

(H. B. 1627)

(No. 154-2018)

(Approved July 23, 2018)

AN ACT

To create the “False Claims to Government of Puerto Rico Programs, Contracts, and Services Act”; establish the Medicaid Fraud Control Unit attached to the Department of Justice; prescribe the powers and responsibilities and operating guidelines of said unit, and for other related purposes.

STATEMENT OF MOTIVES

In 1863, the Government of the United States implemented what is known today as the False Claims Act, 31 U.S.C. §3729-3733. The purpose of this legislation was to promote citizen involvement at a time where the Government was being a victim of fraud in the procurements relating to the war. Such legislation granted the Government of the United States jurisdiction to bring civil actions and claims to recover losses arising out of fraud in federal programs, and to impose fines. In turn, the False Claims Act allows citizens to bring actions on behalf of the Government of the United States to recover any losses attributable to fraud. In exchange, the Government grants such person a percentage of the money recovered thanks to the information furnished by citizens, under what we know today as the Qui Tam Provision.

The Qui Tam anti-fraud provisions are an essential part of the false claim federal legislation. According to information furnished by the U.S. Department of Justice, the Federal Government had recovered \$31.9 billion from 2009 to 2016 under the False Claims Act. In fiscal year 2016 alone, \$4.7 billion were recovered as a result of civil claims brought under the False Claims Act. It is worth noting that

\$2.9 billion of those \$4.7 billion recovered in fiscal year 2016 were the product of Qui Tam or whistleblower actions. Citizens who brought such actions received \$519 million dollars in said fiscal year.

It must be noted that 30 jurisdictions have their own False Claims Act within the framework established under the federal legislation. These state governments have recovered millions of dollars from persons who have committed fraud against state programs, mostly the Medicaid Program. The Qui Tam Provision is an essential part of these state laws given that, just as the federal law, most compensations received by the states arise from this type of actions which are the result of the information furnished by citizens, who in turn, are awarded a sum of money as a reward for such information.

In Puerto Rico, there are state programs that benefit thousands of Puerto Ricans on a daily basis. Unfortunately, there are individuals and/or program participants who submit false information in order to receive such benefits, whether as a service provider or a beneficiary of the program. Every year, such fraudulent conduct causes million dollars in losses for the Government and prevents other citizens from enjoying the benefits of these programs. In addition to the crisis caused by fraud in these programs, an increase in Government contracting fraud with respect to services has also increased. This conduct includes overbilling and/or submitting invoices for services that have not been rendered or are unnecessary. This situation results in substantial losses for the treasury.

Through this False Claims to Government of Puerto Rico Programs, Contracts, and Services Act we seek to establish the framework for the civil prosecution of fraud in Government Programs and service contracts. This mechanism shall establish a procedure in the Courts whereby the Government is able to bring action so that persons who defraud the Government are imposed a monetary

penalty for their acts. Citizen involvement in these proceedings shall be likewise promoted by creating a Qui Tam Provision whereby these persons shall be compensated for the information they furnish.

Moreover, and directly related to fraud in services offered through programs, specifically the Medicaid Program, the Social Security Act, as amended by the Medicare-Medicaid Anti-Fraud and Abuse Amendments (Pub. L. 95-142) and Chapter V of Title 42 of the Code of Federal Regulations, require the states and Puerto Rico to establish a Medicaid Fraud Control Unit (MFCU) to address fraud by health service providers. For such reason the Centers for Medicare & Medicaid Services (CMS) of the U.S. Department of Health has followed up on jurisdictions that had yet to provide for the creation of such unit. Unfortunately, this was the case for Puerto Rico since the former Administration halted the process required to join all the states as well as the District of Columbia which had already implemented an MFCU.

For such reason, as soon as the Governor was sworn in, he issued Executive Order No. 2017-02 whereby he clearly stated, after becoming aware of the situation, the need to satisfy the aforementioned requirements in order to avoid further limitation on Medicaid funds parity, among other things. In keeping with the foregoing, the Department of Justice and the Department of Health led several governmental efforts that resulted in the establishment, through an Administrative Order of the Department of Justice, of the unit in question, almost fully funded by the Office of the Inspector General of the United States. Such unit shall be charged with the investigation and prosecution of violations of the applicable laws relating to Medicaid fraud, among others. However, even when the creation of the unit constitutes a step forward, we are aware that the success thereof shall be contingent on its efficiency to investigate and prosecute violations of law and Medicaid fraud instances. Thus, this Legislative Assembly deems it necessary to provide such units

with tools and establish the structure thereof by law, in order to strengthen the operations thereof. Ultimately, the timely detection of Medicaid fraud and subsequent compensation of the state for any damages arising out of such conduct shall inure to the benefit of our people, since it guarantees the availability of such a valuable resource for citizens in need.

The fact that on February 8, 2018 the President of the United States of America signed into law HR 1832, known as the Bipartisan Budget Act of 2018, is of utmost importance, since such legislation provides for an allocation to Puerto Rico of three billion six hundred million dollars (\$3,600,000,000) in Medicaid funds. It also provides for an additional allocation of one point two billion dollars (\$1,200,000,000) if we are able to show that we have taken the necessary and appropriate steps for the creation of the Medicaid Fraud Control Unit in Puerto Rico. Therefore, the Unit shall be fully funded with the allocations made by the United States Congress until September 2019. Subsequently, the allocations made by the US Congress shall fund ninety percent (90%) of the operations of the Unit and, eventually, a seventy-five percent (75%). In accordance with the foregoing, and in order to obtain the necessary funding for the sound operations of the Medicaid Program, we are hereby creating the Medicaid Fraud Control Unit and providing the Department of Justice with the necessary tools to operate such unit. We are confident that such unit shall inure to the benefit of the People.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

CHAPTER I. GENERAL PROVISIONS

Section 1.01.- Title

This Act shall be known as the “False Claims to Government of Puerto Rico Programs, Contracts, and Services Act.”

Section 1.02.- Definitions

(a) Health Insurance Administration or ASES (Spanish acronym) - Public corporation created by Act No. 72-1993 with autonomy to discharge the duties and responsibilities of implementing, administering, and negotiating a health insurance system through contracts with insurers.

(b) Medicaid State Agency - The agency designated to administer the Medicaid Program in Puerto Rico; in this case, the Department of Health.

(c) Beneficiary - Any person eligible to have benefits paid to him under any Government Program, including Medicaid.

(d) Benefit - Any aid or benefit authorized by any Government Program, including the Medicaid Program.

(e) Knowing and Knowingly - means that a person, with respect to information:

(i) Has actual knowledge of the information.

(ii) Acts in deliberate ignorance of the truth or falsity of the information.

(iii) Acts in reckless disregard of the truth or falsity of the information. In this case, it requires no proof of specific intent to defraud.

(f) Service Contracts - A written obligation executed between an agency, public corporation, or instrumentality of the Government and a natural or juridical person, whereby such person has the obligation to provide certain services to the Government for which the amount agreed upon shall be paid.

(g) Relator - A person who files a lawsuit and/or furnished the information that serves as the cause of action, as an informant, or whistleblower. The following persons are hereby expressly prohibited from being relators or be deemed as such:

(a) Personnel, including contractors, of the Medicaid Fraud Control Unit;

(b) Personnel, including contractors, detailed in the Medicaid and ASES Integrity Programs;

(c) Personnel, including contractors, of the Government concerned with the operations of the Medicaid Management Information System, or any similar program that has the necessary tools to identify fraud or violations of this Act;

(d) Any employee or contractor of the Government, including its personnel, whose duties are related to fraud detection in the Medicaid Program;

(e) Any employee or contractor of the Government, including its personnel, whose duties are related to fraud and abuse detection in Government programs and contracting; and

(f) Any person who files a lawsuit based on information furnished and detected by any of the persons mentioned in paragraphs (a), (b), (c), (d), and (e) of this definition.

(h) Fraud - Means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law.

(i) Material - For purposes of this statute means having a natural tendency to influence or be capable of influencing the payment or receipt of money or property.

(j) Government - The Government of Puerto Rico comprises its agencies, instrumentalities, and public corporations, as defined in their respective organic acts. Likewise, this definition includes the Legislative and Judicial Branches. This definition also covers contractors and subcontractors who have been subject to fraud and/or false claims in the contracting process and/or structure.

(k) Managed Care Organization - An entity that has executed a contract with an insurer or another state agency to provide and/or outsource healthcare services for individuals who are Medicaid beneficiaries, and that holds an insurer license issued by the Commissioner of Insurance of Puerto Rico.

(l) Obligation - Means an established duty, whether or not fixed, arising from an express or implied contractual fee-based relationship, between the Government and any natural or juridical person, from statute and/or regulation, or from the retention of any overpayment.

(m) Person - Includes natural and/or juridical persons.

(n) Government Programs - Means any Federal or State program authorized by law where the Government administers the funds and/or services and makes the appropriate disbursements to program participants.

(o) Medicaid Program in Puerto Rico - Means the Medical Assistance Program authorized by the federal law known as the Social Security Act, as amended, and approved in Puerto Rico in accordance with the state plan.

(p) Provider - Any natural and/or juridical person who requested to participate and/or participates in any Government Program, including the Medicaid Program, as a provider of products, goods, or services.

(q) Claim - Means any communication, whether written or verbal, electronic or otherwise, any request or demand, whether under a contract or otherwise, for money or property and whether or not the Government has title to the money or property, that is presented to an officer, employee, or agent of the Government; or is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a state program or interest, and if the Government provides or has provided any portion of the money or property requested or demanded; or shall reimburse such contractor, grantee, or other recipient for any portion of the money or property which is

requested or demanded; and does not include requests or demands for money or property that the Government has paid to an individual as compensation for Government employment or as an income subsidy with no restrictions on that individual's use of the money or property. Likewise, means any communication, whether written or verbal, electronic or otherwise, any request or demand, by virtue of which a certain good and/or service is identified as reimbursable under the Medicaid Program, or whereby income and/or expenditures are reported and that is used or may be used to determine the amount or source of a payment under the Medicaid Program.

(r) Records - Any document or file or medical, professional, or business record relating to the treatment or care of any beneficiary; or relating to any good or service received by any beneficiary; or relating to the rates paid for any good or service; or any other document or file or record required by the regulations of any Government Program.

(s) Secretary - Means the Secretary of the Department of Justice of Puerto Rico.

(t) Unit - The Medicaid Fraud Control Unit attached to the Department of Justice, created in this Act.

Section 1.03.- Declaration of Public Policy and Rules of Construction

It shall be the public policy of the Government to prevent and act on fraud in Government Programs, Contracts and Services, including the Medicaid Program as well as any conduct that is detrimental to the sound use and management of funds allocated for such programs, contracts, and services. The eradication of such conduct is a priority in the agenda of this Government Administration, since we are aware of the consequences of fraud in the services provided in Puerto Rico, including health services and, most of all, Medicaid Program services. We certainly recognize that

the availability of such funds is contingent on the Government's ability to detect and prevent fraud, and to facilitate the subsequent criminal prosecution and/or the pertinent collection actions.

In accordance with the foregoing, the Government shall make all the necessary efforts to strengthen the structures to investigate and/or prosecute fraudulent actions, and the dynamic and efficient development of such investigations and proceedings. Pursuant to the foregoing, this legislation shall be construed so as to promote and facilitate the investigation and criminal prosecution and civil actions that are appropriate in order to minimize the impact of fraudulent and unlawful conduct on programs, contracts, and services provided in Puerto Rico, including the Medicaid Program.

CHAPTER II: CREATION OF THE FRAUD CONTROL UNIT

Section 2.01.- Medicaid Fraud Control Unit

The Medicaid Fraud Control Unit is hereby created attached to the Department of Justice for the purpose of conducting a program for investigating and prosecuting, or referring for prosecution, violations of all applicable state laws pertaining to fraud in the administration of the Medicaid Program in Puerto Rico, the provision of medical assistance, or the activities of providers of medical assistance under the state Medicaid Program.

The unit shall also review complaints alleging abuse and/or neglect of patients in health care facilities receiving payments under the state Medicaid Program and may review complaints of the misappropriation of patient's private funds or property in such facilities.

For such purposes, the Unit shall conduct investigations and bring civil and criminal actions, as appropriate, for the collection and/or restitution of losses and damages caused to the Medicaid Program, including, but not limited to actions under the False Claims Act or any similar statute.

The Unit shall have autonomy and independence from other offices of the Department of Justice, and shall be completely independent from the State Medicaid Agency and the Health Insurance Administration (ASES). The Unit, however, shall establish a referral system and ensure compliance with the parameters established in Section 455.21(a)(2) of Title 42 of the Code of Federal Regulations.

Section 2.02.- Organization of the Medicaid Fraud Control Unit

The Unit shall operate under the general supervision of the Secretary, and a Director selected by the Secretary shall be charged with the immediate direction of the Unit. The Unit's staff shall comprise attorneys, investigators, and auditors as well as the administrative staff as deemed necessary by the Secretary. All the staff of the Unit shall be engaged solely to address the matters for which the Unit was created. Attorneys shall be experienced in the investigation or prosecution of fraud, capable of providing effective prosecution and giving informed advice on applicable law and procedures.

Auditors attached to the Unit shall be capable of supervising the review of financial records and data, and advising or assisting in the investigation of alleged fraud.

The Unit shall also have a senior investigator with substantial experience in commercial or financial investigations who shall supervise and direct the investigative activities of the unit.

The rest of the staff shall also be knowledgeable about the legislation that regulates the Medicaid Program and about the operation of health care providers.

Section 2.03.- Duties and Powers of the Essential Personnel of the Unit

The attorneys of the Unit shall be empowered by law to conduct criminal investigations as Prosecutors and to bring civil and administrative actions as deemed necessary to enforce the purposes for which this Unit was created. Furthermore,

in order to carry out the task entrusted thereto, the investigators of the Unit shall be empowered to investigate, report, arrest, serve orders, possess and carry firearms, administer oaths, and issue subpoenas and/or civil investigative demands.

CHAPTER III. MEDICAID FRAUD

Section 3.01.- Referrals and Investigations

The Unit shall receive referrals of suspected or potential fraud in the Medicaid Program in Puerto Rico from the State Medicaid Agency, the Health Insurance Administration, affected beneficiaries and/or outside sources. Depending on the nature of the allegations, the Unit Director shall order an investigation, refer the matter to the competent body, or order the dismissal thereof if he determines that no further action is required. The Unit shall notify in writing the decision of whether to accept or deny a referral. If the initial review of the referral does not show sufficient basis for criminal prosecution, the Unit shall transfer the matter to the appropriate agency for analysis and determination. Likewise, the Unit shall have access to the Medicaid Management Information System (MMIS) of Puerto Rico as part of the investigative duties thereof. The Units shall also have access to the Prescription Drug Monitoring Program (PDMP) for the same purposes.

The Unit may also refer to both the State Medicaid Agency and ASES for the potential suspension of payment to any provider with respect to which an investigation has been initiated for material and credible allegations of Medicaid fraud. Likewise, if in the discharge of the delegated duties relating to the initial review, the Unit finds that there was an overpayment in favor of a healthcare facility or another provider of medical assistance under the Medicaid Program, the Unit shall initiate the pertinent collections actions or refer the matter to the appropriate agency.

Section 3.02.- Investigation; Demands; Procedure

Whenever the Secretary has reason to believe that any person and/or entity has possession, custody, or control of any documentary material and/or information relevant to an investigation about potential Medicaid fraud, the Secretary may require in writing the production of documentary material and/or information, and/or access for the examination and investigation thereof through a civil investigative demand. This includes the healthcare service provider or organization that, in accordance with 42 C.F.R. §431.107, shall furnish information and/or records related to the services provided to beneficiaries. The Secretary may require information about the owner or holder of stocks or of any other financial interest to the members of the Board of Directors, administrators, or any other employee of a company.

The civil investigative demands shall:

- (1) Establish the nature of the conduct constituting the alleged fraudulent acts in connection with the Medicaid Program which is being investigated under this Act or other applicable provisions of law;
- (2) Describe the class or classes of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;
- (3) Prescribe a return date for each such class which shall provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection, copying, and/or reproduction; and
- (4) Identify the custodian to whom such material shall be delivered.

No person having custody of documentary material relevant to an investigation about potential Medicaid fraud, including records of services provided to beneficiaries may deny access thereto under the right of privacy of the beneficiary, under any of the privileges of the beneficiary against disclosure or use, nor under any other privilege or right in accordance with the exclusions of the general privacy

rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191, as amended.

The Unit shall respect the privacy and the right thereto of individuals and shall establish safeguards to prevent the wrongful use of the information under its control.

Section 3.03.- Service of Demand

(a) Service of any civil investigative demand or of any petition filed under this Section may be made in any of the following manners:

(1) Delivering an executed copy to any partner, officer, agent, or general agent or to any agent authorized by law to receive service of process on behalf of such person, and/or directly to the person;

(2) Delivering an executed copy to the principal office or place of business; or

(3) Depositing an executed copy by certified mail with a return receipt requested, addressed to the person to his principal office or place of business.

(b) A verified return by the individual serving any civil investigative demand setting forth the manner of such service shall be prima facie evidence of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery thereof. Any person upon whom any civil investigative demand for the production of documentary material has been served under this Section shall make such material available for inspection, copying, and reproduction to the investigator at the principal place of business of such person, or at such other place as the investigator and the person thereafter may agree and prescribe in writing, or as the Court may direct. An investigator who receives any documentary material as prescribed in this Section shall take physical possession thereof and shall be responsible for the use made and for the return thereof as provided herein. While in the possession of such investigator, such documentary material shall not be available for examination by

any individual other than the Secretary, the person to whom he delegates, or the Unit's staff, unless consent is given by the person who produced such documentary material. Under such terms and conditions as the Secretary shall prescribe, documentary material in the possession of the investigator shall be available for examination by the person who produced it or by an authorized agent of that person.

Section 3.04.- Account Freeze and Property Forfeiture

Upon petition of the Secretary or the person to whom he delegates in the Unit, the Court may enter a temporary injunction or a preliminary restraining order to freeze bank accounts, require the execution of a performance bond for real property, or take any action to preserve the availability of property described in Section 3.02 available so as to guarantee the subsequent forfeiture thereof if appropriate under this Section, according to any of the following alternatives:

(1) Upon the filing of an indictment or information charging a violation of this Act and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(2) A temporary restraining order may be entered without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the Prosecutor demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture and that provision of notice shall jeopardize the availability of the property for forfeiture. The temporary order shall expire not more than ninety (90) days after the date on which it is entered, unless extended for good cause shown. A hearing requested concerning an order entered under this subsection shall be held by the Court at the earliest possible time and prior to the expiration of the temporary order.

(3) At any hearing held pursuant to this section the Puerto Rico Rules of Evidence shall not apply.

Section 3.05.- Noncompliance with Demands

Whenever any person fails to comply with any civil investigative demand for the production of documentary material issued under this Act, or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Secretary may file with the Court a petition for the enforcement of the provisions of this Act. Any disobedience of any order entered under this section by any court shall be punished as a contempt of the court and shall be the basis for the suspension of any license, permit, or authorization that has been granted to the person or business under investigation. Within twenty (20) days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, the person may file a petition for a Court order to modify or render it without effect. During the pendency of the petition in the Court, the Court may stay the running of the time allowed for compliance with the demand. The petition shall specify the grounds therefor, and may be based upon any failure of the demand to comply with the provisions of this Act and/or upon any constitutional or other legal right.

Section 3.06.- Return of Material

Upon the completion of the investigation or of any case or proceeding arising out of such investigation, the investigator shall return the documentary material to the person who produced them, other than the copies made by the Secretary. If no case or proceeding has been commenced within a reasonable time after completion of the examination and analysis of all the evidence assembled in the course of such investigation, the person who produced such evidence shall be entitled, upon written request to the Secretary, to have such documentary material returned to him. In the event of the death, disability, or separation from service of the custodian of any documentary material produced pursuant to a civil investigative demand under this

Act, or in the event that the investigator is relieved from responsibility for the custody of such material, the Secretary shall promptly: (1) designate another investigator from the Unit to serve as custodian of such material, and (2) notify in writing to the person who produced such material, the name and address of the successor so designated. Any person who is designated to be a successor shall have, with regard to such material, the same function, duties, and responsibilities as were imposed by this Act upon that person's predecessor in office, except that the successor shall not be held responsible for any negligence which occurred before that designation.

Section 3.07.- Medicaid Fraud and Penalties

A. Shall incur in Medicaid Program Fraud, any person who willingly and knowingly:

(1) Presents and/or causes to be presented a claim to the Medicaid Program, knowing that it is partially or completely false.

(2) Makes or causes to be made a false statement or representation for the purpose of obtaining or attempting to obtain an authorization to offer a good or service under the Medicaid Program, knowing that the false statement or representation is partially or completely false.

(3) Makes or causes to be made a false statement or representation to be used by another person to obtain a good or service under the Medicaid Program, knowing that the false statement or representation is partially or completely false.

(4) Makes or causes to be made a false statement or representation in order to be used to qualify as provider of a good or service under the Medicaid Program, knowing that the false statement or representation is partially or completely false.

(5) Charges to any beneficiary or person who acts on behalf of a beneficiary, money or other consideration at a rate in excess of the rates agreed with

the Managed Care Organization, any health service organization and/or insurer, regardless of the healthcare delivery model.

(6) Except as otherwise authorized under the Medicaid Program, pays, charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under the Medicaid Program any gift, money, donation, or other consideration or bribe in connection with the goods or services paid or claimed by a provider under the Medicaid Program.

(7) Knowingly presents or causes to be presented a claim for payment under the Medicaid Program for:

(a) A good or service that has not been approved or acquiesced in by a treating physician or a health care professional;

(b) A good or service that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(c) A product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(d) A good or service that has not been provided as claimed;
and/or

(e) A good or service that is not medically necessary.

(8) Is a Managed Care Organization, a health service organization and/or insurer regardless of the regardless of the healthcare delivery model and knowingly:

(a) Fails to provide to an individual a health care benefit or service that the entity is required to provide under the contract;

(b) Fails to provide to the commission or appropriate state agency information required to be provided by law, regulation, or contractual provision; or

(c) Engages in a fraudulent activity in connection with the enrollment of an individual eligible under the Medicaid Program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the Medicaid Program;

(d) Commits a violation of any of the provisions of this Act to receive or cause to be received an unauthorized payment or benefit under the Medicaid Program.

B. Penalties for Medicaid Fraud

Any person who violates any of the provisions of this Act to receive or cause to be received an unauthorized payment or benefit under the Medicaid Program shall be guilty of a Medicaid Fraud offense and shall be punished as follows:

(a) Any person who commits Medicaid Fraud shall be guilty of a felony if the total amount of the payments unlawfully claimed or obtained is less than two thousand five hundred dollars (\$2,500), and upon conviction, shall be punished by imprisonment for a fixed term of three (3) years. If there are aggravating circumstances, the punishment shall be increased to up to five (5) years; if there are mitigating circumstances, the punishment shall be reduced to a minimum of one (1) year. Likewise, such person shall pay a fine not to exceed three (3) times the amount of the payments unlawfully claimed or obtained, or a fine of one thousand dollars (\$1,000), whichever is higher.

(b) Any person who commits Medicaid Fraud shall be guilty of a felony if the total amount of the payments unlawfully claimed or obtained is two thousand five hundred dollars (\$2,500) or more, and upon conviction, shall be punished by imprisonment for a fixed term of five (5) years. If there are aggravating circumstances, the fixed punishment shall be increased to up to eight (8) years; if there are mitigating circumstances, the punishment shall be reduced to a minimum

of three (3) years. Likewise, such person shall pay a fine not to exceed three (3) times the amount of the payments unlawfully claimed or obtained, or a fine of ten thousand dollars (\$10,000), whichever is higher.

(c) If the person that committed Medicaid Fraud is an entity or juridical person rather than an individual, such person shall be punished with a fine not to exceed fifty thousand dollars (\$50,000) for each offense under subsection (a), and not to exceed two hundred fifty thousand dollars (\$250,000) for each offense under subsection (b).

C. Other Acts Barred

(a) Conspiracy to Defraud the Medicaid Program

Any person who conspires with another to defraud the Government and commits a violation of any of the provisions of this Act in order to obtain or cause another to obtain an unauthorized payment or benefit under the Medicaid Program shall be guilty of a felony and punished by imprisonment for a fixed term of three (3) years. If there are aggravating circumstances, the fixed punishment may be increased to up to five (5) years; if there are mitigating circumstances, the punishment may be reduced to a minimum of two (2) years.

(b) Obstruction of an Investigation Initiated by the Unit

Any person who willingly obstructs a criminal investigation initiated by the Unit of a violation of this Act shall be guilty of a felony and be punished by imprisonment for a fixed term of three (3) years. If there are aggravating circumstances, the fixed punishment may be increased to up to five (5) years; if there are mitigating circumstances, the punishment may be reduced to a minimum of two (2) years.

(c) Acquisition of Property by Third Parties

Any person who entered in an agreement or arrangement to conspire with or on behalf of a person accused or convicted for violations of this

Act, who in violation of the provisions of this statute acquires or attempts to acquire any property under subsection (b) of Section 3.08, which has been seized or is subject to forfeiture, shall be punished by imprisonment for a fixed term of ten (10) years. If there are aggravating circumstances, the fixed punishment may be increased to up to fifteen (15) years; if there are mitigating circumstances, the punishment may be reduced to a minimum of five (5) years.

(d) Destruction of Documentary Material

The destruction, mutilation, concealment, removal, or damage of any documentary material requested by the Secretary for purposes of an investigation on Medicaid Fraud shall constitute a felony and be punished by imprisonment for a fixed term of three (3) years. If there are aggravating circumstances, the fixed punishment may be increased to up to five (5) years; if there are mitigating circumstances, the punishment may be reduced to a minimum of two (2) years.

D. Referral to the Office of the Insurance Commissioner

If the Unit determines that there is a potential violation of this Act by a company under the jurisdiction of the Office of the Commissioner of Insurance, the Unit shall be required to refer such determination to the Insurance Commissioner for the appropriate administrative action. Depending on the seriousness of the violation, the Office of the Commissioner of Insurance may suspend the insurance license of such entity.

E. Referral to the Licensing Board

Once a final and binding judgment is entered for a violation of the provisions of this Section, the Unit shall be required to serve a copy of the judgment to the Licensing Board that regulates the profession of the convicted person for purposes of any pertinent administrative disciplinary procedure.

F. Statute of Limitations of the Criminal Action

The statute of limitation of a criminal action arising out of the provisions of this Act shall be:

- (1) Ten (10) years for felonies;
- (2) Five (5) years for misdemeanors.

Section 3.08.- Property Forfeiture

a) Upon entering judgment against a person for violations of the criminal provisions of this Act, the Court shall order, in addition to the imposition of any punishment under this Act, the forfeiture of all the property described below:

- (1) Any interest that the person has acquired or held in violation of the provisions of this Act;
- (2) Any interest on, guarantee, claim against, or right to property or contractual interest of any kind that constitutes an influence on any business that the person has established, operated, controlled, or participated in the direction thereof, in violation of this Act; and/or
- (3) Any property that constitutes, or has been received, directly or indirectly, as a result of a criminal act, or the unlawful collection of a debt, or is the product of an unlawful act, as defined in this Act.

b) The property subject to forfeiture under this Section shall include real and personal property, including rights, privileges, interests, claims, and securities.

c) All right, title, and interest in property described in subsection (b) vests in the Government upon the commission of the act giving rise to forfeiture under this Section. Any such property that is subsequently transferred to a person other than the defendant may be ordered forfeited to the Government, unless the transferee establishes that he is a bona fide purchaser of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this Section.

d) In cases where the nature of the property so warrants, and following the seizure of property ordered forfeited, the Secretary shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest exercisable by, or transferable for value to, the Government shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the Government.

(e) The proceeds from the sale or any other disposition of the property ordered forfeited under this Section, as well as any forfeited money, shall be used to allocate funds to the operations of the Unit, as well as to offset any expenses incurred in the forfeiture and sale, including expenses incurred in the seizure, maintenance, and custody of the property until its subsequent disposition, notices, fees, and expenditures incurred in connection with the proceeding, at the discretion of the Director of the Unit, upon previous consultation with the Secretary.

(f) With Respect to Property Ordered Forfeited, the Secretary is authorized to:

(1) grant petitions for mitigation of forfeiture, restore forfeited property to victims of a violation of this Act, and/or take any other action to protect the rights of innocent persons when in the interest of justice and not inconsistent with the provisions of this Act;

- (2) compromise claims arising under this Section;
- (3) award compensation to persons providing information resulting in forfeiture under this Section;
- (4) direct the disposition by the Government of all property ordered forfeited by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and
- (5) take appropriate measures necessary to safeguard and maintain property ordered forfeited pending its disposition.

(g) No party claiming an interest in property subject to forfeiture may intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this Section; or commence an action at law or equity against the Government concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture.

(h) In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the Government, the Court may, upon application of the Prosecutor, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, document, record, recording, or other material not privileged be produced in the same manner as provided for the taking of depositions under the Rules of Criminal Procedure.

(i) Following the entry of an order of forfeiture under this Section, the Secretary shall publish notice of the order and of its intent to dispose of the property in in a newspaper of general circulation. The Secretary may also, to the extent practicable, provide notice through certified mail to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a

substitute for published notice as to those persons so notified. Any person, other than the convict, asserting a legal interest in property which has been ordered forfeited may, within thirty (30) days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the Court of First Instance for a declaratory judgment to adjudicate the validity of his alleged interest in the property. The petition shall be sworn by the petitioner and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought. The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty (30) days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the convict. In addition to testimony and evidence presented at the hearing, the Court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

If, after the hearing, the Court determines that the petitioner has established by a preponderance of the evidence that (A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was superior to any right, title, or interest of the convict at the time of the commission of the acts which gave rise to the forfeiture of the property under this Section; or (B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture, the Court shall amend the order of forfeiture. Said amendment shall be made in accordance with the Court's determination.

Following the Court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided for the filing of such petitions, the Government shall have clear title to property that is the subject to forfeiture and the title thereof shall be recordable in the Property Registry through a court order. The Government may warrant good title to any subsequent purchaser or transferee.

The Court of First Instance, San Juan Superior Part, shall have jurisdiction to enter orders as provided in this Section without regard to the location of any property which may be subject to forfeiture under this Section or which has been ordered forfeited under this Section. When the property is located outside of the jurisdiction of the Government, the Secretary shall enforce compliance with the orders entered by the Court.

Section 3.09.- Cancellation of Certificate of Incorporation

The Secretary may bring civil action to cancel the certificate of incorporation of any corporation organized under the laws of the Government or to cancel or suspend any license, permit, or authorization issued to any foreign corporation doing business or charitable work in Puerto Rico when the entity has committed violations of this Act and has been subsequently convicted. In the event of conviction, for businesses other than corporations, the Secretary may petition the corporation to halt its operations.

CHAPTER IV: FALSE CLAIMS

Section 4.01.- Violations.-

Subject to subsection (2) of this Section, any person who:

1.

a. Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval of benefits under any Government Program or under a service contract;

b. Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim under any Government Program or under a service contract;

c. Conspires to commit a violation of paragraphs 1(a) and 1(b), of this Section; and/or

d. Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property, relating to any Government Program or any service contract, as defined in this Act, shall be liable to the Government for a civil penalty of not less than eleven thousand one hundred eighty-one dollars (\$11,181) and not more than twenty-two thousand three hundred sixty-three dollars (\$22,363). These penalties shall be adjusted automatically every year in accordance with the provisions of the Federal Civil Penalties Inflation Adjustment Act of 2015 to be consistent with those authorized under the Federal False Claims Act, 31 USC §3729(a). In addition to this civil penalty, said person shall be subject to three (3) times the amount of damages which the Government sustains because of the fraudulent acts of that person.

2. However, if the Court finds that:

a. The person committing the violation of paragraphs 1(a) through 1(d) of this Section, furnished officials of the Government responsible for investigating false claims violations with all information known to such person about the violation within thirty (30) days after the date on which the date such person first obtained the information;

b. Such person fully cooperated with any state or federal investigation of any violation of paragraphs 1(a) through 1(d) of this Section, as certified by the Department of Justice; and

c. At the time such person furnished the Government with the information about the violation of paragraphs 1(a) through 1(d) of this Section, no criminal prosecution, or civil action, or administrative action had commenced under this Act, and the person did not have actual knowledge of the existence of an investigation against him for such violations.

In these cases, the Court may reduce from three (3) to two (2) times the amount of damages which the Government sustains because of such acts.

3. A person violating paragraphs 1(a) through 1(d) of this Section shall also be liable for attorney's fees and the costs incurred to recover any such civil penalty and/or damages.

4. Any person who agrees or intends to perform any act described in paragraphs 1(a) through 1(d) of this Section shall be brought before the Court of First Instance, San Juan Part, in a complaint filed by the Secretary or the person designated by him. Said complaint shall be filed on behalf of the Government and shall be granted if it clearly shows that the rights of the Government have been violated by said person or entity and that the Government shall sustain imminent and irreparable damage, harm, or loss pending a final judgment resolving the dispute, or that the acts or omissions of such person or entity render inefficient said final judgment. The Court may enter judgments or orders, including the appointment of a receiver, as necessary to prevent any of the acts described in paragraphs 1(a) through 1(d) of this Section by any person or entity, or as necessary to return to the Government any money or real or personal property that may have been acquired through such acts.

Section 4.02.- Civil Actions; Who May Bring Civil Actions.

1. If the Secretary or his designee finds that a person has violated or is violating Section 4.01 of this Act, the Secretary or his designee may bring a civil action against the person.

2.

a. Any person may bring a civil action and file a complaint in his capacity as Relator for a violation of Section 4.01 of this Act in the name of the Government. All actions shall be brought in the name of the Government. Such action may be dismissed without prejudice only if the Secretary or his designee give written consent to the dismissal and their reasons for consenting.

b. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government, through the Secretary, on the filing date thereof, by the person who filed the complaint with the Court on behalf of and in the name of the Government. The complaint shall be filed with the Court of First Instance, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. In the complaint, the Relator shall certify under penalty of perjury that he did not obtain information from the persons precluded from filing a complaint under Section 1.02(g) of this Act. The Government may elect to intervene in the process, substitute the complainant and proceed with the action within sixty (60) days after it receives the complaint and the necessary evidence and information for the Secretary to investigate the information reported. The Court may extend the sixty (60)-day term for the Government to issue its decision whether or not it shall intervene; provided, that the Secretary or his designee requests such extension showing good cause to continue the investigation before deciding whether to intervene.

c. Before the expiration of the sixty (60)-day period or of any extension, the Government may:

i. Proceed with the action, in which case it shall be conducted by the Government.

ii. Notify the Court that it shall not assume jurisdiction of the civil action, in which case, the person bringing the action shall conduct the action.

iii. The Secretary or his designee shall have full discretion to make a decision of whether to intervene in any case brought under this Act by any private citizen, and such decision shall not be subject to judicial review nor challenge by the petitioner.

d. When a private person brings an action, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

3. If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person who originally brought the action.

a. The Government may dismiss the action at any time pursuant to subsection 2(a) of this Section notwithstanding the objections of the person initiating the action. A copy of the motion stating the reasons for the dismissal of the action must be served on the person who brought the action. Upon notice of the motion, the person who brought the action shall have fifteen (15) days to oppose the dismissal of the action. In this case, the Court shall hold a hearing within a term of twenty (20) days after the objection of the person who brought the action is received and notified.

b. The Government may settle the action with the defendant notwithstanding the objections of the person bringing the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable.

4. If the Government elects not to proceed with the action, the Secretary may allow the person who initiated the action to conduct the action before the Court on behalf and in favor of the Government. If the Relator is authorized to proceed with the action, he shall not be authorized to settle the claim on behalf of the Government, until the settlement proposal or motion to dismiss is filed with the Secretary or his designee for approval. Any payment for a Transaction shall be made

to the name of the Secretary of the Treasury of Puerto Rico. Any compensation awarded to a Relator shall be subject to agreement between the Relator and the Government. If the Government elects not to proceed and allows the Relator to continue with the litigation, the Secretary may require to be served of all pleadings filed and be supplied with copies of all the evidence presented, including deposition transcripts at the Relator's expense. If the Relator prevails in the action, in addition to the compensation awarded to him for the referral and transaction, the Relator may request the reimbursement of necessary and reasonable expenses which he has incurred and have not been awarded by the Court as attorney fees and costs. If the Government elects not to proceed and the Relator continues with the litigation, the Government shall not be liable to the Relator nor the defendant for any attorney fees. Once the cause of action is initiated, the Court may permit the Government to intervene at a later date upon showing good cause and through an express request from the Secretary or his designee. The Court shall not have jurisdiction to require the Secretary or his designee to intervene in certain action. Likewise, the Government may request the Court to limit the number of the Relator's witnesses, testimonies, and cross-examination if the Government believes that the Relator's unrestricted participation would affect a criminal investigation related thereto or if it believes that not doing so would result in repetitious or irrelevant testimonies or would unduly delay the process.

Whether or not the Government or the person who brought the action proceeds with the action, the Court, at the request of the Government, may stay discovery for a period of not more than sixty (60) days if the Government shows that all or part of discovery would interfere with an investigation or prosecution of a criminal or civil matter arising out of the same or similar facts. The hearing to request the stay of discovery shall be held in camera. The sixty (60)-day period may be extended at the

request of the Government if the Court determines that it has acted in good faith and that continuing with discovery shall interfere with other ongoing investigations.

Section 4.03.- Compensation

1. If the Government proceeds with an action, the person who brought the complaint or the Relator shall be entitled to receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action received by the Government for violations of the Government Program or service contract, as the case may be. Provided, that the Relator shall be entitled to such compensation once the Government enforces the judgment or settlement agreement and has received the payment. Until the Government receives payment, the Relator shall not be entitled to collect his share of the proceeds. Absent an agreement between the Government and the Relator, the Court shall establish the percentage of the proceeds set forth in this Section that the person who brought the complaint shall receive.

2. If the Court finds that the participation of the person who brought the action or the Relator was based on information readily accessible to any person rather than a rigorous investigation, it may fix a compensation of ten percent (10%) of the amount received by the Government under the judgment or settlement agreement.

3. Any payment to the person bringing the action on behalf of the Government shall be made from the proceeds of the judgment or settlement agreement. Except that, if the Government receives partial payments under a judgment or settlement agreement, the Relator may only be entitled to receive the percentage awarded as compensation from the payment received. The Court may impose additional fees to the defendant for reasonable additional costs which the person bringing the action had incurred, such as attorney fees. The person bringing the action shall file with the Court an itemization of the expenses incurred, within fifteen (15) days after the date of the judgment or settlement agreement.

4. If the Government does not proceed with an action, the Relator shall receive not less than twenty-five percent (25%) and not more than thirty percent (30%) of the amount of the judgment as determined by the Court, in addition to any reasonable and necessary expenses incurred in the litigation, under the same collection parameters for the Government stated in the above subsection. The Relator shall file with the Court an itemization of such expenses, within fifteen (15) days after the date of the judgment or settlement agreement.

5. Regardless of whether it was the Government or the Relator that conducts the action, if the Court finds that evidence was presented indicating that the Relator conspired, participated, or aided in the commission of the violation of the Government Program or service contract, the share from the proceeds of the judgment or settlement agreement shall be reduced by five percent (5%). If, as a result of the conspiracy, participation, or aid in the commission of the violation of the Program or service contract, the Government files criminal charges against the person bringing the action, the Relator shall be dismissed from the action as the Government's representative and shall not receive any share of the proceeds of the judgment or settlement agreement arising from his referral. The Government may, however, continue with the cause of action at the discretion of the Secretary or his designee.

6. If the Government does not proceed with an action and the Court finds that it lacks merit, the Court shall impose fees for recklessness, as necessary, on petitioner. The defendant shall have fifteen (15) days from the date the Court enters or dismisses the action to submit to the Court an itemization of the reasonable fees and expenses incurred.

7. The Government shall never be liable for expenses incurred by the Relator in bringing the action or conducting the action in benefit of the Government. If the Relator prevails in the action, the Relator may be reimbursed such necessary

and reasonable expenses in connection with the action, excluding any sums for attorney's fees incurred by the Relator which shall not be reimbursable by the Government.

8. No Relator shall be compensated by the Government for having referred a fraud or false statements for investigation, which has not been brought in Court as a Qui Tam action.

Section 4.04.- Collateral Estoppel

1. In no event may a person bring an action which is based upon allegations or transactions which are or were the subject of a civil suit or an administrative civil money penalty proceeding in which the Government was already a party.

a. The court shall dismiss an action if the allegations or transactions as alleged in the action or claim, series of events, or actors are substantially the same. In these cases, the Government may bring the action at its discretion.

Section 4.05- Rights of the Relator.

Any person, employee, contractor, or agent shall be entitled to bring a complaint as Relator if he knows of the existence of a violation of this Chapter of this Act, unless expressly prohibited by Section 1.02(g) of this Act. If such employee, contractor, or agent is discharged, demoted, suspended, threatened, or otherwise discriminated against in the terms and conditions of employment for bringing an action, such employee shall be entitled to the protections of Title IV of Act No. 2-2018, known as the "Anti-Corruption Code for a New Puerto Rico," and the applicable Federal Laws.

Section 4.06.- Subpoena and Statute of Limitations.

1. A subpoena requiring the attendance of a witness at a proceeding arising from the provisions of this Act may be served in Puerto Rico or any other state or territory of the United States of America, as provided in the Puerto Rico Rules of Civil Procedure.

2. A civil action under the provisions of this Act may not be brought:

a. Six (6) years after the date on which the violation of the Government Program or the service contract is committed, in accordance with the provisions of this Act.

b. Within three (3) years after the date when the allegations of potential violations are known by the Government, regardless of the fact that the six (6)-year term of paragraph (a) has elapsed, but in no event more than ten (10) years after the date on which the violation is committed.

c. If evidence is presented indicating that the violation constituting fraud or a false statement occurred during a conspiracy, the statute of limitations shall begin to elapse when the last act of the conspiracy takes place.

Section 4.07.- Criminal Action

A civil action under the provisions of this Act shall not preclude the Government from bringing a criminal action based on the same facts of the civil action or to proceed with administrative remedies before the concerned government entities.

CHAPTER V: FINAL GENERAL PROVISIONS

Section 5.1.- Jurisdiction and Competence

The Court of First Instance, Superior Part of San Juan, shall be the primary and exclusive forum where criminal actions shall be brought by the Medicaid Fraud Control Unit. In addition, it shall be the forum where complaints for violations of

Government Programs or service contracts shall be brought under the provisions of this Act, regardless of the judicial region where the fraud or false statement occurred.

Section 5.2.- Severability Clause

If any clause, paragraph, subparagraph, sentence, article, provision, section, subsection, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the part of this Act thus held to be null or unconstitutional. If the application to one person or circumstance of any part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect or invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied. It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest extent possible, even if it renders ineffective, nullifies, invalidates, impairs, or holds to be unconstitutional any part thereof, or even if it renders ineffective, nullifies, invalidates, impairs, or holds to be unconstitutional any of its parts, or even if it renders ineffective, invalidates, or holds to be unconstitutional the application thereof to any person or circumstance. This Legislative Assembly would have approved this Act regardless of any determination of severability that the Court may make.

Section 5.03.- Effectiveness

This Act shall take effect immediately after its approval. However, the provisions of Chapter IV on False Claims shall take effect one hundred eighty (180) days after the approval of this Act.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 154-2018 (H. B. 1627)** of the **3rd Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT to create the “False Claims to Government of Puerto Rico Programs, Contracts, and Services Act”; establish the Medicaid Fraud Control Unit attached to the Department of Justice; prescribe the powers and responsibilities and operating guidelines of said unit, and for other related purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 17th day of December, 2018.

Orlando Pagán-Ramírez
Director