

HOUSE BILL REPORT

SB 5163

As Passed House:

April 5, 2023

Title: An act relating to the medicaid fraud false claims act.

Brief Description: Removing the sunset provisions on the medicaid fraud false claims act.

Sponsors: Senators Rivers, Dhingra, Hasegawa, Keiser, Kuderer, Mullet and Muzzall; by request of Attorney General.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/21/23, 3/24/23 [DP].

Floor Activity:

Passed House: 4/5/23, 95-3.

Brief Summary of Bill

- Makes the qui tam provisions of the Medicaid Fraud False Claims Act permanent by repealing provisions that would terminate the qui tam provisions on June 30, 2023.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Hansen, Chair; Farivar, Vice Chair; Graham, Assistant Ranking Minority Member; Cheney, Entenman, Goodman, Peterson, Rude, Thai and Walen.

Minority Report: Without recommendation. Signed by 1 member: Representative Walsh, Ranking Minority Member.

Staff: Edie Adams (786-7180).

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

Background:

Medicaid is a health care program for qualifying low-income and needy people, including children, the elderly, and persons with a disability. The program is a federal-state partnership established under the federal Social Security Act, and implemented at the state level with federal matching funds.

Legislation enacted in 2012 established the Medicaid Fraud False Claims Act (MFFCA). The MFFCA authorizes the Attorney General to investigate and bring civil actions against providers who engage in false or fraudulent activities involving claims for payment to the state Medicaid program. Civil liability for presenting a false or fraudulent claim includes a civil penalty plus three times the amount of damages incurred by the state. The Attorney General's Medicaid Fraud Control Division (Division) is responsible for investigating and pursuing actions relating to Medicaid fraud under the MFFCA. The Division is funded through a federal matching grant.

The MFFCA also authorizes qui tam actions that allow private parties, called qui tam relators (relators), to bring a civil action in the name of the state for violations of the MFFCA. Prior to commencing the action, the relator must serve the Attorney General with a copy of the complaint and all material evidence regarding the claim, and the Attorney General has at least 60 days following the receipt of the complaint to decide whether or not to intervene in the action. If the Attorney General intervenes in the action, the relator continues as a party but his or her participation may be limited. If the Attorney General does not intervene in the suit, the relator may proceed with the case. A relator is entitled to share in the proceeds of any settlements or judgments.

The original MFFCA was subject to a sunset review and termination on June 30, 2016. Legislation enacted in 2016 made portions of the MFFCA permanent but extended the termination and sunset review of the qui tam provisions until June 30, 2023. The Joint Legislative Audit and Review Committee (JLARC) conducted a sunset review of the qui tam provisions and issued its report and recommendations in December 2022. The JLARC found that the Attorney General's Office implements the qui tam provisions consistent with legislative intent and that these provisions maximize fraud recoveries, finding that the state's return on investment during the study period was \$17.76 for every dollar spent. The JLARC recommends that the Legislature reauthorize the qui tam provisions of the MFFCA and make them permanent.

Summary of Bill:

The qui tam provisions of the MFFCA are made permanent by repealing the provisions of law that would terminate the qui tam provisions on June 30, 2023.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This legislation will reauthorize the whistleblower provisions of the MFFCA, which will expire in June of this year without legislative action. The whistleblower provisions are important because they allow private citizens to file complaints when they believe providers are engaging in Medicaid fraud by submitting false claims.

Whistleblowers are uniquely positioned to identify fraud that the state would most likely not know about. The JLARC report was clear that the MFFCA works as intended and that the Legislature should make the whistleblower provisions permanent. From 2016 through the first 11 months of 2022, the Attorney General's Office recovered \$71.8 million, including \$62 million from whistleblower complaints, and only spent \$4 million in state funds. This is an 18-to-1 return on investment.

(Opposed) None.

Persons Testifying: Carrie Bashaw, Washington State Attorney General's Office.

Persons Signed In To Testify But Not Testifying: None.