SENATE BILL REPORT
SB 5620

As Reported by Senate Committee On:
Ways & Means, January 25, 2022

Title: An act relating to medicaid expenditures.

Brief Description: Concerning medicaid expenditures.

Sponsors: Senators Wilson, L., Braun, Dhingra, Gildon, Rolfes and Wilson, J..

Brief History:
Committee Activity: Ways & Means: 1/18/22, 1/25/22 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Directs the Health Care Authority (HCA) to provide reasonable oversight of all Medicaid program integrity activities required by federal regulation.
- Requires HCA to establish and maintain effective internal control over any state agency that receives Medicaid funding in compliance with federal regulation.
- Requires HCA to update managed care contracts to include appropriate program integrity requirements.
- Creates the Medicaid Expenditure Forecast Work Group.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5620 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Honeyford, Ranking Minority Member, Capital; Billig,

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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 part of the legislation nor does it constitute a statement of legislative intent.

Braun, Carlyle, Conway, Dhingra, Gildon, Hasegawa, Hunt, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Minority Report: That it be referred without recommendation.
Signed by Senators Frockt, Vice Chair, Capital; Keiser.

Staff: Sandy Stith (786-7710)

Background: The Health Care Authority (HCA) administers the Medicaid program, which is a state-federal program that pays for health care for low-income state residents who meet certain eligibility criteria. Washington's Medicaid program, known as Apple Health, offers a complete medical benefits package, including prescription drug coverage, to eligible families, children under age 19, low-income adults, certain disabled individuals, and pregnant women. During the 2021-2023 biennium, approximately 2 million low-income Washingtonians are expected to receive services under these programs, at a total biennial cost of $19.9 billion, of which $5 billion is to be from state revenue. The remaining funds are a combination of federal matching funds and other fund sources.

HCA also administers community behavioral health programs. Medicaid-funded services are provided by the Department of Social and Health Services (DSHS) for clients receiving long-term care services and those with developmental disabilities. The Department of Children, Youth, and Families (DCYF) provides Medicaid-funded services for children and young adults with complex needs and who experience significant behavioral health challenges.

HCA is designated as the single state agency responsible for administering medical services programs and under federal regulation is responsible for providing reasonable program integrity oversight and maintaining effective internal control over any state agency that receives Medicaid funding, including those provided by DSHS and DCYF.

In July 2021, the State Auditor's Office (SAO) conducted a performance audit of Medicaid Program Integrity, examining HCA's oversight of efforts at state agencies. This was authorized under Initiative 900 enacted in 2006, which authorizes SAO to conduct independent, comprehensive performance audits of state and local governments. The law specifically directs SAO to review and analyze the economy, efficiency, and effectiveness of the policies, management, fiscal affairs, and operations of state and local governments, agencies, programs, and accounts.

In its findings, SAO made recommendations for HCA to strengthen its program integrity oversight, including, but not limited to:

- improve executive oversight of the agencies program integrity efforts;
- provide federally required oversight of Medicaid program integrity efforts at sister agencies;
- develop a Statewide Fraud and Abuse Prevention Plan;

- develop procedures to provide consistent oversight of program integrity efforts at sister agencies;
- expand program integrity efforts for managed care organizations (MCOs); and,
- improve audit selection practices to prioritize resources for high risk cases and meet federal requirements.

The 2020 Legislature directed the Joint Legislative Audit and Review Committee (JLARC) to review the HCA budget and accounting structures. In its December 2021 report, JLARC reported on the historical increase in complexity of HCA's accounting structure from 2011 to present. Since 2011, changes include expanding the eligible population under the Affordable Care Act, the Medicaid Transformation Waiver, and inclusion of behavioral health services. Changes in accounting structure have also occurred because of shifts from fee-for-service to managed care and changes in payment methodologies to include measuring quality outcomes and patient satisfaction. The result has been an increase in the number of account codes used by HCA between 2011 to the present from 142 to 1369.

The Medical Assistance Expenditure Forecast Work Group (MAEF work group) is not defined in statute and does not have formal bylaws. Other forecasting processes in Washington have more formal structures. In 2016, the Legislature transferred responsibility for the medical assistance expenditure forecast from HCA to the Office of Financial Management (OFM).

In its findings, JLARC recommended that OFM should lead the MAEF work group to develop a charter that specifies its purposes, structure, and decision-making protocols.

Summary of Bill (First Substitute): HCA must provide reasonable oversight of all Medicaid program integrity activities, and establish and maintain effective internal control over any state agency that receives Medicaid funding. This includes:

- providing administrative oversight for all Title XIX and Title XXI funds received under the medical assistance program;
- developing a strategic plan and performance measures for program integrity;
- overseeing Medicaid program resources of any state agency expending Medicaid funding;
- developing and maintaining a single, statewide fraud and abuse prevention plan; and
- following best practices for identifying improper Medicaid spending when implementing program integrity activities.

Beginning January 1, 2023, HCA's contracts with managed care organizations (MCOs) must clearly detail each party's requirements for maintaining program integrity and the consequences the MCOs face if they do not meet the requirements. The contracts must ensure the penalties are adequate to ensure compliance. These penalties and remedies include direct collection from providers, sanctions, and liquidated damages.

The Medicaid Expenditure Forecast Work Group (Work Group) is created. The Work

Group is managed by OFM. OFM shall employee a forecast manager and appropriate staff to oversee, manage, and develop the expenditure forecast, including the necessary infrastructure and programming. Members of the Work Group include staff from HCA, OFM, Office of the State Actuary, the two fiscal committees of the legislature, and other staff as deemed necessary.

OFM shall develop a charter for the Work Group in consultation with its members.

HCA must:

- provide all information necessary to complete the expenditure forecast;
- work with its contracted actuary and the Work Group to develop methods and metrics related to managed care program integrity activity that shall be incorporated into annual managed care rate setting;
- work with the Work Group in a transparent manner to ensure program integrity activity is incorporated into the managed care rate setting process; and
- submit data and reports to the Work Group as soon as they are available.

Forecasts developed under this process shall be used to develop budget estimates for OFM and the fiscal committees of the Legislature.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (First Substitute):

- Clarifies that changes to managed care contracts are required beginning January 1, 2023.
- Clarifies financial penalties and remedies that may be pursued for failure to follow program integrity requirements to include:
    - sanctions;
    - recovering payments from providers; and,
    - assessing liquidated damages from managed care organizations.
- Removes specific job titles for the participants in the Medicaid Forecast Expenditure Work Group for the Office of Financial Management and Health Care Authority.
- Consolidates the duties for staff responsible for the forecast at the Office of Financial Management.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a*

different version of the bill than what was heard. PRO: Over the past several years, the Health Care Authority (HCA) has relied on the managed care plans for program integrity activity. National data shows that approximately one in seven Medicaid claims are improper. Washington has two million people who receive Medicaid services. Overall, costs are increasing by approximately 5 percent per year with over half of HCA's budget going to managed care organizations. The focus of this bill is to ensure that we get the right amount to the right provider for the right reason and on sound fiscal management. HCA has created a Division of Program Integrity. There is a need for strategic planning in this area because the current process is insufficient. HCA has developed some measures for program integrity, but it lacks some other. In the budget, there is a program integrity savings item which is a conservative estimate if there was a working program integrity system in place. One example of what was found in the audit was that division staff reviewed 120 encounters and found errors in all 120. Most were in the mid-range of severity, which could effect payment and rate setting. Medicaid is our largest public assistance program. It's important that it's transparent and accountable. As a retired pediatrician, I support consolidation and coordination of oversight. This is from a perspective of someone who supports universal health. Improving oversight is a step in the right direction. No consideration was provided in the bill for eliminating contracting with the managed care organizations. This has greatly increased costs and administrative burden to small providers. If fewer dollars are spent on MCOs, then more money would be available for services. Connecticut has gone back to fee-for-service. This is something the expenditure work group should consider.

OTHER: We are neutral about this bill. We share a desire that money goes toward people we are intended to serve. We are aware of the SAO results and have implemented all or most of the recommendations. In order to implement the oversight of other agencies, a more comprehensive audit team would be needed. This is beyond our current capabilities. We request to make the staff list for the expenditure work group less specific should job titles change in the future.

Persons Testifying: PRO: Senator Lynda Wilson, Prime Sponsor; Sarah Weinberg, Physicians for a National Health Program Washington chapter.

OTHER: Dr. Charissa Fotinos, Acting Washington State Medicaid Director, HCA.

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