

SESSION OF 2006

SUPPLEMENTAL NOTE ON SENATE BILL NO. 326

As Amended by Senate Committee on
Judiciary

Brief*

SB 326 would: create a civil cause of action against persons who knowingly submits or benefits from fraudulent Medicaid claims to be brought by the Kansas Attorney General; create civil penalties and treble damages for violators; and amend the misuse of public funds criminal statute to cover submission or receiving of benefits from Medicaid claims that exceed allowable limits.

The bill would make any person who has been found to have violated the law subject to a civil penalty of not less than \$5,000 nor more than \$10,000 plus triple any damages the state sustains: (1) who knowingly presents a false or fraudulent Medicaid claim; (2) creates a false statement; (3) conspires to defraud the State of Kansas; (4) is a beneficiary of an inadvertent submission of a false claim and becomes aware of the false claim but fails to disclose the error; or (5) is the beneficiary of an inadvertent overpayment and fails to repay the overpayment.

Any person who commits a violation and acts within 30 days to reimburse the state and fully cooperates with the investigation would not be subject to criminal prosecution or the civil penalties but would be subject to a penalty of twice the amount of damages sustained by the state.

The civil action would be subject to a five-year statute of limitation and a preponderance of evidence burden of proof.

The crime of misuse of public funds would be expanded to cover attempting to obtain, authorizing, or allowing, any claim for Medicaid services that exceeds authorized limits or bypassing or overriding an edict or deactivation of an edict in any claim submission.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The penalty for the crime would also be amended to reflect a graduated penalty structure based on the amount of money involved; *i.e.*, \$100,000 or more would be a severity level 5 nonperson felony; \$25,000 but less than \$100,000 would be a level 7 nonperson felony; \$1,000 but less than \$25,000 would be a level 9 nonperson felony; and less than \$1,000 would be a class A misdemeanor. Further, a person convicted of misuse of public funds would be prohibited from holding any official, employee, or contract position having control of public funds with the state or political or taxing subdivision.

The Senate Committee added the amendment to the crime of misuse of public funds.

Background

SB 326 was recommended by the 2005 Special Committee on Medicaid Reform.

Proponents included the Attorney General's Medicaid Fraud and Abuse Division, the Kansas Medical Society, the Kansas Hospital Association, Representative Sydney Carlin, and the Kansas Taxpayers Against Fraud.

The fiscal note states that the Attorney General estimates that \$129,285 would be needed from the State General Fund to finance 2.00 new FTE positions. Furthermore, if the Attorney General prosecutes the violations contained in SB 326 and the judgement is in favor of the state, then state revenues would increase as a result of civil penalties defined in the bill. However, there is not enough information to estimate the increase to state revenues.

The bill also would require the courts to hear the violations against SB 326 but the Judiciary has no information upon which to base an estimate of cases it would receive.