



South Carolina Bar

Continuing Legal Education Division

2024 SC BAR CONVENTION

Health Care Law Section

“Current Issues in South Carolina
Health Law”

Thursday, January 18

SC Supreme Court Commission on CLE Course No. 240027

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Health Care Law Section

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Fertile Soil or Battleground? The Post-CON
Landscape in South Carolina

David Levitt

Vito Wicevic

M. Elizabeth Crum

Travis Dayhuff

SOUTH CAROLINA BAR CONVENTION HEALTH LAW SECTION SEMINAR, JANUARY 18, 2024 CURRENT ISSUES IN SOUTH CAROLINA HEALTH LAW

Segment I: Fertile Soil or Battleground? The Post-CON Landscape in South Carolina



FERTILE SOIL OR BATTLEGROUND? THE POST-CON LANDSCAPE IN SOUTH CAROLINA

DISCUSSION TOPICS

What is Certificate of Need (“CON)?

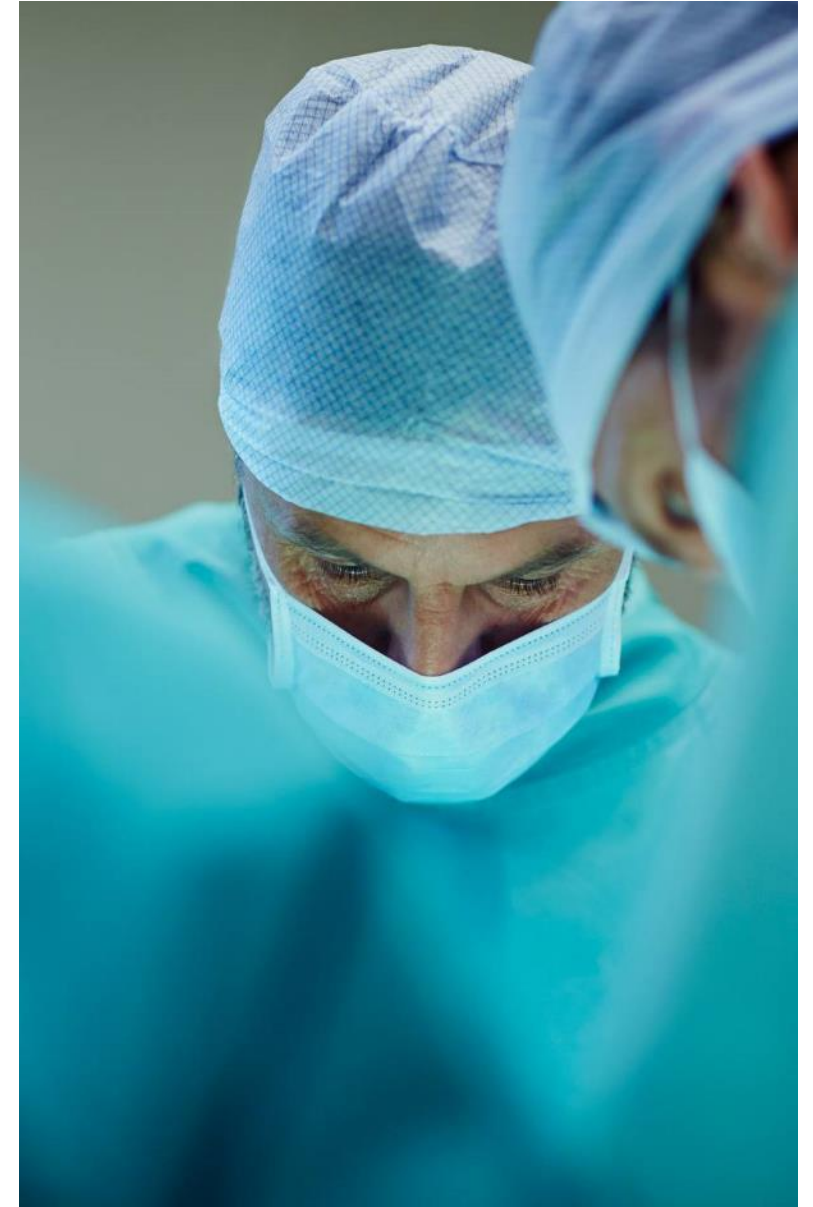
How did the CON law change in South Carolina ?

What does this mean for health care facilities in South Carolina?

What has happened in other states that de-regulated or ended CON?

What do we expect to happen next in South Carolina?

What happens when CON completely sunsets on January 1, 2027?





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Health Care Law Section

Thursday, January 18

South Carolina Health Care Fraud Enforcement
Panel Discussion

Matthew R. Hubbell

E. Bart Daniel

Deborah B. Barbier

William N. Nettles

Joseph P. Griffith, Jr.

James C. Leventis



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2024 SC BAR CONVENTION

Health Care Law Section

Thursday, January 18

Does South Carolina Need a State False Claims Act?

Elizabeth C. Warren
Senator Richard A. Harpootlian
Stephanie G. Opet

Does South Carolina Need a State False Claims Act?

ANNUAL SC BAR CONVENTION – CHARLESTON, SC
THURSDAY, JANUARY 18, 2024
3:45 PM – 4:45 PM

Participants

Panelists:

- Dick Harpootlian, South Carolina State Senator,
- Stephanie Goddard Opet, Director South Carolina Medicaid Fraud Control Unit

Moderator:

- Beth Warren, Assistant United States Attorney

Plan for Panel

1. Introductions

2. Stephanie – provide overview on the number of states that have FCAs and stats for the amount of money fraudulently taken that states have recovered using FCAs.

3. Dick – describe legislation he has introduced, key aspects, how it is the same/different than federal statute, current status.

4. Discuss potential opposition.

5. Stephanie – discuss tools the state has to combat fraud and how they are insufficient.

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A BILL

11 TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 15-85-10 SO AS
12 TO PROVIDE DEFINITIONS FOR THE SOUTH CAROLINA FALSE CLAIMS ACT; BY ADDING
13 SECTION 15-85-20 SO AS TO PROVIDE THAT ANY PERSON WHO COMMITS ANY OF THE
14 FOLLOWING ACTS SHALL BE LIABLE TO THE STATE OR A LOCAL GOVERNMENT, AS
15 APPLICABLE, FOR A CIVIL PENALTY OF NOT LESS THAN SIX THOUSAND DOLLARS AND
16 NOT MORE THAN TWELVE THOUSAND DOLLARS; BY ADDING SECTION 15-85-30 SO AS
17 TO PROVIDE THAT THE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO
18 INVESTIGATE VIOLATIONS AND BRING A CIVIL ACTION AND THAT ANY PERSON MAY
19 BRING A QUI TAM CIVIL ACTION FOR A VIOLATION OF SECTION 15-85-20; BY ADDING
20 SECTION 15-85-40 SO AS TO PROVIDE THAT ALL MONIES RECOVERED OR OBTAINED
21 UNDER THIS CHAPTER BY A STATE AGENCY OR STATE OFFICIAL OR EMPLOYEE
22 ACTING IN THEIR OFFICIAL CAPACITY SHALL BE SUBJECT TO SUBDIVISION ELEVEN
23 OF SECTION FOUR OF THIS CHAPTER; BY ADDING SECTION 15-85-50 SO AS TO PROVIDE
24 THAT FOR PURPOSES OF THIS SECTION, A “LAWFUL ACT” SHALL INCLUDE, BUT NOT
25 BE LIMITED TO, OBTAINING OR TRANSMITTING TO THE STATE, A LOCAL
26 GOVERNMENT, A QUI TAM PLAINTIFF, OR PRIVATE COUNSEL SOLELY EMPLOYED TO
27 INVESTIGATE, POTENTIALLY FILE, OR FILE A CAUSE OF ACTION UNDER THIS
28 CHAPTER, DOCUMENTS, DATA, CORRESPONDENCE, ELECTRONIC MAIL, OR ANY
29 OTHER INFORMATION, EVEN THOUGH SUCH ACT MAY VIOLATE A CONTRACT,
30 EMPLOYMENT TERM, OR DUTY OWED TO THE EMPLOYER OR CONTRACTOR, SO LONG
31 AS THE POSSESSION AND TRANSMISSION OF SUCH DOCUMENTS ARE FOR THE SOLE
32 PURPOSE OF FURTHERING EFFORTS TO STOP ONE OR MORE VIOLATIONS OF THIS
33 CHAPTER; BY ADDING SECTION 15-85-60 SO AS TO PROVIDE THAT A CIVIL ACTION
34 UNDER THIS CHAPTER SHALL BE COMMENCED NO LATER THAN TEN YEARS AFTER
35 THE DATE ON WHICH THE VIOLATION OF THIS CHAPTER IS COMMITTED; BY ADDING
36 SECTION 15-85-70 SO AS TO PROVIDE THAT THIS CHAPTER SHALL NOT PREEMPT THE
37 AUTHORITY OF LAW ENFORCEMENT TO INVESTIGATE VIOLATIONS OF LAW OR
38 PREVENT A PERSON FROM DISCLOSING INFORMATION CONCERNING A VIOLATION OF
39 THIS CHAPTER TO LAW ENFORCEMENT; BY ADDING SECTION 15-85-80 SO AS TO
40 AUTHORIZE THE ATTORNEY GENERAL TO ADOPT SUCH RULES AND REGULATIONS AS
41 ARE NECESSARY TO EFFECTUATE THE PURPOSES OF THIS CHAPTER.

42
43 Be it enacted by the General Assembly of the State of South Carolina:

44

45 SECTION 1. Title 15 of the S.C. Code is amended by adding:

46

47

CHAPTER 85

48

49

South Carolina False Claims Act

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Section 15-85-10. (1) “Claim” means any request demand, whether under a contract or otherwise, for money or property that is made to:

(a) an officer, employee or agent of the state or a local government; or

(b) a contractor, grantee, or other recipient, if the money or property is to be spent or used on the State or a local government’s behalf or to advance a state or local government program or interest, and if the state or local government

(i) provides or has provided any portion of the money or property requested or demanded; or

(ii) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded;

(2) “False claim” means any claim or portion thereof that is false or fraudulent.

(3)(a) “Knowing” means, with respect to information, that a person:

(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; and

(b) no proof of specific intent to defraud is required; however, acts occurring by mistake or as a result of mere negligence are not covered by this chapter.

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

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

(6) “Local government” means any South Carolina county, city, town, village, school district, board of cooperative educational services local public benefit corporation or other municipal corporation or political subdivision of the state, or of such local government.

(7) “Original source” means a person who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action pursuant to this section which is based on the information.

(8) “Person” means any natural person, partnership, corporation, association, or any other legal entity or individual, other than the state or a local government.

(9) “State” means the State of South Carolina and any state department, board, bureau, division, commission, committee, public benefit corporation, public authority, council, office, or other governmental entity performing a governmental or proprietary function for the state.

Section 15-85-20. (A) Any person who commits any of the following acts shall be liable to the state or a local government, as applicable, for a civil penalty of not less than six thousand dollars and not

1 more than twelve thousand dollars, as adjusted to be equal to the civil penalty allowed under the federal
2 False Claims Act, 31 U.S.C. sec. 3729, et seq., as amended, as adjusted for inflation by the Federal
3 Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note; Pub. L. No. 101-
4 410), plus three times the amount of all damages, including consequential damages, which the state or
5 local government sustains because of the act of that person:

6 (1) knowingly presents, or causes to be presented a false or fraudulent claim for payment or
7 approval;

8 (2) knowingly makes, uses, or causes to be made or used, a false record or statement that is material
9 to a false or fraudulent claim;

10 (3) conspires to commit a violation of the South Carolina False Claims Act;

11 (4) has possession, custody, or control of property or money used, or to be used, by the state or a
12 local government and knowingly delivers, or causes to be delivered, less than all of that money or
13 property;

14 (5) is authorized to make or deliver a document certifying receipt of property used or to be used,
15 by the state or a local government, and intending to defraud the state or a local government, makes or
16 delivers the receipt without completely knowing that the information on the receipt is true;

17 (6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an
18 officer or employee of the state or a local government knowing that the officer or employee violates a
19 provision of law when selling or pledging such property;

20 (7) knowingly makes, uses, or causes to be made or used, a false record or statement material to
21 an obligation to pay or transmit money or property to the state or a local government; or

22 (8) knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or
23 transmit money or property to the state or a local government, or conspires to do the same.

24 (B) The court may assess not more than two times the amount of damages sustained because of the
25 act of the person described in this section, if the court finds that:

26 (1) the person committing the violation of this section had furnished all information known to such
27 person about the violation, to those officials responsible for investigating false claims violations on
28 behalf of the state and any local government that sustained damages, within thirty days after the date
29 on which such person first obtained the information;

30 (2) such person fully cooperated with any government investigation of such violation; and

31 (3) at the time such person furnished information about the violation, no criminal prosecution,
32 civil action, or administrative action had commenced with respect to such violation, and the person did
33 not have actual knowledge of the existence of an investigation into such violation.

34 (C) A person who violates this section shall also be liable for the costs, including attorney's fees, of
35 a civil action brought to recover any such penalty or damages.

36 (D)(1) This section shall apply to claims, records, or statements made under the tax law only if:

1 (a) the net income or sales of the person against whom the action is brought equals or exceeds
2 one million dollars for any taxable year subject to any action brought pursuant to this chapter;

3 (b) the damages pleaded in such action exceed three hundred and fifty thousand dollars; and

4 (c) the person is alleged to have violated the South Carolina False Claims Act; provided,
5 however, that nothing in this sub-subsection shall be deemed to modify or restrict the application of the
6 South Carolina False Claims Act to any act alleged that relates to a violation of the tax law.

7 (2) The attorney general shall consult with the Director of the South Carolina Department of
8 Revenue prior to filing or intervening in any action under this chapter that is based on the filing of false
9 claims, records or statements made under the tax law. If the state declines to participate or to authorize
10 participation by a local government in such an action pursuant to this chapter, the qui tam plaintiff must
11 obtain approval from the attorney general before making any motion to compel the department of
12 taxation and finance to disclose tax records.

13
14 Section 15-85-30. (A) The attorney general shall have the authority to investigate violations under
15 Section 15-85-20. If the attorney general believes that a person has violated or is violating such section,
16 then the attorney general may bring a civil action on behalf of the people of the State of South Carolina
17 or on behalf of a local government against such person. A local government also shall have the authority
18 to investigate violations that may have resulted in damages to such local government under Section 15-
19 85-20 and may bring a civil action on its own behalf, or on behalf of any subdivision of such local
20 government, to recover damages sustained by such local government as a result of such violations. No
21 action may be filed pursuant to this subsection against the federal government, the state or a local
22 government, or any officer or employee thereof acting in his official capacity. The attorney general
23 shall consult with the office of Medicaid inspector general prior to filing any action related to the
24 Medicaid program.

25 (B)(1) Any person may bring a qui tam civil action for a violation of Section 15-85-20 on behalf of
26 the person and the people of the State of South Carolina or a local government. No action may be filed
27 pursuant to this subsection against the federal government, the state or a local government, or any
28 officer or employee thereof acting in his official capacity.

29 (2)(a) A copy of the complaint and written disclosure of substantially all material evidence and
30 information shall be served on the state. Any complaint filed in a court of the State of South Carolina
31 shall be filed in the Sout Carolina Supreme Court in camera, shall remain under seal for at least sixty
32 days, and shall not be served on the defendant until the court so orders. The seal shall not preclude the
33 attorney general, a local government, or the qui tam plaintiff from serving the complaint, any other
34 pleadings, or the written disclosure of substantially all material evidence and information possessed by
35 the person bringing the action, on relevant state or local government agencies, or on law enforcement
36 authorities of the state, a local government, or other jurisdictions, so that the actions may be investigated

1 or prosecuted except that such seal applies to the agencies or authorities so served to the same extent
2 that the seal applies to other parties in the action.

3 (b) If the allegations in the complaint allege a violation of Section 15-85-20 involving damages
4 to a local government, then the attorney general may at any time provide a copy of such complaint and
5 written disclosure to the attorney for such local government; provided, however, that if the allegations
6 in the complaint involve damages only to a city with a population of one million or more, or only to
7 the state and such a city, then the attorney general shall provide such complaint and written disclosure
8 to the corporation counsel of such city within thirty days. The state may elect to supersede or intervene
9 and proceed with the action, or to authorize a local government that may have sustained damages to
10 supersede or intervene, within sixty days after it receives both the complaint and the material evidence
11 and information; provided, however, that if the allegations in the complaint involve damages only to a
12 city with a population of one million or more, then the attorney general may not supersede or intervene
13 in such action without the consent of the corporation counsel of such city.

14 (c) The attorney general shall consult with the Office of the Inspector General prior to
15 superseding or intervening in any action related to the Medicaid program.

16 (d) The attorney general may, for good cause shown, move the court for extensions of the time
17 during which the complaint remains under seal under this subdivision. Any such motions may be
18 supported by affidavits or other submissions in camera.

19 (3) Prior to the expiration of the sixty-day period or any extensions obtained under this section,
20 the attorney general shall notify the court that he:

21 (a) intends to file a complaint against the defendant on behalf of the people of the State of South
22 Carolina or a local government, and thereby be substituted as the plaintiff in the action and convert the
23 action in all respects from a qui tam civil action brought by a private person to a civil enforcement
24 action by the attorney general under subdivision one of this section;

25 (b) intends to intervene in such action, as of right, to aid and assist the plaintiff in the action; or

26 (c) if the action involves damages sustained by a local government, intended to grant the local
27 government permission to:

28 (i) file and serve a complaint against the defendant, and thereby be substituted as the plaintiff
29 in the action and convert the action in all respects from a qui tam civil action brought by a private
30 person into a civil enforcement action by the local government under this section; or

31 (ii) intervene in such action, as of right, to aid and assist the plaintiff in the action. The
32 attorney general shall provide the local government with a copy of any such notification at the same
33 time the court is notified.

34 (4) If the state notifies the court that it intended to file a complaint against the defendant and
35 thereby be substituted as the plaintiff in the action, or to permit a local government to do so, such
36 complaint, whether filed separately or as an amendment to the qui tam plaintiff's complaint, must be

1 filed within thirty days after the notification to the court. For statute of limitations purposes, any such
2 complaint filed by the state or a local government shall relate back to the filing date of the complaint
3 of the qui tam plaintiff, to the extent that the cause of action of the state or local government arises out
4 of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the complaint of
5 the qui tam plaintiff.

6 (5) If the state notifies the court that it intends to intervene in the action, or to permit a local
7 government to do so, then such motion to intervene, whether filed separately or as an amendment to
8 the qui tam plaintiff's complaint, shall be filed within thirty days after the notification to the court. For
9 statute of limitations purposes, any complaint filed by the state or a local government, whether filed
10 separately or as an amendment to the qui tam plaintiff's complaint, shall relate back to the filing date
11 of the complaint of the qui tam plaintiff, to the extent that the cause of action of the state or local
12 government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth,
13 in the complaint of the qui tam plaintiff.

14 (6) If the state declines to participate in the action or to authorize participation by a local
15 government, the qui tam action may proceed subject to judicial review under this section, the civil
16 practice law and rules, and other applicable law. The qui tam plaintiff shall provide the state or any
17 applicable local government with a copy of any document filed with the court on or about the date it is
18 filed, or any order issued by the court on or about the date it is issued. A qui tam plaintiff shall notify
19 the state or any applicable local government within five business days of any decision, order or verdict
20 resulting in judgement in favor of the state or local government.

21 (C) If the state decides to participate in a qui tam action or to authorize the participation of a local
22 government, then the court shall order that the qui tam complaint be unsealed and served at the time of
23 the filing of the complaint or intervention motion by the state or local government. After the complaint
24 is unsealed, or if a complaint is filed by the state or a local government pursuant to this section, the
25 defendant shall be served with the complaint and summons pursuant to South Carolina Rules of Civil
26 Procedure. A copy of any complaint which alleges that damages were sustained by a local government
27 shall also be served on such local government. The defendant shall be required to respond to the
28 summons and complaint within the time allotted under South Carolina Rules of Civil Procedure.

29 (D) When a person brings a qui tam action under this section, no person other than the attorney
30 general, or a local government attorney, may intervene or bring a related civil action based upon the
31 facts underlying the pending action; provided, however, that nothing in this section shall be deemed to
32 deny persons the right, upon leave of court, to file briefs amicus curiae.

33 (E)(1)(a) If the attorney general elects to convert the qui tam civil action into an attorney general
34 enforcement action, then the state shall have the primary responsibility for prosecuting the action.

35 (b) If the attorney general elects to intervene in the qui tam civil action then the state and the
36 person who commenced the action, and any local government which sustained damages and intervenes

1 in the action, shall share the primary responsibility for prosecuting the action.

2 (c) If the attorney general elects to permit a local government to convert the action into a civil
3 enforcement action, then the local government shall have the primary responsibility for investigating
4 and prosecuting the action. If the action involves damages to a local government but not the state, and
5 the local government intervenes in the qui tam civil action, then the local government and the person
6 who commenced the action shall share primary responsibility for prosecuting the action.

7 (d) Under no circumstances shall the state or a local government be bound by an act of the
8 person bringing the original action. Such person shall have the right to continue as a party to the action,
9 subject to the limitations set forth in this section. Under no circumstances shall the state be bound by
10 the act of a local government that intervenes in an action involving damages to the state.

11 (e) If neither the attorney general nor a local government intervenes in the qui tam action, then
12 the qui tam plaintiff shall have the responsibility for prosecuting the action, subject to the attorney
13 general's right to intervene at a later date upon a showing of good cause.

14 (2)(a) The state may move to dismiss the action notwithstanding the objections of the person
15 initiating the action if the person has been served with the motion to dismiss and the court has provided
16 the person with an opportunity to be heard on the motion. If the action involves damages to both the
17 state and a local government, then the state shall consult with such local government before moving to
18 dismiss the action. If the action involves damages sustained by a local government but not the state,
19 then the local government may move to dismiss the action notwithstanding the objections of the person
20 initiating the action if the person has been served with the motion to dismiss and the court has provided
21 the person with an opportunity to be heard on the motion.

22 (b) The state or a local government may settle the action with the defendant notwithstanding the
23 objections of the person initiating the action if the court determines, after an opportunity to be heard,
24 that the proposed settlement is fair, adequate, and reasonable with respect to all parties under all the
25 circumstances. Upon a showing of good cause, such opportunity to be heard may be held in camera.

26 (c) Upon a showing by the attorney general or a local government that the original plaintiff's
27 unrestricted participation during the course of the litigation would interfere with or unduly delay the
28 prosecution of the case, or would be repetitious or irrelevant, or upon a showing by the defendant that
29 the original qui tam plaintiff's unrestricted participation during the course of the litigation would be for
30 purposes of harassment or would cause the defendant undue burden, the court may, in its discretion,
31 impose limitations on the original plaintiff's participation in the case, such as:

- 32 (i) limiting the number of witnesses the person may call;
- 33 (ii) limiting the length of the testimony of such witnesses;
- 34 (iii) limiting the person's cross-examination of witnesses; or
- 35 (iv) otherwise limiting the participation by the person in the litigation.

36 (3) Notwithstanding any other provision of law, whether or not the attorney general or a local

1 government elects to supersede or intervene in a qui tam action, the attorney general and such local
2 government may elect to pursue any remedy available with respect to the criminal or civil prosecution
3 of the presentation of false claims, including any administrative proceeding to determine a civil money
4 penalty or to refer the matter to the office of the Medicaid inspector general for Medicaid related
5 matters. If any such alternative civil remedy is pursued in another proceeding, then the person initiating
6 the action shall have the same rights in such proceeding as such person would have had if the action
7 had continued under this section.

8 (4) Notwithstanding any other provision of law, whether or not the attorney general elects to
9 supersede or intervene in a qui tam civil action, or to permit a local government to supersede or
10 intervene in the qui tam civil action, upon a showing by the state or local government that certain
11 actions of discovery by the person initiating the action would interfere with the state's or a local
12 government's investigation or prosecution of a criminal or civil matter arising out of the same facts,
13 the court may stay such discovery for a period of not more than sixty days. Such a showing shall be
14 conducted in camera. The court may extend the period of such stay upon a further showing in camera
15 that the state or a local government has pursued the criminal or civil investigation or proceedings with
16 reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing
17 criminal or civil investigation or proceedings.

18 (F)(1)(a) If the attorney general elects to convert the qui tam civil action into an attorney general
19 enforcement action, or to permit a local government to convert the action into a civil enforcement action
20 by such local government, or if the attorney general or a local government elects to intervene in the qui
21 tam civil action, then the person or persons who initiated the qui tam civil action collectively shall be
22 entitled to receive between fifteen and twenty-five percent of the proceeds recovered in the action or in
23 settlement of the action.

24 (b) The court shall determine the percentage of the proceeds to which a person commencing a
25 qui tam civil action is entitled, by considering the extent to which the plaintiff substantially contributed
26 to the prosecution of the action.

27 (c) Where the court finds that the action was based primarily on disclosures of specific
28 information (other than information provided by the person bringing the action) relating to allegations
29 or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report,
30 hearing, audit, or investigation, or from the news media, the court may award such sums as it considers
31 appropriate, but in no case more than ten percent of the proceeds, taking into account the significance
32 of the information and the role of the person or persons bringing the action in advancing the case to
33 litigation. Any such person shall also receive an amount for reasonable expenses that the court finds to
34 have been necessarily incurred, reasonable attorney's fees, and cost. All such expenses, fees, and costs
35 shall be awarded against the defendant.

36 (2)(a) If the attorney general or a local government does not elect to intervene or convert the action

1 and the action is successful, then the person or persons who initiated the qui tam action which obtained
2 proceeds shall be entitled to receive between twenty-five and thirty percent of the proceeds recovered
3 in the action or settlement of the action.

4 (b) The court shall determine the percentage of the proceeds to which a person commencing a qui
5 tam civil action is entitled, by considering the extent to which the plaintiff substantially contributed to
6 the prosecution of the action. Such person shall also receive an amount for reasonable expenses that
7 the court finds to have been necessarily incurred, reasonable attorney's fees, and costs. All such
8 expenses, fees, and costs shall be awarded against the defendant.

9 (3) With the exception of a court award of costs, expenses or attorney's fees, any payment to a
10 person pursuant to this paragraph shall be made from the proceeds.

11 (4) If the attorney general or a local government does not proceed with the action and the person
12 bringing the action conducts the action, then the court may award to the defendant its reasonable
13 attorney's fees and expenses if the defendant prevails in the action and the court finds that the claim of
14 the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for the
15 purposes of harassment.

16 (G) In any action brought pursuant to this chapter, the court may award any local government that
17 participates as a party in the action an amount for reasonable expenses which the courts finds to have
18 been necessarily incurred, plus reasonable attorney's fees, plus costs. All such expenses, fees, and costs
19 shall be awarded directly against the defendant and shall not be charged from the proceeds but shall
20 only be awarded if a local government prevails in the action.

21 (H)(1) If the court finds that the qui tam civil action was brought by a person who planned or initiated
22 the violation of Section 15-65-20 upon which the action was brought, then the court may, to the extent
23 the court considers appropriate, reduce the share of the proceeds of the action which the person would
24 otherwise be entitled to receive under subdivision six of this section, taking into account the role of
25 such person in advancing the case to litigation and any relevant circumstances pertaining to the
26 violation.

27 (2) If the person bringing the qui tam civil action is convicted of criminal conduct arising from his
28 role in the violation of Section 15-65-20, then that person shall be dismissed from the qui tam civil
29 action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice
30 the right of the attorney general to supersede or intervene in such action and to civilly prosecute the
31 same on behalf of the state or a local government.

32 (I)(1) The court shall dismiss a qui tam action under this chapter if:

33 (a) it is based on allegations or transactions which are the subject of a pending civil action or an
34 administrative action in which the state or a local government is already a party;

35 (b) the state or local government has reached a binding settlement or other agreement with the
36 person who violated Section 15-65-20 resolving the matter and such agreement has been approved in

1 writing by the attorney general, or by the applicable local government attorney; or

2 (c) against a member of the legislature, a member of the judiciary, or a senior executive branch
3 official if the action is based on evidence or information known to the state when the action was
4 brought.

5 (2) The court shall dismiss a qui tam action under this chapter, unless opposed by the state or an
6 applicable local government, or unless the qui tam plaintiff is an original source of the information, if
7 substantially the same allegations or transactions as alleged in the action were publicly disclosed:

8 (a) in a state or local government criminal, civil, or administrative hearing in which the state or
9 a local government or its agent is a party;

10 (b) in a federal, South Carolina State, or South Carolina local government report, hearing, audit,
11 or investigation that is made on the public record or disseminated broadly to the general public;
12 provided that such information shall not be deemed “publicly disclosed” in a report or investigation
13 because it was disclosed or provided pursuant to the "Freedom of Information Act," or under any other
14 federal, state, or local law, rule or program enabling the public to request, receive or view documents
15 or information in the possession of public officials or public agencies;

16 (c) in the news media, provided that such allegations or transactions are not publicly disclosed
17 in the news media merely because information or allegations of transactions have been posted on the
18 internet or on a computer network.

19
20 Section 15-85-40. (A) Notwithstanding any law to the contrary, all monies recovered or obtained
21 under this chapter by a state agency or state official or employee acting in their official capacity shall
22 be subject to subdivision eleven of section four of this chapter.

23 (B) The attorney general shall make an annual report to the President of the Senate, Speaker of the
24 House, Chair of the Senate Finance Committee, Chair of the House Ways and Means Committee, Chair
25 of the Senate Medical Affairs Committee, and Chair of the House Medical, Military, Public and
26 Municipal Affairs Committee by April fifteenth of each year. Such report shall include the amount of
27 monies recovered by the Medicaid fraud control unit pursuant to the false claims act for the preceding
28 calendar year.

29
30 Section 15-85-50. (A) For purposes of this section, a “lawful act” shall include, but not be limited
31 to, obtaining or transmitting to the state, a local government, a qui tam plaintiff, or private counsel
32 solely employed to investigate, potentially file, or file a cause of action under this chapter, documents,
33 data, correspondence, electronic mail, or any other information, even though such act may violate a
34 contract, employment term, or duty owed to the employer or contractor, so long as the possession and
35 transmission of such documents are for the sole purpose of furthering efforts to stop one or more
36 violations of this chapter. Nothing in this subdivision shall be interpreted to prevent any law

1 enforcement authority from bringing a civil or criminal action against any person for violating any
2 provision of law.

3 (B) Any current or former employee, contractor, or agent of any private or public employer who is
4 discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in
5 the term and conditions of employment, or otherwise harmed or penalized by an employer, or a
6 prospective employer, because of lawful acts done by the employee, contractor, agent, or associated
7 others in furtherance of an action brought under this chapter, shall be entitled to relief necessary to
8 make the employee, contractor, or agent whole. Such relief shall include but not be limited to:

9 (1) an injunction to restrain continued discrimination;

10 (2) hiring, contracting, or reinstatement to the position such person would have had but for the
11 discrimination or to an equivalent position;

12 (3) reinstatement of full fringe benefits and seniority rights;

13 (4) payment of two times back pay, plus interest; and

14 (5) compensation for any special damages sustained as a result of the discrimination, including
15 litigation costs and reasonable attorney's fees.

16 (C) An employee, contractor, or agent described in subdivision (1) of this section may bring an action
17 in the appropriate supreme court for the relief provided in this section

18
19 Section 15-85-60. (A) A civil action under this chapter shall be commenced no later than ten years
20 after the date on which the violation of this chapter is committed. Notwithstanding any other provision
21 of law, for the purposes of this chapter, an action under this chapter is commenced by the filing of the
22 complaint.

23 (B) In pleading an action brought under this chapter, the qui tam plaintiff shall not be required to
24 identify specific claims that result from an alleged course of misconduct, or any specific records or
25 statements used, if the facts alleged in the complaint, if ultimately proven true, would provide a
26 reasonable indication that one or more violations of Section 15-85-20 are likely to have occurred, and
27 if the allegations in the pleading provide adequate notice of the specific nature of the alleged
28 misconduct to permit the state or a local government effectively to investigate and defendants fairly to
29 defend the allegations made.

30 (C) In any action brought under this chapter, the state, a local government that participates as a party
31 in the action, or the person bringing the qui tam civil action, shall be required to prove all essential
32 elements of the cause of action, including damages, by a preponderance of the evidence.

33
34 Section 15-85-70. This chapter shall not:

35 (1) Preempt the authority, or relieve the duty, of other law enforcement agencies to investigate and
36 prosecute suspected violations of law;

1 (2) Prevent or prohibit a person from voluntarily disclosing any information concerning a violation
2 of this chapter to any law enforcement agency; or

3 (3) Limit any of the powers granted elsewhere in this chapter and other laws to the attorney general
4 or state agencies or local governments to investigate possible violations of this chapter and take
5 appropriate action against wrongdoers.

6

7 Section 15-85-80. The attorney general is authorized to adopt such rules and regulations as are
8 necessary to effectuate the purposes of this chapter.

9

10 SECTION 2. This act takes effect upon approval by the Governor.

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