

**FINAL
FISCAL NOTE**

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| Drafting Number: LLS 13-0831 | Date: June 26, 2013 |
| Prime Sponsor(s): Sen. Hodge; Roberts Rep. Gardner; Young | Bill Status: Signed into Law |
| | Fiscal Analyst: Kerry White (303-866-3469) |

TITLE: CONCERNING REVISIONS TO THE COLORADO MEDICAID FALSE CLAIMS ACT TO COMPLY WITH FEDERAL LAW.

| Fiscal Impact Summary | FY 2013-2014 | FY 2014-2015 |
|---|--|---------------------|
| State Revenue General Fund* | \$485,000 | \$485,000 |
| State Expenditures | Minimal reduction. See State Expenditures section. | |
| FTE Position Change | | |
| Effective Date: The bill was signed into law by the Governor on May 25, 2013, and takes effect August 7, 2013, assuming no referendum petition is filed. | | |
| Appropriation Summary for FY 2013-2014: None required. | | |
| Local Government Impact: None. | | |

* Assuming the General Fund was the source used to pay the Medicaid costs identified as false or fraudulent. Depending on the client group, other fund sources may be affected, such as the Hospital Provider Fee Cash Fund.

Summary of Legislation

This bill makes a number of technical changes to align the Colorado Medicaid False Claims Act with the federal False Claims Act in order to qualify for an additional share of state recoveries for false or fraudulent Medicaid claims. Among these changes, the bill requires that civil penalties be calculated in accordance with federal law and increases the range for penalties to between \$5,500 and \$11,000 from the current levels of between \$5,000 and \$10,000. Depending on the facts of the case, the bill also provides for variable time frames in the statute of limitations for a plaintiff who believes he or she was retaliated against following a qui tam (whistleblower) action. Under the bill, a private action for retaliation may not be brought more than three years after the date when the retaliation occurred.

Background

Under current law, as enacted in Senate Bill 10-167, anyone who knowingly submits a false Medicaid claim or intends to defraud the state or a political subdivision is liable for up to three times the amount of damages, the costs of civil action, and a civil penalty of between \$5,000 and \$10,000. Persons who are ineligible to receive state funds and report receiving such funds to the Attorney General within 30 days may be liable for two times the amount of damages and no civil penalty, provided certain conditions are met.

Because most costs for Medicaid are split equally between the state and the federal government, state recoveries for false or fraudulent claims are also split. The federal Deficit Reduction Act (DRA) allows a state to retain an additional 10 percent of the recoveries if the state's law is at least as effective as federal law in rewarding and facilitating whistleblower actions. If the Colorado Medicaid False Claim Act were in compliance with federal standards, the state would receive 60 percent of most recoveries, rather than the current 50 percent.

The DRA charges the Inspector General's Office of the federal Department of Health and Human Services (HHS) with determining whether a state's law meets federal standards. Following the enactment of SB10-167, the state requested approval from HHS. In two separate letters to the state, HHS cited nine areas of Colorado's law as being noncompliant with federal standards. This bill seeks to address those concerns in order to obtain HHS approval.

State Revenue

Conditional upon federal approval of the Colorado Medicaid False Claims Act, as amended by SB13-205, this bill could increase revenue by \$485,000 per year. Depending on the funding source of the false or fraudulent claim, the fiscal note assumes additional revenues will be credited to the General Fund and possibly other cash funds used to pay Medicaid costs, such as the Hospital Provider Fee Cash Fund. The amount identified in the fiscal note is based on actual recoveries in FY 2012-13, but this analysis assumes the actual amount may vary from year to year.

State Expenditures

The bill may also reduce workload for state courts within the Judicial Branch by a minimal amount. This is a result of the provision that specifies a private action for retaliation may not be brought more than three years after the date when the retaliation occurred, and the provisions which provide for variable time frames in the statute of limitations for whistleblower actions. No reduction in appropriations is required for the Judicial Branch.

Departments Contacted

Governor's Office
Law

Health Care Policy and Financing
Legislative Council Staff

Judicial