

Legislative Analysis



MEDICAID FALSE CLAIM RECOVERY

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Senate Bill 1622 (Substitute H-1)

Sponsor: Sen. Ron Jelinek

House Committee: Judiciary

Senate Committee: Appropriations

Complete to 12-11-08

A SUMMARY OF SENATE BILL 1622 AS REPORTED BY HOUSE COMMITTEE

BACKGROUND INFORMATION:

Under the Federal False Claims Act, the federal government shares any recovery of damages from false or fraudulent Medicaid claims with the state in the same proportion of that state's share of the cost of its program. Recently enacted federal legislation, the Deficit Reduction Act (DRA), allows an additional 10 percent of recovered money from false claims to be given to any state that has a law with similar civil liability provisions as the Federal False Claims Act.

Though Michigan's Medicaid False Claim Act provides similar penalties as the federal legislation, it was recently declared by federal officials as not complying with the federal act because it did not prohibit a particular conduct, nor did it set a minimum fine of at least \$5,000 for each false claim for a penalty. As a result, the state missed out on an additional 10 percent cut of the \$21.7 million recovered last year from Medicaid fraud cases by the Attorney General. Legislation is needed to revise the appropriate provisions to comply with federal requirements so that the state will be eligible for the extra 10 percent under the federal incentive. Enactment of either bill would add the elements identified as lacking so that the state can receive the extra 10 percent revenue promised by the DRA.

In addition, the Medicaid False Claim Act was amended by Public Act 337 of 2005, which took effect in early 2006, to provide a whistleblower provision, known as a *qui tam* provision, that allows a private citizen to commence a civil action against any entity believed to have committed Medicaid fraud. The Attorney General may later take primary responsibility for the action. A successful plaintiff receives a percentage of any monetary proceeds resulting from the action. Some feel that this provision should have a statute of limitations that would provide a timeframe within which a civil action could be begun. The reasoning is that as time goes on, evidence is lost, witnesses' memories fade, and a defendant is disadvantaged in mounting a defense. The time periods allowed by the bill are generous compared to the typical statute of limitations of three years for most civil actions.

The bill is similar to House Bill 5757, which previously was passed by the House and is pending Senate committee action.

CONTENT:

The bill would amend the Medicaid False Claims Act (400.602 et al.) to, among other things, prohibit individuals from engaging in actions prohibited by the act, establish civil penalties for making a false claim, and establish a statute of limitations for filing an action against those making false claims. In brief, the bill would do the following:

****** Prohibit a person from knowingly making, using, or causing to be made or using a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state pertaining to a claim for Medicaid benefits.

****** Revise the current definition of “knowing” and “knowingly” to include acting in deliberate ignorance of the truth or falsity of facts or acting in reckless disregard of the truth or falsity of facts. Proof of specific intent to defraud would not be required.

****** Create a statute of limitations for actions brought by a person (defined as an individual, corporation, association, partnership, or other legal entity). Under the bill, a person could not bring a civil action after the later of the following: 1) more than six years after the date on which the violation against the state occurred; or 2) more than three years after the date when facts material to the right of action were known or reasonably should have been known by the state official charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation had been committed.

****** Allow a court to award necessary expenses, costs, and reasonable attorney fees to the attorney general (AG) if the AG prevails in an action brought under this provision of law.

****** Allow, rather than require, a court to award the person bringing an action under this provision of law no more than 10 percent of the monetary recovery (in addition to attorney fees, etc.)

****** Revise conditions under which a court may reduce or eliminate the share of proceeds under an action that a person would otherwise be entitled to receive. Currently, the award may be reduced or eliminated if a person bringing an action planned, initiated, or participated in the conduct upon which the action was brought. The bill would eliminate the element of “participation”.

****** Allow a person other than the attorney general to bring an action based on allegations or transactions that are the subject of a criminal investigation or prosecution. The act would still prohibit a person from bringing an action if the matter were the subject of a civil suit or an administrative civil money penalty proceeding to which the state or the federal government were a party.

****** Allow an action brought by the attorney general to be filed in a county other than Ingham County. (Currently, all such actions must be filed in Ingham County.)

**** A person could bring an action under the act for conduct occurring before the bill's effective date if the action were filed within the statute of limitations added by the bill.**

**** Require a person bringing a civil action under the act to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.**

FISCAL IMPACT:

The federal government created an incentive within the Deficit Reduction Act, Sec. 6031, for states to enact false claims acts that are comparable to the federal False Claims Act. Effective January 1, 2007, the federal government will give to a state 10 percent of any funds recovered as part of Medicaid enforcement actions brought under that state's law that should have otherwise gone to the federal government.

The Executive's proposed FY 2008-09 Department of Community Health budget includes \$1 million in GF/GP savings, recognizing increased collections on Medicaid False Claims Act recoveries if the state statute sufficiently resembles federal law.

POSITIONS:

The Department of Community Health supports the bill. (12-9-08)

The Office of Attorney General supports the bill. (12-9-08)

The law firm of Frank, Haron, Weiner & Navarro supports the bill. (12-9-08).

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