

# HOUSE BILL REPORT

## HB 2273

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**As Reported by House Committee On:**  
Judiciary  
Appropriations

**Title:** An act relating to the medicaid fraud control unit.

**Brief Description:** Concerning the medicaid fraud control unit.

**Sponsors:** Representatives Goodman, Klippert, Kilduff, Peterson, Ryu, Haler, Young, Jinkins and Ormsby; by request of Attorney General.

**Brief History:**

**Committee Activity:**

Judiciary: 1/10/18, 1/23/18 [DPS];  
Appropriations: 2/3/18, 2/5/18 [DPS(JUDI)].

**Brief Summary of Substitute Bill**

- Requires the Attorney General to establish and maintain a Medicaid Fraud Control Unit (MFCU) and specifies the authority and duties of the MFCU.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Klippert, Muri, Orwall, Shea and Valdez.

**Staff:** Edie Adams (786-7180).

**Background:**

State law establishes a number of civil and criminal penalties for fraudulent acts related to the Medicaid program. Medicaid service providers that obtain payments through willful false statements, willful misrepresentation or concealment of material facts, or other fraudulent schemes must repay any excess payments received and may be assessed civil penalties up to three times the amount of the excess payments. In addition, the Medicaid

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Fraud False Claims Act establishes civil liability for a number of false or fraudulent activities involving claims for payment to the state Medicaid program.

Criminal provisions relating to Medicaid fraud make it a class C felony for any person to knowingly make a false statement or conceal material facts in an application for payment, knowingly make a false statement regarding facts used to determine rights to payments, or have knowledge of the concealment of information with the intent to fraudulently receive unauthorized payments. Other criminal prohibitions applicable to Medicaid fraud include prohibitions relating to inappropriate rebating and referral practices and knowingly charging excessive rates for services to patients.

The Medicaid Fraud Control Unit (MFCU) within the Office of the Attorney General is responsible for both civil and criminal investigation and prosecution of health care provider fraud committed against the state's Medicaid program. In addition, the MFCU monitors complaints of resident abuse or neglect in Medicaid-funded nursing homes, adult family homes, and boarding homes. The MFCU is funded through a federal matching grant. The state provides 25 percent of the funding, which comes from Medicaid fraud recoveries deposited in the Medicaid Fraud Penalty Account. The federal government provides a grant funding the remaining 75 percent of the MFCU.

Under federal law, all states must operate MFCUs that effectively carry out the requirements of federal law with regard to the investigation and prosecution of Medicaid provider fraud and patient abuse and neglect, unless the Secretary of Health and Human Services determines the state can operate without a MFCU. The Office of the Inspector General is responsible for certifying state MFCUs as meeting federal requirements and eligibility for federal grants. In order to receive federal grants, a state MFCU must meet a number of requirements under the Social Security Act and federal regulations. These include requirements that the MFCU have either statewide authority to prosecute criminal cases or procedures for referring suspected criminal violations to an agency with such authority.

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### **Summary of Substitute Bill:**

The Attorney General must establish and maintain a Medicaid Fraud Control Unit (MFCU) within the Office of the Attorney General.

The MFCU has the authority and criminal jurisdiction to investigate and prosecute Medicaid provider fraud, as well as other health care program fraud and abuse and neglect matters where authority is granted by the federal government. The MFCU must cooperate with federal and local investigators and prosecutors and coordinate local, state, and federal investigations and prosecutions involving such fraud.

The Attorney General must employ and train personnel to achieve the purposes of the act, including attorneys, investigators, auditors, clerical support, and other necessary personnel. Medicaid fraud control investigators appointed by the Attorney General are authorized to detect, investigate, and apprehend when it appears a criminal violation relating Medicaid

fraud, Medicaid managed care fraud, Medicare fraud, or abuse or neglect has been or is about to be committed.

The MFCU must protect patient privacy and establish procedures to ensure confidentiality of records in accordance with state and federal laws, including the federal Health Insurance Portability and Accountability Act and the Washington Uniform Health Care Information Act.

**Substitute Bill Compared to Original Bill:**

The original bill included a provision designating the Medicaid Fraud Control Unit an appropriate law enforcement agency for the purposes of mandatory reporting of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The Medicaid Fraud Control Unit (MFCU) has been in existence for 40 years but there is no enabling statute specifically laying out its authority and powers. States are required to have an effective MFCU as a condition to receiving federal Medicaid program funding. The MFCU is a stand-alone unit within the Office of the Attorney General responsible for investigating and prosecuting health care provider fraud and abuse and neglect cases in residential facilities. The MFCU is revenue generating, paying for its own operations as well as generating revenue for the Medicaid program.

This bill sets forth in one section the powers of the MFCU and the limits of those powers. The Washington MFCU is the only one in the country that does not have law enforcement authority, and this lack of authority significantly hampers the MFCU's ability to pursue and conduct investigations. The MFCU has to involve local law enforcement, which slows down investigations and imposes a burden on local law enforcement agencies. Providing the MFCU with the authority to engage in essential enforcement functions will help alleviate the burden on local law enforcement, as well as enable investigation and prosecution of more complex cases.

Law enforcement agencies and prosecutors have indicated their support for the legislation. It is time to catch up with the other 49 states and give the MFCU the law enforcement powers that it needs to successfully do its job.

(Opposed) There is concern with subsection (7), which states that the MFCU is a law enforcement agency for purposes of mandatory reporting. This will create confusion for

mandatory reporters regarding to whom the reports must be given. A better option would be to require law enforcement to share appropriate reports with the MFCU so there is no change regarding a mandatory reporter's obligations.

**Persons Testifying:** (In support) Representative Goodman, prime sponsor; and Yasmin Trudeau and Larissa Payne, Office of the Attorney General.

(Opposed) Lisa Thatcher, Washington State Hospital Association.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 24 members: Representatives Ormsby, Chair; Robinson, Vice Chair; MacEwen, Assistant Ranking Minority Member; Bergquist, Cody, Fitzgibbon, Graves, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Schmick, Senn, Springer, Stanford, Sullivan, Tharinger and Wilcox.

**Minority Report:** Do not pass. Signed by 8 members: Representatives Chandler, Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Manweller, Taylor and Vick.

**Staff:** Meghan Morris (786-7119).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Judiciary:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

### **Staff Summary of Public Testimony:**

(In support) The Medicaid Fraud Control Unit (MCFU) is the state's arm of the Medicaid fraud program and is a standalone unit, which is typically housed within the Office of the Attorney General, but has separate funding, budgeting, and operations. The MCFU investigates and prosecutes cases to fight fraud, waste, and abuse in the roughly \$13.7 billion program, protecting Washington's most vulnerable citizens. The only additional power this bill adds is in subsection 6. All other functions are already in existence, and the bill otherwise consolidates current functions into one statute to conform to federal recommendations.

Law enforcement agencies and prosecutors are in support of this legislation. Washington is the only state that does not enable essential MCFU law enforcement functions, which impedes the state's ability to prosecute people taking advantage of the system. With this bill, the MCFU will no longer have fiscal impacts on local law enforcement operations. The MCFU currently takes up about 25 hours per month of local enforcement time. Operating independently will increase the pace of investigations.

There is also urgency around the MCFU's work in the midst of the opioid crisis. The MCFU has the power to investigate pharmacies and doctors to stop the source of the drug crisis. Strengthening the MCFU will also allow efficient and effective coordination with local law enforcement to handle street movement of opioids, such as heroin and fentanyl.

The MCFU is a revenue-generating division that pays for itself, the prescription monitoring program, and the Health Care Authority's Program Integrity Unit. Last year the MCFU recovered \$14.7 million for Washington. The MCFU's 2017 budget consisted of \$4.14 million in federal funds and \$1.3 million in state funds. The MCFU's 2018 budget consisted of \$4.4 million in federal funds and \$1.4 million in state funds. The recoveries to date for 2018 are already at \$824,000. There is no fiscal impact for this bill; in fact, the bill is cost-saving and revenue-generating. This bill will allow the MCFU to focus on larger criminal cases, which will result in larger recoveries for the state. With current resources, the MCFU can work on more substantial and complex cases which have a high dollar value and deterrent effect.

(Opposed) None.

**Persons Testifying:** Yasmin Trudeau, and Larissa Payne, Office of the Attorney General.

**Persons Signed In To Testify But Not Testifying:** None.