



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Medicaid Fraud Control Unit
PO Box 40114 • Olympia WA 98504-0114 • (360) 586-8888

October 22, 2015

Mr. Keenan Konopaski, Legislative Auditor
Joint Legislative Audit & Review Committee
Eastside Plaza Building #4, 2nd Floor
P.O. Box 40910
Olympia, WA 98504-0910
Via E-mail and Campus Mail

Re: *Agency Response to the Legislative Auditor Recommendations*

Dear Mr. Konopaski,

Thank you for the opportunity to respond to the JLARC Medicaid False Claims Act audit review. At the outset, I wish to acknowledge and commend the highly competent and thorough review that Mark Fleming and your able staff accomplished. The process was conducted with the requisite independence, rigor, and the utmost professionalism.

JLARC Preliminary Report: Medicaid Fraud False Claims Act Sunset Review
Agency Response to the Legislative Auditor Recommendation:

RECOMMENDATION	AGENCY POSITION	COMMENTS
Rec. 1: The Legislature should reauthorize the Medicaid Fraud False Claims Act	The Attorney General's Office concurs with this recommendation	The Washington Medicaid False Claims Act (WA-FCA) is an essential law enforcement tool in the important effort to detect and deter provider fraud in Washington's Medicaid system and to recover taxpayers' dollars lost due to fraud, waste, and abuse.

Additional Response:

We concur with Recommendation number 1 that supports reauthorization of the Washington Medicaid False Claims Act, chapter 74.66 RCW (WA-FCA). The WA-FCA is an effective tool

ATTORNEY GENERAL OF WASHINGTON

Mr. Keenan Konopaski

October 22, 2015

Page 2

and enables the AGO, on behalf of Washington citizens, to detect fraud, deter fraud, and recover fraudulently obtained Medicaid funds. The WA-FCA directly supports the integrity of the Medicaid system. The Medicaid Fraud Control Unit (MFCU) Civil Section is a self-sustaining, revenue generating unit of government. The Act facilitates the recovery of money obtained by Medicaid providers through fraud.

The WA-FCA is a prerequisite to the MFCU gaining knowledge of court-sealed global (multi-state and federal) *qui tam* (whistleblower) cases, which enables us to participate early in those multi-jurisdictional investigations, thus maximizing recoveries for Washington. Most importantly, to aid fraud detection, the WA-FCA encourages disclosure of fraud allegations to the MFCU, which are essential to the mission to *detect and deter* fraud in the Medicaid system. Health care fraud today is inordinately complex. The whistleblower provisions of the WA-FCA, like those in its long-standing and successful federal law counterpart, are essential to uncovering sophisticated medical fraud schemes. Medical fraud is particularly hard to detect because of the confidentiality requirements associated with the provision of health care services, and it is complex because often only *qui tam* relators (whistleblowers or insiders with access to key facts supporting fraud allegations) have specialized knowledge of the medical issues involved and access to the provider and patient records pertaining to the Medicaid claims processed. In addition, medical professional autonomy can lead to compartmentalizing knowledge of the offense. *See also*, 104 Columbia Law Review, 949 at 982-986, which concludes, "Based on the above reasons, it is clear that in theory *qui tam* suits may be more valuable in the context of health care fraud than in any other." Washington's FCA is specifically targeted to Medicaid fraud.

In conclusion, the Legislature's decision to create the WA-FCA was a sound public policy choice. Passage of the WA-FCA has demonstrated that it is an excellent tool and self-funding investment to safeguard the integrity of Washington's Medicaid system. The Attorney General's Office strongly believes that it is vitally important for Washington to have a FCA, which at the federal level has been a long-standing (Civil War era) tool to combat fraud. We owe it to the citizens of Washington to do all that we can to bring integrity and accountability to the expenditure of Washington's Medicaid funds.

Again, thank you for your continuing effort in this important review process.

Respectfully,



DOUGLAS D. WALSH, Senior Assistant Attorney General
Director, Medicaid Fraud Control Unit
Washington State Office of the Attorney General

DDW/de

cc: Bob Ferguson, Attorney General