



Maryland
Hospital Association

February 28, 2023

To: The Honorable William C. Smith Jr., Chair, Senate Judicial Proceedings Committee

Re: Letter of Opposition - Senate Bill 666- Maryland False Claims Act and Maryland False Health Claims Act - Revisions

Dear Chair Smith:

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment in opposition to Senate Bill 666. Protecting the government and taxpayers from false claims is a goal shared by all Maryland citizens. We are concerned, however, that SB 666 as proposed may be overly punitive, increase the risk of frivolous lawsuits, and unnecessarily expand government power.

First, the proposed minimum penalty is overly punitive. Maryland's existing law, which does not specify a minimum, provides flexibility to tailor a penalty to fit the nature of the offense. As the statute already includes the potential for additional treble damage, it allows a minor violation to have a correspondingly lower penalty, whereas more serious offenses are punished with higher fines. Imposing a minimum penalty eliminates this flexibility and may be excessively punitive for minor transgressions.

Second, introducing a private right of action after the government elects not to intervene is likely to increase the number of nuisance lawsuits. The promise of an award as a percentage of the judgment or settlement creates strong incentives for plaintiffs to pursue frivolous claims. If the government elects not to intervene after reviewing the facts and circumstances of a case, then the lawsuit likely lacks merit. Allowing such cases to proceed would encourage frivolous lawsuits, which are not only time-consuming to defend, but will divert precious hospital resources away from vital patient care activities.

Finally, the bill would allow the government to issue subpoenas upon any suspicion of relevant information. Furthermore, the government would be permitted to issue a subpoena prior to the institution of a civil proceeding. While we support provisioning the government with the necessary tools to investigate fraudulent claims, we are concerned this unnecessarily expands government power without an adequate check and balance from the courts.

If this Committee proceeds with the expansion of Maryland's False Claims Act, MHA requests that the Committee strongly consider amendments that would protect Maryland's hospitals and other private institutions that submit to Maryland agencies claims for payment. These amendments must start with:

1. An explicit adoption of the standard established by Rule 9(b) of the Federal Rules of Civil Procedure, which requires a plaintiff alleging fraud to “state with particularity the circumstances constituting fraud or mistake.” Further, any reform to the current Maryland law should explicitly adopt the U.S. Supreme Court’s interpretation of Rule 9(b) in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), holding that a complaint must plead sufficient factual matter to “state a claim to relief that is plausible on its face.”
2. The Maryland False Claims Act already requires a “knowing” act on the part of the alleged violator. Both common sense and a recent Fourth Circuit opinion, *U.S. ex rel. Sheldon v. Allergan Sales, LLC*, command that a person’s objective reasonable interpretation of a law is a complete defense under the federal False Claims Act. Naturally, Maryland should follow this reasoning and include codification that a person may defend “knowing” actions based on an objectively reasonable interpretation of a relevant statute when it has not been warned away from that interpretation by authoritative guidance.
3. The Maryland False Claims Act should provide that the Attorney General shall promptly make a determination as to whether a person’s claim under this title complies with all applicable pleading standards (including the *Iqbal* and *Sheldon* standards) and shall file a motion to dismiss the case upon making a determination that the person’s claim fails one or more of those standards.

For these reasons, we request an *unfavorable* report on SB 666.

For more information, please contact:

Nicole Stallings, Executive Vice President and Chief External Affairs Officer
Nstallings@mhaonline.org