
Judiciary Committee

HB 2326

Title: An act relating to medicaid fraud false claims civil penalties.

Brief Description: Concerning medicaid fraud false claims civil penalties.

Sponsors: Representatives Ryu, Haler, Sawyer, Jinkins and Young; by request of Attorney General.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Revises the civil penalty amounts that may be imposed under the Medicaid Fraud False Claims Act.
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Hearing Date: 1/10/18

Staff: Edie Adams (786-7180).

Background:

Washington Medicaid Fraud False Claims Act.

The Washington Medicaid Fraud False Claims Act (MFFCA) was enacted in 2012 and establishes civil liability for a number of false or fraudulent activities involving claims for payment to the state Medicaid program. The MFFCA also authorizes qui tam actions that allow private parties, called qui tam relators, to bring a civil action in the name of the state for violations of the MFFCA, and to share in the proceeds of any settlements or judgments.

Under the MFFCA, civil liability for presenting a false or fraudulent claim includes three times the amount of damages incurred by the state plus a civil penalty set in statute of between \$5,500 and \$11,000. The Attorney General must annually adjust the civil penalty amounts so that they are equivalent to the civil penalties under the federal False Claims Act (FCA) in accordance with the federal Civil Penalties Adjustment Act of 1990.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Attorney General's Medicaid Fraud Control Unit (MFCU) is responsible for investigating and pursuing actions relating to Medicaid fraud under the MFFCA. 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.

Federal False Claims Act.

The FCA establishes liability for a variety of improper or fraudulent activities in all federal programs, including presenting a fraudulent claim or using false records pertaining to a fraudulent claim; failing to return money or property to the government; and using false records or concealing or improperly avoiding an obligation to pay money to the government. The FCA contains "qui tam" provisions that allow citizens with evidence of fraud against the government to sue on behalf of the government.

Under the Deficit Reduction Act of 2005, a state that adopts its own version of the FCA pertaining to Medicaid programs is entitled to an increase of 10 percentage points in its share of Medicaid fraud amounts recovered under the state act. In order to qualify for this financial incentive, the Office of the Inspector General (OIG) for the United States Department of Health and Human Services must certify that the state law meets specified criteria, including state liability for false or fraudulent claims that is equivalent to the federal liability, provisions that are at least as effective as federal standards for rewarding and facilitating qui tam actions, and civil penalties that are as much or more than the federal penalties.

Civil penalties under the FCA at the time Washington enacted the MFFCA ranged between \$5,500 and \$11,000 for each false claim, but the penalty amounts must be adjusted for inflation under federal inflation adjustment requirements. Effective August 1, 2016, the civil penalties authorized under the FCA increased pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and going forward will be adjusted annually on August 1. As a result of the inflation adjustment, the civil penalty under the FCA increased to a range of not less than \$10,957 and not more than \$21,916, for violations occurring after November 2, 2015.

The OIG analyzed Washington's previously approved MFFCA and determined that the penalty provisions in the MFFCA are no longer in compliance with federal requirements, and effective December 31, 2018, the state will lose its compliance status. The OIG recommends that the MFFCA be amended to reference the federal FCA civil penalty provisions or the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, rather than setting an exact dollar amount for the civil penalties.

Summary of Bill:

The civil penalty applicable to a person found liable under the Washington Medicaid Fraud False Claims Act is revised to be not less than the greater of \$10,957 or the minimum inflation-adjusted penalty amount imposed as provided by federal law and not more than the greater of \$21,916 or the maximum inflation-adjusted penalty amount imposed under federal law.

Appropriation: None.

Fiscal Note: Requested on 1/4/18.

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