SUNSET REVIEW OF THE MEDICAID FRAUD FALSE CLAIMS ACT

PROPOSED SCOPE AND OBJECTIVES

APRIL 2015

STATE OF WASHINGTON
JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

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Why a JLARC Sunset Review of the Medicaid Fraud False Claims Act?

Washington participates in the federal Medicaid program which pays health care providers for services to eligible low income individuals and families. In some instances providers file false claims, billing for services not provided and other fraud schemes. In 2012, the Legislature passed the Medicaid Fraud False Claims Act (Act), with the intent to "provide this state with another tool to combat Medicaid fraud." Modeled on similar federal legislation, the Act's purpose is to "…root out significant areas of fraud" and help recover state money that could be used to support the state's Medicaid program. The Act includes a sunset review provision which terminates the authority to pursue potential fraud under the Act after June 30, 2016, unless reauthorized by the Legislature.

Attorney General's Office Investigates and Prosecutes Medicaid False Claim Cases

The Legislature assigned responsibility for investigating potential Medicaid fraud to the Medicaid Fraud Control Unit within the Attorney General's Office (AGO). The unit is responsible for investigating and prosecuting civil and criminal healthcare provider fraud against Washington's Medicaid program. Between June 2012, when the Act took effect and January 2015, AGO reports that the unit's expenditures totaled $3.2 million, of which 75 percent was funded by the federal government. Reported recoveries during that period were $76 million, primarily the result of 149 federal false claims actions which named Washington providers. That amount was divided almost equally between the state and federal governments.

Private Individuals May Also Initiate False Claim Cases

A key element of the Act is the "*qui tam*" provision, which allows private individuals known as "relators" to bring a false claim action against a provider. The Attorney General's Office receives notice when *qui tam* actions are initiated, and the Act gives the office the option to prosecute or decline *qui tam* cases brought under the Act. If the AGO initially declines to pursue a *qui tam* case, the relator may continue to pursue the case, although the Attorney General may intervene at a later date or seek to have the case dismissed upon showing good cause. Relators can receive up to 30 percent of recoveries depending on their involvement in bringing and litigating the case. Since the Act became law in 2012, Washington relators have filed three *qui tam* Washington-only actions under the Act's authority. Two other Washington-only *qui tam* cases were filed under both state and federal law. In addition, several multistate and federal cases citing the Washington Medicaid Fraud False Claims Act have been filed in federal courts around the country.

What Is a Sunset Review?

The Washington Sunset Act (Chapter 43.131 RCW) establishes the process for conducting sunset reviews. When a program is subject to sunset, the program terminates unless the Legislature reauthorizes the program. In the year prior to the termination date, the Joint Legislative Audit and Review Committee (JLARC) staff review the extent to which the program has complied with legislative intent and whether the program has met its performance targets.

The Legislature included a June 30, 2016, sunset date for the Medicaid Fraud False Claims Act. JLARC staff will complete a sunset review of the use of the Act prior to the 2016 Legislative Session.

Sunset Review Objectives

Statute specifies the objectives for a sunset review, which include addressing the following questions:

1. To what extent has use of the Medicaid Fraud False Claims Act complied with legislative intent?
2. To what extent does the Act provide for efficient and economical oversight of Medicaid providers, with adequate cost controls in place?
3. To what extent have actions pursuant to the Act achieved expected performance goals and targets?
4. To what extent does the Act duplicate the activities of another agency or the private sector?

The review will include a recommendation of whether to terminate, modify, or continue without modification the Medicaid Fraud False Claims Act.

Timeframe for the Study

Staff will present the preliminary report in September 2015 and a proposed final report in December 2015.

JLARC Staff Contact for the Study

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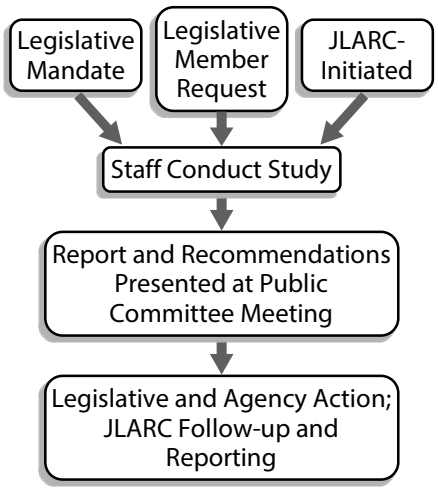
JLARC Study Process



Criteria for Establishing JLARC Work Program Priorities

- Is study consistent with JLARC mission? Is it mandated?
- Is this an area of significant fiscal or program impact, a major policy issue facing the state, or otherwise of compelling public interest?
- Will there likely be substantive findings and recommendations?
- Is this the best use of JLARC resources? For example:
  - Is JLARC the most appropriate agency to perform the work?
  - Would the study be nonduplicating?
  - Would this study be cost-effective compared to other projects (e.g., larger, more substantive studies take longer and cost more, but might also yield more useful results)?
- Is funding available to carry out the project?