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## **Most False Claims Act Cases are Legitimate: Concerns over Frivolous Suits Unfounded**

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### *New Federal Law Could Mean Millions for Missouri*

The Federal budget, recently signed by President Bush, includes an incentive for states to pass a version of the Federal False Claims Act (FCA). States now have the opportunity to increase their portion of settlements by receiving an additional 10 percentage points of the federal share.<sup>1</sup> This incentive could mean significant additional money for the state based on estimates as high as \$575<sup>2</sup> million annually in provider fraud in the Missouri Medicaid program.

These new provisions were added to help the states fight the problem of provider fraud, and based on the success of the act at the Federal level it is the most important tool Missouri can implement to help insure Medicaid is truly free of fraud. *"Over the past 20 years, I've seen whistleblowers use the False Claims Act to recover more than \$17 billion in tax dollars. With these new provisions, the False Claims Act is evolving to help fight fraud, waste and abuse for another 20 years and beyond."* - Sen. Charles Grassley (R-IA)

The Missouri Senate has started to address provider fraud and has established a Special Committee to Investigate Medicaid Fraud, chaired by Senator Chris Koster. He has indicated the possibility of enacting False Claims Act legislation. In its first hearing the Committee heard testimony from at least one state which has already implemented an FCA. Texas has been using the act for some time and is seeing more than a 13:1 return on investment.

### *Protections Against Frivolous Cases*

Legislators at the state level are being approached by providers concerned that they will get caught up in frivolous suits filed by disgruntled employees. However, it is unlikely that such cases, if filed, would move forward.

According to legal experts at the national organization Taxpayers Against Fraud, frivolous cases are rare. Among the reasons:

- Attorneys only take False Claims cases if they believe the claim is valid and has a good chance of prevailing if and when the case is properly investigated.
- Most states require the cases to be reviewed by the Attorney General's office. The AG will discourage those who have filed weak or problematic cases from moving forward.
- After review by the AG, the state division that has been defrauded must complete an internal investigation and indicate it wants the case to move forward.
- The case must remain under seal until all of these steps are taken; the provider under investigation will not know of the developments until that time.
- The Federal FCA and most state FCAs include provisions that allow all legal costs to be repaid to the provider in the event of a frivolous claim. No such claims have ever been paid at the Federal level.

This process provides several layers of protection against potentially frivolous suits. Providers conducting business within the boundaries of their contractual arrangements with the state need not be uneasy about the False Claims Act.

Some providers are concerned that they will be subject to additional suits due to internal billing or payment problems that may seem to be fraud. Fortunately, the Payment Integrity system in place within the Division of Medical Services already has policies in place for reconciling billing errors. Most providers are aware such policies exist.

It is important to note that not all FCA cases result in settlements against providers. While some cases are not considered frivolous, they may not result in a judgment because of insufficient evidence or the agency in question may decline to pursue the claim.

A state version of the FCA can significantly reduce waste, fraud and abuse. Passing a False Claims Act in Missouri will address concerns voiced by the Governor and legislative leaders about money lost to fraud in the Medicaid program. If enacted, an FCA would likely result in recouping \$12 for every dollar the state invests.

The Missouri Budget Project urges legislators to enact a state version of the False Claims Act. This will give Missouri a major tool to more effectively prosecute Medicaid provider fraud. The millions that could be recovered would help ensure that the Medicaid program can serve the children, elderly and disabled of our state as it is intended.<sup>3</sup>

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<sup>1</sup> Section 1909(b) of the Social Security Act, 42 U.S.C. sub section 1396(b) as enacted by section 6031 of the Deficit Reduction Act, 2006.

<sup>2</sup> Kansas City Star, December 21, 2005.

<sup>3</sup> Additional information provided by TAF Education Fund, Patrick Burns Esq., 2006.