

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: H.120 Name of Bill: An Act relating to creating a Vermont false claims act

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.182 (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.120 would provide state law to mirror the federal False Claims Act.

- It prohibits specific actions that would amount to or aid in 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 permits a private citizen to bring a qui tam action in the name of the State. Such actions remain under seal for 60 days, and the bill provides a process under which the Attorney General may intervene and take over the action.
- Relators who bring actions under this bill would be entitled to compensation for their assistance when appropriate under the terms of this bill.
- Individuals who are the subject of retaliatory actions by their employers' actions because of their lawful conduct pursuant to this law would be entitled to relief under 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. Also, as explained below, this bill would entitle the state to a greater share of Medicaid funds recovered pursuant to this law than if such funds were recovered pursuant to the already existing authority.

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

Fiscal impact for DVHA

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.

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DVHA's Program Integrity Unit recouped roughly \$1.8M in returned funds last year. Of that, some were attributable to inadvertent overpayments and other causes, and some portion of those payments would have fallen under the scope of false claims. For those which are false claims, the share going back to the state would have been higher under this bill.

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, appears to satisfy the requirements of Section 1909.

Programmatic impact for DVHA

This bill would provide stronger authority for DVHA to enforce penalties, in addition to damages, for false claims.

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)

Regulated entities and employees, agents, and contractors may potentially be affected by reporting incentives and whistleblower protections.

6. Other Stakeholders:

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

None known at this time

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

None known at this time

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

DVHA supports this bill, as it will provide for the state to retain 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.*

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None at this time.

9. Gubernatorial appointments to board or commission?

Secretary/Commissioner has reviewed this document: *Steven M. Costantino* **Date:** 2/23/15