



Senate Fiscal Agency
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BILL



ANALYSIS

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House Bill 5492 (as reported without amendment)
 Sponsor: Representative Gerald Law
 House Committee: Insurance
 Senate Committee: Financial Services

Date Completed: 5-13-96

RATIONALE

Under the Health Care False Claim Act, it is a felony knowingly to present a false claim for health care benefits, to solicit or offer a kickback in connection with payments by a health insurer, and to participate in a conspiracy to defraud a health insurer. A convicted offender is subject to a fine and/or imprisonment, and maybe ordered to make restitution to a health care corporation or health care insurer. The Act was created to help in the investigation and prosecution of cases of fraudulent medical claims and the fraudulent provision of unnecessary medical services. Reportedly, a special unit created by Blue Cross and Blue Shield of Michigan to root out and prevent fraudulent claims has, in recent years, recouped over \$40 million and avoided over \$80 million in false health benefits claims. The company also has a toll-free hot line for people to report suspected fraud. It has been suggested that civil immunity for those cooperating in an investigation would be an additional tool to fight fraud. The Legislature recently passed Public Act 276 of 1995, which deals with insurance fraud in a more comprehensive manner. That Act contains provisions granting immunity from civil liability for certain kinds of activity, such as providing information or evidence of suspected fraud and cooperating with investigations by law enforcement agencies and other organizations. Some people believe that a similar immunity provision should be included in the Health Care False Claim Act.

CONTENT

The bill would amend the Health Care False Claim Act to specify that a person would not be subject to civil liability for providing information, investigating, or cooperating with an investigation or examination under the Act, if he or she acted in good faith.

Proposed MCL 752.1008a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

An immunity provision to protect insurance companies and others from lawsuits when engaged in good faith efforts to prevent or detect fraud would be an additional useful tool in those efforts. The bill would grant immunity from civil liability for people and organizations that, acting in good faith, investigated health care fraud, provided information relevant to investigations, or otherwise cooperated with investigations. This would be consistent with the immunity provisions in the recently enacted general insurance fraud law. Providing immunity from lawsuits would aid in the fight against health care insurance fraud. Granting immunity also would reduce the costs associated with antifraud efforts by eliminating retaliatory lawsuits by targets of investigations, and would alleviate the fear of lawsuits that can inhibit cooperation with fraud investigations.

Opposing Argument

The immunity provision in the bill is not identical to that contained in Public Act 276 of 1995. Under that Act, immunity is provided for a variety of activities to a person or entity acting "in the absence of malice".

Response: According to testimony before the Senate Financial Services Committee, the "absence of malice" standard is more vague than the bill's "good faith" standard. Apparently, the

meaning of “malice” in this context is more elusive, while “good faith” would encompass the activities envisioned as deserving of immunity from liability in connection with health care fraud investigations.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact. While it is clear that fraudulent activities do occur at a variety of levels in the aggregate health care industry, there is no apparent research that would indicate how much additional fraud would be uncovered as a result of a statutory “immunity provision” as is contemplated in this bill.

Fiscal Analyst: J. Walker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.