§ 145-b. False statements; actions for treble damages. 1. (a) It shall be unlawful for any person, firm or corporation knowingly by means of a false statement or representation, or by deliberate concealment of any material fact, or other fraudulent scheme or device, on behalf of himself or others, to attempt to obtain or to obtain payment from public funds for services or supplies furnished or purportedly furnished pursuant to this chapter.

(b) For purposes of this section, "statement or representation" includes, but is not limited to: a claim for payment made to the state, a political subdivision of the state, or an entity performing services under contract to the state or a political subdivision of the state; an acknowledgment, certification, claim, ratification or report of data which serves as the basis for a claim or a rate of payment, financial information whether in a cost report or otherwise, health care services available or rendered, and the qualifications of a person that is or has rendered health care services.

(c) For purposes of this section, a person, firm or corporation has attempted to obtain or has obtained public funds when any portion of the funds from which payment was attempted or obtained are public funds, or any public funds are used to reimburse or make prospective payment to an entity from which payment was attempted or obtained.

2. For any violation of subdivision one, the local social services district or the state shall have a right to recover civil damages equal to three times the amount by which any figure is falsely overstated or in the case of non-monetary false statements or representations, three times the amount of damages which the state, political subdivision of the state, or entity performing services under contract to the state or political subdivision of the state sustain as a result of the violation or five thousand dollars, whichever is greater. Notwithstanding part C of chapter fifty-eight of the laws of two thousand five: (a) For civil damages collected by a local social services district, relating to the medical assistance program, pursuant to a judgment under this subdivision, such amounts shall be apportioned between the local social services district and the state. If the violation occurred: (i) prior to January first, two thousand six, the amount apportioned to the local social services district shall be the local share percentage in effect

immediately prior to such date as certified by the division of budget, or (ii) after January first, two thousand six, the amount apportioned to the local social services district shall be based on a reimbursement schedule, created by the office of Medicaid inspector general, in effect at the time the violation occurred; provided that, if there is no schedule in effect at the time the violation occurred, the schedule to be used shall be the first schedule adopted pursuant to this subdivision. Such schedule shall provide for reimbursement to a local social services district in an amount between ten and fifteen percent of the gross amount collected. Such schedule shall be set on a county by county basis and shall be periodically reviewed and updated as necessary; provided, however, that any such updated schedule shall not be less than ten percent nor greater than fifteen percent of the gross amount collected; and (b) For civil damages collected by the state relating to the medical assistance program pursuant to a judgment under this subdivision, the local social services district shall be entitled to compensation up to fifteen percent of the gross amount collected for such participation, including but not limited to identification, investigation or development of a case, commensurate with its level of effort or value added as determined by the Medicaid inspector general.

3. If any provider or supplier of services in the program of medical assistance is required to refund or repay all or part of any payment received by said provider or supplier under the provisions of this chapter and title XIX of the federal social security act, said refund or repayment shall bear interest from the date the payment was made to said provider or supplier to the date of said refund or repayment. Interest shall be at the maximum legal rate in effect on the date the payment was made to said provider or supplier.

4. (a) The Medicaid inspector general, in consultation with the department of health, may require the payment of a monetary penalty as restitution to the medical assistance program by any person who fails to comply with the standards of the medical assistance program or standards of generally accepted medical practice in a substantial number of cases or grossly and flagrantly violated such standards and:

(i) receives, or causes to be received by another person, payment from

the medical assistance program when such person knew, or had reason to know, that:

(A) the payment involved the providing or ordering of care, services or supplies that were medically improper, unnecessary or in excess of the documented medical needs of the person to whom they were furnished;

(B) the care, services or supplies were not provided as claimed;

(C) the person who ordered, prescribed, or furnished the care, services or supplies which were medically improper, unnecessary or in excess of the documented medical need of the person to whom they were furnished was suspended or excluded from the medical assistance program at the time the care, services or supplies were furnished; or

(D) the services or supplies for which payment was received were not, in fact, provided; or

(ii) such person fails to grant timely access to facilities and records, upon reasonable notice, to the Medicaid inspector general, the Medicaid fraud control unit of the attorney general's office, or the department of health for the purpose of audits, investigations, reviews, or other statutory functions. For purposes of this subparagraph, "reasonable notice" means a written request made by a properly identified agent of the Medicaid inspector general, the Medicaid fraud control unit of the attorney general's office, or the department of health either, during hours that the individual or entity is open for business, or mailed to the individual or entity to an address on file with the department of health or last known address. The request shall include a statement of the authority for the request, the definition of "reasonable notice", and the penalties for failure to comply;

(iii) such person knew or should have known that an overpayment has been identified and does not report, return and explain the overpayment in accordance with subdivision six of section three hundred sixty-three-d of this article;

(iv) such person arranges or contracts, by employment, agreement, or otherwise, with an individual or entity that the person knows or should know is suspended or excluded from the medical assistance program at the time such arrangement or contract regarding activities related to the medical assistance program is made;

(v) such person had an obligation to identify, claim, and pay a bonus under subdivision three of section three hundred sixty-seven-w of this

article and such person failed to identify, claim and pay such bonus.

(vi) For purposes of this paragraph, "person" as used in subparagraph (i) of this paragraph does not include recipients of the medical assistance program; and "person" as used in subparagraphs (ii), (iii) and (iv) of this paragraph, is as defined in paragraph (e) of subdivision six of section three hundred sixty-three-d of this article; and "person" as used in subparagraph (v) of this paragraph includes employers as defined in section three hundred sixty-seven-w of this article.

(b) In determining the amount of any monetary penalty to be imposed, the Medicaid inspector general, in consultation with the department of health, shall take into consideration the following:

(i) the number and total value of the claims for payment from the medical assistance program which were the underlying basis of the determination to impose a monetary penalty;

(ii) the effect, if any, on the quality of medical care provided to recipients of medical assistance as a result of the acts of the person;

(iii) the degree of culpability of the person in committing the proscribed actions and any mitigating circumstances;

(iv) any prior violations committed by the person relating to the medical assistance program, Medicare or other social services programs which resulted in either a criminal or administrative sanction, penalty, or recoupment; and

(v) any other facts relating to the nature and seriousness of the violations including any exculpatory facts.

(c) (i) For subparagraphs (i), (iii), and (iv) of paragraph (a) of this subdivision, in no event shall the monetary penalty imposed exceed ten thousand dollars for each item or service which was the subject of the determination herein, except that where a penalty under this section has been imposed on a person within the previous five years, such penalty shall not exceed thirty thousand dollars for each item or service which was the subject of the determination herein.

(ii) For subparagraph (ii) of paragraph (a) of this subdivision, in no event shall the monetary penalty exceed fifteen thousand dollars for each day of the failure described in such subparagraph.

(iii) For subparagraph (v) of paragraph (a) of this subdivision, a monetary penalty shall be imposed for conduct described in subparagraphs

(i), (ii) and (iii) of paragraph (a) of subdivision five of section three hundred sixty-seven-w of this article and shall not exceed one thousand dollars per failure to identify, claim and pay a bonus for each employee.

(d) Amounts collected pursuant to this subdivision shall be apportioned between the local social services district and the state in accordance with the regulations of the department of health.

(e) For the purposes of this subdivision, "gross and flagrant violation" shall mean conduct which has an adverse effect on the fiscal integrity of the medical assistance program and:

(i) which substantially impairs the delivery of high quality medical care, services, or supplies; or

(ii) which substantially impairs the oversight and administration of the program.

(f) A person against whom a monetary penalty is imposed pursuant to this subdivision shall be entitled to notice and an opportunity to be heard, including the right to request a hearing pursuant to section twenty-two of this chapter.

5. When in the course of conducting an investigation relating to the investigation relating to the medical assistance program, a local social services district deduces that a provider may have committed criminal fraud, it shall refer the case to the office of Medicaid inspector general along with appropriate supporting information. The office shall promptly review the case and, if deemed appropriate, refer the case pursuant to subdivision seven of section thirty-two of the public health law. If the deputy attorney general for Medicaid fraud control accepts a referral from the office of Medicaid inspector general that was identified, investigated or developed by a local social services district, and the state collects damages, the participating local social services district shall be entitled to compensation up to fifteen percent of the gross amount collected for such participation commensurate with its level of effort or value added as determined by the deputy attorney general for Medicaid fraud control. If the office of Medicaid inspector general determines that it is not appropriate for referral in accordance with subdivision seven of section thirty-two of the public health law the office of Medicaid inspector general shall

further investigate the case, with notice to the participating local social services district, or return the case to the participating social services district, which may resume its investigation of the provider.