

OFFICE OF THE
ATTORNEY GENERAL





Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

October 24, 2014

Mr. David Schumacher
Director, Office of Financial Management
P.O. Box 43113
Olympia, WA 98504-3113

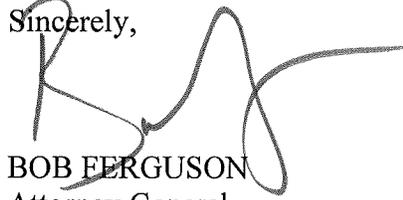
Dear Mr. Schumacher:

Enclosed please find the 2015 Supplemental Budget Request from the Attorney General's Office (AGO).

We are mindful of the continuing challenges of the current and projected state budget situation. As such, my supplemental request for the current fiscal year budget has been narrowed to only one budget activity supporting enforcement of the False Claims Act. Specifically I am requesting \$70,875 to provide for the AGO Medicaid Fraud Control Unit. This funding is required to meet the 25% state match requirement for the Federal Grant, which is administered by the Office of the Inspector General. As you know, the 75% federal support for the program would be discontinued if we do not meet the state match requirements. This work has been proven to benefit the State by deterring fraud, abuse and neglect and recovering money for the Medicaid system – last year the state portion of recoveries was \$12.2 million against total state expenditure of \$1.027 million.

If you have any questions about this budget request, please contact Mark Melroy, Chief Financial Officer, at (360) 534-4981. Thank you for your assistance and continued cooperation.

Sincerely,



BOB FERGUSON
Attorney General

RWF/rgp
Enclosure

cc: Mamie Marcuss, Chief of Staff
David Horn, Chief Deputy Attorney General
Mark Melroy, Chief Financial Officer

OFFICE OF THE ATTORNEY GENERAL
2015 Supplemental Budget Request
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TAB A

RECOMMENDATION
SUMMARY



Recommendation Summary

Agency: 100 Office of Attorney General

10:59:18AM

10/17/2014

Dollars in Thousands

	FY2 FTEs	General Fund State	Other Funds	Total Funds
2013-15 Current Biennium Total	1,096.3	21,822	222,070	243,892
Total Carry Forward Level Percent Change from Current Biennium	1,096.3	21,822	222,070	243,892
Carry Forward plus Workload Changes Percent Change from Current Biennium	1,096.3	21,822	222,070	243,892
M2 BA Medicaid Fraud Direct Costs			71	71
Total Maintenance Level Percent Change from Current Biennium	1,096.3	21,822	222,141 .0%	243,963 .0%
Subtotal - Performance Level Changes	0.0			
2013-15 Total Proposed Budget Percent Change from Current Biennium	1,096.3	21,822	222,141 .0%	243,963 .0%

M2 BA Medicaid Fraud Direct Costs

The Office of the Attorney General (AGO) requests \$70,875 in Fiscal Year (FY) 2015 for the AGO Medicaid Fraud Control Unit (MFCU) to meet the 25% State match requirement to the Federal Grant administered by the Office of Inspector General (OIG), and to provide for new and ongoing litigation costs relating to the False Claims Act (FCA).

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TAB B

DECISION
PACKAGES



Agency: 100 Office of Attorney General
Decision Package Code/Title: BA Medicaid Fraud Direct Costs

Budget Period: 2013-15
Budget Level: M2 - Inflation and Other Rate Changes

Recommendation Summary Text:

The Office of the Attorney General (AGO) requests \$70,875 in Fiscal Year (FY) 2015 for the AGO Medicaid Fraud Control Unit (MFCU) to meet the 25% State match requirement to the Federal Grant administered by the Office of Inspector General (OIG), and to provide for new and ongoing litigation costs relating to the False Claims Act (FCA).

Fiscal Detail

Operating Expenditures	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
19A-1 Medicaid Fraud Penalty Account-State		70,875	70,875
Total Cost		70,875	70,875

Package Description:

The AGO requests \$70,875 in State FY (SFY) 2015 to provide for the AGO MFCU to meet the 25% State match requirement to the Federal Grant administered by the OIG, and to provide for new and ongoing litigation costs relating to the FCA. Requested funding is limited to the State matching requirement and the purpose of these funds is for new and ongoing litigation related to the FCA.

Fully funding pending FCA litigation most effectively advances MFCU's mission to recover money for the Medicaid system and deter fraud abuse and neglect. Having adequate AAG staff and bringing FCA actions is at the core of MFCU's mission. We are directed to recover money stolen by fraud against Medicaid and to deter abuse and neglect of Medicaid clients.

The state/federal split of Medicaid recoveries is 50/50, based on the 50/50 state/federal cost split to administrate the Medicaid program. Last year FCA cases brought in a total of \$24.4 million and Washington State retained \$12.2 million of these recoveries. The cost to generate these recoveries was \$1.027 million. This is a return on investment of about 12 to 1.

This request is to fully fund the state 25% match to the federal grant (75% match) approved by the OIG for Federal Fiscal Year (FFY) 2015 (October 1, 2014 - September 30, 2015). We have received the federal Notice of Award confirming federal funding of \$3,804,244 (\$951,061 per quarter) with a state responsibility of \$1,268,080 (\$317,020 per quarter).

The SFY 2015 federal award is \$3,760,399 (FFY2014's 4th quarter allotment of \$907,216 and FFY2015 1st through 3rd quarter responsibility of \$951,061 per quarter). This is contingent on state MFCU funding of at least \$1,253,465 (FFY2014 4th quarter responsibility of \$302,405 and FFY2015 1st through 3rd quarter responsibility of \$317,020 per quarter).

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The AGO Expenditure Authority Schedule approves \$1,197,000 for the Medicaid Fraud Penalty Account (MFPA). This leaves a variance of \$56,465 that the state must match. However, this \$1,197,000 includes \$54,000 of proviso finding for AAG Salary Adjustments that will not be able to be fully utilized for its directed purpose. This results in additional shortfall for direct cost requirements.

We assume that we will only use \$39,590 of proviso funding which increases the state matching requirement by \$14,410 to a total of \$70,875 in SFY 2015.

Access to the federal dollars is conditioned on the approval of this supplemental request. This request is for costs of pending in-court Civil False Claims litigation particularly in the areas of depositions, expert witness costs and litigation support.

The increased litigation costs are ongoing and reflect a trend to have more FCA cases go further in litigation rather than settling at the pre-filing stage. This leads to more depositions and expert witness fees in our complex medical fraud cases.

The AGO contact for this request is Brendan VanderVelde, Budget Manager, (360) 586-2104.

Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

This request is for funding necessary for the continuation and successful prosecution of two major FCA cases pending in court. The outcome of these cases will have fiscal implications for the state and can create a long-lasting precedent which would deter future fraud directed at the state's Medicaid system.

This request will prevent the loss of revenue from the state MFPA, while the recovery of funds will be deposited into the MFPA.

This litigation will result in the recovery of damages and penalties, and promote general deterrence and increased voluntary compliance with the laws by Medicaid providers.

Performance Measure Detail

Activity: A009 Investigation and Prosecution of Medicaid Fraud and Resident Abuse

Outcome Measures

Incremental Changes
FY 2014 **FY 2015**

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002538	More Medicaid funds are returned to the State and made available through appropriation to combat fraud, provide Medicaid services, and monitor prescription drug abuse. In particular, as part of the legislation creating the FCA, the 2012 legislature also created the Medicaid Penalty Account which is the state funding source for not only the MFCU, but also the Medicaid program integrity responsibilities managed by the Washington Health Care Authority. Thus, through MFCU's civil efforts, recovered money that was illegally obtained in violation of either the federal or state FCA's is returned to the State and placed into the Penalty Account. This includes restitution, interest and penalties. During the 2013 legislative session, the legislature also authorized the prescription drug monitoring program to be funded from the Penalty Account.	\$0.00	\$0.00
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Is this decision package essential to implement a strategy identified in the agency's strategic plan?

This budget request supports the following AGO Strategic Plan Goals:

Goal 1: Serve the state - Provide excellent legal advice and representation to our client, the State of Washington.

Goal 2: Serve the people. Protect the legal rights of the people of the State of Washington.

Does this decision package provide essential support to one of the Governor's priorities?

This request supports the following Governor's Priorities:

Budget

This request helps the AGO to operate more effectively and efficiently, within available resources.
Protect vital services to seniors, children and disabled individuals.

Health Care

Continue to enroll families in affordable insurance plans and Apple Health.
Pay for quality instead of quantity.

This request is for funding to be used in litigation in Medicaid Fraud lawsuits. Continued enforcement of Medicaid fraud infractions will reduce improper billing and increase services provided to Medicaid patients state-wide.

Does this decision package make key contributions to statewide results? Would it rate as a high priority in the Priorities of Government process?

This request supports the following Results Washington Goals:

Goal 4: Healthy and Safe Communities

- 1.3 Decrease rate of uninsured in state from 15% to 6% by 2017.
- 1.3.b. Meet or exceed Medicaid expansion enrolment target of 300,000 by 2016.

This request promotes integrity in Medicaid providers resulting in access to improved medical care while supporting the elderly and most vulnerable residents of the state.

The state's share of all MFCU FCA case recoveries is 50%. Last year, Washington State received \$12.2-million in recoveries. The

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cost to generate these recoveries was \$1.027-million. This is a return on investment of about 12 to 1.

Goal 5: Effective, Efficient and Accountable Government
Customer Satisfaction and Confidence

- 1.1 Increase/maintain customer service satisfaction with accuracy, timeliness, and respectfulness.
- 1.3 Increase/maintain timely delivery for state services.

This request aligns the actual costs of current MFCU services with the funding available to the AGO in sustaining the current workload. This request clarifies how state resources are spent, shows accountability and responsibility in spending, and offers transparency resulting in customer satisfaction and confidence in legal services provided.

This request will provide the AGO with MFPA funding and justify the recent approval of the Federal General Funds (75%) match. These funding increases will also align the AGO MFCU with the correct level of legal services needs. This funding will eliminate the need for the AGO to reprioritize current programs and efforts to fund MFCU activities.

What are the other important connections or impacts related to this proposal?

The funding sought in this proposal will fund expert review, consultation and testimony in support of damage theories in two filed FCA cases, and pay for extraordinary litigation costs, specifically depositions.

What alternatives were explored by the agency, and why was this alternative chosen?

The MFCU did consider alternatives to litigation as part of the filing decisions. Once the commitment to litigate was made, the options narrow to pursuing it or dismissing the case.

What are the consequences of not funding this package?

Funding will promote successful prosecution of two revenue generating FCA cases.

Additional Medicaid funds will be returned to the State and made available through appropriation to combat fraud, provide Medicaid services, and monitor prescription drug abuse. In particular, as part of the legislation creating the FCA, the 2012 legislature also created the MFPA which is the state funding source for MFCU as well as Medicaid program integrity responsibilities managed by the Washington Health Care Authority. Thus, through MFCU's civil efforts, recovered money that was illegally obtained in violation of either the federal or state FCA's is returned to the State and placed into the MFPA. This includes restitution, interest and penalties. During the 2013 legislative session, the legislature also authorized the Prescription Drug Monitoring program to be funded from the MFPA.

Through MFCU's criminal and non-FCA civil efforts, more money is also returned to the State, because those cases also contain a restitution portion, and generate or have generated interest. In these cases, the restitution recoveries are returned directly to the Medicaid program and not to the Penalty Account. Interest earned and recovered goes to the State General Fund.

What is the relationship, if any, to the state's capital budget?

None.

What changes would be required to existing statutes, rules, or contracts, in order to implement the change?

None.

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Expenditure and revenue calculations and assumptions

\$1,253,465 SFY2015 matching fund responsibility.
\$1,197,000 - Expenditure Authority Schedule total for FY2015.
\$ 56,465 = Decision Package Sub-Total
\$ 14,410 + Proviso funding not able to be used
\$ 70,875 = Decision Package Total

\$70,875 in additional direct litigation costs will aid in recovery of damages and penalties exceeding \$1-million dollars.

\$15,000 per FY for deposition costs.

\$54,000 per FY for expert witnesses: 216 hours at \$250 per hour.

\$1,875 per FY for document processing and an electronic discovery vendor.

This supplemental request will fund deposition costs, expert witness costs and litigation support for the successful resolution of pending in-court Civil False Claims cases.

Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

OIG supports this budget request and has already approved federal allotments contingent on the approval of this request.

These costs are ongoing and will carry forward into future biennia as we become fully staffed, and assign full civil litigation loads with new FCA in-state cases. We will build these increased litigation costs into future budgets based on our experience, litigation capacity and anticipation of our needs.

<u>Object Detail</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
C Professional Svc Contracts		54,000	54,000
E Goods\Other Services		16,875	16,875
Total Objects		70,875	70,875

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TAB C

REVENUES



Revenue Reports

- Not Applicable -

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TAB D

ADDITIONAL
INFORMATION



2015 Supplemental Budget Request

ELECTRONIC SUBMITTAL CONFIRMATION FORM

Agency Number: 100

Agency Name: Office of the Attorney General

Agencies are required to provide electronic access to each decision package in their budget request as part of the submittal process. Confirm Option 1 or 2 below:

Option 1(Preferred):

- This agency posts all decision packages for our 2015 supplemental budget request to our public facing website at the following URL:

URL: <http://www.atg.wa.gov/budget.aspx>

Option 2:

- This agency does not post decision packages and has forwarded copies via e-mail to OFM.Budget@ofm.wa.gov.

These decision packages conform to ADA accessibility compliance policy.

Agency Contact: Brendan VanderVelde

Contact Phone: (360) 586-2104

Contact E-mail: brendanv@atg.wa.gov

Date: October 24, 2014

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