

# SENATE BILL REPORT

## SB 5287

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As of February 10, 2015

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

**Brief Description:** Reauthorizing the medicaid fraud false claims act.

**Sponsors:** Senators Keiser, Frockt, Conway, Parlette and Hasegawa; by request of Attorney General.

**Brief History:**

**Committee Activity:** Health Care: 2/10/15.

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### SENATE COMMITTEE ON HEALTH CARE

**Staff:** Kathleen Buchli (786-7488)

**Background:** Medicaid Fraud False Claims Act. Legislation enacted in 2012 established the Medicaid Fraud False Claims Act (MFFCA). The MFFCA establishes civil liability for a number of 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 between \$5,500 and \$11,000 plus three times the amount of damages incurred by the state. 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. Prior to commencing the action, the qui tam 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 the relator's 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 Attorney General's Medicaid Fraud Control Unit civil section (Civil Section) is responsible for investigating and pursuing actions relating to Medicaid fraud under the MFFCA. The Civil Section 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 Civil Section.

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*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.*

Sunset Review of the Medicaid Fraud False Claims Act. The MFFCA is scheduled to terminate on June 30, 2016, under the Washington Sunset Act. The Sunset Act requires the Joint Legislative Audit and Review Committee to conduct a sunset review of the program and provide a report with recommendations regarding whether the program should be retained, modified, or allowed to terminate. The sunset review of the MFFCA must be completed in 2015.

**Summary of Bill:** The statutory sections that terminate the MFFCA effective June 30, 2016, and repeal the provisions of the MFFCA effective June 30, 2017, are repealed. Consequently, MFFCA will not terminate in 2016.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This provides another way to prevent Medicaid fraud. The bill has been active for two years and none of the dire outcomes predicted two years ago have occurred. Multi-million dollar recoveries have happened in this state. We estimate that 3 to 10 percent of the \$13 billion spent in Medicaid is lost to fraud. The bill spends no general fund dollars and 75 percent of the funding is provided by the federal government. The qui tam provisions are at the core of the bill. Of the five cases of fraud that were brought to the Attorney General, none went forward without the Attorney General participating. The MFFCA has been a success in recovering money for the state.

CON: The bill is premature because the Joint Legislative Audit and Review Committee (JLARC) study is not yet complete, the process intended by the legislation two years ago was to wait for the JLARC report before deciding to keep the program. We are opposed to the qui tam provisions, which make the process unbalanced. The prevailing plaintiffs can recover attorneys' fees and costs, but prevailing defendants can recover costs only if a court finds the case to be vexatious. The costs to small practices must be considered; if a qui tam relator continues without the Attorney General, it is the small practice that has to pay for litigation. Two years is not enough time to see the consequences of creating this cause of action.

**Persons Testifying:** PRO: Senator Keiser, prime sponsor; Jeff Sprung, WA State Assn. for Justice; Mike Webb, Doug Walsh, Office of the Attorney General.

CON: Mel Sorensen, WA Defense Trial Lawyers; Cliff Webster, Liability Reform Coalition; Kathryn Kolan, WA State Medical Assn.; Lisa Thatcher, WA State Hospital Assn.