SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3/4/09
BILL NO. HB 122

DEPARTMENT OF JUSTICE
HB 122: Revising Montana's False Claims Act

Background

The federal government has concluded that state and federal false claims statutes help uncover fraud involving government programs like Medicaid.

False claims statutes deal with fraud against a government agency when someone submits a false or fraudulent claim for payment. A case may be brought by the government itself or by a third party – also known as a "relator" – who has knowledge of the fraudulent claim. Many times, these third parties are "whistleblowers" working inside a business or agency. Sometimes, the government proceeds with a case initiated by a relator. Other times, the relator proceeds independently.

Montana's Share

When a national Medicaid false claim lawsuit is settled, the State of Montana is awarded a share that is proportionate to its population. From that share, Montana keeps about 32 percent and the remainder is sent to the federal government. The division of the reward reflects the fact that the federal government pays 68 percent of the costs of the state's Medicaid program.

Lost Bonuses

As an added incentive for states, the federal government will award states an extra 10 percent of any recovery, as long as the state has a false claim statute that meets certain requirements. In general, these requirements are designed to make the state statute at least as effective as the federal statute.

Because Montana statutes do not meet these guidelines, the state receives smaller settlements. In 2007-2008, for example, Montana could have received an additional $379,172 in settlement money.

Proposed Changes

HB 122 makes some simple changes so Montana statutes meet federal guidelines.

- Minimum damages are increased from two to three times actual damages, in addition to $5000-10,000 per occurrence.
- Montana's statute of limitations is conformed to the federal statute: six years from the date of violation or three years from the date of when the facts should have been discovered, whichever is longer.
- HB 122 requires that when suit is initially brought by a relator, the case must be filed "under seal" with the court for 60 days. This allows the state attorney general to review the case for possible intervention.
- HB 122 raises the minimum amount awarded to the relator to 15 percent – up from the current 10 percent – when the government prosecutes an action initially brought by a relator. If the relator proceeds independently, the relator's share of the recovery is raised to a minimum of 25 percent instead of the current 15 percent.

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MEDICAID FRAUD FALSE CLAIMS SETTLEMENTS/
Lost Federal Bonuses, 2007 - 2008

QUARTER ENDING	CASE NAME	CHECK DATE	LOST BONUS (Approx. 10% of Total Settlement)
03/31/07	Schering Plough	01/29/07	$63,497
03/31/07	Pediatrix	02/16/07	$609
09/30/07	Purdue Pharmaceutical	09/07/07	$71,930
12/31/07	Medicis Pharmaceutical	11/26/07	$413
03/31/08	Merck/Steinke	02/19/08	$49,806
03/31/08	Merck/LaCorte	02/20/08	$92,177
06/30/08	Walgreen's	06/16/08	$8,133
09/30/08	Bristol Meyers	07/14/08	$92,435
09/30/08	Omnicare	09/23/08	$172
		TOTAL	**$379,172**

2009 Legislature
January 9, 2009