

## **BILL ANALYSIS**

C.S.S.B. 544  
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Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The office of the attorney general recently received part of a global settlement from a lawsuit relating to Medicaid fraud involving adulterated drugs manufactured by a plant in Puerto Rico. C.S.S.B. 544 seeks to allow the state to more effectively hold persons who engage in Medicaid fraud responsible for their actions and to recover additional funds for the Medicaid program by making state laws relating to Medicaid fraud more consistent with federal laws.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 544 amends the Human Resources Code to include among the persons who are considered to have committed an unlawful act for purposes of provisions relating to Medicaid fraud prevention and Medicaid fraud a person who knowingly causes a claim to be made under the Medicaid program for a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner, a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry, or a product that has been adulterated, debased, or mislabeled, or that is otherwise inappropriate.

C.S.S.B. 544 increases the civil penalty for a person who commits an unlawful act relating to Medicaid fraud from not less than \$5,000 or more than \$15,000 to not less than \$5,500 or the minimum amount imposed as provided by certain provisions of federal law governing false claims, if that amount exceeds \$5,500, and not more than \$15,000 or the maximum amount as provided by those federal provisions, if that amount exceeds \$15,000, for each unlawful act committed by the person that results in injury to an elderly person, a disabled person, or a person younger than 18 years of age.

C.S.S.B. 544 increases the civil penalty for a person who commits an unlawful act relating to Medicaid fraud from not less than \$5,000 or more than \$10,000 to not less than \$5,500 or the minimum amount imposed as provided by certain provisions of federal law governing false claims, if that amount exceeds \$5,500, and not more than \$11,000 or the maximum amount as provided by those federal provisions, if that amount exceeds \$11,000, for each unlawful act committed by the person that does not result in injury to an elderly person, a disabled person, or a person younger than 18 years of age.

C.S.S.B. 544 includes, as an alternative to the requirement that a court's determination of expenses, fees, and costs to be awarded to a private plaintiff in an action by a private person relating to Medicaid fraud be made only after the defendant has been found liable in the action, that the determination be made after the state settles an action with a defendant that the court determined, after the hearing, was fair, adequate, and reasonable in accordance with provisions

of law relating to such a settlement.

C.S.S.B. 544 limits the circumstances under which a private person is prohibited from bringing an action relating to Medicaid fraud that is based on certain public disclosure of allegations or transactions to allegations or transactions in a criminal or civil hearing, unless the person is an original source of the information, to a criminal or civil hearing in which the state or an agent of the state is a party. The bill expands the definition of "original source," for purposes of that prohibition, to include an individual who has knowledge that is independent of and materially adds to the publicly disclosed allegations and who has voluntarily provided the information to the state before filing an action that is based on the information. The bill requires the court, before dismissing an action by a private person as barred under state law, to give the attorney general an opportunity to oppose the dismissal.

C.S.S.B. 544 specifies, for purposes of provisions of law prohibiting retaliation against a person in the terms of employment because of a lawful act taken by the person in furtherance of an action regarding Medicaid fraud, that such a person includes an employee, contractor, or agent. The bill includes discrimination against the conditions of such a person's employment, in addition to the terms of employment, in the conditions under which the person is entitled to reinstatement and back pay. The bill includes in the lawful acts taken by the person covered in the prohibition against retaliation any efforts taken by the person to stop one or more violations that constitute an unlawful act for purposes of Medicaid fraud.

C.S.S.B. 544 defines "material" and "obligation."

C.S.S.B. 544 amends the Penal Code to make a conforming change in provisions relating to the offense of Medicaid fraud.

#### **EFFECTIVE DATE**

September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 544 contains provisions not included in the original defining "material" and "obligation" for purposes of provisions of law relating to Medicaid fraud.

C.S.S.B. 544 contains provisions not included in the original increasing the civil penalties for a person who commits an unlawful act relating to Medicaid fraud that results in injury to an elderly person, a disabled person, or a person younger than 18 years of age and for a person who commits such an act that does not result in such injury.

C.S.S.B. 544 contains a provision not included in the original providing, as an alternative, for a court's determination of expenses, fees, and costs to be awarded to a private plaintiff in an action by a private person regarding Medicaid fraud be made after the state settles an action with a defendant that the court determined, after the hearing, was fair, adequate, and reasonable in accordance with provisions of law relating to such a settlement.

C.S.S.B. 544 contains a provision not included in the original limiting the circumstances under which a private person is prohibited from bringing an action relating to Medicaid fraud that is based on certain public disclosure of allegations or transactions in a criminal or civil hearing, unless the person is an original source of the information, to a criminal or civil hearing in which the state or an agent of the state is a party. The substitute contains a provision not included in the original expanding the definition of "original source." The substitute contains a provision not included in the original requiring the court, before dismissing an action by a private person as barred, to give the attorney general an opportunity to oppose the dismissal.

C.S.S.B. 544 contains provisions not included in the original specifying, for purposes of provisions of law prohibiting retaliation against a person in the terms of employment because of a lawful act taken by the person in furtherance of an action regarding Medicaid fraud, that such a person includes an employee, contractor, or agent; including discrimination against the conditions of such a person's employment in the conditions under which the person is entitled to reinstatement and back pay; and including in the lawful acts taken by the person covered in the prohibition against retaliation any efforts taken by the person to stop one or more violations that constitute an unlawful act for purposes of Medicaid fraud.

C.S.S.B. 544 contains a saving provision not included in the original. The substitute differs from the original in conforming and nonsubstantive ways.