

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5584

STATE OF NEW JERSEY

DATED: JUNE 27, 2023

The Assembly Budget Committee reports favorably Assembly Bill No. 5584.

This 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.

BACKGROUND. The New Jersey False Claims Act (NJFCA) imposes civil penalties on any person who submits a claim to the State that the person knows or should know is false. The NJFCA is similar to the federal False Claims Act (FFCA). The NJFCA authorizes 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 FFCA in facilitating these whistleblower actions. Presently, the Inspector General has determined that the NJFCA is not “at least as effective” as the FFCA, and has recommended specific revisions. This bill would implement the Inspector General’s recommendations.

LANGUAGE CHANGES. The bill would modify the definition of the term “claim” in order to align with the scope of the definition set out in the FFCA, and add new definitions of the terms “material” and “obligation.” The bill also adds clarifying language to better track the remedies available under the FFCA, and the terminology concerning calculation of the State’s share of NJFCA claim proceeds. In addition, the bill incorporates minor language changes suggested by the federal OIG to more closely track terminology used in the FFCA.

INTERVENTION BY ATTORNEY GENERAL; STATUTE OF LIMITATIONS AND FILING DATE. Under current law, a person bringing an action under the NJFCA must serve the Attorney General with a copy of the complaint and disclose material evidence and information. The Attorney General may elect to intervene and proceed with the action on behalf of the State within 60 days after it receives the complaint, material evidence, and information from the person bringing the action. The complaint is required to remain under seal for at least 60 days and will not be served on the defendant until the court orders.

The bill specifies that upon receiving the documents from the

person bringing the action, the Attorney General may then file its own complaint; amend the person's complaint; or supplement the claims in which it is intervening with additional detail or by adding any additional claims. The bill also provides that for purposes of the statute of limitations, any such pleading by the Attorney General would relate back to the filing date of the complaint of the person who originally brought the action.

LIFTING OF SEAL. Under current law, if the Attorney General decides not to proceed with the action, the court is required to lift the seal on the complaint and the person who initiated the action has the right to conduct the action. Under the bill, if the Attorney General decides not to proceed, the court has discretion whether to lift the seal and allow the person who initiated the action the right to continue the action.

DISCLOSURE TO ATTORNEY GENERAL. The bill provides that the person bringing the action would be authorized to continue to disclose information related to the action to the Attorney General. Current law provides that the person has an ongoing duty to disclose the information.

INFORMATION DISCOVERED IN COURSE OF EMPLOYEE'S DUTIES. Currently, the NJFCA 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.

PROTECTION AGAINST EMPLOYER REPRISALS. The bill clarifies that the protections against employer reprisals in the NJFCA apply not only to employees, but also to contractors and agents. The bill provides that a civil action may be brought against an employer if an employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under the NJFCA, or in other efforts to stop one or more violations of the NJFCA. The statute of limitations for the civil action would be three years after the date the retaliation occurred.

CRIMINAL DEFENDANT ESTOPPED FROM DENYING ELEMENTS OF THE OFFENSE. The draft would add a new provision, similar to that in the FFCA, that estops a criminal defendant convicted of fraud or false statements from denying essential elements of the offense in an action brought under the NJFCA.

AUTHORITY OF ATTORNEY GENERAL. 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 NJFCA violations.

FISCAL IMPACT:

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.