

FISCAL NOTE
Requested by Legislative Council
01/06/2017

Amendment to: HB 1174

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill establishes the false claims act which needs to be in place before the state can set up a Medicaid Fraud Control Unit.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 5 of the bill requires the Attorney General to investigate alleged violations of the false claims act. The Attorney General may file a civil action or criminal action against anyone who violates this Act.

Proceeds from this action must be deposited in the general fund, except when a trust fund suffered as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss, and the remained of any damages and civil penalty must be deposited in the general fund.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Revenues which will be generated from this act are unknown at this time since the number of actions the Attorney General can take under the bill are uncertain.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Expenditures for the Office of Attorney General taking the required actions will be provided for House Bill No. 1226, which establishes the Medicaid Fraud Control Unit in the Office of Attorney General.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The appropriation needed by the Office of the Attorney General for costs associated with this Act will be reflected in the fiscal note for House Bill No.1226, which establishes the Medicaid Fraud Control Unit in the Office of Attorney General.

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 328-3622

Date Prepared: 01/14/2017

FISCAL NOTE
Requested by Legislative Council
01/06/2017

Bill/Resolution No.: HB 1174

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill establishes the false claims act which needs to be in place before the state can set up a Medicaid Fraud Control Unit.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 5 of the bill requires the Attorney General to investigate alleged violations of the false claims act. The Attorney General may file a civil action or criminal action against anyone who violates this Act.

Proceeds from this action must be deposited in the general fund, except when a trust fund suffered as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss, and the remained of any damages and civil penalty must be deposited in the general fund.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Revenues which will be generated from this act are unknown at this time since the number of actions the Attorney General can take under the bill are uncertain.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Expenditures for the Office of Attorney General taking the required actions will be provided for House Bill No. 1226, which establishes the Medicaid Fraud Control Unit in the Office of Attorney General.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The appropriation needed by the Office of the Attorney General for costs associated with this Act will be reflected in the fiscal note for House Bill No.1226, which establishes the Medicaid Fraud Control Unit in the Office of Attorney General.

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 328-3622

Date Prepared: 01/14/2017

2017 HOUSE JUDICIARY

HB 1174

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1174
1/16/2017
26921

- Subcommittee
 Conference Committee

Committee Clerk Signature

Donna Whetham

Explanation or reason for introduction of bill/resolution:

Act to provide for civil liability for false claims to the state; and to provide a penalty.

Minutes:

See Attachments #1, #2, #3

Chairman K. Koppelman: Opened the hearing on HB 1174.

Representative K. Hogan: (:40-4:30)

See Attachments #1, #2, & #3

This is talking about provider fraud and what Medicaid Fraud is from the National Council of State Legislators. This is a good summary of what Medicaid Fraud is about.

Representative Satrom: The Fiscal note is without numbers.

Chairman K. Koppelman: The bill deals primarily with fraud by providers billing for services not rendered or billing an incorrect amount. What about those not qualifying for Medicaid and are attempting to get into the system through fraudulent means?

Representative K. Hogan: The cost of the unit set up in the 1990's to target the people who falsely claimed benefits found that the consumer fraud in Medicaid tended to run 1 ½ - 2%. Was in existence for 4-5 years but the Legislature in the end decided the cost of it was not worth it. This paid for itself on the funding side; there is 90% reimbursement for all administrative costs. The state matches 10% and the claims if collections are made. It pays for itself.

Representative Klemin: In looking at section 2 of this bill, not less than \$5,000 or more than \$10,000 plus – three times you get your expenses back. On the civil penalty what is the basis for those kinds of numbers?

Representative K. Hogan: I believe those are standards based on other state protocol; I think these need to be worked at. This is model legislation and we need to see what fits for North Dakota.

Representative Roers Jones: On page 2, Section 2, it looks like the wording on that section needs to be changed. It should read "unless" the court finds all of the following...

Representative K. Hogan: Yes I do and that's the detail of the language that we want you to walk through. It needs to be revised.

Representative Roers Jones: I did not realize that it was supposed to be geared to Medicaid fraud. If we are going to limit this to Medicaid fraud, we need to make it more clear. If we are going to open this to more things we need to look at damages that are less than \$5,000 we need to make that more clear.

Representative K. Hogan: Those are the reactions I got from people not looking at this bill for Medicaid fraud. It might include much broader than what we originally intended. Some of the opposition may have unintended consequences.

Chairman Koppelman: Is there further testimony in support of, opposition to or neutral to HB 1174. Seeing none we will close the hearing on H B 1174. We will reopen the hearing on HB 1174.

Troy Seibold, Chief Deputy Attorney General: Introductions. He is the expert in drafting legal language.

Michael McGhoney, Attorney General: This will be limited to Medicaid fraud claims. Language comes from the federal false claims act. We need to do this for funding for the Medicaid Fraud Unit. We do have proposed amendments in the hopper that we will get to the committee as soon as possible.

Chairman Koppelman: With no further testimony, we will again close the hearing on H B 1174.

Chairman Koppelman: Closed the hearing on HB 1174.

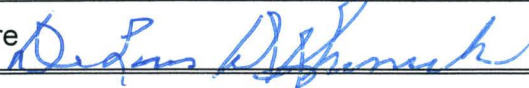
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1174
2/14/2017
28333

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Act to provide for civil liability for false claims to the state; and to provide a penalty.

Minutes:

1

Chairman K. Koppelman: Reopened the meeting on HB 1174. This bill has to do with Medicaid fraud. I am going to pass out an amendment she asked us to do. (#1) There was a requirement to have a Medicaid fraud unit and ND has had a waiver of that requirement for several years and was told last year no more waivers would be forth coming and we needed to do something so that is what precipitated these bills. Now apparently the federal government is pretty certain we will get another waiver now. With the new administration there might be even a greater opportunity to get a waiver. The amendments I am told are important to add to the bill. It is up to the committee then.

Motion made to move the amendment .01002 by Representative Nelson: Seconded by Rep. Satrom

Voice vote carried.

Chairman K. Koppelman: Kelly would you make for sure we get a marked up of that as well.

Closed.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1174
2/14/2017
28371

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Act to provide for civil liability for false claims to the state; and to provide a penalty.

Minutes:

1

Chairman K. Koppelman: Reopened the meeting on HB 1174. We have a waiver from the federal government. It appears that we will get another waiver. Apparently there was a time the counties could do this. If they found fraud they could retain some of this money. They found out it wasn't really worth it because of the expense that they went through trying to unearth any fraud was not enough to pay for the cost to do that. I asked both the Attorney General's office and with Rep. Weisz's committee folks thought we should just kill it. We did not need the amendments or marked up bill then. We are going to study it.

Representative Hanson: I talked to Kathy Hogan about this bill and she thinks we should pass it. She cited a letter from Governor Bergum saying we were going to pursue this?

Chairman K. Koppelman: She gave me the amendments (#1). She worked with the Attorney General's office to get those. The Deputy Attorney General thought it could probably go away. This was a couple days ago that she thought the amendments were necessary if we were going to pass the bill.

Do No Pass as Amended by Representative Klemin: Seconded by Rep. Satrom

Discussion:

Representative Paur: I have seen figures on Medicaid fraud and we don't have a lot here, but you go around the country and there is a lot of it. Why is Hogan a prime sponsor on all three of these bills?

Chairman K. Koppelman: She came to me early in the session and said that the state was under the impression that we needed to now have one. I don't know why there is three instead of one.

Roll Call Vote: 13 Yes 2 No 0 Absent Carrier: Rep. Magrum

Closed.

FILE
2/14/17
1066

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1174

Page 1, line 1, remove "civil"

Page 1, line 1, after "false" insert "medical assistance"

Page 1, line 6, after "1." insert "a."

Page 1, line 6, replace "includes any" with "means a"

Page 1, line 6, after "demand" insert ", whether under a contract or otherwise."

Page 1, line 6, replace the first underscored comma with "or"

Page 1, line 6, replace "or services made" with "regardless of whether the state has title to that money or property, which is presented"

Page 1, line 7, replace "a governmental unit" with "the state"

Page 1, line 7, after the second "or" insert "is made"

Page 1, line 8, remove "whether under contract or not."

Page 1, line 8, remove "any portion of"

Page 1, line 8, replace the third underscored comma with "or"

Page 1, line 8, remove ", or"

Page 1, line 9, replace "services requested or demanded issued from or was provided by a governmental unit" with "is to be spent or used on behalf of the state or to advance a state program or interest, and if the state:"

- (1) Provides or has provided any portion of the money or property requested or demanded; or
- (2) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded

Page 1, after line 9, insert

"b."

Page 1, line 10, replace "includes a document submitted as part of or in support of the claim" with "does not include a request or demand for money or property the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or property"

Page 1, line 11, remove "Governmental unit means the state or a political subdivision of the state."

Page 1, replace lines 12 and 13 with:

"Knowingly" or "knowing" means an individual who, regardless of whether that individual has an intent to defraud, has actual knowledge of

information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information.

296

3. "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.
4. "Obligation" means an established duty, regardless of whether fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.
5. "Original source" means an individual, who before a public disclosure, voluntarily disclosed to the state the information on which allegations or transactions in the claim are based, or who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the state before filing an action under this Act."

Page 1, line 16, replace "a governmental unit" with "the state"

Page 1, line 17, after the first "thousand" insert "five hundred"

Page 1, line 17, replace "ten" with "eleven"

Page 1, line 18, remove "a"

Page 1, line 19, replace "governmental unit" with "the state"

Page 1, line 21, remove "to an officer or employee of the"

Page 1, line 22, remove "governmental unit"

Page 1, line 22, after "fraudulent" insert "medical assistance"

Page 2, line 2, after "statement" insert "material"

Page 2, line 2, remove "get"

Page 2, line 2, after "fraudulent" insert "medical assistance"

Page 2, line 2, remove "governmental"

Page 2, line 3, replace "unit" with "state"

Page 2, line 6, replace "governmental unit" with "state to provide medical assistance"

Page 2, line 6, remove ", with the intent to defraud the governmental"

Page 2, line 7, remove "unit or to willfully conceal the property,"

Page 2, line 8, after "less" insert "than all that"

Page 2, line 8, remove "than the amount for which the person receives"

Page 2, line 9, remove "a certificate or receipt"

Page 2, line 11, replace "governmental unit" with "state"

Page 2, line 12, replace "governmental unit or to willfully conceal the property" with "state"

308

Page 2, line 13, after "without" insert "completely"

Page 2, line 14, remove "buys or receives as a pledge of an obligation or debt public property of"

Page 2, remove line 15

Page 2, line 16, replace "property" with "conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state"

Page 2, line 16, after the underscored semicolon insert "or"

Page 2, line 18, after "statement" insert "material"

Page 2, line 18, remove "conceal, avoid, or decrease"

Page 2, line 19, replace "governmental unit or its contractors; or" with "state."

Page 2, remove lines 20 through 23

Page 2, line 25, after the first "thousand" insert "five hundred"

Page 2, line 25, replace "ten" with "eleven"

Page 2, line 27, replace "a governmental unit" with "the state"

Page 2, line 27, after "act" insert ". However, the court may assess not less than two times the amount of damages the state sustains as a result of the act of the person and the person is liable to the state for the costs of the civil action brought to recover any such penalty or damages"

Page 3, line 7, remove "governmental"

Page 3, line 8, replace "unit" with "state"

Page 3, line 12, replace "This section does not apply to claims filed under title 38, 57, or 65" with "The attorney general may adopt rules to increase the minimum amount of civil penalties under this section to address inflation. The attorney general may base this increase on the Federal Civil Penalties Inflation Adjustment Act of 1990 [Pub. L. 101-410; 28 U.S.C. 2461]"

Page 3, line 15, remove "a person may not file a"

Page 3, remove lines 16 through 30

Page 4, replace lines 1 through 7 with "unless opposed by the state, a court shall dismiss an action or a claim brought under this Act if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil, or administrative hearing in which the state or the state's agent is a party; in a legislative, state auditor, or other state report, hearing, audit, or investigation; or from the news media, unless the action is brought by the attorney general, or the person bringing the action is an original source of the information."

Page 4, line 13, replace "governmental unit" with "state"

Page 4, line 24, replace "governmental unit" with "state"

Page 4, line 24, remove the second "governmental"

Page 4, line 25, replace "unit" with "state"

4 of 6

Page 5, line 17, replace "it" with "the action"

Page 5, line 19, replace "governmental unit" with "attorney general"

Page 6, after line 6, insert:

- "9. Regardless of whether the attorney general proceeds with the action, upon an in-camera showing by the attorney general that actions of discovery by the person initiating the action would interfere with the attorney general's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may extend the sixty-day period upon a further in-camera showing that the attorney general has pursued the criminal or civil investigation with reasonable diligence and any discovery in the civil action will interfere with the ongoing investigation or proceedings.

- 10. The attorney general may elect to pursue the claim through any alternate remedy available, including administrative proceedings to determine a civil penalty. If an alternate remedy is pursued, the person initiating the action has the same rights in such proceeding as the person would in a proceeding under this section. A finding of fact or conclusion of law made in such other proceeding which has become final is conclusive on all parties to an action under this section. A finding or conclusion is final if the finding or conclusion has been determined on appeal to the appropriate court, if time for filing such an appeal has expired, or if the finding or conclusion is not subject to judicial review.

- 11. If the attorney general elects to intervene and proceed with an action, the attorney general may file a complaint or amend the complaint of a person that brought an action to clarify or add detail to the claim in which the attorney general is intervening and to add additional claims with which the attorney general contends the attorney general is entitled to relief. For statute of limitations purposes, any such pleading must relate back to the filing date of the complaint of the person that originally brought the action to the extent the attorney general's claim arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the earlier complaint of that person."

Page 6, line 28, after the third underscored comma insert "or"

Page 7, line 9, remove "or governmental unit"

Page 7, line 16, replace the first underscored comma with "or"

Page 7, line 16, remove ", or knowingly participated in"

Page 7, line 25, replace "governmental unit" with "attorney general"

Page 7, line 26, after "person" insert "bringing the action"

Page 7, line 26, remove "of"

Page 7, remove lines 27 through 29

Page 7, line 30, remove "in the general fund of the governmental unit"

Page 8, line 11, replace "The governmental unit that filed" with "If the state favorably settles or prevails in"

5076

Page 8, line 11, replace "or" with "in which the state"

Page 8, line 11, after "intervened" insert "or filed, the state"

Page 8, line 11, after "to" insert "be awarded"

Page 8, line 11, after "reasonable" insert "expenses, consultant and expert witness fees,"

Page 8, line 11, after "costs" insert an underscored comma

Page 8, line 12, remove "if the action is settled favorably for the governmental unit or the"

Page 8, remove lines 13 through 19

Page 8, line 20, remove "incurred in the prosecution of the action"

Page 8, line 22, replace "governmental unit" with "state"

Page 8, line 22, remove the second "governmental"

Page 8, line 23, replace "unit" with "state"

Page 8, line 23, after the underscored period insert "The expenses, fees, and costs must be awarded against the defendant."

Page 8, line 26, after "action" insert an underscored comma

Page 8, line 26, replace "governmental unit" with "state"

Page 8, line 27, replace "a governmental unit" with "the state"

Page 8, line 29, replace "**Prohibitions on employers - Employee remedies**" with "**Relief from retaliatory actions**"

Page 8, remove lines 30 and 31

Page 9, replace lines 1 through 16 with:

- "1. An employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent or associated others in furtherance of an action under this Act or other efforts to stop one or more violations of this Act.
2. Relief under subsection 1 must include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, two times the amount of backpay, interest on the backpay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An action under this subsection may be brought in the appropriate district court for the relief provided in this subsection.
3. A civil action under this section may not be brought more than three years after the date the retaliation occurred."

Page 9, line 19, replace the first "the" with "a"

Page 9, line 19, after "defendant" insert "under this Act,"

Page 9, line 24, after "**False**" insert "**medical assistance**"
Page 9, line 27, after "fraudulent" insert "medical assistance"
Page 9, line 28, after "valid" insert "medical assistance"
Page 10, line 1, after "fraudulent" insert "medical assistance"
Page 10, line 5, after "fraudulent" insert "medical assistance"
Page 10, line 9, after "fraudulent" insert "medical assistance"
Renumber accordingly

bobb

Date: 2-14-17
 Roll Call Vote 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB1174**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0618.01002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Nelson Seconded By Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion carried - Voice Vote

Date: 2-14-19
 Roll Call Vote: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1174**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Klemin Seconded By Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson		✓
Vice Chairman Karls	✓		Rep. Nelson		✓
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 13 No 2

Absent 0

Floor Assignment : Rep. Magrum

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1174: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1174 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "civil"

Page 1, line 1, after "false" insert "medical assistance"

Page 1, line 6, after "1." insert "a."

Page 1, line 6, replace "includes any" with "means a"

Page 1, line 6, after "demand" insert ", whether under a contract or otherwise."

Page 1, line 6, replace the first underscored comma with "or"

Page 1, line 6, replace "or services made" with "regardless of whether the state has title to that money or property, which is presented"

Page 1, line 7, replace "a governmental unit" with "the state"

Page 1, line 7, after the second "or" insert "is made"

Page 1, line 8, remove "whether under contract or not."

Page 1, line 8, remove "any portion of"

Page 1, line 8, replace the third underscored comma with "or"

Page 1, line 8, remove ", or"

Page 1, line 9, replace "services requested or demanded issued from or was provided by a governmental unit" with "is to be spent or used on behalf of the state or to advance a state program or interest, and if the state:

- (1) Provides or has provided any portion of the money or property requested or demanded; or
- (2) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded

Page 1, after line 9, insert

"b."

Page 1, line 10, replace "includes a document submitted as part of or in support of the claim" with "does not include a request or demand for money or property the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or property"

Page 1, line 11, remove "Governmental unit means the state or a political subdivision of the state."

Page 1, replace lines 12 and 13 with:

Governmental unit means an individual who, regardless of whether that individual has an intent to defraud, has actual knowledge of information, acts in deliberate ignorance of the truth or falsity of the

- information, or acts in reckless disregard of the truth or falsity of the information.
3. "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.
 4. "Obligation" means an established duty, regardless of whether fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.
 5. "Original source" means an individual, who before a public disclosure, voluntarily disclosed to the state the information on which allegations or transactions in the claim are based, or who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the state before filing an action under this Act."

Page 1, line 16, replace "a governmental unit" with "the state"

Page 1, line 17, after the first "thousand" insert "five hundred"

Page 1, line 17, replace "ten" with "eleven"

Page 1, line 18, remove "a"

Page 1, line 19, replace "governmental unit" with "the state"

Page 1, line 21, remove "to an officer or employee of the"

Page 1, line 22, remove "governmental unit"

Page 1, line 22, after "fraudulent" insert "medical assistance"

Page 2, line 2, after "statement" insert "material"

Page 2, line 2, remove "get"

Page 2, line 2, after "fraudulent" insert "medical assistance"

Page 2, line 2, remove "governmental"

Page 2, line 3, replace "unit" with "state"

Page 2, line 6, replace "governmental unit" with "state to provide medical assistance"

Page 2, line 6, remove ", with the intent to defraud the governmental"

Page 2, line 7, remove "unit or to willfully conceal the property,"

Page 2, line 8, after "less" insert "than all that"

Page 2, line 8, remove "than the amount for which the person receives"

Page 2, line 9, remove "a certificate or receipt"

Page 2, line 11, replace "governmental unit" with "state"

Page 2, line 12, replace "governmental unit or to willfully conceal the property" with "state"

Page 2, line 13, after "without" insert "completely"

Page 2, line 14, remove "buys or receives as a pledge of an obligation or debt public property of"

Page 2, remove line 15

Page 2, line 16, replace "property" with "conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state"

Page 2, line 16, after the underscored semicolon insert "or"

Page 2, line 18, after "statement" insert "material"

Page 2, line 18, remove "conceal, avoid, or decrease"

Page 2, line 19, replace "governmental unit or its contractors; or" with "state."

Page 2, remove lines 20 through 23

Page 2, line 25, after the first "thousand" insert "five hundred"

Page 2, line 25, replace "ten" with "eleven"

Page 2, line 27, replace "a governmental unit" with "the state"

Page 2, line 27, after "act" insert ". However, the court may assess not less than two times the amount of damages the state sustains as a result of the act of the person and the person is liable to the state for the costs of the civil action brought to recover any such penalty or damages"

Page 3, line 7, remove "governmental"

Page 3, line 8, replace "unit" with "state"

Page 3, line 12, replace "This section does not apply to claims filed under title 38, 57, or 65" with "The attorney general may adopt rules to increase the minimum amount of civil penalties under this section to address inflation. The attorney general may base this increase on the Federal Civil Penalties Inflation Adjustment Act of 1990 [Pub. L. 101-410; 28 U.S.C. 2461]"

Page 3, line 15, remove "a person may not file a"

Page 3, remove lines 16 through 30

Page 4, replace lines 1 through 7 with "unless opposed by the state, a court shall dismiss an action or a claim brought under this Act if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil, or administrative hearing in which the state or the state's agent is a party; in a legislative, state auditor, or other state report, hearing, audit, or investigation; or from the news media, unless the action is brought by the attorney general, or the person bringing the action is an original source of the information."

Page 4, line 13, replace "governmental unit" with "state"

Page 4, line 24, replace "governmental unit" with "state"

Page 4, line 24, remove the second "governmental"

Page 4, line 25, replace "unit" with "state"

Page 5, line 17, replace "it" with "the action"

Page 5, line 19, replace "governmental unit" with "attorney general"

Page 6, after line 6, insert:

- "9. Regardless of whether the attorney general proceeds with the action, upon an in-camera showing by the attorney general that actions of discovery by the person initiating the action would interfere with the attorney general's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may extend the sixty-day period upon a further in-camera showing that the attorney general has pursued the criminal or civil investigation with reasonable diligence and any discovery in the civil action will interfere with the ongoing investigation or proceedings.
10. The attorney general may elect to pursue the claim through any alternate remedy available, including administrative proceedings to determine a civil penalty. If an alternate remedy is pursued, the person initiating the action has the same rights in such proceeding as the person would in a proceeding under this section. A finding of fact or conclusion of law made in such other proceeding which has become final is conclusive on all parties to an action under this section. A finding or conclusion is final if the finding or conclusion has been determined on appeal to the appropriate court, if time for filing such an appeal has expired, or if the finding or conclusion is not subject to judicial review.
11. If the attorney general elects to intervene and proceed with an action, the attorney general may file a complaint or amend the complaint of a person that brought an action to clarify or add detail to the claim in which the attorney general is intervening and to add additional claims with which the attorney general contends the attorney general is entitled to relief. For statute of limitations purposes, any such pleading must relate back to the filing date of the complaint of the person that originally brought the action to the extent the attorney general's claim arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the earlier complaint of that person.

Page 6, line 28, after the third underscored comma insert "or"

Page 7, line 9, remove "or governmental unit"

Page 7, line 16, replace the first underscored comma with "or"

Page 7, line 16, remove ", or knowingly participated in"

Page 7, line 25, replace "governmental unit" with "attorney general"

Page 7, line 26, after "person" insert "bringing the action"

Page 7, line 26, remove "of"

Page 7, remove lines 27 through 29

Page 7, line 30, remove "in the general fund of the governmental unit"

Page 8, line 11, replace "The governmental unit that filed" with "If the state favorably settles or prevails in"

Page 8, line 11, replace "or" with "in which the state"

Page 8, line 11, after "intervened" insert "or filed, the state"

Page 8, line 11, after "to" insert "be awarded"

Page 8, line 11, after "reasonable" insert "expenses, consultant and expert witness fees,"

Page 8, line 11, after "costs" insert an underscored comma

Page 8, line 12, remove "if the action is settled favorably for the governmental unit or the"

Page 8, remove lines 13 through 19

Page 8, line 20, remove "incurred in the prosecution of the action"

Page 8, line 22, replace "governmental unit" with "state"

Page 8, line 22, remove the second "governmental"

Page 8, line 23, replace "unit" with "state"

Page 8, line 23, after the underscored period insert "The expenses, fees, and costs must be awarded against the defendant."

Page 8, line 26, after "action" insert an underscored comma

Page 8, line 26, replace "governmental unit" with "state"

Page 8, line 27, replace "a governmental unit" with "the state"

Page 8, line 29, replace "**Prohibitions on employers - Employee remedies**" with "**Relief from retaliatory actions**"

Page 8, remove lines 30 and 31

Page 9, replace lines 1 through 16 with:

- "1. An employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent or associated others in furtherance of an action under this Act or other efforts to stop one or more violations of this Act.
2. Relief under subsection 1 must include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, two times the amount of backpay, interest on the backpay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An action under this subsection may be brought in the appropriate district court for the relief provided in this subsection.
3. A civil action under this section may not be brought more than three years after the date the retaliation occurred."

Page 9, line 19, replace the first "the" with "a"

Page 9, line 19, after "defendant" insert "under this Act."

Page 9, line 24, after "**False**" insert "**medical assistance**"

Page 9, line 27, after "fraudulent" insert "medical assistance"

Page 9, line 28, after "valid" insert "medical assistance"

Page 10, line 1, after "fraudulent" insert "medical assistance"

Page 10, line 5, after "fraudulent" insert "medical assistance"

Page 10, line 9, after "fraudulent" insert "medical assistance"

Renumber accordingly

2017 TESTIMONY

HB 1174

#1
HB 1174
1-16-17

TESTIMONY
HB 1174
House Judiciary Committee
January 16, 2017
Representative Kathy Hogan

Chairman Koppelman and member so the House Judiciary Committee, for the record, my name is Kathy Hogan and I represent District 21, the heart of Fargo.

During the 2015 legislative session, the House Appropriations committee had serious discussions regarding the need for and structure of a Medicaid fraud unit. These hearings and discussion were in the Government Operations Division of Appropriations. In the end we agreed that there were a number of related issues that needed to be considered before beginning and so it was not funded at that point in time.

During the interim, several of us have worked to address this issue and we have prepared three bills related to Medicaid Fraud. This is the first bill regarding civil liability in false claims, the second bill (HB 1227) is specifically identifying what Medicaid fraud is. That bill will be heard in the Human Service committee tomorrow and the third bill (HB 1226) is a bill to establish a Medicaid Fraud Unit in the Attorney General's Office and will be heard in Government Operations on Thursday. .

Two significant events have happened in the last 6 weeks. During the organizational session, a major meeting was held with providers, DHS and other key partners to review this issue and idea. Secondly, unknown to me, the ND Department had requested an exemption to the federal Medicaid Fraud requirements which we have had in place since about 2005. On January 6, the Governor was notified that that exemption was denied and the state had 20 days to develop a plan to implement a Medicaid Fraud unit. Attached is the letter.

These bills have been drafted in collaboration with the Attorney General's office. I understand that there may be some concerns about the *may and shall* language in the bill. I hope your committee can work with them to address those issues.

Thank you for your consideration and I would be more than willing to answer any questions.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

JAN - 6 2017

Administrator
Washington, DC 20201

#2
HB 1174
1-16-17

The Honorable Jack Dalrymple
Governor of North Dakota
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Governor Dalrymple:

Thank you for your letter dated September 12, 2016, in which you requested that the State of North Dakota be granted a new waiver from the requirement that it operate a Medicaid Fraud Control Unit (MFCU). Along with your letter, you enclosed several documents in support of the state's waiver request, including those that address fraud and abuse efforts in its managed care program; expenditure summaries; corrective actions taken related to various state and federal program integrity reviews; and state abuse and neglect processes.

As you are aware, section 1902(a)(61) of the Social Security Act outlines two criteria, which must co-exist, under which a state may be granted a waiver from the requirement to operate a MFCU. To qualify for a waiver, a state must demonstrate to the satisfaction of the Department of Health and Human Services' (HHS) Secretary: (1) that the effective operation of a MFCU would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the state plan, and (2) that beneficiaries under the plan are protected from abuse and neglect in connection with the provision of services under the plan without the existence of a MFCU. The Centers for Medicare & Medicaid Services (CMS) has carefully reviewed the information you provided and determined that the state's waiver request does not meet these criteria.

We appreciate the analysis outlined in your letter of MFCUs in similar sized states that had years in which operational costs exceeded their recoveries. However, we do not believe that this observation is indicative of a MFCU's cost-effectiveness. Monetary recoveries are only one factor in measuring the success and impact of an effective MFCU. MFCUs primarily conduct criminal prosecutions that result in criminal indictments and convictions, in addition to the recovery of criminal restitution. MFCUs' deterrent value, and the sentinel effect of their successful criminal and civil cases, cannot be measured in dollars. This is especially so for prosecutions of patient abuse or neglect that occur in North Dakota health facilities, which typically do not involve a Medicaid overpayment and result in criminal outcomes with no monetary recovery.

Moreover, in reviewing the recovery information in similar states, while in a single year MFCU operational costs may exceed recoveries when analyzing MFCUs over a longer period of time, such as a 3-year period (2013-2015), recoveries in similar sized states often exceeded the operational costs of operating a MFCU. Wyoming, for example, recovered roughly \$3.1 million and expended \$1.4 million, and South Dakota recovered roughly \$7 million and expended \$1.2 million. While Montana had a negative return on investment for this time period, during the prior 3-year period (2010-2012), Montana had recoveries of \$3.2 million and expenditures of

\$697,345. Overall, the data suggest that MFCUs are cost-effective in the similar sized states, and there is insufficient reason to believe that a MFCU operating in North Dakota will be an exception.

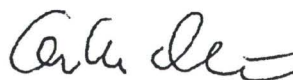
Your letter offers an analysis conducted by Optum related to Professional Provider Specialty Peer Outliers suggesting that minimal fraud exists in North Dakota's Medicaid program and that beneficiaries are protected from abuse and neglect without the existence of a MFCU. This Optum analysis was only for Sanford Health Plan, and therefore, covers only North Dakota's Medicaid expansion population and represents only about 25 percent of the state's Medicaid budget. CMS does not believe this information persuasively argues that the operation of a MFCU would not be cost-effective because minimal fraud exists in North Dakota and that beneficiaries under the plan would be protected from abuse and neglect without the existence of a MFCU.

Finally, the enclosures to your letter include a description of the affirmative steps taken by HHS in response to program integrity-related deficiencies identified by CMS and other agencies. CMS appreciates these actions, but none of them are germane to our determination that the state has not demonstrated in its request that minimal fraud exists or that, absent a MFCU, all beneficiaries under the plan are fully protected from abuse and neglect. In sum, upon carefully reviewing the information provided, CMS has determined that North Dakota has not demonstrated that operating a MFCU would not be cost-effective because minimal fraud exists and that all beneficiaries under the plan are fully protected from abuse and neglect without the existence of a MFCU.

As such, CMS is requesting that North Dakota submit an implementation plan within 60 days of receipt of this letter. The implementation plan should include a timetable for establishing a MFCU, including the earliest feasible date by which North Dakota will submit an application for certification of a MFCU to the Office of Inspector General (OIG). Please submit the implementation plan to the CMS Administrator and provide a copy of your reply to Daniel R. Levinson, Inspector General, 330 Independence Ave., SW, Washington DC 20201.

Should you or your staff have questions about this letter, please contact Jonathan Morse, Deputy Director, Center for Program Integrity, Centers for Medicare & Medicaid Services, at 410-786-1892, Jonathan.Morse@cms.hhs.gov, while questions about requirements of the MFCU program may be directed to Richard Stern, Director, OIG Medicaid Fraud Policy and Oversight Division, at 202-205-0572, Richard.Stern@oig.hhs.gov. Mr. Stern's OIG division would be pleased to provide North Dakota with technical assistance regarding establishing a MFCU, and CMS looks forward to continuing to work with you to protect North Dakota's Medicaid program against fraud and abuse, and its beneficiaries against abuse and neglect.

Sincerely,



Andrew M. Slavitt
Acting Administrator

FIGHTING FRAUD MEDICAID



States are sniffing out Medicaid swindlers and saving a lot of money.

BY MEGAN COMLOSSY

Combating Medicaid fraud and abuse is no easy task. And while some states do it better than others, all face enormous challenges. Limited resources, mountains of transactions and sophisticated scams make for a very tough, but extremely important, job. Just ask Texas.

Dr. Michael David Goodwin, an orthodontist, devised a scheme to defraud the Lone Star State's Medicaid program out of more than \$2.6 million. From 2008 to 2011, he billed for services that weren't medically necessary and during times when he wasn't even in town. His bonanza ended when he was caught by state and federal anti-fraud agencies.

Goodwin was by no means a lone ranger. Texas has been

Megan Comlossy is a policy associate in the Health Program at NCSL.

hit hard by similar attempts to defraud Medicaid in the past few years. After dental and orthodontic reimbursement rates increased for children's Medicaid in 2007, spending on those services in Texas shot through the roof, much more than in other states. It's not that children in Texas were in greater need of orthodontic services or receiving more expensive care than kids in other states. Rather, it was a handful of orthodontists putting braces on children who didn't need them that was behind the spike in reimbursable care. Some dental clinics were even going so far as to entice Medicaid patients with gift cards and other incentives.

These cases of crooked orthodontists, physicians, home health care providers, pharmacists or other providers are not unique to Texas. Nor are fraud, waste and abuse new to Medicaid programs across the country.

The sheer size and complexity of the joint state-federal Medicaid program—60 million Americans covered at a cost of more

than \$450 billion annually—put it at considerable risk for violations. Exactly how much is unknown, although estimates by the Centers for Medicare and Medicaid Services suggest tens of billions of dollars each year.

“There are too many instances of providers engaging in waste, fraud and abuse,” says New York Senator Kemp Hannon (R). And many agree with him. Although this is not a new issue, states and the federal government have renewed their efforts to protect the integrity of the Medicaid program as one way to contain rising costs.



Senator
Kemp Hannon (R)
New York

Fraud Fighters

Even in an age of bitterly divided politics and polarization, legislators—from both sides of the aisle and at the state and federal levels—agree that detecting, deterring and combating Medicaid fraud is a way to hold down costs. So what can lawmakers do?

“Our role is to create an environment where auditors, investigators and other fraud-fighters have the statutory authority and budgetary resources to do their jobs,” says Utah Senate President Wayne Niederhauser (R).

How states do that looks somewhat different from one state to another. Federal funding, support, technical assistance and, in some cases, collaboration from federal agencies, aid states’ efforts to combat fraud.



Senate
President
Wayne
Niederhauser (R)
Utah

But day-to-day responsibility for fighting fraud rests with state entities. Depending on the state, these may include Medicaid agencies, Medicaid fraud control units, Medicaid inspectors general, attorneys general, auditors or others.

To address the reports of costly dental and orthodontic fraud in Texas, for example, the state formed a task force with officials from the Health and Human Services Commission, that agency’s Office of Inspector General, the Office of Attorney General and the OAG Medicaid Fraud Control Unit. These fraud-fighting agencies are common in many states.

The Texas Office of Inspector General, a division of the state’s Health and Human Services Commission, is charged with preventing, detecting and pursuing fraud, waste and abuse in all the state’s health and human services programs—including Medicaid. Independent of the state Medicaid agency, the office conducts audits and investigations to ensure fraudulent beneficiaries and providers—such as Goodwin—are held accountable. Depending on the situation, the inspector general may try to recover taxpayer money from fraudsters, or refer cases of suspected fraud to the Medicaid Fraud Control Unit for prosecution.

At least eight states have established independent offices of Medicaid inspector general, similar to the one in Texas. Utah is the most recent state to set up an independent Medicaid watchdog. A 2009 report by the Utah Legislative Auditor General estimated the state could save millions of dollars by curbing fraud and abuse in the Medicaid program. Senator

The Defining Differences

Abuse: Conducting unnecessary medical services, procedures or treatments or engaging in questionable and costly business, fiscal or medical practices.

Fraud: Deceiving Medicaid intentionally for unauthorized financial gain. This includes getting kickbacks for promoting certain tests, treatments or medications; billing for services not provided; and billing more complex and costly procedures than were actually performed.

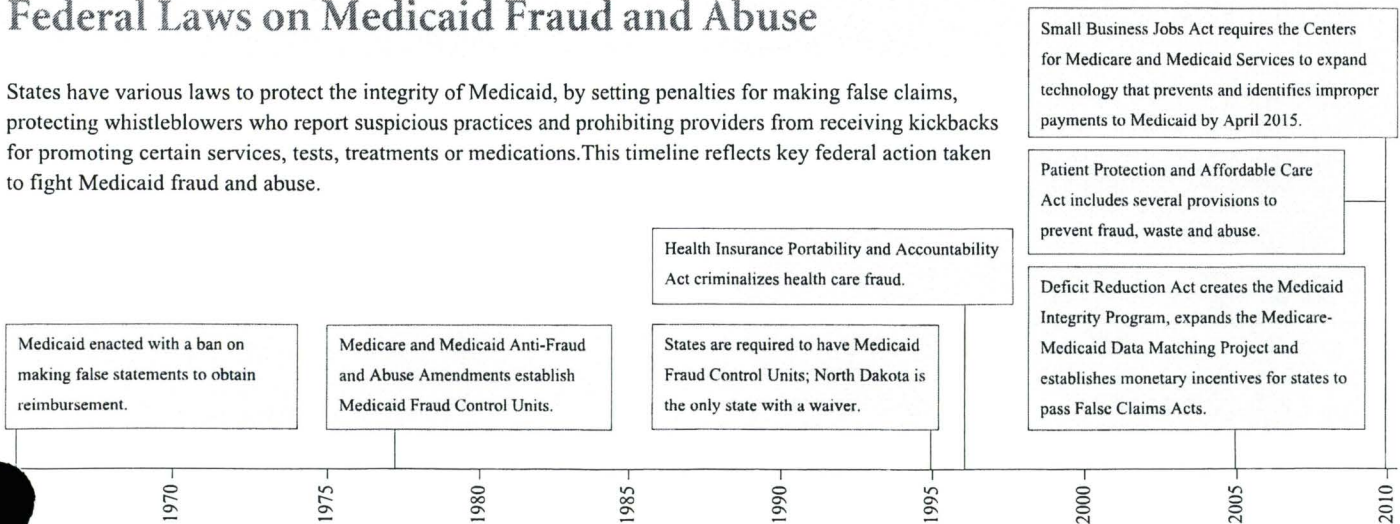
Waste: Misusing resources or billing incorrectly, usually unintentionally, and overusing services, either by beneficiaries or providers.

“Our role is to create an environment where auditors, investigators and other fraud-fighters have the statutory authority and budgetary resources to do their jobs.”

—UTAH SENATE PRESIDENT
WAYNE NIEDERHAUSER (R)

Federal Laws on Medicaid Fraud and Abuse

States have various laws to protect the integrity of Medicaid, by setting penalties for making false claims, protecting whistleblowers who report suspicious practices and prohibiting providers from receiving kickbacks for promoting certain services, tests, treatments or medications. This timeline reflects key federal action taken to fight Medicaid fraud and abuse.



Fighting Fraud

The Patient Protection and Affordable Care Act contains several provisions to help states fight fraud. A few follow.

1. Information Sharing

The federal law requires states to share information about providers whose billing privileges have been revoked, so they aren't allowed into other state Medicaid or Medicare programs. Previously, a shady Medicaid provider could simply hop state lines to continue swindling taxpayers.

2. Heightened Scrutiny

The law also creates new screening and enrollment requirements for some Medicaid providers—such as home health care attendants and durable medical equipment providers—who historically have higher levels of fraud and abuse. These high-risk providers will be subject to a higher level of scrutiny, including licensure checks, fingerprinting, criminal background checks, and medical site visits to confirm legitimacy and location.

3. Payment Freezes

States now can freeze payments to Medicaid providers if there is a “credible allegation of fraud.” The potential savings to Medicaid are obvious: fewer improper payments and less time lost trying to recover funds. Many providers, however, are concerned that Medicaid reimbursements may be halted without just cause, potentially restricting resources for legitimate services.

Niederhauser says the report prompted lawmakers to establish a more “accountable system,” with an Office of Inspector General of Medicaid Services.

It's been worth the investment, he says. “We're spending pennies but saving dollars. Having an independent office of inspector general has been money well spent and good policy for Utah so far.”

While inspectors general and Medicaid officials are responsible for preventing and investigating fraud and abuse, they also refer certain cases to the state Medicaid Fraud Control Unit. Typically located within the Office of Attorney General, Medicaid Fraud Control Units are responsible for conducting criminal investigations and prosecuting providers suspected of fraud, fraud in the administration of the Medicaid program, and physical abuse in Medicaid-funded facilities. With the exception of North Dakota, every state has one.

Coordination is Key

Despite the fact that these state entities share the common goal of detecting and prosecuting Medicaid fraud, they have not always—and, in some states, still do not—work together. So lawmakers in a few states have mandated interagency collaboration through legislative action. A recent law in Oklahoma, for example, requires the attorney general and the Health Care Authority to share data and allows the attorney general to pursue cases without a referral from the Health Care Authority.

Interagency collaboration has resulted in successful investigations of fraudulent providers, which can send a powerful

message that Medicaid fraud won't be tolerated. For example, in Florida, the Medicaid Fraud Control Unit opened an investigation on Nasim Hashmi, based on information provided by the Agency for Health Care Administration. The investigators discovered Hashmi, the owner of L'Image Physical Therapy and Rehabilitation in Miami-Dade County, had billed Medicaid for therapy provided by unlicensed therapists and overbilled for work done by assistant therapists. Hashmi was sentenced to five years' probation and ordered to repay nearly \$500,000.

And in New York, the attorney general, armed with information from the Office of the Medicaid Inspector General, caught Brooklyn pharmacist Rao Veeramachaneni buying prescription medications on the black market, dispensing them to unknowing patients, and then submitting claims to Medicaid. Between 2006 and 2008, Veeramachaneni bilked the state out of \$1.2 million, the amount he was charged to repay. He was also banned from ever working in the pharmaceutical or health care industry again.

Looking for Savings

“Preventing fraud and abuse is always a priority,” says Washington Representative Eileen Cody (D), “but when facing tough economic times, as we have over the last few years, we are looking for coins in the couch cushions.”

For many state lawmakers, those coins are the savings that come from the difficult re-examination of how limited resources are currently used.

When Douglas Wilson took the reins as Texas inspector general, for example, most investigations were aimed at Medicaid beneficiaries. Based on historical trends, however, Wilson knew that efforts to recover fraud, waste and abuse from Medicaid providers—rather than beneficiaries—reaped a much higher rate of return for the state. So he switched gears and focused the majority of efforts instead on catching fraudulent providers. Although it's hard to prove that a single policy reduced fraud by a specific amount, officials believe that this change, and others designed to improve efficiency and increase monetary returns, are yielding positive results.

North Carolina beefed up its fraud prevention resources—doubling the Medicaid Fraud Control Unit's Medicaid Investigation Division—believing the money it saves will more than pay for their added costs.

Wisconsin appropriated an additional \$2 million and 19 positions to the Department of Health Services' Office of Inspector General to support fraud prevention and program integrity efforts, beginning in FY 2013.

With the nation's most expensive Medicaid program, New York has taken various steps to combat fraud in the past few



Representative
Eileen Cody (D)
Washington

"Preventing fraud and abuse is always a priority, but when facing tough economic times, as we have over the last few years, we are looking for coins in the couch cushions."

WASHINGTON REPRESENTATIVE EILEEN CODY (D)

years. In 2006, legislation increased fraud penalties; 2010 saw the creation of a Republican Task Force on Medicaid Fraud; and, in 2011, the governor formed a statewide team to develop recommendations to reform the Medicaid system and reduce costs.

Nevertheless, the state has come under increased scrutiny, after a recent report from the U.S. House Committee on Oversight and Government Reform identified waste, fraud and mismanagement in New York Medicaid. In response, Senate Republicans called for an immediate independent audit of the program and announced a joint roundtable meeting of the Senate Health and Investigations Committees to investigate allegations of inaction by the Office of the Medicaid Inspector General.

"Medicaid is New York state's largest spending program, and we must conduct a thorough and sweeping audit of the entire system to make certain that it is operating as efficiently as possible," says Senator Hannon. "We need to constantly monitor and review Medicaid because taxpayers have a right to expect that their tax dollars are being spent wisely to care for people who truly need health care."

Moving Away From "Pay and Chase"

Fraud fighters are getting assistance from new technology that helps catch fraud before it occurs, rather than chasing after it later on. The technology aims to detect illicit behavior and suspicious billing practices before reimbursement checks are written. It uses real-time data and advanced analytics to

identify suspect patterns, flag dubious claims and, potentially, deny payments.

Texas, for example, secured matching federal funds to develop "pattern recognition analysis" technology, a system that will provide near real-time analysis, capable of sifting through immense amounts of data to identify suspicious activity. Illinois' Office of Inspector General developed its own highly advanced predictive analytics technology using a 2007 federal Medicaid Transformation Grant that does similar analyses.

Other technical innovations also offer hope in thwarting Medicaid abuse and fraud. New York, for example, enacted legislation that requires certain groups of providers with a history of Medicaid fraud—such as large home health agencies, long-term home health care programs and personal care providers—to electronically verify services performed. The technology quickly verifies that the services billed to Medicaid are what beneficiaries actually receive.

"History has shown that there are always individuals who try to take advantage of the program—either by outright fraud or not carrying out program requirements properly," says New York's Senator Hannon. "What we need to do is keep a careful eye on providers—and on government—to ensure that entitlements are allotted, apportioned, paid and accounted for in a very fair way."

As Medicaid continues to evolve and expand, those intent on cheating the system will invariably develop new, sophisticated schemes. The challenge for states is to develop equally intelligent, timely strategies to keep one step ahead of the fraudsters. ■

#1
1174
2-24-17

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1174

Page 1, line 1, remove "civil"

Page 1, line 1, after "false" insert "medical assistance"

Page 1, line 6, after "1." insert "a."

Page 1, line 6, replace "includes any" with "means a"

Page 1, line 6, after "demand" insert ", whether under a contract or otherwise."

Page 1, line 6, replace the first underscored comma with "or"

Page 1, line 6, replace "or services made" with "regardless of whether the state has title to that money or property, which is presented"

Page 1, line 7, replace "a governmental unit" with "the state"

Page 1, line 7, after the second "or" insert "is made"

Page 1, line 8, remove "whether under contract or not."

Page 1, line 8, remove "any portion of"

Page 1, line 8, replace the third underscored comma with "or"

Page 1, line 8, remove ", or"

Page 1, line 9, replace "services requested or demanded issued from or was provided by a governmental unit" with "is to be spent or used on behalf of the state or to advance a state program or interest, and if the state:

- (1) Provides or has provided any portion of the money or property requested or demanded; or
- (2) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded

Page 1, after line 9, insert

"b."

Page 1, line 10, replace "includes a document submitted as part of or in support of the claim" with "does not include a request or demand for money or property the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or property"

Page 1, line 11, remove "Governmental unit means the state or a political subdivision of the state."

Page 1, replace lines 12 and 13 with:

Governmentally or knowingly means an individual who, regardless of whether that individual has an intent to defraud, has actual knowledge of

information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information.

3. "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.
4. "Obligation" means an established duty, regardless of whether fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.
5. "Original source" means an individual, who before a public disclosure, voluntarily disclosed to the state the information on which allegations or transactions in the claim are based, or who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the state before filing an action under this Act."

Page 1, line 16, replace "a governmental unit" with "the state"

Page 1, line 17, after the first "thousand" insert "five hundred"

Page 1, line 17, replace "ten" with "eleven"

Page 1, line 18, remove "a"

Page 1, line 19, replace "governmental unit" with "the state"

Page 1, line 21, remove "to an officer or employee of the"

Page 1, line 22, remove "governmental unit"

Page 1, line 22, after "fraudulent" insert "medical assistance"

Page 2, line 2, after "statement" insert "material"

Page 2, line 2, remove "get"

Page 2, line 2, after "fraudulent" insert "medical assistance"

Page 2, line 2, remove "governmental"

Page 2, line 3, replace "unit" with "state"

Page 2, line 6, replace "governmental unit" with "state to provide medical assistance"

Page 2, line 6, remove ", with the intent to defraud the governmental"

Page 2, line 7, remove "unit or to willfully conceal the property."

Page 2, line 8, after "less" insert "than all that"

Page 2, line 8, remove "than the amount for which the person receives"

Page 2, line 9, remove "a certificate or receipt"

Page 2, line 11, replace "governmental unit" with "state"

Page 2, line 12, replace "governmental unit or to willfully conceal the property" with "state"

Page 2, line 13, after "without" insert "completely"

Page 2, line 14, remove "buys or receives as a pledge of an obligation or debt public property of"

Page 2, remove line 15

Page 2, line 16, replace "property" with "conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state"

Page 2, line 16, after the underscored semicolon insert "or"

Page 2, line 18, after "statement" insert "material"

Page 2, line 18, remove "conceal, avoid, or decrease"

Page 2, line 19, replace "governmental unit or its contractors; or" with "state."

Page 2, remove lines 20 through 23

Page 2, line 25, after the first "thousand" insert "five hundred"

Page 2, line 25, replace "ten" with "eleven"

Page 2, line 27, replace "a governmental unit" with "the state"

Page 2, line 27, after "act" insert ". However, the court may assess not less than two times the amount of damages the state sustains as a result of the act of the person and the person is liable to the state for the costs of the civil action brought to recover any such penalty or damages"

Page 3, line 7, remove "governmental"

Page 3, line 8, replace "unit" with "state"

Page 3, line 12, replace "This section does not apply to claims filed under title 38, 57, or 65" with "The attorney general may adopt rules to increase the minimum amount of civil penalties under this section to address inflation. The attorney general may base this increase on the Federal Civil Penalties Inflation Adjustment Act of 1990 [Pub. L. 101-410; 28 U.S.C. 2461]"

Page 3, line 15, remove "a person may not file a"

Page 3, remove lines 16 through 30

Page 4, replace lines 1 through 7 with:

"unless opposed by the state, a court shall dismiss an action or a claim brought under this Act if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil, or administrative hearing in which the state or the state's agent is a party; in a legislative, state auditor, or other state report, hearing, audit, or investigation; or from the news media, unless the action is brought by the attorney general, or the person bringing the action is an original source of the information."

Page 4, line 13, replace "governmental unit" with "state"

Page 4, line 24, replace "governmental unit" with "state"

Page 4, line 24, remove the second "governmental"

Page 4, line 25, replace "unit" with "state"

Page 5, line 17, replace "it" with "the action"

Page 5, line 19, replace "governmental unit" with "attorney general"

Page 6, after line 6, insert:

- "9. Regardless of whether the attorney general proceeds with the action, upon an in-camera showing by the attorney general that actions of discovery by the person initiating the action would interfere with the attorney general's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may extend the sixty-day period upon a further in-camera showing that the attorney general has pursued the criminal or civil investigation with reasonable diligence and any discovery in the civil action will interfere with the ongoing investigation or proceedings.
10. The attorney general may elect to pursue the claim through any alternate remedy available, including administrative proceedings to determine a civil penalty. If an alternate remedy is pursued, the person initiating the action has the same rights in such proceeding as the person would in a proceeding under this section. A finding of fact or conclusion of law made in such other proceeding which has become final is conclusive on all parties to an action under this section. A finding or conclusion is final if the finding or conclusion has been determined on appeal to the appropriate court, if time for filing such an appeal has expired, or if the finding or conclusion is not subject to judicial review.
11. If the attorney general elects to intervene and proceed with an action, the attorney general may file a complaint or amend the complaint of a person that brought an action to clarify or add detail to the claim in which the attorney general is intervening and to add additional claims with which the attorney general contends the attorney general is entitled to relief. For statute of limitations purposes, any such pleading must relate back to the filing date of the complaint of the person that originally brought the action to the extent the attorney general's claim arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the earlier complaint of that person."

Page 6, line 28, after the third underscored comma insert "or"

Page 7, line 9, remove "or governmental unit"

Page 7, line 16, replace the first underscored comma with "or"

Page 7, line 16, remove ", or knowingly participated in"

Page 7, line 25, replace "governmental unit" with "attorney general"

Page 7, line 26, after "person" insert "bringing the action"

Page 7, line 26, remove "of"

Page 7, remove lines 27 through 29

Page 7, line 30, remove "in the general fund of the governmental unit"

Page 8, line 11, replace "The governmental unit that filed" with "If the state favorably settles or prevails in"

Page 8, line 11, replace "or" with "in which the state"

Page 8, line 11, after "intervened" insert "or filed, the state"

Page 8, line 11, after "to" insert "be awarded"

Page 8, line 11, after "reasonable" insert "expenses, consultant and expert witness fees,"

Page 8, line 11, after "costs" insert an underscored comma

Page 8, line 12, remove "if the action is settled favorably for the governmental unit or the"

Page 8, remove lines 13 through 19

Page 8, line 20, remove "incurred in the prosecution of the action"

Page 8, line 22, replace "governmental unit" with "state"

Page 8, line 22, remove the second "governmental"

Page 8, line 23, replace "unit" with "state"

Page 8, line 23, after the underscored period insert "The expenses, fees, and costs must be awarded against the defendant."

Page 8, line 26, after "action" insert an underscored comma

Page 8, line 26, replace "governmental unit" with "state"

Page 8, line 27, replace "a governmental unit" with "the state"

Page 8, line 29, replace "**Prohibitions on employers - Employee remedies**" with "**Relief from retaliatory actions**"

Page 8, remove lines 30 and 31

Page 9, replace lines 1 through 16 with:

- "1. An employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent or associated others in furtherance of an action under this Act or other efforts to stop one or more violations of this Act.
2. Relief under subsection 1 must include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, two times the amount of backpay, interest on the backpay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An action under this subsection may be brought in the appropriate district court for the relief provided in this subsection.
3. A civil action under this section may not be brought more than three years after the date the retaliation occurred."

Page 9, line 19, replace the first "the" with "a"

Page 9, line 19, after "defendant" insert "under this Act."

Page 9, line 24, after "**False**" insert "**medical assistance**"

Page 9, line 27, after "fraudulent" insert "medical assistance"

Page 9, line 28, after "valid" insert "medical assistance"

Page 10, line 1, after "fraudulent" insert "medical assistance"

Page 10, line 5, after "fraudulent" insert "medical assistance"

Page 10, line 9, after "fraudulent" insert "medical assistance"

Renumber accordingly