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Bill Analysis
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Reps. Hughes, J. Stewart, J. McGregor, Mallory, Fende, Oelslager, DeGeeter, Webster, Stebelton, Fessler, Huffman, Flowers, Foley

BILL SUMMARY

- Provides that any person who commits any of the following illegal acts (hereafter "prohibitions") in the context of the Medicaid program is liable to the state for damages and civil penalties: (1) knowingly presenting or causing to be presented to any officer, employee, or agent of the state, or to any contractor, grantee, or other recipient of state funds, a false or fraudulent claim for payment or approval, (2) knowingly making, using, or causing to be made or used a false record or statement to get a false or fraudulent claim paid or approved, (3) having possession, custody, or control of public property or money used or to be used by the state and knowingly delivering or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt, (4) being authorized to make or deliver a document certifying receipt of property used or to be used by the state and knowingly making or delivering a receipt that falsely represents the property used or to be used, (5) knowingly buying, or receiving as a pledge of an obligation or debt, public property from any person who is not lawfully authorized to sell or pledge the property, (6) knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state, (7) being a beneficiary of an inadvertent submission of a false claim to any employee, officer, or agent of the state, or to any contractor, grantee, or other recipient of state funds, subsequently discovering the falsity of the claim, and failing to disclose the false claim to the state within a reasonable period of time after the discovery of the false claim, or (8) conspiring with one or more others to violate any element of clauses (1) to (7), above.

- Imposes liability in damages to the state and in certain cases civil penalties for a violation of any of the "prohibitions" and provides that proof of intent to defraud is not required in any case brought.
- Requires the Attorney General to investigate violations of the "prohibitions" and authorizes the Attorney General to bring a civil action against the violator.
- Authorizes any person to bring a civil action for a violation of a "prohibition" for the person or for the state in the name of the state, permits the state to intervene in the action or to pursue an alternate remedy, prescribes procedures that govern those actions, generally awards to the person bringing the action a specified percentage of the proceeds of the action or settlement of the claim, provides certain restrictions on bringing such an action, and specifies a period of limitations for bringing the action.
- Entitles an employee to relief for discriminatory acts by the employer because of the employee's lawful acts in furtherance of a civil action brought under the bill.
- Authorizes the Attorney General who has reason to believe that a person may be in possession, custody, or control of any documentary material or information relevant to an investigation of a violation of a "prohibition" under the bill, before commencing a civil action, to issue and cause to be served upon the person a civil investigative demand requiring the person to: (1) produce the documentary material for inspection and copying, (2) answer in writing written interrogatories with respect to the documentary material or information, (3) give oral testimony concerning the documentary material or information, or (4) furnish any combination of the material, answers, or testimony; and specifies the circumstances under which any material, answers, or testimony would be protected from disclosure.
- Prescribes the procedures for the issuance of and response to such a civil investigative demand, authorizes the Attorney General to petition a court for an order to enforce a civil investigative demand, and provides for the confidentiality, subject to specified exceptions, of documentary material, answers to interrogatories, or transcripts of oral testimony received pursuant to a civil investigative demand.

TABLE OF CONTENTS

Illegal acts that defraud the state in relation to the Medicaid program and sanctions for committing those acts	3
Illegal acts that result in liability to the state	3
Sanctions.....	4
Investigation by AG of violation of the "prohibition"; civil action against violator by AG or private person.....	5
Investigation by AG and commencement of civil action by AG	5
Commencement of civil action by any person; possible state intervention	5
Relief for employee for employer's discriminatory acts related to the action.....	9
Commencement of action for violations before effective date	9
Statute of limitations for commencement of civil action by AG or private person; burden of proof; estoppel.....	9
Remedies not exclusive; jurisdiction.....	10
Civil investigative demands by AG.....	10
Issuance and content of demand.....	10
Material, answers, and testimony exempt from civil investigative demands.....	11
Manner of service	11
Manner of production of documentary material pursuant to a demand	11
Manner of responding to interrogatories pursuant to a demand.....	12
Manner of taking oral testimony pursuant to a demand.....	12
General confidentiality of material, answers, and testimony provided pursuant to a demand; use by AG; return to person who produced material	14
Court order for enforcement of civil investigative demand	15
Definitions in general	15
Definition regarding civil investigative demands	15

CONTENT AND OPERATION

Illegal acts that defraud the state in relation to the Medicaid program and sanctions for committing those acts

Illegal acts that result in liability to the state

The bill provides that any "person" who commits any of the following acts (hereafter "prohibitions") in context of the Medicaid program is liable to the state as provided in the bill (terms in quotation marks are defined under "**Definitions in general**," below) (R.C. 2747.02(A)):

(1) "Knowingly" presents or causes to be presented to any officer, employee, or agent of the state, or to any contractor, grantee, or other recipient of state funds, a false or fraudulent "claim" for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved;

(3) Has possession, custody, or control of public property or money used or to be used by the state and knowingly delivers or causes to be delivered less property or money than the amount for which the person receives a certificate or receipt;

(4) Is authorized to make or deliver a document certifying receipt of property used or to be used by the state and knowingly makes or delivers a receipt that falsely represents the property used or to be used;

(5) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who is not lawfully authorized to sell or pledge the property;

(6) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state;

(7) Is a beneficiary of an inadvertent submission of a false claim to any employee, officer, or agent of the state, or to any contractor, grantee, or other recipient of state funds, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state within a reasonable period of time after the discovery of the false claim;

(8) Conspires with one or more others to violate any element of clauses (1) to (7), above.

Sanctions

Except as described in the following paragraph, a person who violates any of the illegal acts ("prohibitions")¹ is liable to the state for three times the amount of damages that the state sustains because of the violation, is liable to the state for a civil penalty of not less than \$5,000 nor more than \$10,000 for each violation, and is liable to the state for the costs of a civil action brought to recover any of those damages or civil penalties.

¹ Although the bill does not prohibit a person from committing any of the illegal acts listed in R.C. 2747.02(A) and discussed above, it refers to them as prohibited acts and/or prohibitions; therefore, to avoid confusion, those illegal acts will be referred to as "prohibited acts" and/or "prohibitions" in the analysis. The bill should probably be amended to prohibit those illegal acts.

A person who violates any of the prohibitions is liable to the state for not less than two times the amount of damages that the state sustains because of the violation, and the costs of a civil action brought to recover the damages but no civil penalties, if the court finds all of the following: (1) the person committing the violation provided the Attorney General (AG) with all information known to the person about the violation within 30 days after the date on which the person first obtained the information, (2) the person fully cooperated with any state investigation of the violation, and (3) at the time the person provided the AG with information about the violation, no criminal prosecution, civil action, or administrative action had been commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation. Proof of intent to defraud is not required in any case brought under the bill. (R.C. 2747.02(B) and (C).)

Investigation by AG of violation of the "prohibition"; civil action against violator by AG or private person

Investigation by AG and commencement of civil action by AG

The bill requires the AG to investigate violations of the "prohibitions." If the AG finds that a person has violated or is violating a "prohibition," the AG may bring a civil action against the person. (R.C. 2747.03(A).)

Commencement of civil action by any person; possible state intervention

In general. The bill authorizes any person to bring a civil action for a violation of any of the "prohibitions" for the person and for the state in the name of the state. The complaint must be filed in camera, remain under seal for at least 60 days, and not be served on the defendant until the court so orders. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses must be served on the AG. The state, for good cause shown, may move the court for extensions of the time during which the complaint remains under seal. The motion may be supported by affidavits or other submissions in camera. The defendant is not required to respond to the complaint filed until 28 days after the complaint is unsealed and served upon the defendant pursuant to Civil Rule 4. Before the expiration of the 60-day period in which the complaint remains sealed or any extensions of that period, the state must either proceed with the action or notify the court that it declines to proceed with the action. If the state proceeds with the action, the state must conduct the action. If the state declines to proceed with the action, the person bringing the action has the right to conduct the action. When a person brings an action as described above, no person other than the state may intervene or bring a related action based on the facts underlying that pending action. (R.C. 2747.03(B).)

State election to proceed with action commenced by a person; effect and procedures. If the state proceeds with an action commenced by a person, it has the primary responsibility for prosecuting the action and is not bound by an action of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to the limitations described in the following paragraphs.

Whether or not the state intervenes in the action, the state may move to *dismiss* an action brought by a person as described above upon a showing of good cause notwithstanding the objections of the person bringing the action if the person has been notified by the state of the filing of the motion to dismiss and the court has provided the person with an opportunity to oppose the motion and to present evidence at a hearing. The state may *settle* the action with the defendant notwithstanding the objections of the person bringing the action if the court determines, after a hearing providing the person who brought the action an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the court may hold the hearing in camera.

Upon a *showing by the state* that unrestricted participation during the course of the litigation by the person bringing the action would interfere with or unduly delay the state's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court, in its discretion, may impose limitations on the person's participation, such as: (1) limiting the number of witnesses the person may call, (2) limiting the length of the testimony of the person's witnesses, (3) limiting the person's cross-examination of witnesses, or (4) otherwise limiting the participation by the person in the litigation. Upon a *showing by the defendant* that unrestricted participation during the course of the litigation by the person bringing the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit participation by the person bringing the action in the litigation. (R.C. 2747.03(C)(1) and (2).)

State election not to proceed with action commenced by a person; state election to pursue claim through alternate remedy. If the state elects not to proceed with the action brought by a person, the person has the right to conduct the action. If the state so requests, it must be served with copies of all pleadings filed in the action and be supplied with copies of all deposition transcripts. When the person proceeds with the action, the court may permit the state to intervene at a later date upon a showing of good cause.

The state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil monetary penalty. If any such alternate remedy is pursued in another proceeding, the person bringing the action has the same rights in that proceeding as the person

would have had if the action had continued. Any finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action brought by a person. A finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review. (R.C. 2747.03(C)(3), (4), and (6).)

Stay of discovery upon request of state. *Whether or not the state proceeds with the action*, upon a showing by the state that certain discovery by the person bringing the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay that discovery for a period of not more than 60 days. The showing must be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings. (R.C. 2747.03(C)(5).)

Distribution of proceeds of action or settlement of claim; recovery of fees, costs, and expenses. *If the state proceeds with an action* brought by a person as described above, the bill requires the person to receive at least 15% but not more than 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. If the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions specifically in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award the sums that it considers appropriate, but in no case more than 10% of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under these provisions must be made from the proceeds. The person also must receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All expenses, fees, and costs must be awarded against the defendant.

If the state does not proceed with the action, the person bringing the action or settling the claim must receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount must not be less than 25% and not more than 30% of the proceeds of the action or settlement and must be paid out of the proceeds. The person also must receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All expenses, fees, and costs must be awarded against the defendant.

Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of the prohibition upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive as described in the preceding paragraphs, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of the prohibition, the person must be dismissed from the civil action and cannot receive any share of the proceeds of the action. The dismissal does not prejudice the right of the state to continue the action.

If the state does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorney's fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment. (R.C. 2747.03(D).)

The state is not liable for expenses that a person incurs in bringing an action under the bill's provisions (R.C. 2747.03(F)).

Restrictions on the bringing of an action by a person. The bill precludes any person from bringing an action under its provisions against a member of the General Assembly, a judge or other judicial officer, the Governor, the Lieutenant Governor, the Secretary of State, the Treasurer of State, the Auditor of State, or the Attorney General if the action is based on evidence or information that is known to the state when the action is brought. The bill also precludes any person from bringing an action that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the state is already a party.

Upon timely motion of the state, a court must dismiss an action brought by a person if the allegations relating to all essential elements of liability on the claim alleged in the action are based on the public disclosure of allegations in a state criminal, civil, or administrative hearing; in a state legislative or administrative report, hearing, audit, or investigation; or from the news media. A "public disclosure" includes only disclosures made on the public record or that otherwise have been disseminated to the general public. An action or claim is "based on" a public disclosure only if the person bringing the action derived the person's knowledge of *all* essential elements of liability on the claim alleged in the action from the public disclosure. The person bringing the action does not create a public disclosure by obtaining information pursuant to a federal or state public records request or from information exchanges with law enforcement and other state

officers, employees, or agents if the information does not otherwise qualify as publicly disclosed. (R.C. 2747.03(E).)

Relief for employee for employer's discriminatory acts related to the action

The bill provides that any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's "employer" (see "**Definitions in general**," below) because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action brought under the bill, including investigation for, initiation of, testimony for, or assistance in such an action filed or to be filed, is entitled to all relief necessary to make the employee whole. The relief includes reinstatement with the same seniority status the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An employee may bring an action for such relief in the appropriate court of common pleas. (R.C. 2747.03(G).)

Commencement of action for violations before effective date

The bill provides that an action may be commenced under R.C. 2747.03 to remedy a violation that occurred before the effective date of that section unless the limitations period described below has elapsed (Section 2).

Statute of limitations for commencement of civil action by AG or private person; burden of proof; estoppel

A civil action commenced by the AG or by any person for a violation of the "prohibitions" under the bill may not be brought after the date that is six years after the date on which the violation of the "prohibition" is committed or three years after the date when facts material to the right of action are known or reasonably should have been known by the AG but in no event more than ten years after the date on which the violation is committed, whichever occurs last. A civil action for relief by an employee as described in the preceding paragraph may not be brought more than three years after the last alleged discriminatory act of the employer.

In any action brought as described above, the state or the person bringing the action must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

A final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea

of guilty or nolo contendere, estops the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought for a violation of the bill's "prohibitions." (R.C. 2747.04.)

Remedies not exclusive; jurisdiction

The bill specifies that the remedies it provides are not exclusive, and are in addition to any other remedies provided for in any other statute (see **COMMENT 1**) or available under common law. An action authorized under the bill may be brought in the court of common pleas of Franklin County, in the court of common pleas of any county in which the defendant or any one of multiple defendants can be found, resides, or transacts business, or in the court of common pleas of any county in which any act "prohibited" by the bill occurred. (R.C. 2747.05.)

Civil investigative demands by AG

Issuance and content of demand

Under the bill, whenever the AG has reason to believe that a person may be in possession, custody, or control of any "documentary material" (see "**Definition regarding civil investigative demands**," below) or information relevant to an investigation by the AG of a violation of the bill's "prohibitions," before commencing a civil action, the AG may issue in writing and cause to be served upon the person a civil investigative demand requiring the person to do any of the following: (1) produce the documentary material for inspection and copying, (2) answer in writing written interrogatories with respect to the documentary material or information, (3) give oral testimony concerning the documentary material or information, or (4) furnish any combination of the material, answers, or testimony. Each civil investigative demand issued must state the nature of the conduct constituting the alleged violation of the "prohibition" that is under investigation.

If the demand is for the *production of documentary material*, the demand must describe each class of documentary material to be produced with such definiteness and certainty as to permit the material to be fairly identified, and prescribe a return date for each class of documentary material that will provide a reasonable period of time within which the material may be assembled and made available for inspection and copying. If the demand is for *answers to written interrogatories*, the demand must set forth with specificity the written interrogatories to be answered, and prescribe dates at which time answers to written interrogatories must be submitted.

If the demand is for the *giving of oral testimony*, the demand must do all of the following: (1) prescribe a date, time, and place at which oral testimony will be commenced, (2) specify that the attendance and testimony are necessary to the

conduct of the investigation, (3) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative, and (4) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, that will be taken pursuant to the demand. The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand must be a date that is not less than seven days after the date on which the demand is received, unless the AG determines that exceptional circumstances are present that warrant the commencement of the testimony within a lesser period of time. The bill prevents the AG from issuing more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the AG, after investigation, notifies the person in writing that an additional demand for oral testimony is necessary. (R.C. 2747.06(A).)

Material, answers, and testimony exempt from civil investigative demands

The bill precludes a civil investigative demand from requiring the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if the material, answers, or testimony would be protected from disclosure under either the standards applicable to subpoenas or subpoenas duces tecum issued by a court to aid in a grand jury investigation, or the standards applicable to discovery requests under the Rules of Civil Procedure, to the extent that the application of the standards for discovery requests to the demand is appropriate and consistent with the provisions and purposes of the bill (R.C. 2747.06(B)).

Manner of service

Any civil investigative demand issued as described above or any petition for a court order filed as described below in "**Court order for enforcement of civil investigative demand**" may be served in the same manner as a summons under Civil Rules 4 to 4.3 and 4.5. A verified return by the individual serving such a civil investigative demand or petition that sets forth the manner of the service is proof of the service. In the case of service by registered or certified mail, the return must be accompanied by the return Post Office receipt of delivery of the demand. (R.C. 2747.06(C) and (D).)

Manner of production of documentary material pursuant to a demand

The bill requires the production of documentary material in response to a civil investigative demand served to be made under a sworn certificate, in any form that the demand designates, by the following methods: (1) in the case of a natural person, the person to whom the demand is directed or (2) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the

person. The certificate must state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the AG.

Any person upon whom any civil investigative demand for the production of documentary material has been served must make the material available for inspection and copying to the AG at the principal place of business of the person or at any other place that the AG and the person after service of the demand may agree and prescribe in writing. The person must make the material available on the return date specified in the demand, or on any later date that the AG may prescribe in writing. The person may, upon written agreement between the person and the AG, substitute copies for originals of all or any part of the material. (R.C. 2747.06(E).)

Manner of responding to interrogatories pursuant to a demand

The bill requires each interrogatory in a civil investigative demand served to be answered separately and fully in writing under oath and to be submitted under a sworn certificate, in the form that the demand designates, by the following persons: in the case of a natural person, the person to whom the demand is directed, or, in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory. If any interrogatory is objected to, the reasons for the objection must be stated in the certificate instead of an answer. The certificate must state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information must be identified and reasons set forth with particularity regarding the reasons why the information was not furnished. (R.C. 2747.06(F).)

Manner of taking oral testimony pursuant to a demand

Under the bill, the examination of any person pursuant to a civil investigative demand for oral testimony served must be taken before an officer authorized by law to administer oaths and affirmations. The officer before whom the testimony is to be taken must put the witness on oath or affirmation and, personally or by someone acting under the direction of the officer and in the officer's presence, must record the testimony of the witness. The testimony must be taken stenographically and transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken promptly must transmit a copy of the transcript of the testimony to the AG. This provision does not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Rules of Civil Procedure.

The AG must exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, any person who may be agreed upon by the AG and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking the testimony. The oral testimony must be taken in Franklin County or in the county within which the person resides, is found, or transacts business, or in any other place that may be agreed upon by the AG and the person. When the testimony is fully transcribed, the AG or the officer before whom the testimony is taken must afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless examination and reading are waived by the witness. Any changes in form or substance that the witness desires to make must be entered and identified upon the transcript by the officer or the AG, with a statement of the reasons given by the witness for making the changes. The transcript then must be signed by the witness, unless the witness waives the signing in writing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the AG must sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefore. The officer before whom the testimony is taken must certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or the AG must take custody of the transcript.

Any person compelled to appear for oral testimony under a civil investigative demand may be accompanied, represented, and advised by counsel, who may advise the person, in confidence, with respect to any question asked of the person. The person or counsel may object on the record to any question, in whole or in part, and must briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that the person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. The person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If the person refuses to answer any question, a petition may be filed in the court of common pleas in Franklin County or in the county in which the examination takes place for an order compelling the person to answer the question. If the person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of the person may be compelled in the manner provided in R.C. 2945.44 (see **COMMENT 2**).

Any person appearing for oral testimony under a civil investigative demand is entitled to the same fees and allowances that are paid to witnesses in the court of common pleas. (R.C. 2747.06(G).)

General confidentiality of material, answers, and testimony provided pursuant to a demand; use by AG; return to person who produced material

The bill provides that documentary material, answers to written interrogatories, and oral testimony provided under a civil investigative demand are not public records, and are exempt from disclosure under the Public Records Law (R.C. 2747.06(J)). Except as described below, no documentary material, answers to interrogatories, or transcripts of oral testimony received under its provisions, or copies of documentary material, answers to interrogatories, or transcripts of oral testimony so received, while in the possession of the AG is available for examination by any individual other than an employee of the AG. This prohibition on the availability of material, answers, or transcripts does not apply if consent is given by the person who produced the material, answers, or transcripts. Nothing in this provision is intended to prevent disclosure to the General Assembly, including any of its committees or subcommittees, to any other state agency for use by the agency in furtherance of its statutory responsibilities, or to any law enforcement officer for use in the furtherance of the law enforcement officer's duties. Disclosure of information to any agency other than those specified is allowed only upon application, made by the AG to a court of common pleas showing substantial need for the use of the information by the agency in furtherance of its statutory responsibilities. While in the AG's possession and under any reasonable terms and conditions that the AG prescribes, documentary material and answers to interrogatories received are available for examination by the person who produced the material or answers, or by a representative of that person authorized by that person to examine the material and answers.

The AG may use any documentary material, answers to interrogatories, or transcripts of oral testimony received in connection with any case or proceeding before a court, grand jury, or state agency.

If any documentary material has been produced by any person in the course of any investigation pursuant to a civil investigative demand, the AG, upon written request of the person who produced the material, must return to the person the documentary material, other than copies furnished to the AG as described above in "**Manner of production of documentary material pursuant to a demand**," or made for the AG as described in the 2nd preceding paragraph, that has not passed into the control of any court, grand jury, or agency through introduction into the record of the case or proceeding, or into the control of any law enforcement officer, if either of the following applies: (1) any case or proceeding before the court or grand jury arising out of the investigation, or any proceeding before any state agency involving the material, has been completed, or (2) no case or proceeding in which the material may be used has been commenced within a reasonable time after completion of the examination and analysis of all

documentary material and other information assembled in the course of the investigation. (R.C. 2747.06(H).)

Court order for enforcement of civil investigative demand

Whenever any person fails to comply with any civil investigative demand or whenever satisfactory copying or reproduction of any material requested in the demand cannot be done and the person refuses to surrender the material, the AG may file in the court of common pleas in Franklin County or in the county in which the person resides, is found, or transacts business, and serve upon the person, a petition for an order of the court for the enforcement of the civil investigative demand (R.C. 2747.06(I)).

Definitions in general

The bill defines the following terms as used in its provisions (R.C. 2747.01):

"Claim" means any request or demand for money, property, or services in context of the Medicaid program.

"Employer" includes any person.

"Knowingly" means that a person, with respect to information, has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information.

"Person" includes any natural person, any partnership or corporation, any business trust, any business firm or entity, any organization or association, any estate, and any trust.

Definition regarding civil investigative demands

The bill defines "documentary material," as used in its provisions regarding civil investigative demands, as including the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret the data compilations, and any product of discovery (R.C. 2747.06(K)).

COMMENT

1. One such statute is existing R.C. 5111.03, not in the bill, which prohibits a provider of services or goods contracting with the Department of Job and Family Services pursuant to the Medicaid program from, by deception, obtaining or attempting to obtain payments under R.C. Chapter 5111. to which the provider is not entitled pursuant to the provider agreement, or the rules of the federal government or the Department relating to the program. It also prohibits a provider from willfully receiving payments to which the provider is not entitled, or willfully receiving payments in a greater amount than that to which the provider is entitled; and from falsifying any report or document required by state or federal law, rule, or provider agreement relating to Medicaid payments. As used in this provision, a provider engages in "deception" when the provider, acting with actual knowledge of the representation or information involved, acting in deliberate ignorance of the truth or falsity of the representation or information involved, or acting in reckless disregard of the truth or falsity of the representation or information involved, deceives another or causes another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact. No proof of specific intent to defraud is required to show, for purposes of this provision, that a provider has engaged in deception.

A provider who violates a prohibition described in the preceding paragraph is liable, in addition to any other penalties provided by law, for all of the following civil penalties: (a) payment of interest on the amount of the excess payments at the maximum interest rate allowable for real estate mortgages under the law on the date the payment was made to the provider for the period from the date upon which payment was made, to the date upon which repayment is made to the state, (b) payment of an amount equal to three times the amount of any excess payments, (c) payment of a sum of not less than \$5,000 and not more than \$10,000 for each deceptive claim or falsification, and (d) all reasonable expenses that the court determines have been necessarily incurred by the state in the enforcement of this section.

In addition to these civil penalties, the Director of Job and Family Services, upon the conviction of, or the entry of a judgment in either a criminal or civil action against, a Medicaid provider or its owner, officer, authorized agent, associate, manager, or employee in an action brought pursuant to R.C. 109.85, generally must terminate the provider agreement between the Department and the provider and stop reimbursement to the provider for services rendered from the date of conviction or entry of judgment.

The Attorney General on behalf of the state may commence proceedings to enforce the provisions described above in any court of competent jurisdiction, and the Attorney General may settle or compromise any case brought under the provisions with the approval of the Department of Job and Family Services. Notwithstanding any other provision of law providing a shorter period of limitations, the Attorney General may commence a proceeding to enforce these provisions at any time within six years after the conduct in violation of this section terminates.

2. Existing R.C. 2945.44, not in the bill, provides that, in any criminal proceeding in Ohio or in any criminal or civil proceeding brought pursuant to R.C. 2923.31 to 2923.36 (corrupt activity), if a witness refuses to answer or produce information on the basis of the privilege against self-incrimination, the court of common pleas of the county in which the proceeding is being held, unless it finds that to do so would not further the administration of justice, must compel the witness to answer or produce the information, if both of the following apply: (1) the prosecuting attorney of the county in which the proceedings are being held makes a written request to the court to order the witness to answer or produce the information, notwithstanding the claim of privilege, and (2) the court informs the witness that by answering, or producing the information the witness will receive immunity as described in the next paragraph.

If, but for the preceding paragraph, the witness would have been privileged to withhold an answer or any information given in any criminal proceeding, and the witness complies with an order under the provision described in the preceding paragraph, the witness cannot be prosecuted or subjected to any criminal penalty in Ohio's courts for or on account of any transaction or matter concerning which, in compliance with the order, the witness gave an answer or produced any information. A witness granted immunity under these provisions may be subjected to a criminal penalty for perjury, tampering with evidence, or falsification, or for contempt committed in answering, failing to answer, or failing to produce information in compliance with the order.

HISTORY

ACTION	DATE
Introduced	10-18-07

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