

# Fiscal Note & Local Impact Statement

127<sup>th</sup> General Assembly of Ohio

Ohio Legislative Service Commission  
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BILL: **H.B. 355** DATE: **November 7, 2007**  
STATUS: **As Introduced** SPONSOR: **Rep. Hughes**  
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**  
CONTENTS: **Illegal acts that defraud the state in relation to the Medicaid program**

## State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
<b>General Revenue Fund (GRF) and Other State Funds</b>			
Revenues	Potential gain in the form of damages, civil penalties, and reimbursable expenses, magnitude uncertain	Potential gain in the form of damages, civil penalties, and reimbursable expenses, magnitude uncertain	Potential gain in the form of damages, civil penalties, and reimbursable expenses, magnitude uncertain
Expenditures	Potential increase to investigate and enforce Medicaid fraud, likely to be no more than minimal	Potential increase to investigate and enforce Medicaid fraud, likely to be no more than minimal	Potential increase to investigate and enforce Medicaid fraud, likely to be no more than minimal

Note: The state fiscal year is July 1 through June 30. For example, FY 2008 is July 1, 2007 – June 30, 2008.

- **Office of the Attorney General workload.** Based on LSC fiscal staff's conversation with staff of the Office of the Attorney General, it appears unlikely that a large number of civil enforcement actions will be generated as a result of the bill's prohibited acts. Assuming this were true, then the additional workload and associated annual operating costs that might be generated as a result of the bill appear unlikely to exceed minimal on an ongoing basis. For the purposes of this fiscal analysis, minimal means less than \$100,000 per year for the state. Whether such annual operating costs would be borne by the Attorney General's GRF or non-GRF funds or some mix of both will depend on what revenue stream(s) finance the section that performs the investigative and enforcement duties for a given violation of the bill's prohibitions.
- **Damages, civil penalties, and reimbursable expenses.** At the time of this writing, it is difficult to predict how much money the state might collect annually in the form of damages, civil penalties, and reimbursable expenses from the bringing of civil actions. What fund or funds these moneys would be credited to in the state treasury is uncertain.
- **Federal Deficit Reduction Act of 2005.** If enacted, the bill will apparently bring Ohio into compliance with certain provisions of the federal Deficit Reduction Act of 2005. According to Office of the Attorney General staff, the federal law provides that states with false claims acts that are at least as strong as the federal false claims act may retain an additional 10% of their recoveries under the act. At the time of this writing, it is difficult to predict



how much additional revenue Ohio could stand to gain in future years. What fund or funds these moneys would be credited to in the state treasury is uncertain.

### ***Local Fiscal Highlights***

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
<b>Counties</b>			
Revenues	Potential gain in court costs and filing fees, likely to be minimal at most	Potential gain in court costs and filing fees, likely to be minimal at most	Potential gain in court costs and filing fees, likely to be minimal at most
Expenditures	Potential increase to adjudicate Medicaid fraud civil actions, likely to be minimal at most	Potential increase to adjudicate Medicaid fraud civil actions, likely to be minimal at most	Potential increase to adjudicate Medicaid fraud civil actions, likely to be minimal at most

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Civil action brought by the Attorney General.** Based on an LSC fiscal staff conversation with staff of the Office of the Attorney General, it appears unlikely that a large number of new civil enforcement actions will be generated as a result of the bill's prohibited acts. Assuming that were true, then the annual costs for any given court of common pleas to adjudicate such matters (including a jury trial) seems unlikely to exceed minimal. For the purposes of this fiscal analysis, a minimal expenditure increase means an estimated annual cost of no more than \$5,000 for any affected court of common pleas.
- **Civil action brought by a person.** Legislative Service Commission fiscal staff is uncertain as to the number of civil actions that might be commenced annually by persons in any given court of common pleas alleging a violation of any of the bill's prohibitions. That said, LSC fiscal staff has not collected any evidence suggesting that a great number of persons might commence such a civil action in any given court of common pleas annually. Assuming that were true, then the annual costs for any given court of common pleas to adjudicate such matters (including a jury trial) seems unlikely to exceed minimal.
- **Court cost and filing fee revenues.** Assuming that a relatively small number of civil actions is commenced against a violator by the Attorney General or a person in any given court of common pleas annually, then the amount of court costs and filing fee revenue that any given county might collect annually as a result of the bill seems unlikely to exceed minimal on an ongoing basis. For the purposes of this fiscal analysis, a minimal revenue gain means an estimated annual increase of no more than \$5,000 for any affected county.

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## ***Detailed Fiscal Analysis***

### ***Fiscally notable provisions of the bill***

For the purposes of this analysis, the provisions of the bill with potential fiscal implications for the state and local governments include the following:

- Provides a person who commits certain acts that defraud the state in relation to the Medicaid program is liable to the state for certain damages, civil penalties, and costs of bringing a civil action.
- Requires the Attorney General to investigate violations of the bill's prohibited acts 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 any of the bill's prohibited acts for the person and for the state in the name of the state, permits the state to intervene in the action or to pursue an alternate remedy, and prescribes procedures that govern such actions.
- Permits an employee, who has taken lawful acts in the furtherance of an action brought under the bill, to bring an action for relief from discriminatory acts taken by the employee's employer.

### ***State fiscal effects***

#### ***Office of the Attorney General***

The Office of the Attorney General's Medicaid Fraud Control Unit is responsible for the investigation and prosecution of health care providers accused of defrauding the state's Medicaid program. During 2004, the unit handled 961 cases, filed criminal charges against 214 individuals or companies, and obtained 151 convictions. In addition, the unit secured \$38.9 million in civil and criminal restitution and penalties and was reimbursed for over \$100,000 in investigative costs. While the Office of the Attorney General has the authority to prosecute cases of Medicaid fraud under existing law, staff of the Attorney General believe that the bill will strengthen their ability to investigate and enforce matters related to Medicaid fraud. In correspondence to LSC fiscal staff, the Office of the Attorney General conveyed the following:

[T]he primary expectation is that this legislation would enable Ohio to more fully participate in litigation that is national in scope. Many of the largest perpetrators of fraud against the Medicaid program are large, interstate corporations. Whistleblowers often file in federal court, and include states with whistleblower laws in the lawsuits. While Ohio currently has a fairly good relationship with the other states, there is no guarantee that Ohio is even learning about some of these lawsuits.

Beyond this, [the agency] can expect that whistleblowers will become an additional source of information regarding fraud against the Medicaid program.<sup>1</sup>

Based on a LSC fiscal staff conversation with Office of the Attorney General staff, it appears unlikely that a large number of new civil enforcement actions will be generated as a result of the bill's prohibitions. Instead, the bill's provisions will potentially allow the Attorney General to more quickly resolve allegations of Medicaid fraud without needing to take a case through the entire process of civil enforcement. Assuming that were true, then the additional workload and associated annual operating costs that might be generated as a result of the bill appear unlikely to exceed minimal on an ongoing basis. For the purposes of this fiscal analysis, minimal means an estimated cost of less than \$100,000 per year for the state. Whether such annual operating costs would be borne by the Attorney General's GRF or non-GRF funds or some mix of both will depend on what revenue stream(s) finance the section that performs the investigative and enforcement duties for a given violation of the bill's prohibition.

### **Federal Deficit Reduction Act of 2005**

If enacted, the bill will apparently bring Ohio into compliance with certain provisions of the federal Deficit Reduction Act of 2005. According to Office of the Attorney General staff, the federal law provides that states with false claims acts that are at least as strong as the federal false claims act may retain an additional 10% of their recoveries under the act. Since 1993, Ohio has recovered over \$100 million for the Medicaid program. Had these recoveries occurred after the enactment of this bill (H.B. 355), Ohio would have retained an additional \$10 million.<sup>2</sup>

At the time of this writing, it is difficult to predict how much additional revenue Ohio could stand to gain in future years, but LSC fiscal staff assume that current enforcement and collections trends will remain steady and may even increase if cases of Medicaid fraud become easier to investigate and resolve following the bill's enactment. What fund or funds these moneys would be credited to in the state treasury is uncertain.

### **Civil penalties**

The bill permits the Attorney General to bring a civil action against a person that has violated or is violating a prohibition, and permits any person to bring a civil action for the person and for the state in the name of the state. Such an action would be brought in the Franklin County Court of Common Pleas, 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 of the bill's violations occurred.

Under the bill:

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<sup>1</sup> Crew, Doug, Office of the Ohio Attorney General, e-mail to Jamie Duskocil, Ohio Legislative Service Commission, October 24, 2007.

<sup>2</sup> *Ibid.*

- A person who violates any of the prohibitions is liable to the state for three times the amount of damages that the state sustains because of the violation, a civil penalty of not less than \$5,000 and not 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.
- If the court finds certain circumstances present, 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 the civil action brought to recover the damages but no civil penalties.
- If the state proceeds with an action brought by a person, then that person would receive up to, but no more than, 25% of the proceeds of the action or settlement of the claim, plus an amount for reasonable expenses, plus attorney's fees and costs. Presumably, the state would be entitled to the remainder.
- If a person brings an action and the state does not intervene, then that person would receive no less than 25% but no more than 30% of the proceeds of the action or settlement of the claim, plus an amount reasonable to reimburse the person's expenses. Presumably, the state would be entitled to the remainder.

At the time of this writing, it is difficult to predict how much money the state might collect annually in the form of damages, civil penalties, and reimbursable expenses from the bringing of civil actions. What fund or funds these moneys would be credited to in the state treasury is uncertain.

### **Local fiscal effects**

#### **Civil action brought by the Attorney General**

If the Attorney General identifies a violation and is unable to secure a successful remedy, a civil action may be brought to the court of common pleas either in Franklin County or in the county where the defendant can be found, resides, transacts business, or in which the violation occurred. As a result, these courts of common pleas may experience an increase in their civil dockets, as well as corresponding increases in costs for court time and potential jury trials. According to Office of the Attorney General staff, most cases would be filed in the Franklin County Court of Common Pleas. If filed, the case would be filed under seal, and typically, most are settled during the investigation period while the matter remains under seal. Attorney General staff anticipates that few cases would progress to the trial stage.

Assuming these assessments were true, then the annual costs for any given court of common pleas, including the Franklin County Court of Common Pleas, to adjudicate such matters (including a jury trial) seems unlikely to exceed minimal. For the purposes of this fiscal analysis, a minimal expenditure increase means an estimated annual cost of no more than \$5,000 for any affected court of common pleas.

#### **Civil action brought by a person**

Legislative Service Commission fiscal staff is uncertain as to the number of civil actions that might be commenced annually by persons in any given court of common pleas alleging a violation of any of the bill's prohibitions. That said, LSC fiscal staff has not collected any evidence suggesting that a great number of persons might commence such a civil action in any given court of common pleas annually. Assuming that were true, then the annual costs for any given court of common pleas to adjudicate such matters (including a jury trial) seems unlikely to exceed minimal.

### **Relief for employer's discriminatory acts**

The bill provides what might be termed "whistleblower protection" if an employee is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by the employee's employer and is entitled to all relief necessary to make the employee whole, including:

- 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.
- 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. As of this time, LSC fiscal staff is uncertain as to the number of civil actions that might be commenced annually by individuals claiming whistleblower status in any given court of common pleas. That said, LSC fiscal staff has not collected any evidence suggesting that a great number of persons might commence such a civil action in any given court of common pleas annually. Assuming that were true, then the annual costs for any given court of common pleas to adjudicate such matters (including a jury trial) seems unlikely to exceed minimal.

### **Court cost and filing fee revenues**

Assuming that a relatively small number of civil actions is commenced against a violator by the Attorney General or a person in any given court of common pleas annually, then the amount of court costs and filing fee revenue that any given county might collect annually as a result of the bill seems unlikely to exceed minimal on an ongoing basis. For the purposes of this fiscal analysis, a minimal revenue gain means an estimated annual increase of no more than \$5,000 for any affected county.

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