

SUBSTITUTE FOR

HOUSE BILL NO. 4577

(As amended October 5, 2005)

[A bill to amend 1977 PA 72, entitled  
"The medicaid false claim act,"  
by amending the title and section 11 (MCL 400.611), the title as amended  
by 1982 PA 518, and by adding sections 10a, 10b, and 10c.]

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

[TITLE

An act to prohibit fraud in the obtaining of benefits or payments  
in connection with the medical assistance program; to prohibit kickbacks  
or bribes in connection with the program; to prohibit conspiracies in  
obtaining benefits or payments; to authorize the attorney general to  
investigate alleged violations of this act; to provide for the  
appointment of investigators by the attorney general; to ratify prior  
appointments of attorney general investigators; to provide for civil  
actions to recover money received by reason of fraudulent conduct; to  
provide for receiverships of residential health care facilities; **TO  
PROHIBIT RETALIATION; TO PROVIDE FOR CERTAIN CIVIL FINES;** and to  
prescribe **REMEDIES AND penalties.**]

1           **SEC. 10A. (1) ANY PERSON MAY BRING A CIVIL ACTION IN THE NAME**  
2 **OF THIS STATE UNDER THIS SECTION TO RECOVER LOSSES THAT THIS STATE**  
3 **SUFFERS FROM A VIOLATION OF THIS ACT. A SUIT FILED UNDER THIS**  
4 **SECTION SHALL NOT BE DISMISSED UNLESS THE ATTORNEY GENERAL HAS BEEN**  
5 **NOTIFIED AND HAD AN OPPORTUNITY TO APPEAR AND OPPOSE THE DISMISSAL.**

6           **(2) IF A PERSON OTHER THAN THE ATTORNEY GENERAL INITIATES AN**  
7 **ACTION UNDER THIS SECTION, THE COMPLAINT SHALL REMAIN UNDER SEAL**  
8 **AND THE CLERK SHALL NOT ISSUE THE SUMMONS FOR SERVICE ON THE**



1 DEFENDANT UNTIL AFTER THE TIME FOR THE ATTORNEY GENERAL'S ELECTION  
2 UNDER SUBSECTION (3) EXPIRES. AT THE TIME OF FILING THE COMPLAINT,  
3 THE PERSON SHALL SERVE A COPY OF THE COMPLAINT ON THE ATTORNEY  
4 GENERAL AND SHALL DISCLOSE, IN WRITING, SUBSTANTIALLY ALL MATERIAL  
5 EVIDENCE AND INFORMATION IN THE PERSON'S POSSESSION SUPPORTING THE  
6 COMPLAINT TO THE ATTORNEY GENERAL.

7 (3) THE ATTORNEY GENERAL MAY ELECT TO INTERVENE IN AN ACTION  
8 UNDER THIS SECTION. BEFORE THE EXPIRATION OF THE LATER OF 90 DAYS  
9 AFTER SERVICE OF THE COMPLAINT AND RELATED MATERIALS OR ANY  
10 EXTENSION OF THE 90 DAYS THAT IS REQUESTED BY THE ATTORNEY GENERAL  
11 AND GRANTED BY THE COURT, THE ATTORNEY GENERAL SHALL NOTIFY THE  
12 COURT AND THE PERSON INITIATING THE ACTION OF 1 OF THE FOLLOWING:

13 (A) THAT THE ATTORNEY GENERAL WILL PROCEED WITH THE ACTION FOR  
14 THIS STATE AND HAVE PRIMARY RESPONSIBILITY FOR PROCEEDING WITH THE  
15 ACTION.

16 (B) THAT THE ATTORNEY GENERAL DECLINES TO TAKE OVER THE ACTION  
17 AND THE PERSON INITIATING THE ACTION HAS THE RIGHT TO PROCEED WITH  
18 THE ACTION.

19 (4) IF AN ACTION IS FILED UNDER THIS SECTION, A PERSON OTHER  
20 THAN THE ATTORNEY GENERAL SHALL NOT INTERVENE IN THE ACTION OR  
21 BRING ANOTHER ACTION ON BEHALF OF THIS STATE BASED ON THE FACTS  
22 UNDERLYING THE ACTION.

23 (5) IF THE ATTORNEY GENERAL ELECTS TO PROCEED WITH THE ACTION  
24 UNDER SUBSECTION (3) OR (6), THE ATTORNEY GENERAL HAS PRIMARY  
25 RESPONSIBILITY FOR PROSECUTING THE ACTION AND MAY DO ALL OF THE  
26 FOLLOWING:

27 (A) AGREE TO DISMISS THE ACTION, NOTWITHSTANDING THE OBJECTION

1 OF THE PERSON INITIATING THE ACTION, BUT ONLY IF THAT PERSON HAS  
2 BEEN NOTIFIED OF AND OFFERED THE OPPORTUNITY TO PARTICIPATE IN A  
3 HEARING ON THE MOTION TO DISMISS.

4 (B) SETTLE THE ACTION, NOTWITHSTANDING THE OBJECTION OF THE  
5 PERSON INITIATING THE ACTION, BUT ONLY IF THAT PERSON HAS BEEN  
6 NOTIFIED OF AND OFFERED THE OPPORTUNITY TO PARTICIPATE IN A HEARING  
7 ON THE SETTLEMENT AND IF THE COURT DETERMINES THAT THE SETTLEMENT  
8 IS FAIR, ADEQUATE, AND REASONABLE UNDER THE CIRCUMSTANCES. UPON A  
9 SHOWING OF GOOD CAUSE, THE SETTLEMENT HEARING MAY BE HELD IN  
10 CAMERA.

11 (C) REQUEST THE COURT TO LIMIT THE PARTICIPATION OF THE PERSON  
12 INITIATING THE ACTION. IF THE ATTORNEY GENERAL DEMONSTRATES THAT  
13 UNRESTRICTED PARTICIPATION BY THE PERSON INITIATING THE ACTION  
14 DURING THE LITIGATION WOULD INTERFERE WITH OR UNDULY DELAY THE  
15 ATTORNEY GENERAL'S PROSECUTION OF THE CASE OR WOULD BE REPETITIOUS,  
16 IRRELEVANT, OR UNDULY HARASSING, THE COURT MAY DO ANY OF THE  
17 FOLLOWING:

18 (i) LIMIT THE NUMBER OF THE PERSON'S WITNESSES.

19 (ii) LIMIT THE LENGTH OF THE TESTIMONY OF THE PERSON'S  
20 WITNESSES.

21 (iii) LIMIT THE PERSON'S CROSS-EXAMINATION OF WITNESSES.

22 (iv) OTHERWISE LIMIT THE PERSON'S PARTICIPATION IN THE  
23 LITIGATION.

24 (6) IF THE ATTORNEY GENERAL NOTIFIES THE COURT THAT HE OR SHE  
25 DECLINES TO TAKE OVER THE ACTION UNDER SUBSECTION (3), THE PERSON  
26 WHO INITIATED THE ACTION MAY PROCEED WITH THE ACTION. AT THE  
27 ATTORNEY GENERAL'S REQUEST AND EXPENSE, THE ATTORNEY GENERAL SHALL

1 BE PROVIDED WITH COPIES OF ALL PLEADINGS FILED IN THE ACTION AND  
2 COPIES OF ALL DEPOSITION TRANSCRIPTS. NOTWITHSTANDING THE ATTORNEY  
3 GENERAL'S ELECTION NOT TO TAKE OVER THE ACTION, THE COURT MAY  
4 PERMIT THE ATTORNEY GENERAL TO INTERVENE IN THE ACTION AT ANY TIME  
5 UPON A SHOWING OF GOOD CAUSE AND, SUBJECT TO SUBSECTION (7),  
6 WITHOUT AFFECTING THE RIGHTS OR STATUS OF THE PERSON INITIATING THE  
7 ACTION.

8 (7) UPON A SHOWING, CONDUCTED IN CAMERA, THAT ACTIONS OF THE  
9 PERSON INITIATING THE ACTION DURING DISCOVERY WOULD INTERFERE WITH  
10 THE ATTORNEY GENERAL'S INVESTIGATION OR PROSECUTION OF A CRIMINAL  
11 OR CIVIL MATTER, THE COURT MAY STAY THE DISCOVERY FOR NOT MORE THAN  
12 90 DAYS. THE COURT MAY EXTEND THE STAY UPON A FURTHER SHOWING THAT  
13 THE ATTORNEY GENERAL IS PURSUING THE INVESTIGATION OR PROCEEDING  
14 WITH REASONABLE DILIGENCE AND THE DISCOVERY WOULD INTERFERE WITH  
15 THE ONGOING INVESTIGATION OR PROCEEDING.

16 (8) AS AN ALTERNATIVE TO AN ACTION PERMITTED UNDER THIS  
17 SECTION, THE ATTORNEY GENERAL MAY PURSUE A VIOLATION OF THIS ACT  
18 THROUGH ANY ALTERNATE REMEDY AVAILABLE TO THIS STATE, INCLUDING AN  
19 ADMINISTRATIVE PROCEEDING. IF THE ATTORNEY GENERAL PURSUES AN  
20 ALTERNATE REMEDY, A PERSON WHO INITIATED AN ACTION UNDER THIS  
21 SECTION SHALL HAVE EQUIVALENT RIGHTS IN THAT PROCEEDING TO THE  
22 RIGHTS THAT THE PERSON WOULD HAVE HAD IF THE ACTION HAD CONTINUED  
23 UNDER THIS SECTION TO THE EXTENT CONSISTENT WITH THE LAW GOVERNING  
24 THAT PROCEEDING. FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT  
25 BECOME FINAL IN AN ALTERNATIVE PROCEEDING SHALL BE CONCLUSIVE ON  
26 THE PARTIES TO AN ACTION UNDER THIS SECTION. FOR PURPOSES OF THIS  
27 SUBSECTION, A FINDING OR CONCLUSION IS FINAL IF IT HAS BEEN FINALLY

1 DETERMINED ON APPEAL TO THE APPROPRIATE COURT, IF THE TIME FOR  
2 FILING AN APPEAL WITH RESPECT TO THE FINDING OR CONCLUSION HAS  
3 EXPIRED, OR IF THE FINDING OR CONCLUSION IS NOT SUBJECT TO JUDICIAL  
4 REVIEW.

5 (9) SUBJECT TO SUBSECTIONS (10) AND (11), IF A PERSON OTHER  
6 THAN THE ATTORNEY GENERAL PREVAILS IN AN ACTION THAT THE PERSON  
7 INITIATES UNDER THIS SECTION, THE COURT SHALL AWARD THE PERSON  
8 NECESSARY EXPENSES, COSTS, REASONABLE ATTORNEY FEES, AND, BASED ON  
9 THE AMOUNT OF EFFORT INVOLVED, THE FOLLOWING PERCENTAGE OF THE  
10 MONETARY PROCEEDS RESULTING FROM THE ACTION OR ANY SETTLEMENT OF  
11 THE CLAIM:

12 (A) IF THE ATTORNEY GENERAL INTERVENES, 15% TO 25%.

13 (B) IF THE ATTORNEY GENERAL DOES NOT INTERVENE, 25% TO 30%.

14 (10) IF THE COURT FINDS AN ACTION UNDER THIS SECTION TO BE  
15 BASED PRIMARILY ON DISCLOSURE OF SPECIFIC INFORMATION THAT WAS NOT  
16 PROVIDED BY THE PERSON BRINGING THE ACTION, SUCH AS INFORMATION  
17 FROM A CRIMINAL, CIVIL, OR ADMINISTRATIVE HEARING IN A STATE OR  
18 FEDERAL DEPARTMENT OR AGENCY, A LEGISLATIVE REPORT, HEARING, AUDIT,  
19 OR INVESTIGATION, OR THE NEWS MEDIA, AND THE ATTORNEY GENERAL  
20 PROCEEDS WITH THE ACTION, THE COURT SHALL AWARD THE PERSON BRINGING  
21 THE ACTION NO MORE THAN 10% OF THE MONETARY RECOVERY IN ADDITION TO  
22 REASONABLE ATTORNEY FEES, NECESSARY EXPENSES, AND COSTS.

23 (11) IF THE COURT FINDS THAT THE PERSON BRINGING AN ACTION  
24 UNDER THIS SECTION PLANNED OR INITIATED THE CONDUCT UPON WHICH THE  
25 ACTION IS BROUGHT, THEN THE COURT MAY REDUCE OR ELIMINATE, AS IT  
26 CONSIDERS APPROPRIATE, THE SHARE OF THE PROCEEDS OF THE ACTION THAT  
27 THE PERSON WOULD OTHERWISE BE ENTITLED TO RECEIVE. A PERSON WHO IS

1 CONVICTED OF CRIMINAL CONDUCT ARISING FROM A VIOLATION OF THIS ACT  
2 SHALL NOT INITIATE OR REMAIN A PARTY TO AN ACTION UNDER THIS  
3 SECTION AND IS NOT ENTITLED TO SHARE IN THE MONETARY PROCEEDS  
4 RESULTING FROM THE ACTION OR ANY SETTLEMENT UNDER THIS SECTION.

5 (12) A PERSON OTHER THAN THE ATTORNEY GENERAL SHALL NOT BRING  
6 AN ACTION UNDER THIS SECTION THAT IS BASED ON ALLEGATIONS OR  
7 TRANSACTIONS THAT ARE ALREADY THE SUBJECT OF A CIVIL SUIT, A  
8 CRIMINAL INVESTIGATION OR PROSECUTION, OR AN ADMINISTRATIVE  
9 INVESTIGATION OR PROCEEDING TO WHICH THIS STATE OR THE FEDERAL  
10 GOVERNMENT IS ALREADY A PARTY. THE COURT SHALL DISMISS AN ACTION  
11 BROUGHT IN VIOLATION OF THIS SECTION.

12 (13) UNLESS THE PERSON IS THE ORIGINAL SOURCE OF THE  
13 INFORMATION, A PERSON, OTHER THAN THE ATTORNEY GENERAL, SHALL NOT  
14 INITIATE AN ACTION UNDER THIS SECTION BASED UPON THE PUBLIC  
15 DISCLOSURE OF ALLEGATIONS OR TRANSACTIONS IN A CRIMINAL, CIVIL, OR  
16 ADMINISTRATIVE HEARING, IN A STATE OR FEDERAL LEGISLATIVE,  
17 INVESTIGATIVE, OR ADMINISTRATIVE REPORT, HEARING, AUDIT, OR  
18 INVESTIGATION, OR FROM THE NEWS MEDIA. THE PERSON IS THE ORIGINAL  
19 SOURCE IF HE OR SHE HAD DIRECT AND INDEPENDENT KNOWLEDGE OF THE  
20 INFORMATION ON WHICH THE ALLEGATIONS ARE BASED AND VOLUNTARILY  
21 PROVIDED THE INFORMATION TO THE ATTORNEY GENERAL BEFORE FILING AN  
22 ACTION BASED ON THAT INFORMATION UNDER THIS SECTION.

23 (14) THIS STATE AND THE ATTORNEY GENERAL ARE NOT LIABLE FOR  
24 ANY EXPENSES, COSTS, OR ATTORNEY FEES THAT A PERSON INCURS IN  
25 BRINGING AN ACTION UNDER THIS SECTION. ANY AMOUNT AWARDED TO A  
26 PERSON INITIATING AN ACTION TO ENFORCE THIS ACT IS PAYABLE SOLELY  
27 FROM THE PROCEEDS OF THE ACTION OR SETTLEMENT.

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1 (15) IF A PERSON PROCEEDS WITH AN ACTION UNDER THIS SECTION  
2 AFTER BEING NOTIFIED THAT THE ATTORNEY GENERAL HAS DECLINED TO  
3 INTERVENE AND THE COURT FINDS THAT THE CLAIM WAS FRIVOLOUS, AS  
4 DEFINED IN SECTION 2591 OF THE REVISED JUDICATURE ACT OF 1961, 1961  
5 PA 236, MCL 600.2591, THE COURT SHALL AWARD THE PREVAILING  
6 DEFENDANT [ACTUAL AND REASONABLE ATTORNEY FEES AND EXPENSES AND, IN  
7 ADDITION, SHALL IMPOSE A CIVIL FINE OF NOT MORE THAN \$10,000.00. THE  
CIVIL FINE SHALL BE DEPOSITED INTO THE MICHIGAN MEDICAID BENEFITS TRUST  
FUND ESTABLISHED IN SECTION 5 OF THE MICHIGAN TRUST FUND ACT, 2000 PA  
489, MCL 12.255.]

8 SEC. 10B. (1) THE ATTORNEY GENERAL MAY RECOVER ALL COSTS THIS  
9 STATE INCURS IN THE LITIGATION AND RECOVERY OF MEDICAID RESTITUTION  
10 UNDER THIS ACT, INCLUDING THE COST OF INVESTIGATION AND ATTORNEY  
11 FEES. THE ATTORNEY GENERAL SHALL RETAIN THE AMOUNT RECEIVED FOR  
12 ACTIVITIES UNDER THIS ACT, EXCLUDING AMOUNTS FOR RESTITUTION, COURT  
13 COSTS, AND FINES, NOT TO EXCEED THE AMOUNT OF THIS STATE'S FUNDING  
14 MATCH FOR THE MEDICAID FRAUD CONTROL UNIT.

15 (2) THE ATTORNEY GENERAL SHALL NOT RETAIN AMOUNTS UNDER THIS  
16 SECTION UNTIL ALL THE RESTITUTION AWARDED IN THE PROCEEDING HAS  
17 BEEN PAID.

18 (3) COSTS THAT THE ATTORNEY GENERAL RECOVERS IN EXCESS OF THE  
19 STATE'S FUNDING MATCH FOR THE MEDICAID FRAUD CONTROL UNIT SHALL BE  
20 DEPOSITED IN THE MICHIGAN MEDICAID BENEFITS TRUST FUND ESTABLISHED  
21 IN SECTION 5 OF THE MICHIGAN TRUST FUND ACT, 2000 PA 489, MCL  
22 12.255.

23 SEC. 10C. (1) AN EMPLOYER SHALL NOT DISCHARGE, DEMOTE,  
24 SUSPEND, THREATEN, HARASS, OR OTHERWISE DISCRIMINATE AGAINST AN  
25 EMPLOYEE IN THE TERMS AND CONDITIONS OF EMPLOYMENT BECAUSE THE  
26 EMPLOYEE INITIATES, ASSISTS IN, OR PARTICIPATES IN A PROCEEDING OR  
27 COURT ACTION UNDER THIS ACT OR BECAUSE THE EMPLOYEE COOPERATES WITH



1 OR ASSISTS IN AN INVESTIGATION UNDER THIS ACT. THIS PROHIBITION  
2 DOES NOT APPLY TO AN EMPLOYMENT ACTION AGAINST AN EMPLOYEE WHO IS  
3 CONVICTED OF CRIMINAL CONDUCT ARISING FROM A VIOLATION OF THIS ACT.

4 (2) AN EMPLOYER WHO VIOLATES THIS SECTION IS LIABLE TO THE  
5 EMPLOYEE FOR ALL OF THE FOLLOWING:

6 (A) REINSTATEMENT TO THE EMPLOYEE'S POSITION WITHOUT LOSS OF  
7 SENIORITY.

8 (B) TWO TIMES THE AMOUNT OF LOST BACK PAY.

9 (C) INTEREST ON THE BACK PAY.

10 (D) COMPENSATION FOR ANY SPECIAL DAMAGES.

11 (E) ANY OTHER RELIEF NECESSARY TO MAKE THE EMPLOYEE WHOLE.

12 Sec. 11. (1) ~~An~~ EXCEPT AS PROVIDED IN SUBSECTION (2), AN  
13 action brought in connection with a medicaid matter under this act  
14 ~~may~~ SHALL be filed in ~~the courts of~~ Ingham county and may be  
15 prosecuted to final judgment in satisfaction there.

16 (2) A PERSON MAY BRING A CIVIL ACTION UNDER SECTION 10A IN ANY  
17 COUNTY IN WHICH VENUE IS PROPER. IF THE ATTORNEY GENERAL ELECTS TO  
18 INTERVENE UNDER SECTION 10A(3) OR (6) AND THE COURT GRANTS THE  
19 REQUEST, UPON MOTION BY THE ATTORNEY GENERAL, THE COURT SHALL  
20 TRANSFER THE ACTION TO THE CIRCUIT COURT IN INGHAM COUNTY.

21 (3) ~~(2)~~ Process issued by a court in which an action is  
22 filed may be served anywhere in the state.