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March 18, 2022

**TO:** The Honorable Maggie McIntosh, Chair  
Appropriations Committee

**FROM:** Shelly Marie Martin  
Assistant Attorney General and  
Director, False Claims Unit

**Re:** SB0114 False Claims - Civil Penalties or Damages - Exceptions to General Fund Deposit by Comptroller (Support)

The Office of the Attorney General supports Senate Bill 114, sponsored by Senator Waldstreicher, which creates exceptions to the current requirement that all funds recovered under the Maryland False Claims Act be deposited into the General Fund and allows for the recovery of attorney's fees in these cases to support future anti-fraud enforcement efforts. Senate Bill 114 is identical to House Bill 391, which passed both this Committee and the House.

The Maryland False Claims Act (Gen. Prov. §§ 8-101 through 8-111) and its companion statute the Maryland False Health Claims Act (Health Gen. §§ 2-601 through 2-611) prohibit contractors, grantees, and others who directly or indirectly receive government funds from making false or fraudulent claims for payment. Those who do so are subject to fines of up to \$10,000 per violation and up to three times the loss suffered by the government agency. The Acts currently require that all funds recovered by the State be deposited to the General Fund. Gen. Prov. § 8-109(c); Health Gen. § 2-610(c). While this is an appropriate disposition of the recovery in many cases, in other instances, we believe that it would be more appropriate to allow a specially-funded agency to retain the recovered funds.

The State has created trust funds and other special programs that receive funds from places other than the General Fund or hold funds in trust for specific purposes. The various State Pension Plans and the State Employee and Retiree Health and Welfare Benefits Program, for example, are funded, in part, by employee contributions to their pension and health insurance benefits. Both programs operate for the purpose of providing current and future benefits to employees, retirees, and their dependents. Both K-12 schools and institutions of higher education receive substantial funding from local taxes, federal programs, student tuition, and other sources in addition to any

funds appropriated to them from the General Fund. Should one of these programs be the victim of fraud by a contractor or other person, we believe that the best use of any recovered funds is to return them to these programs.

SB 114 accomplishes this goal by providing that, while recoveries under the False Claims Act will generally be deposited to the General Fund, funds will not be sent to the General Fund when a case involves the State Retirement and Pension System, the State Employee and Retiree Health and Welfare Benefits Program, or other funds not subject to the general requirement that excess funds revert to the General Fund.

The bill also allows for the government to recover attorneys' fees in cases brought under the Maryland False Claims Act.<sup>1</sup> Those funds would be placed into a special fund to support future anti-fraud enforcement efforts. The Medicaid Fraud Control Unit, which is responsible for both criminal and civil anti-fraud enforcement in the Medicaid program, has thirty-nine attorneys, investigators, auditors, and other administrative staff. The False Claims Unit, which is responsible for anti-fraud enforcement in all other State programs, currently consists of one attorney. It does not have does not have auditors or investigators, who are often crucial to successfully recover fraudulently obtained monies. The lack of investigative resources to handle these cases hampers the Office of the Attorney General's ability to pursue cases and limits the amount of money that can be recovered under the False Claims Act.

Allowing the recovery of attorney's fees under the Maryland False Claims Act harmonizes that Act with both the Maryland False Health Claims Act and the federal False Claims Act. Designating those recoveries to a special fund to support future enforcement is a first step in providing the personnel resources necessary to accomplish the mammoth task of investigating and litigating all fraud cases arising from all State programs except the Medicaid program.

The Office of the Attorney General urges the Committee to vote favorably on SB 114. Thank you for your attention to this matter.

cc: The Honorable Jeff Waldstreicher  
Members, Appropriations Committee

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<sup>1</sup> The Maryland False Health Claims Act already allows for the government to recover attorneys' fees in cases brought under that statute.