



SENATE BILL 368: Update False Claims Act/Rare Disease Appt/HIE.

2017-2018 General Assembly

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| Committee: | Date: | July 25, 2018 |
| Introduced by: | Prepared by: | Theresa Matula |
| Analysis of: | S.L. 2018-41 | Legislative Analyst |

OVERVIEW: *S.L. 2018-41 does the following:*

- *Updates the False Claims Act, effective June 22, 2018, and applies to actions brought on or after that date.*
- *Extends the terms of the current members of the Advisory Council on Rare Diseases until July 31, 2023, effective June 22, 2018.**
- *Extends the HIE Network deadlines for ambulatory surgical centers, dentists, and pharmacies effective June 22, 2018. Ambulatory surgical centers and dentists are required to begin submitting demographic and clinical data by June 1, 2021. Pharmacies must begin submitting claims data by June 1, 2021.*

The effective dates for this act are noted above.

** Note: Legislation extending the terms for the Advisory Council on Rare Diseases was enacted twice. Sec. 2.11 of S.L. 2018-97 extended the terms to July 1, 2023. Because it has a later effective date of July 1, 2018, it replaces Sec. 8 of S.L. 2018-41.*

BILL ANALYSIS:

Sections 1-6 of the act amend Chapter 1, Article 51 of the False Claims Act. These sections became effective June 22, 2018, and apply to actions brought on or after that date.

Section 1 repeals G.S. 1-606(7) which contains a definition of "public employee," "public official," and "public employment."

Section 2 amends G.S. 1-607(a) to allow a civil penalty to be adjusted in accordance with federal law (Section 5 of the Federal Civil Penalties Inflation Adjustment act of 1990, P.L. 101-410, as amended).

Section 3 amends G.S. 1-608(b) to provide that for actions brought by private persons, the action may be dismissed only if the court and the Attorney General have given written consent to the dismissal and the reasons for consenting.

Section 4 amends G.S. 1-610(b) to make technical and clarifying changes.

Section 5 amends G.S. 1-611 pertaining to certain actions that are barred. Subsections (c) and (d) are being removed and subsections (e) and (f) are being added. Subsection (e) provides that unless opposed by the State, the court is required to dismiss an action or claim under the False Claims Act if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed by any of the following:

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- A State criminal, civil, or administrative hearing in which the State or its agent is a party.
- A State legislative, Office of the State Auditor, or other State report, hearing, audit, or investigation.
- The news media.

This subsection does not apply to any action brought by the Attorney General or when the person bringing the action is an original source of the information.

Subsection (f) provides that for purposes of this section, the term "original source" means an individual who meets one of the following descriptions:

- Prior to public disclosure under subsection (e) of this section, the individual has voluntarily disclosed to the State the information on which allegations or transactions in a claim are based.
- The individual (i) has knowledge that is independent of, and materially adds to, the publicly disclosed allegations or transactions and (ii) has voluntarily provided the information to the State before filing an action under the False Claims Act

Section 6 amends G.S. 1-613 pertaining to private action for retaliation to provide that a civil action under the section may not be brought more than three years after the date when the retaliation occurred.

Section 7 amends G.S. 126-84 which is a policy statement section in the State Human Resources Act providing protection for reporting improper government activities. The change provides that State employees are no longer simply encouraged to report improper government activities, but in fact have a duty to report them.

Section 8 pertains to the Advisory Council on Rare Diseases created pursuant to G.S. 130A-33.65 in Part 6 of Chapter 130A. Section 8(a) extends the terms of the current members of the Advisory Council on Rare Diseases through July 31, 2023. Section 8(b) provides that this section of the act is effective when it became law, which was June 22, 2018. *(Note: Legislation extending the terms for the Advisory Council on Rare Diseases was enacted twice. S.L. 2018-97, Sec 2.11, extended the terms to July 1, 2023. Because it has a later effective date of July 1, 2018, it replaces this provision.)*

Section 9 amends G.S. 90-414.4 to **extend the date for connection with the HIE** network for pharmacists, ambulatory surgical centers, and dentists. Ambulatory surgical centers and dentists must begin submitting demographic and clinical data by June 1, 2021. Pharmacies must begin submitting claims data by June 1, 2021. A pharmacy is only required to submit claims data pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds and is only required to submit claims data once daily using pharmacy industry standardized formats. This section became effective when it became law which was June 22, 2018.

EFFECTIVE DATE: The effective dates are provided above.