



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

**MEDICAL FRAUD: IMMUNITY**

**House Bill 5492 as introduced  
First Analysis (1-17-96)**

**Sponsor: Rep. Gerald Law  
Committee: Insurance**

***THE APPARENT PROBLEM:***

The Health Care False Claim Act, enacted in 1984, made it a felony to knowingly present a false claim for health care benefits, to solicit or offer a kickback in connection with payments by a health insurer, and to participate in a conspiracy to defraud a health insurer. (The act was modeled on the Medicaid False Claim Act, which was expanded at the same time the new act was created.) The act was created to help in the investigation and prosecution of cases of fraudulent medical claims and the fraudulent provision of unnecessary medical services. A representative of Blue Cross and Blue Shield testified before the House Insurance Committee that a special unit it has created to root out and prevent fraudulent claims has in recent years recouped over \$40 million and avoided over \$80 million in false health benefits claims. The company also has a toll-free hot line for people to report suspected fraud. An immunity provision to protect insurance companies and others from lawsuits when engaged in good faith efforts to prevent or detect fraud would be an additional useful tool. The legislature has recently enacted Public Act 276 of 1995 dealing with insurance fraud in a more comprehensive manner. That legislation contained provisions granting immunity from civil liability for certain kinds of activity, such as providing information or evidence of suspected fraud and cooperating with investigations by law enforcement agencies and other specified organizations. Some people have urged that a similar immunity provision be placed in the Health Care False Claim Act.

***THE CONTENT OF THE BILL:***

The bill would amend the Health Care False Claim Act to specify that, if acting in good faith, a person would not be subject to civil liability for providing information, investigating, or cooperating with an investigation or examination under the act. (The term "person" in the act refers to an individual, corporation, partnership, association, or any other legal entity.)

MCL 752.1008a

***FISCAL IMPLICATIONS:***

There is no information at present.

***ARGUMENTS:***

***For:***

The bill would grant immunity from civil liability for people and organizations that, acting in good faith, investigate health care fraud, provide information to such investigations, or otherwise cooperate with investigations. This is consistent with the immunity provisions in the recently enacted legislation on insurance fraud. Providing immunity from lawsuits will aid in the fight against health care insurance fraud. It will reduce the costs associated with anti-fraud efforts by eliminating retaliatory lawsuits by targets of investigations, and it will eliminate the fear of lawsuits that can inhibit cooperation with fraud investigations. It only protects people and organizations when they are acting in good faith.

***Response:***

It should be noted that the immunity provision in this bill is not identical to those contained in Public Act 276 of 1995. In that legislation, immunity is provided for a variety of activities to a person or entity if the person is acting "in the absence of malice." That act also says the immunity is provided "unless that person knows that [the information provided] contains false information pertaining to any material fact or thing." Perhaps the term "good faith" should be defined in the bill.

***POSITIONS:***

Blue Cross and Blue Shield of Michigan testified in support of the bill. (1-16-96)

The Michigan Health and Hospital Association supports the bill. (1-16-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

House Bill 5492 (1-17-96)