



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 733 (Patron – Albo)

LD#: 10103828

Date: 1/28/2010

Topic: Medical assistance fraud

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation modifies several statutes relating to medical assistance fraud. Existing *Code* establishes criminal and civil penalties for several behaviors that constitute Medicaid fraud. For instance, soliciting or collecting excess payments for services and soliciting or receiving any remuneration in return for referring a person for items or services for which payment may be made, in whole or in part, under medical assistance are currently Class 6 felonies. Making a false statement in an application for payment and making false statements to obtain benefits of \$200 or more are both punishable by up to 20 years imprisonment. The proposal expands many of the medical assistance fraud provisions to include causing such fraudulent behavior to occur and aiding and abetting in the fraud. Some of the offenders who could be charged under the “aiding and abetting” provision of the proposal could potentially be convicted as co-conspirators or accessories to the Medicaid fraud under current law.

The proposal also makes it easier for the Director of the Department of Medical Assistance Services to terminate a contract with a provider for violations of certain medical assistance fraud statutes. In addition, the proposal makes several technical changes to existing statutes.

Analysis:

According to the Local Inmate Data System (LIDS) for calendar years 2007 and 2008, a misdemeanor violation of § 32.1-321.4 (making false statements to obtain benefits less than \$200) was the most serious offense for one offender held pre- or post-trial in jail during the two-year period. This offender did not receive an active term of incarceration to serve after sentencing.

The Circuit Court Automated Information System (CAIS) database for fiscal years 2008 and 2009 indicates that felony medical assistance fraud was the primary, or most serious, offense for 15 offenders during this time period. While 60% of these offenders did not receive an active term of incarceration, 27% were sentenced to a local-responsible (jail) sentence (with a median sentence length of 8.5 months).

The two remaining offenders were given a state-responsible (prison) term. One of these offenders received an active term of one year while the other was sentenced to three years.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands existing felony provisions, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of additional felony convictions likely to result from enactment of the proposal. Therefore, the impact of the proposal cannot be quantified.

Local adult correctional facilities. By expanding medical assistance fraud statutes, the proposal may also increase the future local-responsible (jail) bed space needs. The magnitude of the impact cannot be determined with existing data.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Convictions for medical assistance fraud are not covered by the sentencing guidelines as the primary, or most serious, offense. However, a conviction under this provision may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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