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LAW/RWH

[Second Reprint]

SENATE, No. 2534

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED JANUARY 26, 2009

Sponsored by:

Senator BARBARA BUONO

District 18 (Middlesex)

Senator JENNIFER BECK

District 12 (Mercer and Monmouth)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington and Camden)

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblyman MATTHEW W. MILAM

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

Assemblyman Connors, Assemblywoman Greenstein and Assemblyman O'Scanlon

SYNOPSIS

Revises New Jersey False Claims Act to comply with federal Deficit Reduction Act for purposes of entitling State to enhanced recovery in Medicaid fraud cases; establishes an annual reporting requirement for the Attorney General.

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 25, 2009.

(Sponsorship Updated As Of: 1/8/2010)

1 AN ACT concerning the New Jersey False Claims Act and
2 amending ¹and supplementing¹ P.L.2007, c.265.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 5 of P.L.2007, c.265 (C.2A:32C-5) is amended to
8 read as follows:

9 5. a. The Attorney General shall investigate a violation of this
10 act. If the Attorney General finds that a person has violated or is
11 violating this act, the Attorney General may bring a civil action in
12 State or federal court against the person. The Superior Court shall
13 have jurisdiction over a State action brought pursuant to this act.

14 b. A person may bring a civil action for a violation of this act
15 for the person and for the State. Civil actions instituted under this
16 act shall be brought in the name of the State of New Jersey.

17 c. A complaint filed by a person under this act shall remain
18 under seal for at least 60 days and shall not be served on the
19 defendant until the court so orders. Once filed, the action may be
20 voluntarily dismissed by the person bringing the action if the
21 Attorney General gives written consent to the dismissal along with
22 the reason for consenting, and the court approves the dismissal.

23 d. A complaint alleging a false claim filed under this act shall
24 be so designated when filed, in accordance with the Rules
25 Governing the Courts of the State of New Jersey. Immediately
26 upon filing of the complaint, the plaintiff shall serve by registered
27 mail, return receipt requested, the Attorney General with a copy of
28 the complaint and written disclosure of substantially all material
29 evidence and information the person possesses. The Attorney
30 General may elect to intervene and proceed with the action on
31 behalf of the State within 60 days after it receives both the
32 complaint and the material evidence and information.

33 e. **[If a person brings an action under this act and the action is**
34 **based upon the facts underlying a pending investigation by the**
35 **Attorney General, the Attorney General may take over the action on**
36 **behalf of the State. In order to take over the action, the Attorney**
37 **General shall give the person written notification within 30 days**
38 **after notice of the action is served on the Attorney General that the**
39 **Attorney General is conducting an investigation of the facts of the**
40 **action and will take over the action.]** (Deleted by amendment,
41 P.L. , c.) (pending before the Legislature as this bill)

42 f. The Attorney General may, for good cause shown, request
43 that the court extend the time during which the complaint remains

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹**Senate SJU committee amendments adopted February 9, 2009.**

²**Assembly floor amendments adopted June 25, 2009.**

1 under seal. Any such motion may be supported by affidavits or
2 other submissions in camera.

3 g. Before the expiration of the 60-day period or any extensions
4 obtained under subsection f., the Attorney General shall:

5 (1) file a pleading with the court that he intends to proceed with
6 the action, in which case the action is conducted by the Attorney
7 General and the seal shall be lifted; or

8 (2) file a pleading with the court that he declines to proceed
9 with the action, in which case the seal shall be lifted and the person
10 bringing the action shall have the right to conduct the action.

11 h. The defendant's answer to any complaint filed under this act
12 shall be filed in accordance with the Rules Governing the Courts of
13 the State of New Jersey after the complaint is unsealed and served
14 upon the defendant.

15 i. When a person files an action under this act, no other person
16 except the State may intervene or bring a related action based on the
17 facts underlying the pending action.

18 (cf: P.L.2007, c.265, s.5)

19

20 2. Section 8 of P.L.2007, c.265 (C.2A:32C-8) is amended to
21 read as follows:

22 8. a. If the Attorney General initiates an action under this act
23 or assumes control of an action brought by a person under this act,
24 the Attorney General shall be awarded reasonable attorney's fees,
25 expenses, and costs. All such expenses, fees, and costs shall be
26 awarded against the defendant.

27 b. If the court awards proceeds to the person bringing the
28 action under this act, the person shall also be awarded an amount
29 for reasonable attorney's fees, expenses, and costs. **【Payment for**
30 **reasonable attorney's fees, expenses, and costs shall be made from**
31 **the recovered proceeds before the distribution of any award.】** All
32 such expenses, fees, and costs shall be awarded against the
33 defendant.

34 c. If the Attorney General does not proceed with an action
35 under this act and the defendant is the prevailing party, the court
36 may award the defendant reasonable attorney's fees, expenses, and
37 costs against the person bringing the action if the court finds that
38 the claim of the person bringing the action was clearly frivolous,
39 clearly vexatious, or brought primarily for purposes of harassment.

40 d. No liability shall be incurred by the State or the Attorney
41 General for any expenses, attorney's fees, or other costs incurred by
42 any person in bringing or defending an action under this act.

43 (cf: P.L.2007, c.265, s.8)

44

45 3. Section 9 of P.L.2007, c.265 (C.2A:32C-9) is amended to
46 read as follows:

47 9. a. No member of the Legislature, a member of the Judiciary,
48 a senior Executive branch official, or a member of a county or

1 municipal governing body may be civilly liable if the basis for an
2 action is premised on evidence or information known to the State
3 when the action was brought. For purposes of this subsection, the
4 term "senior Executive branch official" means any person employed
5 in the Executive branch of government holding a position having
6 substantial managerial, policy-influencing or policy-executing
7 responsibilities.

8 b. A person may not bring an action under this act based upon
9 allegations or transactions that are the subject of a pending action or
10 administrative proceeding **[in] to which the State is already a party.**

11 c. No action brought under this act shall be based upon the
12 public disclosure of allegations or transactions in a criminal, civil,
13 or administrative hearing, in an investigation, report, hearing or
14 audit conducted by or at the request of the Legislature or by the
15 news media, unless the action is brought by the Attorney General,
16 or unless the person bringing the action is an original source of the
17 information. For purposes of this subsection, the term "original
18 source" means an individual who has direct and independent
19 knowledge of the information on which the allegations are based
20 and has voluntarily provided the information to the State before
21 filing an action under this act based on the information.

22 d. No action may be brought under this act by a present or
23 former employee or agent of the State or any political subdivision
24 thereof when the action is based upon information discovered in any
25 civil, criminal or administrative investigation or audit which
26 investigation or audit was within the scope of the employee's or
27 agent's duties or job description.

28 (cf: P.L.2007, c.265, s.9)

29

30 ¹4. (New section). On the 30th day after the effective date of
31 P.L. ,c. (C.) (pending before the Legislature as this bill) and
32 annually on the anniversary of the effective date of
33 P.L. ,c. (C.)(pending before the Legislature as this bill), the
34 Attorney General, pursuant to section 2 of P.L.1991, c. 164
35 (C.52:14-19.1), shall submit to the Legislature, a report containing
36 the following information:

37 a. The number of cases the Attorney General filed during the
38 previous calendar year under the "New Jersey False Claims Act,"
39 P.L.2007, c.265 (C.2A:32C-1 et seq.);

40 b. The number of cases private individuals filed under the
41 "New Jersey False Claims Act," P.L.2007, c.265 (C.2A:32C-1 et
42 seq.) during the previous calendar year, including those cases that
43 remain under seal, and specifying ²for those cases no longer under
44 seal²:

45 (1) the State or federal courts in which those cases were filed
46 and the number in each courts;

47 (2) the State program or agency that is involved in each case;
48 and

1 (3) ²where the information is available, ² the number of cases
2 filed by private individuals who previously had filed an action
3 based on the same or similar transactions or allegations under the
4 federal False Claims Act or the False Claims Act of another state;

5 c. The amount that was recovered by the State under the “New
6 Jersey False Claims Act,” P.L.2007, c.265 (C.2A:32C-1 et seq.) in
7 settlement, in damages, penalties, and litigation costs, if known, and
8 specifying for each the following:

9 (1) the case number and parties for each case in which there was
10 a recovery;

11 (2) the separate amounts of any funds recovered for damages,
12 penalties, and litigation costs; and

13 (3) the percentage of the recovery and the amount ²[that the
14 State paid] awarded ² to any private person who brought the
15 action. ¹

16

17 ¹[4.] 5. ¹ This act shall take effect immediately.

SENATE, No. 2534

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JANUARY 26, 2009

Sponsored by:

Senator BARBARA BUONO

District 18 (Middlesex)

Senator JENNIFER BECK

District 12 (Mercer and Monmouth)

SYNOPSIS

Revises New Jersey False Claims Act to comply with federal Deficit Reduction Act for purposes of entitling State to enhanced recovery in Medicaid fraud cases.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/10/2009)

S2534 BUONO, BECK

2

1 AN ACT concerning the New Jersey False Claims Act and amending
2 P.L.2007, c.265.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. Section 5 of P.L.2007, c.265 (C.2A:32C-5) is amended to
8 read as follows:

9 5. a. The Attorney General shall investigate a violation of this
10 act. If the Attorney General finds that a person has violated or is
11 violating this act, the Attorney General may bring a civil action in
12 State or federal court against the person. The Superior Court shall
13 have jurisdiction over a State action brought pursuant to this act.

14 b. A person may bring a civil action for a violation of this act
15 for the person and for the State. Civil actions instituted under this
16 act shall be brought in the name of the State of New Jersey.

17 c. A complaint filed by a person under this act shall remain
18 under seal for at least 60 days and shall not be served on the
19 defendant until the court so orders. Once filed, the action may be
20 voluntarily dismissed by the person bringing the action if the
21 Attorney General gives written consent to the dismissal along with
22 the reason for consenting, and the court approves the dismissal.

23 d. A complaint alleging a false claim filed under this act shall be
24 so designated when filed, in accordance with the Rules Governing
25 the Courts of the State of New Jersey. Immediately upon filing of
26 the complaint, the plaintiff shall serve by registered mail, return
27 receipt requested, the Attorney General with a copy of the
28 complaint and written disclosure of substantially all material
29 evidence and information the person possesses. The Attorney
30 General may elect to intervene and proceed with the action on
31 behalf of the State within 60 days after it receives both the
32 complaint and the material evidence and information.

33 e. **[If a person brings an action under this act and the action is**
34 **based upon the facts underlying a pending investigation by the**
35 **Attorney General, the Attorney General may take over the action on**
36 **behalf of the State. In order to take over the action, the Attorney**
37 **General shall give the person written notification within 30 days**
38 **after notice of the action is served on the Attorney General that the**
39 **Attorney General is conducting an investigation of the facts of the**
40 **action and will take over the action.]** (Deleted by amendment,
41 P.L. , c.) (pending before the Legislature as this bill)

42 f. The Attorney General may, for good cause shown, request that
43 the court extend the time during which the complaint remains under
44 seal. Any such motion may be supported by affidavits or other
45 submissions in camera.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 g. Before the expiration of the 60-day period or any extensions
2 obtained under subsection f., the Attorney General shall:

3 (1) file a pleading with the court that he intends to proceed with
4 the action, in which case the action is conducted by the Attorney
5 General and the seal shall be lifted; or

6 (2) file a pleading with the court that he declines to proceed with
7 the action, in which case the seal shall be lifted and the person
8 bringing the action shall have the right to conduct the action.

9 h. The defendant's answer to any complaint filed under this act
10 shall be filed in accordance with the Rules Governing the Courts of
11 the State of New Jersey after the complaint is unsealed and served
12 upon the defendant.

13 i. When a person files an action under this act, no other person
14 except the State may intervene or bring a related action based on the
15 facts underlying the pending action.

16 (cf: P.L.2007, c.265, s.5)

17

18 2. Section 8 of P.L.2007, c.265 (C.2A:32C-8) is amended to
19 read as follows:

20 8. a. If the Attorney General initiates an action under this act or
21 assumes control of an action brought by a person under this act, the
22 Attorney General shall be awarded reasonable attorney's fees,
23 expenses, and costs. All such expenses, fees, and costs shall be
24 awarded against the defendant.

25 b. If the court awards proceeds to the person bringing the action
26 under this act, the person shall also be awarded an amount for
27 reasonable attorney's fees, expenses, and costs. [Payment for
28 reasonable attorney's fees, expenses, and costs shall be made from
29 the recovered proceeds before the distribution of any award.] All
30 such expenses, fees, and costs shall be awarded against the
31 defendant.

32 c. If the Attorney General does not proceed with an action under
33 this act and the defendant is the prevailing party, the court may
34 award the defendant reasonable attorney's fees, expenses, and costs
35 against the person bringing the action if the court finds that the
36 claim of the person bringing the action was clearly frivolous,
37 clearly vexatious, or brought primarily for purposes of harassment.

38 d. No liability shall be incurred by the State or the Attorney
39 General for any expenses, attorney's fees, or other costs incurred by
40 any person in bringing or defending an action under this act.

41 (cf: P.L.2007, c.265, s.8)

42

43 3. Section 9 of P.L.2007, c.265 (C.2A:32C-9) is amended to
44 read as follows:

45 9. a. No member of the Legislature, a member of the Judiciary,
46 a senior Executive branch official, or a member of a county or
47 municipal governing body may be civilly liable if the basis for an
48 action is premised on evidence or information known to the State

1 when the action was brought. For purposes of this subsection, the
2 term "senior Executive branch official" means any person employed
3 in the Executive branch of government holding a position having
4 substantial managerial, policy-influencing or policy-executing
5 responsibilities.

6 b. A person may not bring an action under this act based upon
7 allegations or transactions that are the subject of a pending action or
8 administrative proceeding **[in]** to which the State is already a party.

9 c. No action brought under this act shall be based upon the
10 public disclosure of allegations or transactions in a criminal, civil,
11 or administrative hearing, in an investigation, report, hearing or
12 audit conducted by or at the request of the Legislature or by the
13 news media, unless the action is brought by the Attorney General,
14 or unless the person bringing the action is an original source of the
15 information. For purposes of this subsection, the term "original
16 source" means an individual who has direct and independent
17 knowledge of the information on which the allegations are based
18 and has voluntarily provided the information to the State before
19 filing an action under this act based on the information.

20 d. No action may be brought under this act by a present or
21 former employee or agent of the State or any political subdivision
22 thereof when the action is based upon information discovered in any
23 civil, criminal or administrative investigation or audit which
24 investigation or audit was within the scope of the employee's or
25 agent's duties or job description.

26 (cf: P.L.2007, c.265, s.9)

27

28 4. This act shall take effect immediately.

29

30

31

STATEMENT

32

33 This bill amends the New Jersey False Claims Act to bring it into
34 compliance with the federal Deficit Reduction Act for purposes of
35 entitling the State to enhanced recovery in Medicaid fraud cases.

36 Under the federal Deficit Reduction Act, a state is entitled to
37 enhanced recovery in Medicaid fraud cases if the state's false
38 claims act is at least as effective in rewarding and facilitating *qui*
39 *tam* actions as the federal False Claims Act. Generally, a *qui tam*
40 action allows a private individual, with knowledge of a fraud
41 committed against the government, to bring a suit against the
42 alleged wrongdoer in the name of the government.

43 The New Jersey False Claims Act was reviewed by the Office of
44 Inspector General (OIG) of the U.S. Department of Health and
45 Human Services in consultation with the Department of Justice.
46 The OIG found three provisions of the New Jersey False Claims Act
47 related to *qui tam* actions to be deficient because they were not at
48 least as effective as the federal law in rewarding and facilitating *qui*

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5

1 *tam* actions. This bill amends the New Jersey False Claims Act to
2 address those three provisions.

3 Specifically, the bill deletes language enabling the Attorney
4 General to take over a *qui tam* action that is based upon facts
5 underlying a pending Attorney General investigation. The bill also
6 amends language related to the award of attorney's fees and other
7 costs so that a person bringing a *qui tam* action may collect such
8 expenses as an award against the defendant. Additionally, the bill
9 precludes the initiation of *qui tam* actions based upon allegations or
10 transactions that are the subject of a pending action or
11 administrative proceeding to which the State is already a party.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2534

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 9, 2009

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2534.

This bill amends the New Jersey False Claims Act to bring it into compliance with the federal Deficit Reduction Act for purposes of entitling the State to enhanced recovery in Medicaid fraud cases.

Under the federal Deficit Reduction Act, a state is entitled to enhanced recovery in Medicaid fraud cases if the state's false claims act is at least as effective in rewarding and facilitating *qui tam* actions as the federal False Claims Act. Generally, a *qui tam* action allows a private individual, with knowledge of a fraud committed against the government, to bring a suit against the alleged wrongdoer in the name of the government.

The New Jersey False Claims Act, P.L. 2007, c. 265, was reviewed by the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services in consultation with the Department of Justice.

The OIG found three provisions of the New Jersey False Claims Act related to *qui tam* actions to be deficient because they were not at least as effective as the federal law in rewarding and facilitating *qui tam* actions. This bill amends the New Jersey False Claims Act to address those three provisions as follows:

- 1) Deletes language in section 1 enabling the Attorney General to take over a *qui tam* action that is based upon facts underlying a pending Attorney General investigation;

- 2) Amends language in section 2 related to the award of attorney's fees and other costs so that a person bringing a *qui tam* action may collect such expenses as an award against the defendant; and

- 3) Precludes in section 3 the initiation of *qui tam* actions based upon allegations or transactions that are the subject of a pending action or administrative proceeding to which the State is already a party.

The committee amended the bill to provide for a reporting requirement whereby the Attorney General would submit an annual report to the Legislature concerning cases filed under New Jersey's False Claim Act, N.J.S.A.2A:32C-1.

The amendments require the report contain the following information:

a. The number of cases the Attorney General filed during the previous calendar year under New Jersey's False Claims Act N.J.S.A. 2A:32C-1 et seq.;

b. The number of cases private individuals filed during the previous calendar year, including those cases that remain under seal, and specifying: (1) where filed; (2) the State program or agency that is involved in each case; and (3) the number of cases filed by private individuals who previously had filed an action based on the same or similar transactions or allegations;

c. The amount recovered by the State under the "New Jersey False Claims Act," N.J.S.A.2A:32C-1 et seq. in settlement, in damages, penalties, and litigation costs, if known, and specifying for each the following:

(1) the case number and parties for each case in which there was a recovery;

(2) the separate amounts of any funds recovered for damages, penalties, and litigation costs; and

(3) the percentage of the recovery and the amount that the State paid to any private person who brought the action.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2534

STATE OF NEW JERSEY

DATED: MAY 11, 2009

The Assembly Judiciary Committee reports favorably Senate Bill No. 2534(1R).

This bill amends the New Jersey False Claims Act to bring it into compliance with the federal Deficit Reduction Act for purposes of entitling the State to enhanced recovery in Medicaid fraud cases.

Under the federal Deficit Reduction Act, a state is entitled to enhanced recovery in Medicaid fraud cases if the state's false claims act is at least as effective in rewarding and facilitating *qui tam* actions as the federal False Claims Act. Generally, a *qui tam* action allows a private individual, with knowledge of a fraud committed against the government, to bring a suit against the alleged wrongdoer in the name of the government.

The New Jersey False Claims Act, P.L.2007, c.265 (C.2A:32C-1 et seq.), was reviewed by the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services in consultation with the Department of Justice.

The OIG found three provisions of the New Jersey False Claims Act related to *qui tam* actions to be deficient because they were not at least as effective as the federal law in rewarding and facilitating *qui tam* actions. This bill amends the New Jersey False Claims Act to address those three provisions as follows:

1) Deletes language in section 1 enabling the Attorney General to take over a *qui tam* action that is based upon facts underlying a pending Attorney General investigation;

2) Amends language in section 2 related to the award of attorney's fees and other costs so that a person bringing a *qui tam* action may collect such expenses as an award against the defendant; and

3) Precludes in section 3 the initiation of *qui tam* actions based upon allegations or transactions that are the subject of a pending action or administrative proceeding to which the State is already a party.

The bill provides that the Attorney General is required to submit an annual report to the Legislature concerning cases filed under New Jersey's False Claim Act. The report would be required to contain the following information:

a. The number of cases the Attorney General filed during the previous calendar year under the act;

b. The number of cases private individuals filed during the previous calendar year, including those cases that remain under seal, and specifying: (1) where filed; (2) the State program or agency that is involved in each case; and (3) the number of cases filed by private individuals who previously had filed an action based on the same or similar transactions or allegations;

c. The amount recovered by the State under the act in settlement, in damages, penalties, and litigation costs, if known, and specifying for each the following:

(1) the case number and parties for each case in which there was a recovery;

(2) the separate amounts of any funds recovered for damages, penalties, and litigation costs; and

(3) the percentage of the recovery and the amount that the State paid to any private person who brought the action.

STATEMENT TO
[First Reprint]
SENATE, No. 2534

with Assembly Floor Amendments
(Proposed by Assemblyman CONAWAY)

ADOPTED: JUNE 25, 2009

This bill amends the New Jersey False Claims Act to bring it into compliance with the federal Deficit Reduction Act for purposes of entitling the State to enhanced recovery in Medicaid fraud cases.

The bill also establishes reporting requirements for the Attorney General concerning cases filed under the act. These floor amendments provide that the reporting requirement would apply only to those cases no longer under seal. Under the act, cases are sealed for at least 60 days to allow the Attorney General to determine whether criminal conduct is involved and, if warranted, conduct a criminal investigation.

In addition, the bill provides that the Attorney General would report the number of cases filed by private individuals who previously had filed an action based on the same or similar transactions or allegations under the federal False Claims Act or the False Claims Act of another state. These amendments provide that the reporting requirement would apply only where this information is available.

Finally, the amendments correct a reference concerning private plaintiffs. Currently, the bill refers to a reporting requirement concerning “the amount that the State paid” to such plaintiffs. The amendments change this language to “the amount awarded” to the plaintiffs.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2534 STATE OF NEW JERSEY 213th LEGISLATURE

DATED: MARCH 2, 2009

SUMMARY

- Synopsis:** Revises New Jersey False Claims Act to comply with federal Deficit Reduction Act for purposes of entitling State to enhanced recovery in Medicaid fraud cases; establishes an annual reporting requirement for the Attorney General.
- Type of Impact:** Indeterminate. General Fund.
- Agencies Affected:** Department of Law and Public Safety; Office of the Attorney General; Medicaid Fraud Unit.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate - See comments below		
State Revenue	Indeterminate - See comments below		

- The Office of Legislative Services (OLS) finds the costs and potential revenues associated with this bill are indeterminate. It is the understanding of OLS, however, that by enacting this bill it will entitle the State to additional revenues from Medicaid fraud cases. Conversely, the Office of the Attorney General will be required to file an annual report regarding the cases filed under the “New Jersey False Claims Act.”
- Revises New Jersey False Claims Act to comply with federal Deficit Reduction Act for purposes of entitling State to enhanced recovery in Medicaid fraud cases.
- Establishes an annual reporting requirement for the Attorney General.

BILL DESCRIPTION

Senate Bill No. 2534 (1R) of 2009 amends the New Jersey False Claims Act to bring it into compliance with the federal Deficit Reduction Act for purposes of entitling the State to increase revenues in Medicaid fraud cases.

Under the federal Deficit Reduction Act, a state is entitled to enhanced recovery in Medicaid fraud cases if the state's false claims act is at least as effective in rewarding and facilitating qui tam actions as the federal False Claims Act. Generally, a qui tam action is a law which allows a private individual, with knowledge of a fraud committed against the government, to bring a suit against the alleged wrongdoer in the name of the government.

The New Jersey False Claims Act was recently reviewed by the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services in consultation with the Department of Justice and it was found that the New Jersey Act was lacking in certain areas in which to meet the federal guidelines.

Additionally, the bill would require an annual reporting requirement whereby the Attorney General would submit an annual report to the Legislature concerning cases filed under New Jersey's False Claim Act, N.J.S.A.2A:32C-1.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds the costs and potential revenues associated with this bill are indeterminate. It is the understanding of OLS however, that by enacting this bill it will entitle the State to additional revenue from Medicaid fraud cases. Conversely, the Office of the Attorney General will be required to file an annual report regarding the cases filed under the "New Jersey False Claims Act."

As of 2008, the Medicaid Fraud Unit's annual budget was \$4.450 million with 36 employees. According to the Department of Law and Public Safety, in 2007, the Medicaid Fraud Unit indicted or convicted 22 defendants and collected \$4.2 million in restitution, civil fines and criminal fines.

Section: Law and Public Safety
Analyst: Kristin A. Brunner
Senior Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-1 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2534

STATE OF NEW JERSEY 213th LEGISLATURE

DATED: JANUARY 12, 2010

SUMMARY

- Synopsis:** Revises New Jersey False Claims Act to comply with federal Deficit Reduction Act for purposes of entitling State to enhanced recovery in Medicaid fraud cases; establishes an annual reporting requirement for the Attorney General.
- Type of Impact:** Indeterminate. General Fund
- Agencies Affected:** Department of Law and Public Safety; Office of the Attorney General; Medicaid Fraud Unit.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below		
State Revenue	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) finds the costs and potential revenues associated with this bill are indeterminate. It is the understanding of OLS, however, that by enacting this bill it will entitle the State to additional revenues from Medicaid fraud cases. Conversely, the Office of the Attorney General will be required to file an annual report regarding the cases filed under the “New Jersey False Claims Act.”
- Revises New Jersey False Claims Act to comply with federal Deficit Reduction Act for purposes of entitling State to enhanced recovery in Medicaid fraud cases.
- Establishes an annual reporting requirement for the Attorney General.

BILL DESCRIPTION

Senate Bill No. 2534 (2R) of 2009 amends the New Jersey False Claims Act to bring it into compliance with the federal Deficit Reduction Act for purposes of entitling the State to increase revenues in Medicaid fraud cases.

Under the federal Deficit Reduction Act, a state is entitled to enhanced recovery in Medicaid fraud cases if the state's false claims act is at least as effective in rewarding and facilitating qui tam actions as the federal False Claims Act. A qui tam action is a law which allows a private individual, with knowledge of a fraud committed against the government, to bring a suit against the alleged wrongdoer in the name of the government.

The New Jersey False Claims Act was recently reviewed by the Office of Inspector General of the U.S. Department of Health and Human Services, in consultation with the Department of Justice, and it was found that the provisions of the New Jersey False Claims Act did not fully conform with federal guidelines.

Additionally, the bill would require the Attorney General to submit an annual report to the Legislature concerning cases filed under New Jersey's False Claim Act, N.J.S.A.2A:32C-1.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds the costs and potential revenues associated with this bill are indeterminate. It is the understanding of OLS, however, that by enacting this bill it will entitle the State to additional revenue from Medicaid fraud cases. Additionally, the Office of the Attorney General will be required to file an annual report regarding the cases filed under the "New Jersey False Claims Act."

As of 2008, the Medicaid Fraud Unit's annual budget was \$4.450 million with 36 employees. According to the 2008 Annual Report of the New Jersey Office of the Insurance Fraud Prosecutor, New Jersey investigated 334 Medicaid fraud cases in 2008. Additionally, the report noted that in 2008, OIFP's Medicaid Fraud Control Unit recouped \$32.2 million for New Jersey's Medicaid program from federal False Claims Act settlements. As portions of these settlements are returned to the federal program, \$15.2 million was noted as New Jersey's share of the settlement.

Section: Law and Public Safety
Analyst: Kristin A. Brunner
Senior Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 3731

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 9, 2009

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington and Camden)

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblyman MATTHEW W. MILAM

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

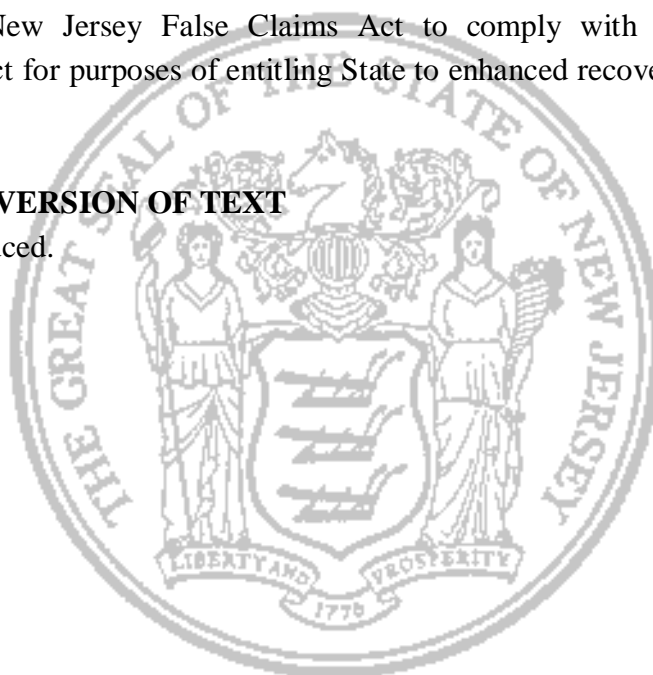
Assemblyman Connors

SYNOPSIS

Revises New Jersey False Claims Act to comply with federal Deficit Reduction Act for purposes of entitling State to enhanced recovery in Medicaid fraud cases.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/6/2009)

1 AN ACT concerning the New Jersey False Claims Act and amending
2 P.L.2007, c.265.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 5 of P.L.2007, c.265 (C.2A:32C-5) is amended to
8 read as follows:

9 5. a. The Attorney General shall investigate a violation of this
10 act. If the Attorney General finds that a person has violated or is
11 violating this act, the Attorney General may bring a civil action in
12 State or federal court against the person. The Superior Court shall
13 have jurisdiction over a State action brought pursuant to this act.

14 b. A person may bring a civil action for a violation of this act
15 for the person and for the State. Civil actions instituted under this
16 act shall be brought in the name of the State of New Jersey.

17 c. A complaint filed by a person under this act shall remain
18 under seal for at least 60 days and shall not be served on the
19 defendant until the court so orders. Once filed, the action may be
20 voluntarily dismissed by the person bringing the action if the
21 Attorney General gives written consent to the dismissal along with
22 the reason for consenting, and the court approves the dismissal.

23 d. A complaint alleging a false claim filed under this act shall
24 be so designated when filed, in accordance with the Rules
25 Governing the Courts of the State of New Jersey. Immediately
26 upon filing of the complaint, the plaintiff shall serve by registered
27 mail, return receipt requested, the Attorney General with a copy of
28 the complaint and written disclosure of substantially all material
29 evidence and information the person possesses. The Attorney
30 General may elect to intervene and proceed with the action on
31 behalf of the State within 60 days after it receives both the
32 complaint and the material evidence and information.

33 e. **[If a person brings an action under this act and the action is**
34 **based upon the facts underlying a pending investigation by the**
35 **Attorney General, the Attorney General may take over the action on**
36 **behalf of the State. In order to take over the action, the Attorney**
37 **General shall give the person written notification within 30 days**
38 **after notice of the action is served on the Attorney General that the**
39 **Attorney General is conducting an investigation of the facts of the**
40 **action and will take over the action.]** (Deleted by amendment,
41 P.L. , c.) (pending before the Legislature as this bill)

42 f. The Attorney General may, for good cause shown, request
43 that the court extend the time during which the complaint remains
44 under seal. Any such motion may be supported by affidavits or
45 other submissions in camera.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 g. Before the expiration of the 60-day period or any extensions
2 obtained under subsection f., the Attorney General shall:

3 (1) file a pleading with the court that he intends to proceed with
4 the action, in which case the action is conducted by the Attorney
5 General and the seal shall be lifted; or

6 (2) file a pleading with the court that he declines to proceed
7 with the action, in which case the seal shall be lifted and the person
8 bringing the action shall have the right to conduct the action.

9 h. The defendant's answer to any complaint filed under this act
10 shall be filed in accordance with the Rules Governing the Courts of
11 the State of New Jersey after the complaint is unsealed and served
12 upon the defendant.

13 i. When a person files an action under this act, no other person
14 except the State may intervene or bring a related action based on the
15 facts underlying the pending action.

16 (cf: P.L.2007, c.265, s.5)

17

18 2. Section 8 of P.L.2007, c.265 (C.2A:32C-8) is amended to
19 read as follows:

20 8. a. If the Attorney General initiates an action under this act
21 or assumes control of an action brought by a person under this act,
22 the Attorney General shall be awarded reasonable attorney's fees,
23 expenses, and costs. All such expenses, fees, and costs shall be
24 awarded against the defendant.

25 b. If the court awards proceeds to the person bringing the
26 action under this act, the person shall also be awarded an amount
27 for reasonable attorney's fees, expenses, and costs. [Payment for
28 reasonable attorney's fees, expenses, and costs shall be made from
29 the recovered proceeds before the distribution of any award.] All
30 such expenses, fees, and costs shall be awarded against the
31 defendant.

32 c. If the Attorney General does not proceed with an action
33 under this act and the defendant is the prevailing party, the court
34 may award the defendant reasonable attorney's fees, expenses, and
35 costs against the person bringing the action if the court finds that
36 the claim of the person bringing the action was clearly frivolous,
37 clearly vexatious, or brought primarily for purposes of harassment.

38 d. No liability shall be incurred by the State or the Attorney
39 General for any expenses, attorney's fees, or other costs incurred by
40 any person in bringing or defending an action under this act.

41 (cf: P.L.2007, c.265, s.8)

42

43 3. Section 9 of P.L.2007, c.265 (C.2A:32C-9) is amended to
44 read as follows:

45 9. a. No member of the Legislature, a member of the Judiciary,
46 a senior Executive branch official, or a member of a county or
47 municipal governing body may be civilly liable if the basis for an
48 action is premised on evidence or information known to the State

1 when the action was brought. For purposes of this subsection, the
2 term "senior Executive branch official" means any person employed
3 in the Executive branch of government holding a position having
4 substantial managerial, policy-influencing or policy-executing
5 responsibilities.

6 b. A person may not bring an action under this act based upon
7 allegations or transactions that are the subject of a pending action or
8 administrative proceeding **[in]** to which the State is already a party.

9 c. No action brought under this act shall be based upon the
10 public disclosure of allegations or transactions in a criminal, civil,
11 or administrative hearing, in an investigation, report, hearing or
12 audit conducted by or at the request of the Legislature or by the
13 news media, unless the action is brought by the Attorney General,
14 or unless the person bringing the action is an original source of the
15 information. For purposes of this subsection, the term "original
16 source" means an individual who has direct and independent
17 knowledge of the information on which the allegations are based
18 and has voluntarily provided the information to the State before
19 filing an action under this act based on the information.

20 d. No action may be brought under this act by a present or
21 former employee or agent of the State or any political subdivision
22 thereof when the action is based upon information discovered in any
23 civil, criminal or administrative investigation or audit which
24 investigation or audit was within the scope of the employee's or
25 agent's duties or job description.

26 (cf: P.L.2007, c.265, s.9)

27

28 4. This act shall take effect immediately.

29

30

31

STATEMENT

32

33 This bill amends the New Jersey False Claims Act to bring it into
34 compliance with the federal Deficit Reduction Act for purposes of
35 entitling the State to enhanced recovery in Medicaid fraud cases.

36 Under the federal Deficit Reduction Act, a state is entitled to
37 enhanced recovery in Medicaid fraud cases if the state's false
38 claims act is at least as effective in rewarding and facilitating *qui*
39 *tam* actions as the federal False Claims Act. Generally, a *qui tam*
40 action allows a private individual, with knowledge of a fraud
41 committed against the government, to bring a suit against the
42 alleged wrongdoer in the name of the government.

43 The New Jersey False Claims Act was reviewed by the Office of
44 Inspector General (OIG) of the U.S. Department of Health and
45 Human Services in consultation with the Department of Justice.
46 The OIG found three provisions of the New Jersey False Claims Act
47 related to *qui tam* actions to be deficient because they were not at
48 least as effective as the federal law in rewarding and facilitating *qui*

1 *tam* actions. This bill amends the New Jersey False Claims Act to
2 address those three provisions.

3 Specifically, the bill deletes language enabling the Attorney
4 General to take over a *qui tam* action that is based upon facts
5 underlying a pending Attorney General investigation. The bill also
6 amends language related to the award of attorney's fees and other
7 costs so that a person bringing a *qui tam* action may collect such
8 expenses as an award against the defendant. Additionally, the bill
9 precludes the initiation of *qui tam* actions based upon allegations or
10 transactions that are the subject of a pending action or
11 administrative proceeding to which the State is already a party.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3731

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 11, 2009

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 3731.

This bill amends the New Jersey False Claims Act to bring it into compliance with the federal Deficit Reduction Act for purposes of entitling the State to enhanced recovery in Medicaid fraud cases.

Under the federal Deficit Reduction Act, a state is entitled to enhanced recovery in Medicaid fraud cases if the state's false claims act is at least as effective in rewarding and facilitating *qui tam* actions as the federal False Claims Act. Generally, a *qui tam* action allows a private individual, with knowledge of a fraud committed against the government, to bring a suit against the alleged wrongdoer in the name of the government.

The New Jersey False Claims Act was reviewed by the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services in consultation with the Department of Justice. The OIG found three provisions of the New Jersey False Claims Act related to *qui tam* actions to be deficient because they were not at least as effective as the federal law in rewarding and facilitating *qui tam* actions. This bill amends the New Jersey False Claims Act to address those three provisions.

Specifically, the bill deletes language enabling the Attorney General to take over a *qui tam* action that is based upon facts underlying a pending Attorney General investigation. The bill also amends language related to the award of attorney's fees and other costs so that a person bringing a *qui tam* action may collect such expenses as an award against the defendant. Additionally, the bill precludes the initiation of *qui tam* actions based upon allegations or transactions that are the subject of a pending action or administrative proceeding to which the State is already a party.

The committee amendments make this bill identical to Senate Bill No. 2534(1R), which the committee is also releasing today.

COMMITTEE AMENDMENTS

(1) The amendments require the Attorney General to submit an annual report to the Legislature concerning cases filed under the New

Jersey False Claims Act. The report would be required to contain the following information:

a. The number of cases the Attorney General filed during the previous calendar year under the act;

b. The number of cases private individuals filed during the previous calendar year, including those cases that remain under seal, and specifying: (1) where filed; (2) the State program or agency that is involved in each case; and (3) the number of cases filed by private individuals who previously had filed an action based on the same or similar transactions or allegations;

c. The amount recovered by the State under the act in settlement, in damages, penalties, and litigation costs, if known, and specifying for each the following:

(1) the case number and parties for each case in which there was a recovery;

(2) the separate amounts of any funds recovered for damages, penalties, and litigation costs; and

(3) the percentage of the recovery and the amount that the State paid to any private person who brought the action.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3731

with Assembly Floor Amendments
(Proposed by Assemblyman CONAWAY)

ADOPTED: JUNE 25, 2009

This bill amends the New Jersey False Claims Act to bring it into compliance with the federal Deficit Reduction Act for purposes of entitling the State to enhanced recovery in Medicaid fraud cases.

The bill also establishes reporting requirements for the Attorney General concerning cases filed under the act. These floor amendments provide that the reporting requirement would apply only to those cases no longer under seal. Under the act, cases are sealed for at least 60 days to allow the Attorney General to determine whether criminal conduct is involved and, if warranted, conduct a criminal investigation.

In addition, the bill provides that the Attorney General would report the number of cases filed by private individuals who previously had filed an action based on the same or similar transactions or allegations under the federal False Claims Act or the False Claims Act of another state. These amendments provide that the reporting requirement would apply only where this information is available.

Finally, the amendments correct a reference concerning private plaintiffs. Currently, the bill refers to a reporting requirement concerning “the amount that the State paid” to such plaintiffs. The amendments change this language to “the amount awarded” to the plaintiffs.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 3731
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: APRIL 13, 2009

SUMMARY

- Synopsis:** Revises New Jersey False Claims Act to comply with federal Deficit Reduction Act for purposes of entitling State to enhanced recovery in Medicaid fraud cases.
- Type of Impact:** Indeterminate. General Fund.
- Agencies Affected:** Department of Law and Public Safety; Office of the Attorney General; Medicaid Fraud Unit.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate - See comments below		
State Revenue	Indeterminate - See comments below		

- The Office of Legislative Services (OLS) finds the costs and potential revenues associated with this bill are indeterminate. It is the understanding of OLS, however, that by enacting this bill it will entitle the State to additional revenues from Medicaid fraud cases.
- Revises New Jersey False Claims Act to comply with federal Deficit Reduction Act for purposes of entitling State to enhanced recovery in Medicaid fraud cases.

BILL DESCRIPTION

Assembly Bill No. 3731 of 2009 amends the New Jersey False Claims Act to bring it into compliance with the federal Deficit Reduction Act for purposes of entitling the State to increase revenues in Medicaid fraud cases.

Under the federal Deficit Reduction Act, a state is entitled to enhanced recovery in Medicaid fraud cases if the state's false claims act is at least as effective in rewarding and facilitating qui tam actions as the federal False Claims Act. Generally, a qui tam action is a law which allows a private individual, with knowledge of a fraud committed against the government, to bring a suit against the alleged wrongdoer in the name of the government.

The New Jersey False Claims Act was recently reviewed by the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services in consultation with the Department of Justice and it was found that the New Jersey Act was lacking in certain areas in which to meet the federal guidelines.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds the costs and potential revenues associated with this bill are indeterminate. It is the understanding of OLS however; that by enacting this bill it will entitle the State to additional revenue from Medicaid fraud cases.

As of 2008, the Medicaid Fraud Unit's annual budget was \$4.450 million with 36 employees. According to the Department of Law and Public Safety, in 2007, the Medicaid Fraud Unit indicted or convicted 22 defendants and collected \$4.2 million in restitution, civil fines and criminal fines.

Section: Law and Public Safety
Analyst: Kristin A. Brunner
Senior Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C. 52:13B-1 et seq.).