an overpayment.

(III) The reviewer or auditor shall prepare findings for the entire period under review or audit, and a provider shall be subject to only one demand for repayment in connection with the review or audit.

(IV) The reviewer or auditor shall initiate each review or audit requiring an inspection of the provider's records by delivering to the provider not less than ten business days prior to the commencement of the audit a written request describing in detail such records and offering the provider the option of providing either a reproduction of such records or inspection by the reviewer or auditor at the provider's site. The request must also clearly define milestone dates pertaining to records' requested due dates, permissible extensions of dates, the timelines for informal reconsideration, and deadlines for requesting a formal appeal. The records subject to the request must be limited to records directly related to claims for reimbursement submitted by the provider. In the event such records are available from a county department of human or social services or another agency, subdivision, or contractor of the state, the reviewer or auditor shall request such records from such other agencies as may be appropriate prior to making a request to the provider. The reviewer or auditor shall conduct on-site inspections at reasonable times during regular business hours, and the reviewer or auditor shall make arrangements necessary for the reproduction of such records on site. If the provider chooses to provide a reproduction of the records requested by the reviewer or auditor instead of on-site inspection, the reviewer or auditor shall give the provider a reasonable period of time, not less than forty-five days, to provide such records, taking into account the scope of the request, the time frame covered, and the reproduction arrangements available to the provider.

(IV.5) At the request of the provider, the reviewer or auditor shall conduct an in-person or telephonic interview with the

provider prior to the preparation of a preliminary draft of the report of the reviewer or auditor at which the reviewer or auditor and the provider shall discuss:

(A) The findings of the reviewer or auditor;

(B) Any documentation useful for the provider to refute the findings of the reviewer or auditor; and

(C) The next steps in the review or audit process.

(V) A physician's record or other order for health care services, drugs, or medicinal supplies in a form transmitted electronically shall be sufficient to validate the provider's records regarding the ordering of the health care services, drugs, or medicinal supplies.

(VI) Whenever possible, the reviewer or auditor shall base a determination of an overpayment to a provider upon a review of actual records of the department, its agents, or the provider. In the event sufficient records are not available to the reviewer or auditor, an overpayment determination may be based upon a sampling of records so long as the sampling and any extrapolation therefrom is reasonably valid from a statistical standpoint and is in accordance with generally accepted auditing standards.

(VII) If a reviewer or auditor determines that there has been an overpayment to the provider, then, at the time demand for repayment is made, the state department shall offer the provider an informal reconsideration of the review or audit findings. The state department shall notify the provider in writing of the right to an informal reconsideration prior to implementing any recovery of an overpayment and give the provider an opportunity to request an informal reconsideration. In the event informal reconsideration is requested or a formal appeal is filed pursuant to subparagraph (VIII) of this paragraph (a), the state department shall not implement recovery of the overpayment until such informal reconsideration or formal appeal has been completed. Within forty-five days after the request for an informal reconsideration, the state department shall render a decision on the request and notify the provider of the decision. The notification shall include information concerning requesting a formal appeal, including informing the provider that the request must be filed within thirty days after the date of the state department's decision on the request for an informal reconsideration. If the state department is unable to render a decision on the request for informal reconsideration within forty-five days after the request, within forty-five days after the request, the state department shall notify the provider of its inability to complete the decision and shall include information concerning requesting a formal appeal, including informing the provider that the request must be filed within thirty days after the receipt of the notification that the state department is unable to render a decision. For purposes of this subparagraph (VII), an informal reconsideration shall be considered final thirty days after the earlier of the date on which the provider withdraws its request or the date on which the state department issues a written decision on the request.

(VIII) In accordance with paragraph (e) of subsection (2) of this section, any provider adversely affected by the actions of the state department or its contracting agent in connection with a review or an audit, including whether the state department or its contracting agent adhered to the provisions of this subsection (3) in making an overpayment determination, may appeal such actions pursuant to the provisions of section 24-4-105, C.R.S.

(a.5) Any additional review or audit procedures shall be adopted by rule of the state board and shall be specifically referenced in any contract with a provider.

(b) The state department is authorized to engage the services of a qualified agent through a competitive contract issued pursuant to the state's procurement code for the purpose of conducting a review or audit of a provider to assist in determining whether there has been an overpayment to a provider and the amount of that overpayment. In addition to such terms and conditions as the state department may deem necessary, any contract shall be subject to the requirements for conducting a review or an audit in accordance with paragraph (a) of this subsection (3). The state department is further authorized to enter into a contract with a qualified agent for the purpose of conducting a review or an audit of a provider that provides that the

compensation of the contracting agent shall be contingent and based upon a percentage of the amount of the recovery collected from the provider. A contract issued by the state department for the purpose of conducting a review or an audit of a provider to determine whether the provider has received an overpayment shall also be subject to the following conditions:

(I) The compensation paid to the contracting agent under a contingency- based contract shall not exceed eighteen percent of the amount finally collected from the provider overpayment, and the state department may establish a limit on the amount of annual compensation that may be paid to a contracting agent under a contingency-based contract and may further establish a limit on the amount that may be paid to a contracting agent under a contingency-based contract for recovery from any one provider.

(II) Reimbursement of the contracting agent's costs in performing the review or audit under a contingency-based contract shall be deemed included in the percentage compensation due the agent under the contract.

(III) No employee or agent of the contracting agent involved in the performance of a contingency-based contract shall be compensated by the contracting agent based upon the amount recovered under the contract.

(IV) The state department shall retain all authority for providing notice and otherwise making demand upon a provider for recovery of an overpayment, and the state department shall review and approve any written demand, request, or determination by the contracting agent regarding a review or an audit of a provider under this subsection (3).

(V) In any contingency-based contract authorized pursuant to this paragraph (b), the state of Colorado shall not be obligated to pay the contracting agent for amounts not actually collected from the provider.

(3.5)(a) Prior to the start of a contract to review or audit providers, the state department is encouraged to meet with organizations or associations of providers to educate providers on the review or audit process and the responsibilities of both the providers and the state department throughout the review or audit process. The state department is also encouraged to prepare an annual report on common findings following a contract to review or audit providers and distribute the report to organizations or associations of providers. The annual report should include information to prevent similar findings in future reviews or audits and should direct providers to resource information.

(b) Repealed by Laws 2007, Ch. 339, § 2, eff. July 1, 2011.

(4) If medical assistance is furnished to or on behalf of a recipient pursuant to the provisions of this article and articles 5 and 6 of this title for which a third party is liable, the state department has an enforceable right against such third party for the amount of such medical assistance, including the lien right specified in subsection (5) of this section. Whenever the recipient has brought or may bring an action in court to determine the liability of the third party, the state department, without any other name, title, or authority to enforce the state department's right, may enter into appropriate agreements and assignments of rights with the recipient and the recipient's attorney, if any. Any such agreement shall be filed with the court in which such an action is pending. The attorney named in such an agreement upon designation as a special assistant attorney general by the attorney general shall have the right to prove both the recipient's claim and the state department's claim. The state department, without any other name, title, or authority, may take any necessary action to determine the existence and amount of the state department's claims under this section, whether such claims are founded on judgment, contract, lien, or otherwise, and take any other action that is appropriate to recover from such third parties. To enforce such right, the attorney general, pursuant to section 24-31-101, C.R.S., on behalf of the state department may institute and prosecute, or intervene of right in legal proceedings against the third party having legal liability, either in the name of the state department or in the name of the recipient or his or her assignee, guardian, personal representative, estate, or survivors. When the state department intervenes in legal proceedings against the third party, it shall not be liable for any portion of the attorney fees or costs of the recipient.

(5)(a) When the state department has furnished medical assistance to or on behalf of a recipient pursuant to the provisions of this article, and articles 5 and 6 of this title, for which a third party is liable, the state department shall have an automatic statutory lien for all such medical assistance. The state department's lien shall be against any judgment, award, or settlement in a suit or claim against such third party and shall be in an amount that shall be the fullest extent allowed by federal law as applicable in this state, but not to exceed the amount of the medical assistance provided.

(b) No judgment, award, or settlement in any action or claim by a recipient to recover damages for injuries, where the state department has a lien, shall be satisfied without first satisfying the state department's lien. Failure by any party to the judgment, award, or settlement to comply with this section shall make each such party liable for the full amount of medical assistance furnished to or on behalf of the recipient for the injuries that are the subject of the judgment, award, or settlement.

(c) Except as otherwise provided in this article, the entire amount of any judgment, award, or settlement of the recipient's action or claim, with or without suit, regardless of how characterized by the parties, shall be subject to the state department's lien.

(d) Where the action or claim is brought by the recipient alone and the recipient incurs a personal liability to pay attorney fees, the state department will pay its reasonable share of attorney fees not to exceed twenty-five percent of the state department's lien. The state department shall not be liable for costs.

(e) The state department's right to recover under this section is independent of the recipient's right.

(6) When the applicant or recipient, or his or her guardian, executor, administrator, or other appropriate representative, brings an action or asserts a claim against any third party, such person shall give to the state department written notice of the action or claim by personal service or certified mail within fifteen days after filing the action or asserting the claim. Failure to comply with this subsection (6) shall make the recipient, legal guardian, executor, administrator, attorney, or other representative liable for the entire amount of medical assistance furnished to or on behalf of the recipient for the injuries that gave rise to the action or claim. The state department may, after thirty days' written notice to such person, enforce its rights under subsection (5) of this section and this subsection (6) in the district court of the city and county of Denver; except that liability of a person other than the recipient shall exist only if such person had knowledge that the recipient had received medical assistance or if excusable neglect is found by the court. The court shall award the state department its costs and attorney fees incurred in the prosecution of any such action.

(7) When a legally responsible relative of the recipient agrees or is ordered to provide medical support or health insurance coverage for his or her dependents or other persons, and such dependents are applicants for, recipients of, or otherwise entitled to receive medical assistance pursuant to this article and articles 5 and 6 of this title, the state department shall be subrogated to any rights that the responsible persons may have to obtain reimbursement from a third party or insurance carrier for the cost of medical assistance provided for such dependents or persons. Where the state department gives written notice of subrogation, any third party or insurance carrier liable for reimbursement for the cost of medical care shall accord to the state department all rights and benefits available to the responsible relative that pertain to the provision of medical care to any persons entitled to medical assistance pursuant to this article and articles 5 and 6 of this title for whom the relative is legally responsible.

(8) All recipients of medical assistance under the medicaid program shall be deemed to have authorized their attorneys, all third parties, including but not limited to insurance companies, and providers of medical care to release to the state department all information needed by the state department to secure and enforce its rights under subsections (4) and (5) of this section.

(9) Nothing in part 6 of article 4 of title 10, C.R.S., shall be construed to limit the right of the state department to recover the medical assistance furnished to or on behalf of a recipient as the result of the negligence of a third party.

(10) No action taken by the state department pursuant to subsection (4) of this section or any judgment rendered in such action shall be a bar to any action upon the claim or cause of action of the applicant or recipient or his or her guardian, personal representative, estate, dependent, or survivors against the third party having legal liability, nor shall any such action or judgment operate to deny the applicant or recipient the recovery for that portion of his or her medical costs or other damages not provided as medical assistance under this article or article 5 or 6 of this title.

(11)(a) The state department shall have a right to recover any amount of medical assistance paid on behalf of a recipient because:

(I) The trustee of a trust for the benefit of the recipient has used the trust property in a manner contrary to the terms of the trust;

(II) A person holding the recipient's power of attorney has used the power for purposes other than the benefit of the recipient.

(b) To enforce the right under this subsection (11), the county or state department may institute or intervene in legal proceedings against the trustee or person holding the power of attorney. Any amount of medical assistance recovered pursuant to this subsection (11) shall be distributed between the state and county in proportion to the amount of medical assistance paid by each respectively, if any.

(c) No action taken by the county or state department pursuant to this subsection (11) or any judgment rendered in such action or proceeding shall be a bar to any action upon the claim or cause of action of the recipient or his or her guardian, personal representative, estate, dependent, or survivors against the trustee or person holding the power of attorney.

(12)(a) An entity that provides managed care, as defined in section 25.5-5-403, that has entered into a risk contract with the state department shall have the same rights of the department set forth in this section except with respect to the rights described in subsections (5) and (6) of this section. In addition, the attorney general may not enforce the rights set forth in this subsection (12). Venue for an action brought by or on behalf of an entity pursuant to this subsection (12) shall be governed by the Colorado rules of civil procedure.

(b) Within fifteen days after filing an action or asserting a claim against a third party, a recipient under a managed care plan or a guardian, executor, administrator, or other appropriate representative of the recipient shall provide to the entity that administers the managed care plan written notice of the action or claim. Notice shall be by personal service or certified mail.

(c) In cases where the state department has recovery rights against a third party pursuant to subsections (4) and (5) of this section and an entity that provides managed care has subrogation rights against the same party pursuant to paragraph (a) of this subsection (12), the recovery rights of the state department shall take precedence over the rights of the managed care plan.

(13) To the extent allowable under federal law, the state department shall recover from a legal immigrant's sponsor all medical assistance paid on behalf of a sponsored legal immigrant who is enrolled in the medical assistance program.

(14) Notwithstanding any provision of this section to the contrary:

(a)(I) The state department, or the state department's designated agent, shall conduct pre-enrollment and post-enrollment site visits of providers who are designated as moderate or high categorical risks to the medicaid program. The purpose of the site

visit is to verify that the information submitted to the state department is accurate and to determine compliance with federal and state enrollment requirements.

(II) As established in rules promulgated by the state board, the state department may waive pre-enrollment and post-enrollment site visits of providers if the site visits are conducted by medicare or other federally designated entities.

(III) A provider is designated as a limited, moderate, or high categorical risk pursuant to the medicare program and federal regulations. If a provider is not designated in a risk category pursuant to the medicare program and federal regulations, the provider's risk category shall be established pursuant to rules promulgated by the state board.

(b) A provider enrolled in the medicaid program shall permit the centers for medicare and medicaid services or its agent or designated contractors and the state department or its agent to conduct unannounced, on-site inspections of any and all provider locations. Payment for any agent designated by the state department to perform on-site inspections shall not be based on any recoveries paid to the state department by a provider for violations discovered as a result of the on-site inspection.

(15)(a) The state department may request a written response from any provider who fails to comply with the rules, manuals, or bulletins issued by the state department, state board, or the state department's fiscal agent, or from any provider whose activities endanger the health, safety, or welfare of medicaid recipients. The written response must describe how the provider will come into and ensure future compliance. If a written response is requested, a provider has thirty days, or longer if approved by the state department, to submit the written response.

(b) If the provider does not agree with the state department's findings that resulted in the request issued pursuant to subsection (15)(a) of this section, then the provider's written response must include an explanation and specific reasons for the provider's disagreement.

C.R.S. § 25.5-4-302

§ 25.5-4-302. Recovery of assets

(1) The general assembly hereby finds, determines, and declares that the cost of providing medical assistance to qualified recipients throughout the state has increased significantly in recent years; that such increasing costs have created an increased burden on state revenues while reducing the amount of such revenues available for other state programs; that recovering some of the medical assistance from the estates of medical assistance recipients would be a viable mechanism for such recipients to share in the cost of such assistance; and that such an estate recovery program would be a cost-efficient method of offsetting medical assistance costs in an equitable manner. The general assembly also declares that in order to ensure that medicaid is available for low-income individuals reasonable restrictions consistent with federal law should be placed on the ability of persons to become eligible for medicaid by means of making transfers of property without fair and valuable consideration.

(2)(a) Medical assistance paid on behalf of any individual who was fifty-five years of age or older when the individual received such assistance may be recovered by the state department from the estate of such individual in accordance with paragraph (c) of this subsection (2).

(b) Medical assistance paid on behalf of any individual who is institutionalized may be recovered by the state department from the estate of such individual in accordance with paragraph (c) of this subsection (2).

(c) The state department shall establish an estate recovery program only insofar as such program is in accordance with Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p, as amended, and shall not take any action to recover medical assistance when the amount of assistance to be recovered is economically inappropriate in relation to expenses of recovery.

(3) The state department is authorized to file liens against any property of an individual who is institutionalized and from whom the state department may recover medical assistance pursuant to paragraph (b) of subsection (2) of this section.

(4) The state department may compromise, settle, or waive any recovery of medical assistance authorized pursuant to subsection (2) of this section upon good cause shown.

(5) Subject to any limitation concerning estate recovery in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p, as amended, the amount of any medical assistance paid pursuant to the provisions of this article and articles 5 and 6 of this title is a claim against the estate pursuant to the provisions of section 15-12-805(1), C.R.S.

(6) The state board shall promulgate rules to implement the provisions of this section, including rules limiting the eligibility for medical assistance if the person made a voluntary assignment or transfer of property without fair and valuable consideration prior to applying for medical assistance. A contract for an exempt burial fund for an individual shall include a provision restricting the full amount to the cost of the burial and stating that any portion not expended for the burial costs shall be refunded to the state department by the mortuary as reimbursement for the cost of medical assistance provided to the individual. Said rules shall be in accordance with Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p, as amended.

(7) Effective upon the implementation of a private-public partnership program for financing long-term care pursuant to section 25.5-6-110, this section shall apply to participants of such program only after excluding from the amount that may otherwise be recovered from such person's estate an amount allowed by rules adopted by the state board in accordance with section 25.5-6-110.

C.R.S. § 25.5-4-303

§ 25.5-4-303. State income tax refund intercept--garnishment of earning--failure to provide medical support for child

(1)(a) At any time prescribed by the department of revenue, but not less frequently than annually, the state department may certify to the department of revenue information regarding any person who:

(I) Is obligated to the state agency responsible for administering medical assistance in this state for medical support based on medical assistance provided to the obligor's dependent child; and

(II) Has received payment from a third party to cover the health care costs of the child but has neither applied such payment to cover the child's health care costs nor to reimburse the state department, the custodial parent of the child, or the provider of medical care.

(b) The information provided to the department of revenue shall include the name and the social security number of the person described in paragraph (a) of this subsection (1), the amount of medical assistance provided to the child during the period for which medical support was ordered but not provided as described in subparagraph (II) of paragraph (a) of this subsection (1), and any other identifying information required by the department of revenue.

(2) Prior to a final certification of the information described in subsection (1) of this section to the department of revenue, the state department shall notify the obligated person, in writing, that the state intends to refer the person's name to the department of revenue in an attempt to offset the person's medical support obligation against the person's state income tax refund. Such notification shall include information on the parent's right to object to the offset.

(3) Upon notification by the department of revenue of amounts deposited with the state treasurer pursuant to section 39-21-108(3), C.R.S., the state department may recover the amount of the medical assistance described in paragraph (b) of subsection (1) of this section.

(4) The state department may garnish the wages and other earnings of a person described in paragraph (a) of subsection (1) of this section. The garnishment of wages and earning shall be in accordance with articles 54 and 54.5 of title 13, C.R.S.

(5) The state board shall adopt rules as are necessary for the implementation of this section.

C.R.S. § 25.5-4-303.3

§ 25.5-4-303.3. Provider fraud--attorney general report

(1) No later than October 1, 2017, and no later than October 1 each year thereafter, the attorney general shall submit a written report to the state department for inclusion in a single, comprehensive report to the general assembly concerning medicaid fraud pursuant to section 25.5-1-115.5. The attorney general shall provide information relating to medicaid provider fraud including, at a minimum:

(a) Investigations of provider fraud during the year;

(b) Criminal complaints requested, cases dismissed, cases acquitted, convictions, and confessions of judgment;

(c) Recoveries, including fines and penalties, restitution ordered, and restitution collected;

(d) Civil claims;

(e) Trends in methods used to commit provider fraud, excluding law enforcement-sensitive information; and

(f) An estimate of the total savings, total cost, and net cost-effectiveness of fraud detection and recovery efforts.

C.R.S. § 25.5-4-303.5

§ 25.5-4-303.5. Short title

This section and sections 25.5-4-304 to 25.5-4-310 shall be known and may be cited as the “Colorado Medicaid False Claims Act”.

C.R.S. § 25.5-4-304

§ 25.5-4-304. Definitions

As used in sections 25.5-4-303.5 to 25.5-4-309, unless the context otherwise requires:

(1)(a) "Claim" means a request or demand for money or property, whether under a contract or otherwise, and regardless of whether the state has title to the money or property, under the "Colorado Medical Assistance Act" that is:

(I) Presented to an officer, employee, or agent of the state; or

(II) Made to a contractor, grantee, or other recipient if the money or property is to be spent or used on the state's behalf or to advance a program or interest of the state and if the state:

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

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

(b) "Claim" does not include a request or demand for money or property that the state has paid to an individual as compensation for employment by the state or as an income subsidy with no restriction on that individual's use of the money or property.

(2) "Colorado Medical Assistance Act" means this article and articles 5 and 6 of this title.

(3)(a) "Knowing" or "knowingly" means that a person, with respect to information:

(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) "Knowing" or "knowingly" does not require proof of specific intent to defraud.

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

(5) "Obligation" means a fixed or contingent duty arising from an express or implied contractual, quasi-contractual, grantor-grantee, licensor-licensee, statutory, fee-based, or similar relationship, or the retention of overpayment.

C.R.S. § 25.5-4-305

§ 25.5-4-305. False medicaid claims--liability for certain acts

(1) Except as otherwise provided in subsection (2) of this section, a person is liable to the state for a civil penalty of not less than five thousand five hundred dollars and not more than eleven thousand dollars; except that these upper and lower limits on liability shall automatically increase to equal the civil penalty allowed under the federal "False Claims Act", 31 U.S.C. sec. 3729, et seq., if and as the penalties in such federal act may be adjusted for inflation as described in said act in accordance with the federal "Civil Penalties Inflation Adjustment Act of 1990", Pub. L. No. 101-410, plus three times the amount of damages that the state sustains because of the act of that person, if the person:

(a) Knowingly presents, or causes to be presented, 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 material to a false or fraudulent claim;

(c) Has possession, custody, or control of property or money used, or to be used, by the state in connection with the "Colorado Medical Assistance Act" and knowingly delivers, or causes to be delivered, less than all of the money or property;

(d) Authorizes the making or delivery of a document certifying receipt of property used, or to be used, by the state in connection with the "Colorado Medical Assistance Act" and, intending to defraud the state, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(e) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state in connection with the "Colorado Medical Assistance Act" who lawfully may not sell or pledge the property;

(f) 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 state in connection with the "Colorado Medical Assistance Act", or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state in connection with the "Colorado Medical Assistance Act";

(g) Conspires to commit a violation of paragraphs (a) to (f) of this subsection (1).

(2) Notwithstanding the amount of damages authorized in subsection (1) of this section, for a person who violates subsection (1) of this section, the court may assess not less than twice the amount of damages that the state sustains because of the act of the person if the court finds that:

(a) The person who committed the violation of subsection (1) of this section furnished to the officials of the state responsible for investigating false claims violations all information about the violation known to the person and furnished said information within thirty days after the date on which the person first obtained the information;

(b) At the time the person furnished the information about the violation to the state, a criminal prosecution, civil action, or administrative action had not commenced with respect to the violation and the person did not have actual knowledge of the existence of an investigation into the violation; and

(c) The person fully cooperated with any investigation of the violation by the state.

(3) A person violating this section shall also be liable to the state for the costs of a civil action brought to recover any penalty or damages.

(4) Any information furnished pursuant to subsection (2) of this section shall be exempt from disclosure under part 2 of article 72 of this title.

C.R.S. § 25.5-4-306

§ 25.5-4-306. Civil actions for false medicaid claims

(1) **Responsibility of attorney general.** The attorney general shall diligently investigate a violation under section 25.5-4-305. If the attorney general finds that a person has violated or is violating section 25. 5-4-305, the attorney general may bring a civil action under this section against the person.

(2) **Actions by private persons.** (a) A relator may bring a civil action for a violation of section 25.5-4-305 on behalf of the relator and the state. The action shall be brought in the name of the state. The action may be dismissed only if the court and the attorney general give written consent to the dismissal and their reasons for consenting.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the relator possesses shall be served on the state pursuant to rule 4 of the Colorado rules of civil procedure. The complaint shall be filed in camera, shall remain under seal for at least sixty 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 sixty days after it receives both the complaint and the material evidence and information.

(c) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (b) of this subsection (2). Any such motion may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to a complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant pursuant to rule 4 of the Colorado rules of civil procedure.

(d) Before the expiration of the sixty-day period pursuant to paragraph (b) of this subsection (2) or any extensions obtained under paragraph (c) of this subsection (2), the state shall:

(I) Proceed with the action, in which case the state shall conduct the action; or

(II) Notify the court that it declines to take over the action, in which case the relator shall have the right to conduct the action.

(e) When a relator brings an action under this subsection (2), no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(3) **Rights of parties to private actions.** (a) If the state proceeds with an action brought under subsection (2) of this section, it shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the relator. The relator shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (b) of this subsection (3).

(b)(I) The state may dismiss the action notwithstanding the objections of the relator if the relator has been notified by the state of the filing of the motion and the court has provided the relator with an opportunity for a hearing on the motion.

(II) The state may settle the action with the defendant notwithstanding the objections of the relator 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.

(III) Upon a showing by the state that unrestricted participation during the course of the litigation by the relator would interfere with or unduly delay the state'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 relator's participation, including but not limited to:

(A) Limiting the number of witnesses the relator may call;

(B) Limiting the length of the testimony of the witnesses;

(C) Limiting the relator's cross-examination of witnesses; or

(D) Otherwise limiting the participation by the relator in the litigation.

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

(c) If the state elects not to proceed with the action, the relator who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and, at the state's expense, shall be supplied with copies of all deposition transcripts. When a relator proceeds with the action, the court, without limiting the status and rights of the relator, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

(d) Regardless of whether the state proceeds with the action, upon a showing by the state that certain actions of discovery by the relator 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 sixty days. The showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and that any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(e) Notwithstanding the provisions of subsection (2) of this section, the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil money penalty. If an alternate remedy is pursued in another proceeding, the relator 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 another proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this paragraph (e), a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the state, 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.

(4) **Award to private persons.** (a)(I) If the state proceeds with an action brought by a relator under subsection (2) of this section, the relator shall, subject to subparagraph (II) of this paragraph (a), receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the relator substantially contributed to the prosecution of the action.

(II) If the court finds the action to be based primarily on disclosures of specific information, other than information provided by the relator, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or state auditor's report, hearing, audit, or investigation, or from the news media, the court may award to the relator such sums as it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the relator in advancing the case to litigation.

(III) Any payment to a relator under subparagraph (I) or (II) of this paragraph (a) 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 attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(b) If the state does not proceed with an action brought under subsection (2) of this section, 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 be not less than twenty-five percent and not more than thirty percent of the proceeds of the action or settlement and shall be paid out of the proceeds. The relator shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(c) Regardless of whether the state proceeds with an action brought under subsection (2) of this section, if the court finds that the action was brought by a relator who planned and initiated the violation of section 25.5-4-305 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 (a) or (b) of this subsection (4), 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 is convicted of criminal conduct arising from his or her role in the violation of section 25.5-4-305, the relator shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

(d) If the state does not proceed with an action brought under subsection (2) of this section and the relator bringing the action conducts the action, the court may award to the defendant its reasonable attorney fees and expenses if the defendant prevails in the action and the court finds that the claim of the relator was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(5) **Certain actions barred.**

(a) A court shall not have jurisdiction over an action brought under this section against a member of the general assembly, a member of the state judiciary, or an elected official in the executive branch of the state of Colorado if the action is based on evidence or information known to the state when the action was brought.

(b) A relator shall not bring an action under subsection (2) of this section 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.

(c)(I) A court shall dismiss an action or claim brought under subsection (2) of this section unless opposed by the state, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a state criminal, civil, or administrative hearing in which the state or its agent is a party, in a legislative, administrative, or state auditor's report, hearing, audit, or investigation, or by the news media, unless the action is brought by the state or the relator is an original source of the information.

(II) For purposes of this paragraph (c), "original source" means an individual who, prior to a public disclosure under subparagraph (I) of this paragraph (c), has voluntarily disclosed to the state the information on which the allegations or transactions in a claim are based, or who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and has voluntarily provided the information to the state before filing an action under subsection (2) of this section.

(6) **State not liable for certain expenses.** The state is not liable for expenses that a relator incurs in bringing an action under this section.

(7) **Private action for retaliation.** (a) An employee, contractor, or agent shall be entitled to all relief necessary to make the employee, contractor, or agent whole, if the employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the defendant or by any other person because of lawful acts done by the employee, contractor, or agent, or associated others in furtherance of an action under this section or in furtherance of an effort to stop any violations of section 25.5-4-305.

(b)(I) An employee, contractor, or agent who seeks relief pursuant to this subsection (7) shall be entitled to all relief necessary to make the employee, contractor, or agent whole. Such relief shall include:

(A) Reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, twice the amount of back pay, and interest on the back pay; and

(B) Compensation for any special damages sustained as a result of the discrimination or retaliation, including litigation costs and reasonable attorney fees.

(II) An employee, contractor, or agent may bring an action in the appropriate court of the state for the relief provided in this subsection (7).

C.R.S. § 25.5-4-307

§ 25.5-4-307. False medicaid claims procedures--statute of limitations

(1) A civil action under section 25.5-4-306(1) or (2) may not be brought after the later of:

(a) More than six years after the date on which the violation of section 25.5-4-305 is committed; or

(b) More than three 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 state charged with responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation of section 25.5-4-305 is committed.

(2) If the state elects to intervene and proceed with an action brought under section 25.5-4-306, the state may file its own complaint or amend the relator's complaint to clarify or add detail to the claims in which the state is intervening and to add any additional claims with respect to which the state contends it is entitled to relief. For statute of limitations purposes, any such pleadings by the state shall relate back to the filing date of the relator's complaint, to the extent that the state's claim arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of the relator.

(3) In an action brought under section 25.5-4-306, the state or relator must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(4) Notwithstanding any other provision of law, the Colorado rules of criminal procedure, or the Colorado rules of evidence, a final judgment rendered in favor of the state in a criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought under section 25.5-4-306.

(5) A private action for retaliation under section 25.5-4-306(7) may not be brought more than three years after the date when the retaliation occurred.

C.R.S. § 25.5-4-308

§ 25.5-4-308. False medicaid claims jurisdiction

An action under section 25.5-4-306 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, or transacts business or in which an act proscribed by section 25.5-4-305 occurred. A summons as required by the Colorado rules of civil procedure shall be issued by the appropriate district court and served at any place.

C.R.S. § 25.5-4-309

§ 25.5-4-309. False medicaid claims civil investigation demands

(1) **General.** (a)(I) Whenever the attorney general has reason to believe that a person may be in possession, custody, or control of documentary material or information relevant to a false medicaid claims law investigation, the attorney general may, before commencing a civil proceeding under section 25.5-4-306 or other false medicaid claims law or making an election under section 25.5-4-306(2)(d), issue in writing and cause to be served upon the person a civil investigative demand requiring the person to:

(A) Produce the documentary material for inspection and copying;

(B) Answer in writing written interrogatories with respect to the documentary material or information;

(C) Give oral testimony concerning the documentary material or information; or

(D) Furnish any combination of such material, answers, or testimony.

(II) The attorney general may not delegate the authority to issue civil investigative demands under this subsection (1). Whenever a civil investigative demand is an express demand for any product of discovery, the attorney general, the deputy attorney general, or an assistant attorney general shall cause to be served, in any manner authorized by this section, a copy of the demand upon the person from whom the discovery was obtained and shall notify the person to whom the demand is issued of the date on which the copy was served.

(b)(I) Each civil investigative demand issued under this subsection (1) shall state the nature of the conduct constituting the alleged violation of a false medicaid claims law that is under investigation and the applicable provision of law alleged to be violated.

(II) If the demand is for the production of documentary material, the demand shall:

(A) Describe each class of documentary material to be produced with such definiteness and certainty as to permit the material to be fairly identified;

(B) Prescribe a return date for each such class that will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(C) Identify the false medicaid claims law investigator to whom the material shall be made available.

(III) If the demand is for answers to written interrogatories, the demand shall:

(A) Specify the written interrogatories to be answered;

(B) Prescribe dates on which answers to written interrogatories shall be submitted; and

(C) Identify the false medicaid claims law investigator to whom the answers shall be submitted.

(IV) If the demand is for the giving of oral testimony, the demand shall:

(A) Prescribe a date, time, and place at which oral testimony shall be commenced and notify the deponent if the oral testimony is to be video or audio recorded;

(B) Identify a false medicaid claims law investigator who shall conduct the examination and the custodian to whom the transcript of the examination shall be submitted;

(C) Specify that such attendance and testimony are necessary to the conduct of the investigation;

(D) Notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(E) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, that will be taken pursuant to the demand.

(V) A civil investigative demand issued under this section that is an express demand for any product of discovery shall not be returned or returnable until twenty days after a copy of the demand has been served upon the person from whom the discovery was obtained.

(VI) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date that is not less than seven days after the date on which the demand is received, unless the attorney general or an assistant attorney general designated by the attorney general determines that exceptional circumstances are present that warrant the commencement of the testimony within a lesser period of time.

(VII) The attorney general shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the attorney general, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. Notwithstanding section 24-31-103, C.R.S., the attorney general shall not authorize the performance, by any other officer, employee, or agency, of any function vested in the attorney general under this subparagraph (VII).

(2) **Protected material or information.** (a) A civil investigative demand issued under subsection (1) of this section shall not require the production of documentary material, the submission of answers to written interrogatories, or the giving of oral testimony if the material, answers, or testimony would be protected from disclosure under:

(I) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of this state to aid in a grand jury investigation; or

(II) The standards applicable to discovery requests under the Colorado rules of civil procedure, to the extent that the application of the standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(b) A demand that is an express demand for a product of discovery supersedes any inconsistent order, rule, or provision of law, other than this section, preventing or restraining disclosure of the product of discovery to a person. Disclosure of a product of discovery pursuant to an express demand does not constitute a waiver of any right or privilege that the person making the disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(3) **Service and jurisdiction.** (a) A civil investigative demand issued under subsection (1) of this section or a petition brought pursuant to subsection (10) of this section may be served by a false medicaid claims law investigator, a sheriff, or a deputy sheriff at any place within the state.

(b) A civil investigative demand issued under subsection (1) of this section or a petition filed under subsection (10) of this section may be served upon a person who is not found within the state in the manner prescribed by the Colorado rules of civil procedure for service in another state or a foreign country. To the extent that the courts of this state can assert jurisdiction over any such person consistent with due process, the district court for the city and county of Denver shall have the same jurisdiction to take an action respecting compliance with this section by any such person that the court would have if the person were personally within the jurisdiction of the court.

(4) **Service on legal entities and natural persons.** (a) Service of a civil investigative demand issued under subsection (1) of this section or of a petition filed under subsection (10) of this section may be made upon a partnership, corporation, association, or other legal entity by:

(I) Delivering an executed copy of the demand or petition to a partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to an agent authorized by appointment or by law to receive service of process on behalf of the partnership, corporation, association, or entity;

(II) Delivering an executed copy of the demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(III) Depositing an executed copy of the demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the partnership, corporation, association, or entity at its principal office or place of business.

(b) Service of a civil investigative demand issued under subsection (1) of this section or of a petition filed under subsection (10) of this section may be made upon a natural person by:

(I) Delivering an executed copy of the demand or petition to the person; or

(II) Depositing an executed copy of the demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence, principal office, or place of business.

(5) **Proof of service.** A verified return by the individual serving a civil investigative demand issued under subsection (1) of this section or a petition filed under subsection (10) of this section setting forth the manner of the service shall be proof of the service. In the case of service by registered or certified mail, the return shall be accompanied by the return post office receipt of delivery of the demand.

(6) **Documentary material.** (a)(I) The production of documentary material in response to a civil investigative demand issued under subsection (1) of this section shall be made under a sworn certificate, in the form as the demand designates, by:

(A) In the case of a natural person, the person to whom the demand is directed; or

(B) In the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person.

(II) The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false medicaid claims law investigator identified in the demand.

(b) A person upon whom a civil investigative demand for the production of documentary material has been served under this section shall make the material available for inspection and copying to the false medicaid claims law investigator identified in the demand at the principal place of business of the person, or at such other place as the false medicaid claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (10) of this section. The material shall be made so available on the return date specified in the demand, or on such later date as the false medicaid claims law investigator may prescribe in writing. The person may, upon written agreement between the person and the false medicaid claims law investigator, substitute copies for originals of all or any part of the material.

(7) **Interrogatories.** (a) Each interrogatory in a civil investigative demand issued under subsection (1) of this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in the form the demand designates, by:

(I) In the case of a natural person, the person to whom the demand is directed; or

(II) In the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

(b) If an interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(8) **Oral examinations.** (a) The examination of a person pursuant to a civil investigative demand for oral testimony issued under subsection (1) of this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States, the state of Colorado, or the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or with the assistance of someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection (8) shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Colorado rules of civil procedure.

(b) The false medicaid claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the state, any person who may be agreed upon by the attorney for the state and the person giving the testimony, the officer before whom the testimony is to be taken, and the stenographer who is recording the testimony.

(c) The oral testimony of a person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the state within which the person resides, is found, or transacts business, or in another place as may be agreed upon by the false medicaid claims law investigator conducting the examination and the person.

(d) When the testimony is fully transcribed, the false medicaid claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless the witness waives the examination and reading. Any changes in form or substance that the witness desires to make shall be entered and identified upon the transcript by the officer or the false medicaid claims law investigator, with a statement of the reasons given by the witness for making the changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the witness does not sign the transcript within thirty days after being afforded a reasonable opportunity to examine it, the officer or the false medicaid claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or refusal to sign, together with the reasons, if any, given therefor.

(e) The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false medicaid claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(f) Upon payment of reasonable charges therefor, the false medicaid claims law investigator shall furnish a copy of the transcript to the witness only; except that the attorney general, the deputy attorney general, or an assistant attorney general may, for good cause, limit the witness to inspection of the official transcript of the testimony of the witness.

(g)(I) A person compelled to appear for oral testimony under a civil investigative demand issued under subsection (1) of this section may be accompanied, represented, and advised by counsel. Counsel may advise the person, in confidence, with respect to any question asked of the person. The person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that the person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. The person may not otherwise object to or refuse to answer any question and may not directly or through counsel otherwise interrupt the oral examination. If the person refuses to answer a question, the false medicaid claims law investigator may file a petition in a district court under paragraph (a) of subsection (10) of this section for an order compelling the person to answer the question.

(II) If the person refuses to answer a question on the grounds of the privilege against self-incrimination, the false medicaid claims law investigator may compel the testimony of the person in accordance with the provisions of section 13-90-118, C.R.S.

(III) A person appearing for oral testimony under a civil investigative demand issued under subsection (1) of this section shall be entitled to the same fees and allowances that are paid to witnesses in the district courts of this state.

(9) **Custodian of documents, answers, and transcripts.** (a) The attorney general shall designate a false medicaid claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section and shall designate such additional false medicaid claims law investigators as the attorney general determines from time to time to be necessary to serve as deputies to the custodian.

(b)(I) A false medicaid claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of the material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (d) of this subsection (9).

(II) The custodian may cause the preparation of copies of the documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by a false medicaid claims law investigator or other officer or employee

of the department of law who is authorized for such use under regulations that the attorney general shall issue. The material, answers, and transcripts may be used by any such authorized false medicaid claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

(III)(A) Except as otherwise provided in this subsection (9), documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall not be available for examination by an individual other than a false medicaid claims law investigator or other officer or employee of the department of law authorized under subparagraph (II) of this paragraph (b).

(B) Sub-subparagraph (A) of this subparagraph (III) shall not apply if consent is given by the person who produced the material, answers, or transcripts or, in the case of any product of discovery produced pursuant to an express demand for the material, if consent is given by the person from whom the discovery was obtained.

(C) Nothing in this subparagraph (III) is intended to prevent disclosure to the general assembly, including any committee of the general assembly, or to any other agency of the state for use by the agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the attorney general to a district court, showing substantial need for the use of the information by the agency in furtherance of its statutory responsibilities.

(IV) While in the possession of the custodian and under such reasonable terms and conditions as the attorney general shall prescribe:

(A) Documentary material and answers to interrogatories shall be available for examination by the person who produced the material or answers, or by a representative of that person authorized by that person to examine the material and answers; and

(B) Transcripts of oral testimony shall be available for examination by the person who produced the testimony or by a representative of that person authorized by that person to examine the transcripts.

(c) Whenever an attorney of the department of law has been designated to appear before a court, grand jury, or state agency in a case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to the attorney such material, answers, or transcripts for official use in connection with the case or proceeding as the attorney determines to be required. Upon the completion of the case or proceeding, the attorney shall return to the custodian the material, answers, or transcripts so delivered that are not in the control of the court, grand jury, or agency through introduction into the record of the case or proceeding.

(d) The custodian shall, upon written request of a person who produced any documentary material in the course of any false medicaid claims law investigation pursuant to a civil investigative demand under this section, return to the person any such material, other than copies furnished to the false medicaid claims law investigator under paragraph (b) of subsection (6) of this section or made for the department of law under subparagraph (II) of paragraph (b) of this subsection (9), that is not in the control of a court, grand jury, or agency through introduction into the record of the case or proceeding, if:

(I) A case or proceeding before a court or grand jury arising out of the investigation or any proceeding before a state agency involving the material has been completed; or

(II) A case or proceeding in which the material may be used has not been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of the investigation.

(e)(I) In the event of the death, disability, or separation from service in the department of law of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of the custodian from responsibility for the custody and control of the material, answers, or transcripts, the attorney general shall promptly:

(A) Designate another false medicaid claims law investigator to serve as custodian of the material, answers, or transcripts; and

(B) Transmit in writing to the person who produced the material, answers, or testimony notice of the identity and address of the successor so designated.

(II) A person who is designated to be a successor under this paragraph (e) shall have, with regard to the material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office; except that the successor shall not be held responsible for any default or dereliction that occurred before that designation.

(10) **Judicial proceedings.** (a) Whenever a person fails to comply with a civil investigative demand issued under subsection (1) of this section, or whenever satisfactory copying or reproduction of the material requested in a demand cannot be done and the person refuses to surrender the material, the attorney general may file, in a district court for the judicial district in which the person resides, is found, or transacts business, and serve upon the person a petition for an order of the court for the enforcement of the civil investigative demand.

(b)(I) A person who has received a civil investigative demand issued under subsection (1) of this section may file a petition for an order of the court to modify or set aside the demand. The person shall file the petition in a district court for the judicial district within which the person resides, is found, or transacts business and shall serve a copy of the petition upon the false medicaid claims law investigator identified in the demand. In the case of a petition addressed to an express demand for a product of discovery, the person may file a petition to modify or set aside the demand only in the district court for the judicial district in which the proceeding in which the discovery was obtained is or was last pending. The person shall file a petition under this subparagraph (I):

(A) Within twenty days after the date of service of the civil investigative demand or at any time before the return date specified in the demand, whichever date is earlier; or

(B) Within such longer period as may be prescribed in writing by a false medicaid claims law investigator identified in the demand.

(II) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (I) of this paragraph (b) and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part; except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(c)(I) In the case of a civil investigative demand issued under subsection (1) of this section that is an express demand for a product of discovery, the person from whom the discovery was obtained may file a petition for an order of the court to modify or set aside those portions of the demand requiring production of any product of discovery. The person shall file the petition in the district court for the judicial district in which the proceeding in which the discovery was obtained is or was last pending and shall serve a copy of the petition upon the false medicaid claims law investigator identified in the demand and upon the recipient of the demand. The person shall file a petition under this subparagraph (I):

(A) Within twenty days after the date of service of the civil investigative demand or at any time before the return date specified in the demand, whichever date is earlier; or

(B) Within such longer period as may be prescribed in writing by the false medicaid claims law investigator identified in the demand.

(II) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (I) of this paragraph (c), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(d) At any time during which a custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by a person in compliance with a civil investigative demand issued under subsection (1) of this section, the person, and in the case of an express demand for any product of discovery, the person from whom the discovery was obtained, may file a petition for an order of the court to require the performance by the custodian of any duty imposed upon the custodian by this section. The person shall file the petition in the district court for the judicial district within which the office of the custodian is situated and shall serve a copy of the petition upon the custodian.

(e) Whenever a petition is filed in a district court under this subsection (10), the court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry out the provisions of this section. A final order so entered shall be subject to appeal under section 13-4-102, C.R.S. Any disobedience of a final order entered by a court under this section shall be punished as a contempt of the court.

(f) The Colorado rules of civil procedure shall apply to a petition under this subsection (10) to the extent that the rules are consistent with the provisions of this section.

(11) **Disclosure exemption.** Any documentary material, answers to written interrogatories, or oral testimony provided under a civil investigative demand issued under subsection (1) of this section shall be exempt from disclosure under section 24-72-203, C.R.S.

(12) **Definitions.** As used in this section, unless the context otherwise requires:

(a) “Custodian” means the custodian, or any deputy custodian, designated by the attorney general under paragraph (a) of subsection (9) of this section.

(b) “Documentary material” means the original or a copy of a 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 the data compilations, and any product of discovery.

(c) “False medicaid claims law” means:

(I) This section and sections 25.5-4-303.5 to 25.5-4-308; and

(II) Any law enacted before, on, or after May 26, 2010, that prohibits or makes available to the state in a court of the state a

civil remedy with respect to a false medicaid claim against, bribery of, or corruption of an officer or employee of the state.

(d) "False medicaid claims law investigation" means an inquiry conducted by a false medicaid claims law investigator for the purpose of ascertaining whether a person is or has been engaged in a violation of a false medicaid claims law.

(e) "False medicaid claims law investigator" means an attorney or investigator employed by the department of law who is charged with the duty of enforcing or carrying into effect a false medicaid claims law or an officer or employee of the state acting under the direction and supervision of the attorney or investigator in connection with a false medicaid claims law investigation.

(f) "Person" means a natural person, partnership, corporation, association, or other legal entity.

(g) "Product of discovery" means:

(I) The original or duplicate of a deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, any one of which is obtained by a method of discovery in a judicial or administrative proceeding of an adversarial nature;

(II) A digest, analysis, selection, compilation, or derivation of an item listed in subparagraph (I) of this paragraph (g); and

(III) An index or other manner of access to an item listed in subparagraph (I) of this paragraph (g).

C.R.S. § 25.5-4-310

§ 25.5-4-310. Medicaid false claims report

(1) Notwithstanding section 24-1-136(11)(a)(I), on or before January 15, 2012, and on or before each January 15 thereafter, the attorney general shall submit a written report to the health and human services committees of the senate and the house of representatives, or any successor committees, and to the joint budget committee of the general assembly concerning claims brought under the "Colorado Medicaid False Claims Act" during the previous fiscal year. The report shall include, but not be limited to:

(a) The number of actions filed by the attorney general;

(b) The number of actions filed by the attorney general that were completed;

(c) The amount that was recovered in actions filed by the attorney general through settlement or through a judgment and, if known, the amount recovered for damages, penalties, and litigation costs;

(d) The number of actions filed by a person other than the attorney general;

(e) The number of actions filed by a person other than the attorney general that were completed;

(f) The amount that was recovered in actions filed by a person other than the attorney general through settlement or through a judgment and, if known, the amount recovered for damages, penalties, and litigation costs, and the amount recovered by the state and the person; and

(g) The amount expended by the state for investigation, litigation, and all other costs for claims related to the "Colorado Medicaid False Claims Act".