

# SENATE BILL REPORT

## SB 6156

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As Passed Senate, February 12, 2016

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

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

**Sponsors:** Senators Rivers, Keiser, Frockt, Miloscia, Pedersen, Litzow, O'Ban, Sheldon, Rolfes, Conway, Mullet, Hasegawa and Benton; by request of Attorney General.

**Brief History:**

**Committee Activity:** Accountability & Reform: 1/20/16, 1/27/16 [DP-WM].

Ways & Means: 2/03/16 [DP].

Passed Senate: 2/12/16, 48-0.

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### SENATE COMMITTEE ON ACCOUNTABILITY & REFORM

**Majority Report:** Do pass and be referred to Committee on Ways & Means.

Signed by Senators Miloscia, Chair; Padden, Vice Chair; Fraser, Ranking Member; Dandel and McAuliffe.

**Staff:** Karen Barrett (786-7413)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Darneille, Hasegawa, Hewitt, Nelson, O'Ban, Padden, Parlette, Pedersen, Rolfes, Schoesler and Warnick.

**Staff:** Sandy Stith (786-7710)

**Background:** Through the Medicaid program, the state and federal government will spend an estimated \$8.3 billion per year during the 2015-17 biennium to provide medical, dental, behavioral health, and long-term care to an average of 1.8 million low income Washingtonians per month.

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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.*

The Washington State Health Care Authority (HCA) administers the Medicaid program, and the consumer protection division of the Attorney General's Office receives and may investigate suspected provider fraud. Providers who submit false or fraudulent claims for Medicaid reimbursement face a civil penalty of between \$5,500 and \$11,000 and up to three times damages sustained by parties to the lawsuit.

Citizens may bring action on behalf of this publically funded medical assistance program. Such persons are referred to as qui tam relators. Qui tam relators share in proceeds of fraud recoveries awarded by the court when cases are successfully litigated. As an incentive for states to adopt similar laws, a 10 point rebate can be earned so long as the state's own Fair Claims Act proves as effective in rewarding and facilitating qui tam actions as that experienced by the U.S. Inspector General.

The 2012 Legislature directed the Legislative Auditor to conduct a sunset review of the Medicaid Fraud False Claims Act. The Joint Legislative Audit and Review Committee finished its evaluation in December, 2015 and recommends continuance citing a positive return per dollar spent to investigate and a 28 percent rise in recoveries since enabled. The Medicaid Fraud False Claims Act will expire on June 30, 2016, unless affirmed and reenacted.

**Summary of Bill:** All but the qui tam provisions of the Medicaid Fraud False Claims Act are permanently codified. Qui tam provisions remain enforceable for seven more years and expire in 2023 unless affirmed and reenacted by the Legislature. Repeal directives in the code are adjusted accordingly.

**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 (Accountability & Reform):** PRO: Hospitals, doctors, and pharmaceutical companies who were once skeptical now support this reauthorization. The evaluation JLARC conducted did not find frivolous lawsuits feared to burden providers back in 2012. More time should pass before lawmakers decide the efficacy of whistleblower - qui tam - provisions and recommend the state revisit this law in 2023. The Legislative Auditor validated the three to one return for a dollar invested to run a civil investigative unit for Medicaid from the Attorney General's Office, and the state would forego federal funds and rebates for its program efforts if allowed to expire this June. AGO investigators partner with Health Care Authority to the benefit of the publically-funded Medicaid program. One qui tam case now closed triggered a change in how the state of Washington handles payment for children's dental care valued at \$2 million a year going forward. Qui tam - whistleblower - is an enforcement tool that helps root out billing abuses from within highly complex and private medical care settings. To deter fraud, this Act and legal procedures should remain on the books.

**Persons Testifying (Accountability & Reform):** PRO: Senator Rivers, prime sponsor; Doug Walsh, Attorney General's Office; Mike Webb, Attorney General's Office; Cliff Webster, WA Liability Reform Coalition.

**Persons Signed In To Testify But Not Testifying:** No one.

**Staff Summary of Public Testimony (Ways & Means):** PRO: This bill was previously hotly debated and hard fought. This bill has been well worked and has been signed off by all stakeholders. The previous concerns about the *qui tam* provision and that there would be frivolous lawsuits did not turn out to be the case. Recoveries have been made under this Act so more services can go to people. Without Legislative action, this bill is set to expire in June of this year. This is problematic for both the Medicaid program and state taxpayers. The sunset report completed by JLARC, which were provided to the committee, show that recoveries are up by 28 percent since 2012. For every dollar invested, three have been returned. This legislation has allowed us to recover stolen money and recover those funds that would have otherwise been lost to fraud. The Medicaid Fraud Control Unit is funded 75 percent by federal funds and 25 percent through recoveries. This legislation mirrors the federal false claims act. Any changes to it could result in a loss of federal funding and a loss of Deficit Reduction Act recoveries. This legislation also acts as a deterrence. The Attorney General's Office takes the role of responsible enforcers very seriously and look forward to continuing this important work. The membership of the Washington Liability Reform Coalition is in unanimous support of this bill. The sunset on *qui tam* being extended for seven years allows the Legislature the oversight necessary to ensure that there are no frivolous lawsuits brought under this provision and to make a better judgment on this in the future.

**Persons Testifying (Ways & Means):** PRO: Senator Rivers, prime sponsor; Mike Webb, Doug Walsh, Attorney General's Office; Doug Walsh, Attorney General's Office Medicaid Fraud Control Unit; Cliff Webster, Washington Liability Reform Coalition.

**Persons Signed In To Testify But Not Testifying:** No one.