FINAL BILL REPORT
ESSB 5978

PARTIAL VETO
C 241 L 12
Synopsis as Enacted

Brief Description: Concerning medicaid fraud.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Pflug, Keiser, Frockt, Conway and Kohl-Welles).

Senate Committee on Health & Long-Term Care
Senate Committee on Ways & Means
House Committee on Judiciary
House Committee on Ways & Means

Background: Through the Medicaid program, the state and federal governments will spend an estimated $8.8 billion per year during the 2011-13 biennium to provide medical, dental, behavioral health, and long-term care to an average of 1.2 million low-income Washingtonians each month. The Medicaid Fraud Control Unit in the Office of the Attorney General (AG) investigates cases of suspected fraud.

Under the Federal False Claims Act, entities that submit false or fraudulent claims for federal government funds may be liable for a civil penalty of between $5,500 and $11,000. A person, known as a qui tam relator, may bring an action on behalf of the United States Government. Qui tam relators share in the proceeds of recoveries awarded to the United States Government. Shares vary between 10 and 30 percent of the recoveries, depending on the level of relator participation and are determined by the court. The Deficit Reduction Act amended the Social Security Act and provided that states are eligible for a ten percentage point rebate with respect to medical assistance recoveries made under state action if: the state establishes liability for false or fraudulent claims relating to its medical assistance program, the state enacts a state false claims act that is at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as the federal law provides, actions are filed under seal for 60 days with review by the AG, and the state establishes a civil penalty that is not less than the amount provided in the Federal False Claims Act. Twenty-seven states have enacted State False Claims Acts and have undergone review by the Office of the Inspector General.

Summary: Medicaid Program Provisions. The Director of the Health Care Authority (HCA) and the AG may assess civil penalties of up to three times the amount wrongfully obtained. The Medicaid Fraud Penalty Account is established. All receipts from civil

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penalties collected by the HCA and the AG and all receipts received under judgments and settlements that originated under the Federal or State False Claims Acts must be deposited into the account. The account is subject to appropriation, and may only be used for Medicaid services, fraud detection and prevention activities, recovery of improper payments, and for other Medicaid fraud enforcement activities.

In order to be paid for Medicaid services, providers of durable medical equipment must also be providers under the federal Medicare program.

A person who presents a false Medicaid claim for payment or approval is subject to a civil penalty of between $5,500 and $11,000 and treble damages received by the state. This penalty may be reduced to double damages if the person cooperates with the AG's investigation. If the person is found to have fraudulently billed for services, their insurer is not obligated to pay claims on the person's behalf. The AG is to diligently investigate false Medicaid claims and may bring civil actions. The AG may contract with private attorneys and local governments in bringing fraud actions. Whistleblowers who report to the HCA that their employer has fraudulently obtained or attempted to obtain Medicaid benefits or payments may not be subject to workplace reprisal or retaliatory action.

State False Claims Act. A State False Claims Act is created, permitting qui tam actions. A person, known as a relator, may bring a civil action on both their own behalf and that of the state alleging submission of a false Medicaid billing. The relator must serve a copy of the complaint on the AG and the complaint must be filed under seal. The AG may intervene in the qui tam action and the relator may continue as a party to the action. If the AG does not intervene, the relator may proceed with action unless dismissed by the court. A qui tam action may not be brought if it is based on a proceeding in which the AG is already a party. The court may dismiss an action if the action is publicly disclosed in a federal criminal, civil, or administrative hearing in which the AG is a party or in a government report or by the news media. If the relator has been retaliated against, the relator is entitled to relief necessary to make the employee whole; this includes reinstatement, two times the amount of back pay with interest, and special damages. The AG is to report annually on the number of cases brought under qui tam actions and their results, delineated between those brought by the AG and those brought by relators without AG participation.

If the AG Intervenes in the Qui Tam Action. The AG may move to dismiss the action if the relator has been given notice and opportunity for a hearing or settle the action if the court determines that the settlement is fair and reasonable. The court may put limitations on the relator's participation if the court determines that such participation would interfere with the action or is repetitious, irrelevant, or to harass. The court may limit the number of witnesses called by the relator and the amount of their participation. If the defendant shows that unrestricted participation of the relator would be for purposes of harassment or cause undue burden or expense, the court may limit participation by the relator. The relator will receive between 15 percent and 25 percent of the proceeds of the action or settlement, depending on the extent of the relator's participation and as determined by the court. If the court determines that the action is based on information other than that provided by the relator, the relator may be awarded no more than 10 percent of the proceeds. Payments to the relator must be from the proceeds and the relator is due reasonable expenses, plus reasonable attorneys' fees and costs. All expenses, fees, and costs will be awarded against the defendant.

If the AG Does Not Intervene in the Qui Tam Action. As requested by the AG, the relator must serve copies of all pleadings and depositions on the AG. The court may permit the AG to intervene at a later date upon a showing of good cause. The relator will receive between 25 percent and 30 percent of the proceeds of the action or settlement, as determined by the court. The relator must also receive an amount for reasonable expenses, attorneys' fees, and costs. All expenses, fees, and costs will be awarded against the defendant. If the defendant prevails, the court may award to the defendant reasonable attorneys' fees and expenses if the court finds the claim was clearly frivolous, clearly vexatious, or brought primarily for the purposes of harassment.

The Joint Legislative Audit and Review Committee must conduct a sunset review of the Medicaid Fraud False Claims Act. The Medicaid Fraud False Claims Act terminates on June 30, 2016.

Votes on Final Passage:

Senate	36	11	
House	56	42	(House amended)
Senate	40	9	(Senate concurred)

Effective: June 7, 2012

Partial Veto Summary: The Governor removed the emergency clause which would have made the act effective immediately.