

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 5336-03  
Bill No.: SB 1244  
Subject: Attorney General, State; Auditor, State; Civil Procedure; Courts; Crimes and Punishment; Medicaid  
Type: Original  
Date: March 13, 2006

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(\$70,386)	(\$67,734)	(\$69,431)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(\$70,386)</b>	<b>(\$67,734)</b>	<b>(\$69,431)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 8 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>
Federal*	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*Income and costs of approximately \$100,000 would net to \$0.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

### FISCAL ANALYSIS

#### ASSUMPTION

Officials from the **Missouri Senate**, the **Office of Prosecution Services**, the **Office of the Governor**, the **Office of State Auditor**, the **Department of Mental Health**, the **Office of State Courts Administrator**, and the **Missouri House of Representatives** assume this proposal would not fiscally impact their agencies.

Officials from the **Department of Health and Senior Services (DOH)** assume this proposal would not fiscally impact the operations of the DOH. DOH states if a fiscal impact were to result, funds to support the program would be sought through the appropriations process.

Officials from the **Department of Corrections (DOC)** state currently, the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY05 average of \$39.13 per inmate, per day or an annual cost of \$14,282 per

ASSUMPTION (continued)

inmate) or through supervision provided by the Board of Probation and Parole (FY03 average of \$3.15 per offender, per day or an annual cost of \$1,150 per offender).

The following factors contribute to DOC's minimal assumption: (1) DOC assumes the narrow scope of the crime will not encompass a large number of offenders, (2) The low felony status of the crime enhances the possibility of plea-bargaining or imposition of a probation sentence, and (3) The probability exists that offenders would be charged with a similar but more serious offense or that sentences may run concurrent to one another.

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Office of Attorney General (AGO)** assume that reviewing materials associated with potential claims of fraud, filing pleadings as intervenors and bringing causes of action alleging Medicaid fraud will require additional staff. AGO assumes it would require 2 Assistant Attorney Generals and one-half FTE Investigator to meet the requirements of this proposal.

Officials from the **Department of Social Services - Division of Medical Services (DMS)** state this proposal requires the Medicaid program integrity unit within the Department of Social Services to provide to the General Assembly and the Governor several reports starting January 1, 2007 and annually thereafter. To enter, track, produce and review the data for these reports, DMS assumes it would need an additional Management Analysis Specialist II.

Officials from the **Department of Social Services - Division of Legal Services** assume this proposal would not fiscally impact their division.

Officials from the **Office of State Public Defender** did not respond to our fiscal note request.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
<b>GENERAL REVENUE</b>			
<u>Costs - Office of Attorney General</u>			
Personal Services (2.5 FTE)	(\$19,005)	(\$23,376)	(\$23,961)
Fringe Benefits	(\$8,374)	(\$10,299)	(\$10,557)
Expense and equipment	<u>(\$11,783)</u>	<u>\$0</u>	<u>\$0</u>
Total Costs - Office of Attorney General	(\$39,162)	(\$33,675)	(\$34,518)
<u>Costs - Department of Social Services - Division of Medical Services</u>			
Personal Services (1 FTE)	(\$19,001)	(\$23,381)	(\$23,966)
Fringe Benefits	(\$8,372)	(\$10,302)	(\$10,559)
Expense and equipment	<u>(\$3,851)</u>	<u>(\$376)</u>	<u>(\$388)</u>
Total Costs - Department of Social Services - Division of Medical Services	(\$31,224)	(\$34,059)	(\$34,913)
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b><u>(\$70,386)</u></b>	<b><u>(\$67,734)</u></b>	<b><u>(\$69,431)</u></b>
<b>FEDERAL</b>			
<u>Income - Office of Attorney General</u>			
Program Reimbursement	\$82,137	\$101,028	\$101,109
<u>Income - Department of Social Services - Division of Medical Services</u>			
Program Reimbursement	\$31,224	\$34,055	\$34,907
<u>Costs - Office of Attorney General</u>			
Personal Services (2.5 FTE)	(\$57,016)	(\$70,129)	(\$71,882)
Fringe Benefits	<u>(\$25,121)</u>	<u>(\$30,899)</u>	<u>(\$29,227)</u>
	(\$82,137)	(\$101,028)	(\$101,109)

Costs - Department of Social Services -  
 Division of Medical Services

Personal Services (1 FTE)	(\$19,001)	(\$23,380)	(\$23,964)
Fringe Benefits	(\$8,372)	(\$10,301)	(\$10,559)
Expense and equipment	<u>(\$3,851)</u>	<u>(\$374)</u>	<u>(\$384)</u>
Total Costs - Department of Social Services - Division of Medical Services	<u>(\$31,224)</u>	<u>(\$34,055)</u>	<u>(\$34,907)</u>

**ESTIMATED NET EFFECT ON  
 FEDERAL**

	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This proposal provides that any person may bring an action for Medicaid fraud on behalf of the person and the state. The person bringing the action must give a copy of the petition to the Attorney General, and must also disclose to the Attorney General all material information in the person's possession.

The petition shall be filed in camera, and shall remain under seal for at least 60 days, or until the state elects to intervene, whichever occurs first. Service of the petition shall not be made on the defendant until ordered by the court.

On behalf of the state, the Attorney General may elect to intervene and proceed with the action, not later than 60 days after the date the Attorney General received the petition and information. This deadline may be extended for good cause shown. During the period in which the complaint is under seal, the Attorney General may elect to initiate discussions with the accused provider in an attempt to facilitate a resolution of the claim prior to the commencement of judicial proceedings.

The court and the Attorney General may consent to a dismissal of an action at any time during

DESCRIPTION (continued)

which the petition remains under seal. If the state elects not to intervene, the action shall be dismissed.

No person other than the state may intervene or bring a related action based on the same underlying facts as an action brought under this section. If the state intervenes, it shall have the primary responsibility for investigating and prosecuting the action, and is not bound by any act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to limitations.

The state may limit the participation of the person who initiated the action if it finds that the person's participation would cause harassment, or would unduly delay investigation or prosecution of the action, or would be repetitious or irrelevant. Limitations may include, but are not limited to, limiting the number of witnesses, limiting length of testimony, limiting cross-examination of witnesses.

Even if an action has been brought under this act, the state is free to pursue the claim through any alternate proceeding. The person bringing the initial action will have the same rights in an alternate proceeding as are provided by this act, and any final finding or conclusion in the alternate proceeding shall be conclusive on all parties to the initial action.

The person who initiated the action is entitled to at least ten percent, but no more than twenty percent, of the proceeds of any action brought under this section, unless the court finds that the person bringing the action planned and initiated the violation on which the action is based, in which case it may reduce the share of the proceeds to the extent it deems appropriate. If the person bringing the action is convicted of criminal conduct arising from the role in the violation, the court may dismiss the person from the action, and the person may not receive any share of the proceeds of the action. A dismissal under this section of the person who initiated the action shall not prejudice the right of the state to continue such action.

A person may not bring an action under this act that is based on allegations that are the subject of another civil suit or administrative penalty proceeding which has already commenced, and in which the state is a party.

A person may not bring an action under this act that is based on the public disclosure of allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person bringing the action is the original source of such information.

DESCRIPTION (continued)

The proposal also contains "whistle-blower" protections, providing that a person who is discharged, demoted, suspended, threatened, harassed, or in any way discriminated against in terms of employment due to a lawful act taken by the person in furtherance of an action for Medicaid fraud shall be entitled to reinstatement with the same seniority status, not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as the result of such discrimination. However, such protections shall not apply if the court finds that the employee brought a frivolous or clearly vexatious claim, planned initiated or participated in the conduct upon which the action is brought, or is convicted of criminal conduct arising from Medicaid fraud violations.

The act provides that an action brought under this section shall not be brought more than five years after the date on which the violation was committed. Also, this version provides that nothing within this section shall be deemed to alter the statutes of limitations in Sections 516.105 (medical malpractice actions), or 537.100 (wrongful death actions).

This act also provides that any person who intentionally files a false report or claim alleging a Medicaid fraud violation shall be guilty of a Class A misdemeanor upon a first conviction, and shall be guilty of a Class D felony upon subsequent convictions.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Missouri Senate  
Department of Mental Health  
Office of State Courts Administrator  
Missouri House of Representatives  
Department of Health and Senior Services  
Department of Corrections  
Office of State Auditor  
Office of Attorney General  
Department of Social Services  
Office of Prosecution Services  
Office of the Governor

**NOT RESPONDING: State Public Defender**



Mickey Wilson, CPA  
Director  
March 13, 2006