

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 5584
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: JUNE 30, 2023

SUMMARY

- Synopsis:** Revises New Jersey False Claims Act to comply with federal law for purposes of entitling State to enhanced recovery in Medicaid fraud cases.
- Type of Impact:** Potential annual State expenditure and revenue increases.
- Agencies Affected:** Department of the Treasury; Department of Law and Public Safety

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Expenditure Increase	Potential increase
State Revenue Increase	Potential increase

- The Office of Legislative Services (OLS) finds that this bill may result in annual revenue gains for the State. This bill revises the New Jersey False Claims Act in order to comply with federal law for purposes of entitling the State to enhanced recovery in Medicaid fraud cases. Federal law provides that complying states receive an increased share of any amounts recovered pursuant to the State’s fraudulent claim lawsuit or settlement in Medicaid fraud cases. The OLS does not have any further information to project the potential gain in revenues from compliance with the federal False Claims Act.
- The OLS notes that the bill may result in an increased workload for the Office of the Attorney General in the Department of Law and Public Safety.

BILL DESCRIPTION

The bill revises the New Jersey False Claims Act in order to comply with certain provisions in federal law. Compliance would make the State eligible for greater recoveries in Medicaid fraud cases.

The New Jersey False Claims Act imposes civil penalties on any person who submits a claim to the State that the person knows or should know is false. The act is similar to the federal

False Claims Act. The New Jersey False Claims Act authorizes the Office of the Attorney General or a private individual to bring a civil action on behalf of the State to recover funds fraudulently obtained. The State and the individual may be entitled to percentages of any monies collected. Under federal law, a state is entitled to enhanced recovery in Medicaid fraud cases if the Inspector General in the federal Department of Health and Human Services determines that the state has a false claims act that is at least as effective as the federal one in facilitating these whistleblower actions. Presently, the Inspector General has determined that the New Jersey False Claims Act is not at least as effective as the federal one, and has recommended specific revisions. This bill would implement the Inspector General's recommendations.

Currently, the New Jersey False Claims Act bars an employee or agent of the State or a political subdivision from bringing an action based on information discovered in a civil, criminal, or administrative investigation or audit that was within the scope of the employee's or agent's duties or job description. The bill deletes this provision, thus allowing employees and agents to bring such actions.

The bill provides specific authority for the Attorney General to make civil investigative demands, issue subpoenas to out-of-State witnesses, and take sworn testimony in relation to New Jersey False Claims Act violations.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that compliance with the federal law may result in increased revenues for the State. According to the Attorney General's 2019 Report to the Legislature concerning the New Jersey False Claims Act, out of the 63 cases filed under the New Jersey False Claims Act, 12 were concerning Medicaid. The State received a total of \$7.5 million in recovery. It is unclear if all the recovery money received was from Medicaid related false claims. According to some estimates, compliance with the federal law will result in an increased share from recovered money for the State, potentially up to 10 percent. Per a more recent FY 2021 report issued by the federal Department of Health and Human Services, Office of Inspector General, the total recovery for New Jersey amounted to \$11.7 million involving cases that included participation by Federal and State Medicaid Fraud Control Units. The OLS has no further information on how much money is actually collected; how the amount is distributed amongst individuals, federal, and State agencies and finally, by how much the State's share will change under the bill.

The OLS finds that under the bill, the Office of Attorney General may experience increased workload due to certain provisions in the bill. For instance, the bill provides specific authority for the office to make civil investigative demands, issue subpoenas to out-of-State witnesses, and take sworn testimony in relation to New Jersey False Claims Act violations.

Section: Judiciary

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).