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Promoting Fairness and Equity in Wisconsin's Civil Justice System

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Memorandum

To: Joint Finance Committee
From: Wisconsin Civil Justice Council
Date: March 12, 2019
Re: **Oppose Gov. Evers Proposal to Reinstate *Qui Tam* Lawsuits**

Wisconsin Civil Justice Council (WCJC) respectfully requests members of the Joint Finance Committee reject Gov. Tony Evers’s budget proposal to reinstate *qui tam* lawsuits, which allow private individuals to bring file lawsuits against business and medical providers on the government’s behalf. These lawsuits serve only to profit plaintiff attorneys and do little to prevent fraud against the state.

What are qui tam lawsuits?

Qui tam lawsuits are lawsuits in which a private party (called a “relator”) may bring a false claims lawsuit against a party on the government’s behalf. The relator must first present the information to the government, which can decide to either pursue the case, or deny involvement and allow the plaintiff to bring the case on behalf of the state using a private plaintiff attorney.

In 2007, the Wisconsin Legislature enacted a *qui tam* law that allowed plaintiffs to file lawsuits in Medicaid fraud cases. In 2015, with the support of WCJC, the Legislature repealed the law.

Gov. Evers’s proposal

In his budget proposal, Gov. Evers not only reintroduces the previous *qui tam* law for Medicaid fraud, but also would expand to the law to **all** state agencies. This means that if any private party contracting with the state is alleged to have committed a “false claim” with a state agency, a relator can bring a claim on behalf of the state against the business.

The proposed *qui tam* law provides significant incentives for private parties to sue. Under the proposed language, the relator can receive **up to 30 percent** of the total alleged damages to the state, as well as the ability to recoup his or her attorney’s fees and costs. Moreover, the business providing the service to the state can be liable for up to **three times the damages** the state sustained, “or could have sustained,” whichever is higher.



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State Qui Tam Laws Profit Plaintiff Attorneys and Do Little to Prevent Fraud

The main proponents of *qui tam* laws are plaintiff attorneys who profit off of suing businesses and medical providers on behalf of the state. Wisconsin already has a law¹ that grants the Attorney General the authority to prosecute Medicaid fraud and recover damages on behalf of the state. All damages recovered under current law go to the state and need not be paid out to a private party or plaintiff attorneys.

There is little evidence that these statutes accomplish the ostensible goal of detecting and recovering damages for fraud.² Instead, in many instances states with *qui tam* statutes may actually recover *less* from the average fraud settlement than those states without, due to the state's obligation to pay out a share of the settlement to the private party. As noted above, under Gov. Evers's proposal, the state would have to pay up to 30 percent of settlements to relators, significantly reducing the amount of recovered dollars that could be returned to covering Wisconsin's Medicaid population and funding other important work in state agencies.

In conclusion, WCJC respectfully requests JFC members reject Gov. Evers's proposal to reinstate and expand needless and ineffective *qui tam* lawsuits in Wisconsin.

For more information on *qui tam* lawsuits, please contact WCJC Executive Director Andy Cook at cook@hamilton-consulting.com or 608-258-9506.

The Wisconsin Civil Justice Council's mission is to promote fairness and equity in Wisconsin's civil justice system, with the ultimate goal to make Wisconsin a better place to work and live.

¹ Wis. Stat. § 49.49

² U.S. Chamber Institute for Legal Reform. 2018. "The Great Myths of State False Claims Acts." <https://www.instituteforlegalreform.com/uploads/sites/1/GreatMythsStateFCAsPaper-Feb18-web.pdf>.