

Addition to Sectional Analysis on SB 78

Detail on the Alaska False Claims Act

Prepared by the Alaska Department of Law – Feb. 16, 2016

Section 4 - Establishes the Alaska Medicaid False Claims Act (language below to comply with Office of Inspector General guidelines for false claims act certification . This allows the state to increase its match on recoveries by five percent for a (45/55 split in favor of the state).

AS 09.58.010. False claims for medical assistance; civil penalty. This is a general provision which identifies the five types of claims that would give rise to a false claim under this section (for full list see page 2 line 31, page 2, lines 1-14). The penalties for false claims would be civil penalties not less than \$5500 and not more than \$11,000, three times the amount of actual damages, reasonable attorneys' fees and costs as provided in court rules, possible reduction in penalties, and establishes corporate liability for false claims.

AS 09.58.015. Attorney General invitation; civil action. Authorizes the attorney general to investigate claims brought under this statute and to work collaboratively with DHSS on such matters.

AS 09.58.020. Private plaintiff; civil action. Provides that a private citizen (relator) can bring a Medicaid False Claims Act case. If a relator brings an action, they must serve the attorney general's office and disclose the evidence upon which the complaint is filed. The relator's action is filed under seal for at least sixty days to allow the attorney general's office to investigate the claim. The attorney general can get an extension of time if the sixty days is not sufficient. After investigation, the attorney general must do one of the following:

- (1) Intervene in the matter and take control of the action;
- (2) Notify the court that it will not be intervening, but allow the relator to proceed; or
- (3) Dismiss the action if the evidence does not support a false claim.

AS 09.58.025. Subpoenas. Gives the attorney general the authority to issue subpoenas to assist in its investigation of a false claim.

AS 08.58.030. Rights in fraudulent claims actions. This outlines the relative role of the parties in the event that the attorney general intervenes in a case (exclusive authority over the case/action), including moving to dismiss the case at any time or settling with the provider despite the objection of the relator. If the attorney general defers to the relator, the attorney general can ask to be served on all pleadings and intervene at any time. Further, the attorney general can ask that discovery in the case be stayed during the pendency of the criminal investigation.

AS 09.58.040. Award to false or fraudulent claim plaintiff. Outlines how the relator will be compensated in a filed claim act.

- (1) If the attorney general intervenes, the relator will be awarded 150% to 25% of the total award;
- (2) If the attorney general defers and allows the case to go forward, the relator receives 25% to 30% of the total award; and,
- (3) Authorizes the court to limit or reduce the award if the evidence takes into account the role of the relator in bringing the case and the overall scheme.

AS 08.58.050. Certain actions barred. Provides a list of situations that do not constitute a false claim, such as a claim that is currently subject to a criminal or civil action by the State. (for full list page 8, line 17-31).

AS 09.58.060. State not liable for attorneys' fees and other expenses. Provides that the State is not responsible for the costs and fees of a relator in bringing an action.

AS 08.58.070. Employee protection for retaliation. Provides whistleblower protection for employees who report false claims to the State.

AS 09.58.080. Regulations. Provides authority for the attorney general to adopt regulations to implement this new cause of action.

AS 09.58.090. Special provision. Requests a minimum threshold damage amount of \$5500.

AS 09.58.100. Definitions section.

AS 09.58.110. Short title.