

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: H.182 Name of Bill: An Act relating to submitting a false claim to the state

Agency/ Dept: Dept. of VT Health Access Author of Bill Review: Gabriel Epstein

Date of Bill Review: 2/17/2015 Related Bills and Key Players H.120 (2015)

Status of Bill: (check one): ☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both

Recommended Position:

☐ Support ☒ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

H.182 allows the Attorney General or a private citizen to bring an action against an individual who submits a false claim to the state.

- It prohibits specific actions that would amount to the bringing of a fraudulent claim.
- It allows civil action to be taken, and civil penalties to be enforced, against individuals who violate these prohibitions.
- It permits the Attorney General to bring a civil action pursuant to such violations.
- It also permits a private citizen to bring a qui tam action in the name of the State and provides a process for the supervision of these actions by the Attorney General.
- Private citizens who bring actions under this bill would be entitled to compensation for their assistance when appropriate under the terms of this bill.

2. Is there a need for this bill? *Please explain why or why not.*

Yes. To the extent that the bill provides incentives and protections to private citizens that will improve the reporting and investigation of false claims, it will be beneficial to the government and people of the state.

Further provisions would be necessary, however, to establish liability to the state for false or fraudulent claims with respect to Medicaid expenditures, to make the bill as effective in rewarding and facilitating qui tam actions for false or fraudulent claims, and to create a requirement for filing an action under seal for 60 days with review by the Attorney General. Without these provisions, this bill would not be sufficient to entitle the state to an increased share of recovered funds from actions for false Medicaid claims, as described below.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

Fiscal impact for DVHA

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Medicaid funds recovered under a federal false claims action are returned to the state, minus the federal medical assistance that was received by the state in connection with the expenditure.

Section 1909 of the Social Security Act provides requirements for state laws that would create liability for false or fraudulent claims, and provides that, for any Medicaid funds recovered under such a state law, the percentage of funds which must be returned to the federal government is decreased by 10%.

The bill, as presented, does not satisfy several requirements of Section 1909.

Programmatic impact for DVHA

This bill does not directly impose any programmatic requirements on DVHA.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

The bill would require the Attorney General to be involved in the oversight and activity of qui tam actions brought by private parties, and to involve qui tam parties in any qui tam actions it elects to take over. The bill would not otherwise enlarge or change the scope of the Attorney General's authority, functions, or duties in investigating and pursuing actions related to false claims.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

Employees, agents, and contractors of regulated entities may potentially be affected by reporting incentives.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

Regulated entities may prefer this bill as opposed to h.120 because it omits whistleblower protections.

6.2 Who else is likely to oppose the proposal and why?

Various regulators and advocates for whistleblower protections are likely prefer h.120 to this bill.

7. Rationale for recommendation: *Justify recommendation stated above.*

DVHA does not support this bill, as it omits provisions necessary to entitle the state to a greater proportion of Medicaid funds recovered.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

None at this time.

9. Gubernatorial appointments to board or commission?

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Secretary/Commissioner has reviewed this document: Steven M. Constantino Date: 2/24/15