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BILL ANALYSIS

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House Bill 4577 (Substitute S-1 as reported by the Committee of the Whole)
Sponsor: Representative David Law
House Committee: Judiciary
Senate Committee: Judiciary

CONTENT

The bill would amend the Medicaid False Claim Act to do all of the following:

- Allow any person to bring a civil action in the name of the State to recover the State's losses from a violation of the Act; prohibit such a suit from being dismissed unless the Attorney General had been notified and given an opportunity to appear and oppose dismissal; and provide that the Attorney General would waive the opportunity to oppose dismissal if it were not excised within 28 days.
- Allow the Attorney General to intervene in an action filed by someone else, and require that the complaint be sealed and service on the defendant be withheld until the time for the Attorney General to intervene expired.
- Prohibit a person other than the Attorney General from filing an action that was based on ongoing proceedings or investigations or public disclosure of allegations.
- Prohibit a person other than the Attorney General from intervening in an action filed under the bill.
- Allow the court to limit the participation of the person who initiated an action, if the Attorney General intervened.
- Allow the Attorney General to monitor, and intervene in, an action initiated by another person, who proceeded with the action.
- Allow the court to stay discovery upon a showing that activities of the person initiating an action would interfere with the Attorney General's investigation or prosecution of a criminal or civil matter.
- Provide for a monetary award to a person other than the Attorney General who prevailed in an action.
- Provide for the recovery of costs by the Attorney General and for the Attorney General to retain certain amounts recovered.
- Allow the Attorney General to pursue a violation of the Act through an alternative remedy.
- Prohibit employers from penalizing employees who initiated, assisted, or participated in proceedings or court actions under the Act or who cooperated with or assisted in an investigation under the Act, unless the court found the employee had brought a frivolous claim; the court found the employee had planned, initiated, or participated in the conduct upon which an action was brought; or the employee was convicted of criminal conduct arising from a violation of the Act.

MCL 400.611 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate impact on Medicaid fraud litigations and recoveries. According to the Department of Attorney General, Medicaid fraud recoveries totaled \$4.1 million in FY 2002-03 and \$10.4 million in FY 2003-04.

Total Medicaid expenditures on services to Medicaid clients in Michigan are in the range of \$8 billion. The Federal government pays approximately 57% of this cost, with the remainder coming from various State sources.

There have been some estimates that anywhere from 3% to 10% of Medicaid expenditures are fraudulent, which would equate to \$240 million to \$800 million of gross Michigan Medicaid expenditures, or about \$100 million to \$340 million in State funding.

Approximately three-quarters of Medicaid expenditures in Michigan are fixed payments made to mental health and physical health managed care organizations as well as long-term care providers. Other than in cases of fraudulent eligibility, the risk of fraud is borne by these providers and not by the State. For instance, if a fraudulent claim is filed by a doctor who claims to have provided services to Medicaid managed care clients, it is the managed care organization, not the State, that loses money due to fraud.

Therefore, the 3% to 10% estimate should be applied to about \$2 billion of the Medicaid base. This would translate to maximum potential savings of \$25 million to \$85 million GF/GP, if all fraud unrelated to fraudulent eligibility were rooted out by this program. It should be noted that the statistical basis for the 3% to 10% estimate is unclear, and the actual percentage could be higher or lower. Eligibility fraud, to the extent that it occurs and would be detected due to this bill, would add to the maximum potential recoveries.

Date Completed: 12-1-05

Fiscal Analyst: Steve Angelotti
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