

Vermont Legislative Joint Fiscal Office

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FISCAL NOTE

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H.120 An Act Relating to Creating a Vermont False Claims Act

Overview

Legislation H.120 proposes to create a Vermont False Claims Act. This anti-fraud legislation, modeled after the federal False Claims Act, provides for penalties and damages for anyone who knowingly submits false or fraudulent claims. It also authorizes a person who has evidence of fraud, the relator, to bring action on behalf of the government against those who commit fraud against government programs. The recovery is refunded to the state and federal governments. Relators may then be eligible to collect awards as a percentage of the funds recovered.

Thirty states have False Claims Acts in place, sixteen of which are deemed to be at least as strong as the federal act when it comes to recovering Medicaid money.¹ Almost 70 percent of recoveries are in health care programs.

The Joint Fiscal Office finds that the fiscal impact of this legislation is revenue positive, but the exact amount is uncertain. Between fiscal years 2010 and 2015, the median of known net revenue gains would have exceeded \$30,000 dollars annually under the False Claims Act, with a high of \$589,705 in fiscal year 2013. This does not account for additional recoveries that would have been possible if the legislation were in place.

Background

The Deficit Reduction Act (DRA) of 2005 contained provisions that create incentives for states to enact anti-fraud legislation modeled after the federal legislation. States that opt to enact legislation are qualified to receive a 10-percentage-point increase in their share of any amounts recovered under these laws. As a result, the majority of states have enacted some form of a False Claims Act.² Vermont's fiscal year 2016 federal match rate for Medicaid is 55 percent.

On the federal level, in 2013 the government received just over \$4 billion dollars, on net, in restitutions and penalties for fraud committed by individuals and businesses in the Medicare, Medicaid, and Children's Health Insurance Programs. Since 1997 the government has recouped about \$26 billion dollars in such payments.³ According to the Congressional Budget Office, the

¹ <http://www.taf.org/states-false-claims-acts>

² Some states have "Medicaid only" False Claims Act; some of those have a False Claims Act deemed by the HHS to be at least as strong as the federal Act when it comes to recovering Medicaid money. <http://www.taf.org/states-false-claims-acts>

³ Department of Health and Human Services and Department of Justice, Health Care Fraud and Abuse Control Program Annual Report for Fiscal Year 2013 (February 2014), <http://go.usa.gov/5mvG>

return to the federal government and states should be considered only a partial measure of effectiveness because it represents the money repaid, not the fraud that has been deterred.⁴

Fiscal Impact

Vermont’s Office of the Attorney General estimated the net change to recoupments or recoveries that would have accrued to the State, for Medicaid claims only, if a DRA-compliant state False Claims Act had been in effect between fiscal years 2010 and 2015. The estimates are based only on actual amounts repaid over that time period. They do not account for recoveries that would have been possible if the state False Claims Act had been in place. The analysis found minimum net recoveries under the False Claims Act for the past six fiscal years to date with a median of \$33,612 dollars. The analysis shows that the 10-percentage-point DRA increase is sufficient to offset the relator’s share.

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015ⁱ
Total Actual Recoupmentsⁱⁱ	\$1,268,861	\$1,028,772	\$1,106,311	\$6,275,180	\$1,841,975	\$271,823
Total Estimated Recoupmentsⁱⁱⁱ	\$1,316,326	\$1,062,351	\$1,117,683	\$6,864,885	\$1,875,620	\$281,868
Net Change	\$47,465	\$33,579	\$11,372	\$589,705	\$33,645	\$10,045

ⁱ The year to date.

ⁱⁱ Actual recoveries with no Vermont False Claims Act in effect.

ⁱⁱⁱ Estimated recoveries if the state had a False Claims Act in place. Estimates reflect a 10 percent increase in the state’s Federal Medical Assistance Percentage (FMAP), a 20 percent share for relator fees, and investigative costs.

A review of fiscal notes on this issue from other states, including Colorado, Washington, and the District of Columbia, suggests the legislation would have a positive yet unknown fiscal impact in Vermont. The 10-percentage-point increase in the state’s share recovered under the False Claims Act would result in a positive yet indeterminable bump in state revenue.

As a result of successfully litigating fraudulent or false claims, the state will recoup revenue. That resulting revenue is made up of the recoveries minus the payments to the relators and investigation fees. However, due to the wide variance of recovered amounts from year to year, the range for estimated savings is highly uncertain.

Using Texas, Massachusetts, and Rhode Island data on a per capita basis applied to Vermont, we developed an illustrative example of how much the state could have recovered under the False Claims Act if its existence had prompted a larger range of cases.⁵ In comparison to Texas between fiscal years 2010 to 2013, Vermont could have recovered an annual net increase of over \$280,000 dollars. Our initial look at Massachusetts and Rhode Island resulted in substantially higher returns.

⁴ <http://www.cbo.gov/sites/default/files/cbofiles/attachments/49460-ProgramIntegrity.pdf>

⁵ Comparable data on net increases were available for Texas (FY 2010-2013). Data were also available for Massachusetts (FY 2010-2011) and Rhode Island (FY 2012). Note that this calculation only accounts for the differences in population.