

1 AN ACT relating to the Kentucky False Claims Act.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO  
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 9 of this Act:*

6 *(1) "Claim" means:*

7 *(a) Any request or demand for money or property, under a contract or*  
8 *otherwise, whether the Commonwealth or the Kentucky Medical Assistance*  
9 *program has title to the money or property, that is made to:*

10 *1. The Commonwealth;*

11 *2. The Kentucky Medical Assistance program as defined under KRS*  
12 *205.8451;*

13 *3. Any officer, employee, fiscal intermediary, or agent of the*  
14 *Commonwealth or the Kentucky Medical Assistance program;*

15 *4. Any contractor or grantee of the Commonwealth or the Kentucky*  
16 *Medical Assistance program; or*

17 *5. Any other person or entity; and*

18 *(b) 1. The request or demand results in payment by the Kentucky Medical*  
19 *Assistance program;*

20 *2. The Kentucky Medical Assistance program has provided or will*  
21 *provide any portion of the money or property requested or demanded;*

22 *3. The Kentucky Medical Assistance program will reimburse the*  
23 *contractor, grantee, or other recipient for any portion of the money or*  
24 *property requested or demanded; or*

25 *4. The money or property is to be spent or used on behalf of or to*  
26 *advance the Kentucky Medical Assistance program;*

27 *(c) Any request or demand for money or property that is made orally, in*

1 writing, electronically, or magnetically; and

2 (d) Each request or demand may be treated as a separate claim;

3 (2) "Commonwealth" means the Commonwealth of Kentucky, the Kentucky Medical  
4 Assistance Program, and any cabinet, agency, board, commission, or similar  
5 entity of state government, and includes within the class of persons against whom  
6 a violation of subsection (1) of Section 2 of this Act may be committed a public or  
7 private entity under contract with the government to accept, process, review, or  
8 pay claims, including any managed care provider contracting with the Kentucky  
9 Medical Assistance Program;

10 (3) "Documentary material" means:

11 (a) The original or any copy of any book, record, report, memorandum, paper,  
12 communication, tabulation, chart, or other document;

13 (b) Data compilations stored in or accessible through computer or other  
14 information-retrieval systems;

15 (c) Instructions and all other materials necessary to use or interpret the data  
16 compilations; and

17 (d) Any product of discovery;

18 (4) "Knowing" and "knowingly," with respect to information, means a person,  
19 acting with or without a specific intent to defraud, either:

20 (a) Has actual knowledge of the information;

21 (b) Acts in deliberate ignorance of the truth or falsity of the information; or

22 (c) Acts in reckless disregard of the truth or falsity of the information;

23 (5) "Material" means having a natural tendency to influence, or be capable of  
24 influencing, the payment or receipt of money or property;

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

26 (a) An express or implied contractual, grantor-grantee, or licensor-licensee  
27 relationship;

1 (b) A fee based or similar relationship;

2 (c) Statute or regulation; or

3 (d) Retention of any overpayment;

4 (7) "Original source" means an individual who:

5 (a) Has voluntarily disclosed to the government the information on which  
 6 allegations or transactions in a claim are based prior to their public  
 7 disclosure under circumstances described in subsection (1) of Section 3 of  
 8 this Act; or

9 (b) Has knowledge that is independent of and materially adds to the publicly  
 10 disclosed allegations or transactions and has provided that knowledge to the  
 11 government prior to filing an action as a relator under Sections 1 to 9 of  
 12 this Act;

13 (8) "Person" means any natural person, corporation, company, association, firm,  
 14 partnership, society, joint-stock company, or any other entity with capacity to sue  
 15 or be sued; and

16 (9) "Relator" means a private individual who brings a civil action on behalf of both  
 17 the Commonwealth and the individual under Section 3 of this Act.

18 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO  
 19 READ AS FOLLOWS:

20 (1) No person shall:

21 (a) Knowingly present, or cause to be presented, to any officer, employee, fiscal  
 22 intermediary, contractor, grantee, or agent of the Commonwealth, or to the  
 23 Kentucky Medical Assistance program, a false or fraudulent claim for  
 24 payment or approval;

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

27 (c) Have possession, custody, or control of property or money used, or to be

1 used, by the Commonwealth or the Kentucky Medical Assistance program,  
2 and knowingly deliver, or cause to be delivered, less than all of that money  
3 or property;

4 (d) Authorize to make or deliver a document certifying receipt of property used,  
5 or to be used, by the Commonwealth or the Kentucky Medical Assistance  
6 Program and, intending to defraud the Commonwealth or the Kentucky  
7 Medical Assistance Program, make or deliver the receipt without completely  
8 knowing that the information on the receipt is true;

9 (e) Knowingly buy, or receive as a pledge of an obligation or debt, public  
10 property from an officer or employee of the Commonwealth or the Kentucky  
11 Medical Assistance Program who lawfully may not sell or pledge the  
12 property;

13 (f) Knowingly make, use, or cause to be made or used, a false record or  
14 statement material to an obligation to pay or transmit money or property to  
15 the Commonwealth or the Kentucky Medical Assistance Program;

16 (g) Knowingly conceal or knowingly and improperly avoid or decrease an  
17 obligation to pay or transmit property or money to the Commonwealth or  
18 the Kentucky Medical Assistance Program; or

19 (h) Conspire to commit a violation of this section, including conspire to defraud  
20 the Commonwealth or the Kentucky Medical Assistance Program by getting  
21 a false or fraudulent claim allowed or paid.

22 (2) A person who violates subsection (1) of this section shall be liable to the  
23 Commonwealth in a civil action brought under Sections 1 to 9 of this Act for:

24 (a) Three (3) times the amount of damages sustained by the Commonwealth or  
25 the Kentucky Medical Assistance Program because of the acts of the  
26 person;

27 (b) A civil penalty of not less than five thousand five hundred dollars (\$5,500)

1 and not more than eleven thousand dollars (\$11,000) for each false and  
2 fraudulent claim; and

3 (c) All costs of any civil action brought to recover the penalties and damages  
4 provided under this subsection, including a reasonable attorney's fee.

5 (3) In determining the amount of the civil penalty imposed under subsection (2)(b) of  
6 this section for a violation under this section, the court shall consider:

7 (a) The nature, circumstances, extent, and gravity of the violation;

8 (b) Whether the person has previously violated this section;

9 (c) The violation's threat to public or individual health and safety;

10 (d) Whether the person acted in bad faith in committing the violation; and

11 (e) The amount necessary to deter future violations.

12 (4) The court may reduce a person's liability under subsection (2)(a) of this section to  
13 not more than two (2) times the actual amount of the damages sustained if, prior  
14 to the Attorney General, Kentucky Medical Assistance Program, agency, or other  
15 authorized investigative entity commencing any criminal prosecution, civil  
16 action, or administrative proceeding regarding the violation, the person  
17 committing the violation:

18 (a) Furnished all information known to the person about the violation to the  
19 Attorney General, Kentucky Medical Assistance Program, agency, or other  
20 authorized investigative entity not later than thirty (30) days after the date  
21 on which the person first obtained the information;

22 (b) Fully cooperated with any governmental investigation of the violation; and

23 (c) Did not have actual knowledge of the existence of any investigation  
24 regarding the violation at the time the person furnished the information  
25 about the violation to the Attorney General, Kentucky Medical Assistance  
26 Program, agency, or other authorized investigative entity.

27 (5) No civil action may be brought under Sections 1 to 9 of this Act for any claim

1 relating to the assessment, payment, nonpayment, refund, or collection of taxes  
2 imposed by the Commonwealth.

3 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO  
4 READ AS FOLLOWS:

5 (1) In addition to the investigative and enforcement authority of the Attorney  
6 General under KRS 205.8469, if the Attorney General finds that a person has  
7 violated or is violating Section 2 of this Act, the Attorney General shall be  
8 authorized to bring a civil action to recover the damages, penalties, and costs  
9 authorized by this section, or to obtain appropriate injunctive relief restraining  
10 future violations, or both.

11 (2) A private person may bring a civil action as a relator to recover the amounts  
12 allowed under Section 2 of this Act if:

13 (a) The relator has not been convicted of a criminal offense arising out of the  
14 violation;

15 (b) The violation is not the basis of a previously initiated criminal, civil, or  
16 administrative action in which the Commonwealth is already a party; and

17 (c) The violation has not been previously disclosed in the news media or in a  
18 legislative or administrative report, hearing, audit, or investigation unless  
19 the relator is an original source for information on the violation.

20 (3) In initiating the civil action, a relator, in addition to any other filing  
21 requirements, shall:

22 (a) Bring the action in the name of the Commonwealth of Kentucky;

23 (b) Notify the circuit clerk in writing that the action is being brought under  
24 Sections 1 to 9 of this Act, which the Court of Justice may require by rule be  
25 submitted on a form provided by the Administrative Office of the Courts;

26 (c) Serve a copy of the complaint and a written disclosure of substantially all  
27 material evidence and information possessed by the person pertaining to the

1 alleged violation upon the Attorney General.

2 (4) A circuit clerk receiving a complaint under subsection (3) of this section shall:

3 (a) Immediately send a copy of the complaint to the Attorney General;

4 (b) Place the case record under seal for at least sixty (60) days, or until  
5 otherwise authorized by the court after the expiration of the initial sixty (60)  
6 day period, with access being allowed only to the court, the relator, and the  
7 Attorney General, to provide the Attorney General time to investigate the  
8 allegations of the complaint if he or she elected to do so; and

9 (c) Issue process for the defendant only after ordered to do so by the court.

10 (5) Once a civil action under Sections 1 to 9 of this Act has been filed, no other  
11 person may act as a relator in a civil action alleging a violation of Section 2 of  
12 this Act based upon the same facts and circumstances.

13 (6) While under seal, a civil action may only be dismissed on motion of the relator  
14 with either the Attorney General's consent, or upon a showing of good cause  
15 made in a hearing where the Attorney General may be heard on the motion.

16 (7) Within sixty (60) days following both the filing of the complaint and delivery of  
17 the material evidence and information by the relator, the Attorney General may:

18 (a) Intervene in the action and assume representation of the Commonwealth's  
19 interest;

20 (b) Move the court for extensions of time to investigate the allegations of the  
21 complaint with proper notice to the relator, during which time the  
22 complaint shall remain under seal. The motions may be supported by  
23 affidavits or other submissions in camera, and the court may grant the  
24 extensions, following an in camera hearing, for good cause shown; or

25 (c) Decline to intervene.

26 (8) If the Attorney General intervenes under this section, the Attorney General shall:

27 (a) Notify the relator of the intervention and move the court to direct the clerk

1 to unseal the case record and issue process to the defendant either  
2 immediately or at a future time certain;

3 (b) Have primary responsibility for prosecuting the action and shall not be  
4 bound by any act of the relator, although the relator may continue as a  
5 party, subject to the limitations under this section;

6 (c) Have the authority to seek dismissal of the action over the relator's  
7 objection if the relator has been notified by the Attorney General of the  
8 filing of any motion seeking dismissal, and the court has provided the  
9 relator with an opportunity for a hearing on the motion; and

10 (d) Have the authority to settle the civil action over the objection of the relator  
11 if the court finds, after a hearing, that the settlement is fair, adequate, and  
12 reasonable under all the circumstances. Upon a showing of good cause, the  
13 hearing may be held in camera; and

14 (e) May file his or her own complaint or amend the complaint of the relator to  
15 clarify or add detail to the claims in which the Attorney General is  
16 intervening and to assert any additional claims to which the Commonwealth  
17 contends it is entitled to relief. For purposes of the Statute of Limitations,  
18 and notwithstanding any other provision to the contrary, any pleading filed  
19 under this paragraph by the Attorney General shall relate back to the filing  
20 date of the complaint of the relator, to the extent that the claim of the  
21 Commonwealth arises out of the conduct, transactions, or occurrences set  
22 forth, or attempted to be set forth, in the original complaint of the relator.

23 (9) If the Attorney General does not intervene under this section:

24 (a) The Attorney General shall notify the relator and the court of the decision  
25 not to intervene and the relator shall have the right to proceed with the civil  
26 action;

27 (b) The relator shall then move the court to direct the clerk to unseal the case

1 record and issue process to the defendant;

2 (c) The court, without limiting the status and rights of the relator, may permit  
3 the Attorney General to intervene at a later date upon a showing of good  
4 cause for any purpose including but not limited to a dismissal of the action  
5 over the relator's objection if the relator has been notified by the Attorney  
6 General of the filing of any motion seeking dismissal, and the court has  
7 provided the relator with an opportunity for a hearing on the motion; and

8 (d) At the Attorney General's request and expense, a relator shall provide  
9 copies of all pleadings and discovery in the action.

10 (10) A defendant's time period for filing an answer shall not begin to run until  
11 process is issued for that defendant.

12 (11) In any civil action brought under Sections 1 to 9 of this Act, the Commonwealth  
13 or any relator bringing the civil action shall be required to prove all essential  
14 elements of the claim, including damages, by a preponderance of the evidence.

15 (12) The Commonwealth shall not be liable for expenses or attorney's fees that a  
16 relator incurs in bringing an action under this section.

17 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO  
18 READ AS FOLLOWS:

19 The proceeds of a civil action brought under Sections 1 to 9 of this Act or any  
20 resulting settlement shall be distributed to the Commonwealth subject to the following  
21 awards made by the court:

22 (1) (a) Except as otherwise provided in this section, if the Attorney General  
23 intervenes and assumes control of an action brought by a relator, the court  
24 shall award the relator not less than fifteen percent (15%) but not more  
25 than twenty-five percent (25%) of the total proceeds after consideration of  
26 the extent to which the relator substantially contributed to the prosecution  
27 of the action; or

1       **(b) The court shall limit the relator's share to not more than ten percent (10%)**  
2       **of the proceeds if the court finds the civil action is based primarily on**  
3       **disclosures of specific information, other than information provided by the**  
4       **relator as an original source, relating to allegations or transactions in:**

5       **1. Any criminal, civil, or administrative hearing in which the**  
6       **Commonwealth, Kentucky Medical Assistance program, or its**  
7       **employee, agent, or contractor is a party;**

8       **2. Any congressional, legislative, or other state or federal report,**  
9       **hearing, audit, or investigation; or**

10       **3. The news media; and**

11       **(c) The Attorney General, and any relator awarded a share of the proceeds**  
12       **under this subsection, shall also be awarded their reasonable expenses,**  
13       **attorney's fees, and costs that the court finds to have been necessarily**  
14       **incurred in bringing and prosecuting the action, with these expenses, fees,**  
15       **and costs being paid by the defendant. In addition, the court shall award the**  
16       **Attorney General twenty-five percent (25%) of any additional damages**  
17       **recovered beyond the actual damages suffered by the Kentucky Medical**  
18       **Assistance Program.**

19       **(2) (a) If the Attorney General does not intervene or proceed with a civil action**  
20       **under Sections 1 to 9 of this Act, the relator shall receive an amount that**  
21       **the court determines is reasonable for collecting the civil penalty and**  
22       **damages of not less than twenty-five percent (25%) and not more than thirty**  
23       **percent (30%) of the proceeds of the civil action or settlement; and**

24       **(b) Any relator who is awarded a share of the proceeds under this subsection**  
25       **shall also be awarded the reasonable expenses, attorney's fees, and costs**  
26       **that the court finds to have been necessarily incurred in bringing and**  
27       **prosecuting the action, with these expenses, fees, and costs being paid by the**

1           defendant.

- 2   (3) Whether or not the Attorney General proceeds with a civil action under Sections  
3   1 to 9 of this Act, if the court finds that the civil action was brought by a relator  
4   who planned and initiated the violation upon which the civil action was based,  
5   the court may reduce the share of the proceeds that the relator would otherwise  
6   receive, taking into account the role of the relator in advancing the case to  
7   litigation and any relevant circumstances pertaining to the violation.
- 8   (4) If the relator bringing the civil action is convicted of criminal conduct arising  
9   from the relator's role in the violation upon which the civil action was based, the  
10   court shall dismiss the relator from the civil action and the relator shall not  
11   receive any share of the proceeds of the civil action. A dismissal of the relator  
12   shall not prejudice the right of the Commonwealth to continue the civil action,  
13   represented by the Attorney General.
- 14   (5) If the Attorney General does not intervene in the civil action and the relator  
15   bringing the civil action prosecutes the civil action independently, the court may  
16   award the defendant reasonable attorney's fees and expenses against the relator  
17   bringing the civil action if the defendant prevails and the court finds that the  
18   claim was clearly frivolous, clearly vexatious, or brought primarily for purposes  
19   of harassment.
- 20   (6) Any proceeds distributed to the Commonwealth in accordance with this section  
21   shall be remitted to the unit of government injured by the violation of Section 2 of  
22   this Act up to the amount required to reimburse that unit for its loss. Proceeds  
23   recovered on behalf of the Kentucky Medical Assistance Program shall be  
24   deposited in the Medicaid trust fund in accordance with Section 12 of this Act.  
25   Any remaining proceeds distributed to the Commonwealth shall be deposited in  
26   the Kentucky False Claims Recovery Fund, which shall be a separate,  
27   nonlapsing, interest bearing fund within the State Treasury. Amounts deposited

1 in or accruing to the fund, including interest, shall remain inviolate until  
2 appropriated by the General Assembly for a specific purpose.

3 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO  
4 READ AS FOLLOWS:

5 (1) Whether or not the Attorney General proceeds with any civil action brought  
6 under Sections 1 to 9 of this Act, any discovery in the civil action may be stayed  
7 or limited by the court if the Attorney General shows that the discovery may  
8 unreasonably interfere with a separate civil or criminal action in which the  
9 Commonwealth is a party, and which the Attorney General has pursued with  
10 reasonable diligence. The showing shall be conducted in camera.

11 (2) Upon a showing by the Attorney General that unrestricted participation during  
12 the course of litigation by the relator would interfere with or unduly delay the  
13 Commonwealth's prosecution of the case, or would be repetitious, irrelevant, or  
14 for purposes of harassment, the court may impose limitations on the relator's  
15 participation, including:

16 (a) Limiting the number of witnesses the relator may call;

17 (b) Limiting the length of the testimony of witnesses called by the relator;

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

19 (d) Otherwise limiting the participation by the relator in the litigation.

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

24 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO  
25 READ AS FOLLOWS:

26 (1) Notwithstanding the provisions of Section 2 of this Act, the Attorney General may  
27 elect to pursue the Commonwealth's claim through any alternate remedy

1 available to the Attorney General, including any administrative proceeding to  
 2 determine a civil money penalty.

3 (2) If any alternate remedy is pursued in another proceeding, the relator initiating  
 4 the civil action shall have the same rights in the alternate proceeding as the  
 5 relator would have had if the civil action had continued under Section 2 of this  
 6 Act.

7 (3) Any finding of fact or conclusion of law made in any alternate proceeding that  
 8 has become final shall be conclusive as to all parties to the civil action under  
 9 Section 2 of this Act. For purposes of this subsection, a finding or conclusion of  
 10 law is final when it is not subject to further administrative or judicial review, or  
 11 when the time for appeal has expired.

12 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO  
 13 READ AS FOLLOWS:

14 (1) Whenever the Attorney General has reasonable cause to believe that any person  
 15 may be in possession, custody, or control of any information or documentary  
 16 material relevant to an investigation of a violation of Section 2 of this Act, the  
 17 Attorney General may, prior to the initiation of a civil action regarding the  
 18 violation, issue and cause to be served on any person an administrative subpoena  
 19 requiring the recipient to provide testimony, information, or records pertaining to  
 20 the alleged violation by means of a deposition, deposition upon written questions,  
 21 interrogatories, or request for the production of documents in the same manner  
 22 and using the same process, standards, and protections as provided for  
 23 depositions and discovery under the Kentucky Rules of Civil Procedure.

24 (2) The administrative subpoena shall be served in the same manner as a subpoena  
 25 in a civil action.

26 (3) (a) Information and records held by the Attorney General after being gathered  
 27 pursuant to this section or having been voluntarily provided in lieu of an

1 administrative subpoena shall not be an open record under KRS 61.870 to  
 2 61.884, and shall not be released or disclosed by the Attorney General  
 3 except:

4 1. With the consent of the person who provided or who is the subject of  
 5 the information or record;

6 2. Pursuant to a court order;

7 3. In the course of civil litigation under Sections 1 to 9 of this Act,  
 8 subject to applicable rules of court;

9 4. To an agency of this state, the United States, or another state;

10 5. To a Commonwealth's attorney, county attorney, or political  
 11 subdivision of this state;

12 6. To a state or federal grand jury;

13 7. To the United States Attorney General; or

14 8. To any other person authorized by law to receive the information.

15 (b) The provisions of this subsection shall not alter the accessibility,  
 16 releaseability, or open records status of information or records gathered by  
 17 or provided to the Attorney General which continue to be held by the person  
 18 or entity from whom the information or records were obtained.

19 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO  
 20 READ AS FOLLOWS:

21 (1) Any employee, contractor, or agent shall be entitled to all relief necessary to make  
 22 that employee, contractor, or agent whole, if that employee, contractor, or agent  
 23 is discharged, demoted, suspended, threatened, harassed, or in any other manner  
 24 discriminated against in the terms and conditions of employment because of  
 25 lawful acts done by the employee, contractor, agent, or associated others in  
 26 furtherance of an action under Sections 1 to 9 of this Act or other efforts to stop  
 27 one or more violations of Section 2 of this Act.

1 (2) An employee, contractor, or agent who is injured by a violation of this section  
 2 may petition a court for:

3 (a) Injunctive relief reinstating the employee, contractor, or agent with the  
 4 same seniority status the employee, contractor, or agent would have had but  
 5 for the discrimination;

6 (b) A monetary award of not less than two (2) times the amount of back pay  
 7 and interest, and an amount compensating the employee, contractor, or  
 8 agent for any other damages sustained as a result of the violation; and

9 (c) The litigation costs and fees, including a reasonable attorney's fee, of the  
 10 employee, contractor, or agent.

11 (3) A public employee may utilize this section notwithstanding the administrative  
 12 remedies granted by KRS Chapters 16, 18A, 78, 90, 95, and 156, and other  
 13 chapters of the Kentucky Revised Statutes.

14 (4) An action alleging a violation of this section shall be brought within three (3)  
 15 years of the cause of action accruing.

16 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO  
 17 READ AS FOLLOWS:

18 (1) A civil action brought under Sections 1 to 9 of this Act or an action to enforce or  
 19 limit an administrative subpoena issued under Section 7 of this Act:

20 (a) Shall be brought in the Circuit Court of any county in which any part of the  
 21 violation occurred;

22 (b) Shall not, except as provided in Section 8 of this Act, be brought:

23 1. More than six (6) years after the date on which the violation of Section  
 24 2 of this Act occurred; or

25 2. More than three (3) years after the date when facts material to the  
 26 right of action are known or reasonably should have been known to  
 27 an official of the Commonwealth charged with responsibility to act in

1 the circumstances, but no more than ten (10) years after the date on  
2 which the violation of Section 2 of this Act is committed; and

3 (c) Shall require that all elements of a case, including damages, be proven by a  
4 preponderance of the evidence.

5 (2) Any remedies or investigatory authority granted under Sections 1 to 9 of this Act  
6 shall be ancillary and supplemental to other criminal, civil, or administrative  
7 remedies or authority, including professional or vocational discipline.

8 (3) Sections 1 to 9 of this Act shall not waive sovereign immunity.

9 (4) The provisions of Sections 1 to 9 of this Act adopt the intent underlying the  
10 federal False Claims Act, 31 U.S.C. secs. 3729 to 3733, as amended, and the  
11 decisions of the courts of the United States under that Act may be used as an aid  
12 in construing the provisions of Sections 1 to 9 of this Act.

13 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO  
14 READ AS FOLLOWS:

15 Sections 1 to 9 of this Act shall be known as and may be cited as the Kentucky False  
16 Claims Act.

17 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO  
18 READ AS FOLLOWS:

19 (1) (a) The Attorney General shall have access to all documentary materials  
20 generated by the Medical Assistance Program which are under the care,  
21 custody, or control of any state or local agency. Any documentary material  
22 gathered by the Attorney General under this subsection shall not be an open  
23 record under KRS 61.870 to 61.884, and shall not be released or disclosed,  
24 except under the same circumstances as delineated under subsection (3) of  
25 Section 7 of this Act for the release of information gathered under that  
26 section.

27 (b) To the extent permitted by 31 U.S.C. secs. 3729 to 3733, the Attorney

1           General may bring an action as relator under 31 U.S.C. sec. 3730 with  
2           respect to an act in connection with the Medical Assistance Program for  
3           which a person may be held liable under 31 U.S.C. sec. 3729.

4   (2) If a civil action brought under Sections 1 to 9 of this Act recovers damages  
5           arising from an unlawful act involving the Medical Assistance Program,  
6           proceeds directed by Section 4 of this Act to be repaid to the Commonwealth or  
7           deposited into the Kentucky False Claims Act Recovery Fund shall be paid to the  
8           Medical Assistance Program which shall repay to the federal government any  
9           required amounts out of these funds.

10 (3) The cabinet shall develop a system of administrative sanctions for Medical  
11 Assistance Program providers who violate Section 2 of this Act, with sanctions  
12 including suspension or termination of participation in the program. The  
13 sanctioning system may be triggered by a finding of liability in a civil action  
14 brought under Sections 1 to 9 of this Act.

15       ➔Section 12. KRS 205.8467 is amended to read as follows:

16 (1) Any provider who has been found by a preponderance of the evidence in an  
17 administrative process, in conformity with any applicable federal regulations and  
18 with due process protections, to have knowingly submitted or caused claims to be  
19 submitted for payment for furnishing treatment, services, or goods under a medical  
20 assistance program provided under this chapter, which payment the provider was  
21 not entitled to receive by reason of a violation of this chapter or who has violated  
22 Section 2 of this Act, shall:

23 (a) Be liable for restitution of any payments received in violation of this chapter,  
24 and interest at the maximum legal rate pursuant to KRS 360.010 in effect on  
25 the date any payment was made, for the period from the date payment was  
26 made to the date of repayment to the Commonwealth;

27 (b) Be liable for a civil payment in an amount up to three (3) times the amount of

- 1 excess payments;
- 2 (c) Be liable for payment of a civil payment of **five thousand five hundred**
- 3 **dollars (\$5,500) to eleven thousand dollars (\$11,000)**~~five hundred dollars~~
- 4 ~~(\$500)~~ for each false or fraudulent claim submitted for providing treatment,
- 5 services, or goods;
- 6 (d) Be liable for payment of legal fees and costs of investigation and enforcement
- 7 of civil payments; and
- 8 (e) Be removed as a participating provider in the Medical Assistance Program for
- 9 two (2) months to six (6) months for a first offense, for six (6) months to one
- 10 (1) year for a second offense, and for one (1) year to five (5) years for a third
- 11 offense.
- 12 (2) **Liability for damages or penalties established under Sections 1 to 9 of this Act**
- 13 **shall take priority over and offset any liability for similar damages or penalties**
- 14 **under this section. An administrative action under this section may be stayed**
- 15 **during the pendency of a civil action brought under Sections 1 to 9 of this Act.**
- 16 **(3)** Civil payments, interest, costs of investigation, and enforcement of the civil
- 17 remedies recovered on behalf of the Commonwealth under this section shall be
- 18 remitted to the State Treasurer for deposit in a Medicaid trust fund which is hereby
- 19 created and shall not lapse. Funds deposited in the Medicaid trust fund shall not be
- 20 spent until appropriated by the General Assembly for medical assistance services.
- 21 ~~**(4)**~~~~(3)~~ The remedies under this section are separate from and cumulative to any other
- 22 administrative, civil, or criminal remedies available under federal or state law or
- 23 regulation.
- 24 ~~**(5)**~~~~(4)~~ The Cabinet for Health and Family Services, in consultation with the Office of
- 25 the Attorney General, may promulgate administrative regulations, pursuant to KRS
- 26 Chapter 13A, for the administration of the civil payments contained in this section.
- 27 ➔Section 13. KRS 194A.990 is amended to read as follows:

- 1 (1) Any person who violates the provisions of KRS 194A.505(1), (2), or (7) shall be  
2 guilty of a Class A misdemeanor, unless the sum total of benefits received in excess  
3 of that to which the person was entitled at the time of the offense was committed is  
4 valued at or over one hundred dollars (\$100), in which case it is a Class D felony.
- 5 (2) Any person who violates KRS 194A.505(3) shall be guilty of a Class D felony.
- 6 (3) Any person who violates the provisions of KRS 194A.505(4) or (5) shall be guilty  
7 of a Class C felony.
- 8 (4) Any person who violates the provisions of KRS 194A.505(6) shall be guilty of a  
9 Class D felony, unless the purpose of the violation is to obtain ten thousand dollars  
10 (\$10,000) or more, in which case it shall be a Class C felony.
- 11 (5) Any person who violates KRS 194A.505(1) to (6) shall, in addition to any other  
12 penalties provided by law, forfeit and pay a civil penalty of payment to the cabinet  
13 in the amount of all benefits and payments to which the person was not entitled.
- 14 (6) Any provider who violates KRS 194A.505(1) to (6) shall, in addition to any other  
15 penalties provided by law, including the penalty set forth in subsection (5) of this  
16 section, forfeit and pay civil penalties of:
- 17 (a) Payment to the State Treasury's general revenue fund in an amount equal to  
18 three (3) times the amount of the benefits and payments to which the person  
19 was not entitled; and
- 20 (b) Payment to the State Treasury's general revenue fund of all reasonable  
21 expenses that the court determines have been necessarily incurred by the state  
22 in the enforcement of this section.
- 23 **(7) Liability for damages or penalties established under Sections 1 to 9 of this Act**  
24 **shall take priority over and offset any liability for similar civil damages or**  
25 **penalties under this section.**