SESSION OF 2014

CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 271

As Agreed to April 3, 2014

Brief*

SB 271 would amend the Medicaid Fraud Control Act as follows:

- Rename the crime of making a false claim, statement or representation to the Medicaid program to "Medicaid fraud";
- Add the intentional execution or attempt to execute a scheme or artifice to defraud Medicaid or any Medicaid contractor or subcontractor to the definition of the crime;
- Restructure the applicable severity levels so that, for each individual count involving an illegal claim, the severity level would depend on the aggregate amount of payments illegally claimed, as follows:
    - $250,000 or more, a severity level 3, nonperson felony;
    - At least $100,000 but less than $250,000, a severity level 5, nonperson felony;
    - At least $25,000 but less than $100,000, a severity level 7, nonperson felony;
    - At least $1,000 but less than $25,000, a severity level 9, nonperson felony; and

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- Less than $1,000, a class A nonperson misdemeanor;

- Provide that regardless of the aggregate amount of payments illegally claimed, an illegal claim resulting in great bodily harm to another person would be a severity level 4, person felony;

- Provide that regardless of the aggregate amount of payments illegally claimed, an illegal claim resulting in death would be a severity level 1, person felony;

- Provide that in sentencing for Medicaid fraud, an act or omission by the defendant resulting in any Medicaid recipient receiving any service of lesser quality or amount than the service to which the recipient was entitled could be considered an aggravating factor in making a departure determination;

- Specify that a person violating the provisions of this section could also be prosecuted for, convicted of, and punished for any form of battery or homicide;

- Provide definitions for "aggregate amount of payments illegally claimed" and "pecuniary harm";

- Impose a fine of $1,000 to $11,000 per violation, on any person convicted of a violation of the act, if requested by the Attorney General, and direct the revenue from this fine to the False Claims Litigation Revolving Fund; and

- Make technical changes to correct statutory and agency references.

Conference Committee Action

The Conference Committee agreed to the version of the bill passed by the House, with the following modifications:

- Make an illegal claim in the aggregate amount of $250,00 or more a severity level 3, nonperson felony;
- Remove the aggregate-payment severity level tiers for illegal claims resulting in bodily harm;
- Add specific penalty provisions for illegal claims resulting in great bodily harm or death, regardless of aggregate payments;
- Add the aggravating factor provision for departure sentencing.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of the Attorney General's Office. In the Senate Committee, Attorney General Schmidt and another representative of his office testified in support of the bill. There was no opponent testimony.

The Senate Committee amended the bill to make technical corrections to statutory references and the crime definition.

In the House Committee on Judiciary, the same conferees testified. The House Committee amended the bill to structure the severity levels in accordance with the theft statute, make the severity levels proposed in the original version of the bill apply where bodily harm results from an illegal claim, and specify that a perpetrator of Medicaid fraud may also be prosecuted for, convicted of, and punished for battery or homicide.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of the Attorney General indicates fine proceeds would provide additional funding for investigation and litigation of Medicaid fraud, but it is not possible to estimate the proceeds.

The Kansas Sentencing Commission estimates that the bill, as introduced, would require two additional prison beds in FY 2015 and seven additional prison beds by FY 2024.

For all crimes, the Kansas Sentencing Commission estimates the number of inmates will be below available capacity (9,636 as of January 13, 2014) by 103 beds in FY 2014 and by 196 beds in FY 2015. However, starting in FY 2017, it is expected that adult correctional facilities will again be over capacity. The reduction in estimates when compared to last year's projections can be directly attributed to the passage of 2013 HB 2170, the Justice Reinvestment Initiative Act. Continued population increases will require new construction providing 512 beds at a construction cost of approximately $24.4 million and operating costs of approximately $8.4 million ($45 per inmate per day). If utilized, bond financing for construction would need to be authorized in FY 2016. Because it increases the number of beds needed, this bill could require earlier construction or additional funds for contract beds. Should passage of the bill require capacity beyond the scenario described above, additional costs for contract beds or facility expansion would be incurred.

Any fiscal effect associated with the bill is not reflected in *The FY 2014 Governor's Budget Report*.

Medicaid Fraud Control Act; Medicaid fraud; severity levels

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