

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version:	CSSB 74(FIN)
Fiscal Note Number:	43
(S) Publish Date:	3/9/2016

Identifier: SB074CS(STA)-LAW-CRIM-03-07-16
Title: MEDICAID REFORM/PFD/HSAS/ER
USE/STUDIES
Sponsor: KELLY
Requester: Senate Finance

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Appeals/Special Litigation
OMB Component Number: 2203

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below.

(Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	FY 2017	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Personal Services	316.6		316.6	316.6	316.6	316.6	316.6
Travel	1.5		1.5	1.5	1.5	1.5	1.5
Services	39.8		39.8	39.8	39.8	39.8	39.8
Commodities	6.1		6.1	6.1	6.1	6.1	6.1
Capital Outlay	1.0		1.0	1.0	1.0	1.0	1.0
Grants & Benefits							
Miscellaneous							
Total Operating	365.0	0.0	365.0	365.0	365.0	365.0	365.0

Fund Source (Operating Only)

1002 Fed Rcpts	273.7		273.7	273.7	273.7	273.7	273.7
1003 G/F Match	45.5						
1108 Stat Desig	45.8		91.3	91.3	91.3	91.3	91.3
Total	365.0	0.0	365.0	365.0	365.0	365.0	365.0

Positions

Full-time	2.0		2.0	2.0	2.0	2.0	2.0
Part-time							
Temporary							

Change in Revenues	500.0		500.0	500.0	500.0	500.0	500.0
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Estimated SUPPLEMENTAL (FY2016) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

This version contains a technical adjustment to the fund sources for the state's 25% match requirement from the initial version.

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Agency: Department of Law

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Date: 03/07/2016 08:47 AM
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REPORTED OUT OF
SFC 03/08/2016

FISCAL NOTE ANALYSIS

STATE OF ALASKA
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Analysis

In addition to other provisions amending AS 47.05, the committee substitute for SB 74 (STA) would add a provision to Title 9, code of civil procedure, to establish an "Alaska Medical Assistance False Claim and Reporting Act." Under AS 09.58.010, sec. 4 of the bill, a medical assistance provider or medical assistance recipient may not knowingly submit, authorize, or cause to be submitted, a false or fraudulent claim under the medical assistance program. A beneficiary of a false or fraudulent claim, whether intentional or inadvertent, would be required to disclose the false or fraudulent claim to the state not later than 60 days after discovering the false claim.

Under proposed AS 09.58.010, a medical assistance provider or recipient who engages in the prohibited acts would be liable to the state in a civil action for a penalty of not less than \$5,500 and not more than \$11,000, three times the amount of damages sustained by the state and costs and attorney fees. Damages could be reduced if the person liable furnishes the attorney general or the Department of Health and Social Services all information known to the person about the violation not later than 30 days after the information was obtained and the person cooperates with the attorney general, and no action is pending with respect to the violation.

Under proposed AS 09.58.015 and 09.58.020, an action for damages due to a false or fraudulent claim for medical assistance may be brought by the attorney general, or by a private plaintiff. If a private person files a complaint, the complaint is under seal for at least 60 days to allow the attorney general time to investigate the action and decide whether to recommend dismissal due to lack of substantial evidence that a violation occurred, intervene and pursue the case on behalf of the state, or allow the private person to proceed with the action on behalf of the state. The attorney general may request an extension of time to conduct the investigation.

If the attorney general elects not to proceed with the action, and does not move to dismiss it, the person who brought the action has the right to proceed and conduct the action. The attorney general may request to be served with all documents related to an action pursued by a private plaintiff. To protect pending state investigations, under proposed AS 9.58.030(d), the attorney general may request a court to stay discovery for not more than 90 days.

For an action brought by a private plaintiff, if the claim is successful, a private plaintiff would be entitled to a percentage of damages. If the attorney general pursues the action, damages to the private plaintiff would be at least 15 percent but not more than 25 percent of the proceeds. If the attorney general does not proceed with the action, the available damages amount shall be at least 25 percent but not more than 30 percent of the proceeds.

Certain actions would be barred: actions based on evidence known to the state, actions based on allegation or transactions subject to an action in which the state is a party, actions based on public disclosure, and actions against the state or current or former state employees. The bill would also establish as part of AS 47.05, a provision authorizing seizure and forfeiture of property of a medical assistance provider if the attorney general finds probable cause that the provider has or is committing medical assistance fraud; seizure is subject to court review.

Both the proposed Medical Assistance False Claim and Reporting Act and provision on seizure and forfeiture of real property require involvement of the Department of Law. The Department of Law would require attorneys, investigators, and support staff in order to review the complaints and make recommendations as to which action to take under the Medical Assistance False Claim and Reporting Act. The department anticipates that the work could be done by attorneys in the Medicaid Fraud Control Unit (MFCU) of the Office of Special Prosecutions and Appeals. The bill would allow for recovery of attorney fees incurred in prosecuting civil action for Medicaid fraud, but under federal law fifty percent of attorney fees recovered must be paid to the federal government to reimburse the federal government its proportionate share of funding the Medicaid program.

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Analysis Continued

The State of Alaska recovered approximately \$1.9 million in civil settlements in 2012 through the MFCU in the form of global class action cases as a result of the State's membership in the National Association of Medicaid Fraud Units. A portion of recovered monies could be used to pay MFCU attorney fees. While conservative estimates may not provide for full funding of the MFCU through attorney fee recoveries, it is likely that a significant portion will be recovered to pay for the twenty-five percent of matching state funds that are required. This fact combined with a positive fiscal note from the Department of Health and Social Services regarding this legislation (for savings in the amount of \$800,000 for the first year and approximately \$900,000 each year thereafter), along with the deterrent effect of the proposed legislation should result in significant savings for the State of Alaska.