

March 6, 2017

The Honorable Blaine Finch, Chairperson
House Committee on Judiciary
Statehouse, Room 519-N
Topeka, Kansas 66612

Dear Representative Finch:

SUBJECT: Fiscal Note for HB 2337 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2337 is respectfully submitted to your committee.

HB 2337 would amend the Kansas False Claims Act as it relates to Medicaid fraud with the following:

1. Modify the list of acts that constitute a violation of the law;
2. Reorganize into a separate section, language that limits the financial penalty or damages that may be imposed for a standard violation of the Act;
3. Clarify the statute of limitations governing changes brought under the Act;
4. Prescribe relief for a person who experiences employment retaliation because of an effort to stop a violation of the Act, and clarify this relief would also be available to a contractor, agent, or other person who experiences employment retaliation;
5. Establish new penalty and damage provisions for a violation of the Act that is made with respect to any expenditure described in 42USC 1396b(a) regarding federal grants to states for medical assistance programs, and create a new civil cause of action for a violation of the Act in which the unlawful act is a claim relating to such expenditures;
6. Provide that any person could bring a civil action of this type on his or her own behalf and for the state or a subdivision thereof;
7. Provide that an action could be dismissed, after its been filed, with the written consent of the court, or the Attorney General who would be the only permissible intervenor in this type of action;
8. Require the petition to be filed in camera and remain under seal for at least 180 days from the date of filing or until the date the Attorney General elects or declines to intervene in the action;
9. Provide the action would not be served on the defendant until the court orders it served;

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10. Allow the Attorney General to move for an extension of the 180-day deadline, but require the Attorney General to elect or decline to intervene before the extension expires;
11. Allow the person bringing the case to proceed if the Attorney General declines;
12. Require the defendant to respond to the petition after the complaint is unsealed and served;
13. Allow a dismissal by the Attorney General so long as the Attorney General notifies the person of the dismissal and the court provides the person with an opportunity for a hearing on the motion;
14. Establish multiple other procedural rules to govern the relationship between the Attorney General and the person bringing the action, including rules for settlement, with the court acting as referee in applying and enforcing many of the rules;
15. Require the court to dismiss an action if substantially the same allegations were publicly disclosed in a criminal or civil hearing where the state is a party, or in another specified forum, unless the person bringing the action is the original source of the information; and
16. Add, expand, or clarify several definitions included in the Act.

The Office of the Attorney General indicates HB 2337 would have a fiscal effect on state revenues by allowing Kansas to increase its share of recoveries under the federal sharing agreement by 10.0 percent. The agency indicates recoveries have varied widely in the past few years with the average amount recovered from Medicaid False Claims cases of approximately \$200,000 per year, which represents the current 50.0 percent share of total recoveries. Using this number as an estimate, increasing the revenue sharing percentage by 10.0 percent could potentially increase the state's share of annual recoveries by \$40,000 for a total of \$240,000 (\$400,000 x 60.0 percent) beginning in FY 2018. The agency indicates the overall number of recoveries would be expected to increase from additional referrals and increases in civil penalties for False Claims Act violations related to Medicaid fraud; however, the agency cannot provide an estimate for the increased recoveries. The Office of Judicial Administration indicates the new civil cause of action and additional procedural complexities created in HB 2337 could increase revenues from court fees, and Judicial Branch expenditures from time spent by judicial and nonjudicial employees processing and deciding cases, but an estimate of revenues and expenditures cannot be given.

Sincerely,



Shawn Sullivan,
Director of the Budget

cc: Ashley Michaelis, Judiciary
Willie Prescott, Office of the Attorney General