

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5340-06
Bill No.: Perfected SS for SCS for SB 1210, 1244 & 844
Subject: Attorney General, State; Auditor, State; Civil Procedure; Courts; Crimes and Punishment; Medicaid
Type: Original
Date: April 11, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(\$114,681 to \$214,681)	(\$122,222 to \$222,222)	(\$125,280 to \$225,280)
Total Estimated Net Effect on General Revenue Fund	(\$114,681 to \$214,681)	(\$122,222 to \$222,222)	(\$125,280 to \$225,280)

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

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

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

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

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

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Missouri Senate**, the **Office of the Governor**, the **Department of Mental Health**, and the **Office of State Courts Administrator** 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 this proposal authorizes individuals to sue for Medicaid fraud, and modifies various provisions relating to the reporting and investigation of such fraud. The penalty provision component of the bill resulting in potential fiscal impact for the DOC, is enhanced to up to a class C felony.

DOC states at this time, the DOC is unable to determine the number of people who would be convicted under the provisions of this bill and therefore the number of additional inmate beds that may be required as a consequence of passage of this proposal. Estimated construction cost for one new medium to maximum-security inmate bed is \$55,000. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as facility start-up costs are not included and

ASSUMPTION (continued)

entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

Currently, the DOC cannot predict the number of new commitments which may result from the creation and enhancement of the offense(s) outlined in this proposal. Currently only one offender is on parole for existing violations. 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 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).

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to DOC. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Officials from the **Office of State Auditor (SAO)** state this proposal contains two audit requirements. SAO states it would be required to do an annual financial audit of the Medicaid fraud unit within the Attorney General's Office. This audit requirement is primarily a cost/benefit analysis of the unit. SAO estimates that this audit will require 1 FTE.

SAO states it would also be required to do an annual financial audit of the program integrity unit of the Medicaid program within the Department of Social Services. This audit requirement is primarily a cost/benefit analysis of this unit. SAO estimates that this audit will require the equivalent of 1 FTE.

Oversight assumes the SAO can carry out the requirements of this proposal with 1 FTE.

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.

ASSUMPTION (continued)

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 **Missouri House of Representatives (MHR)** assume a .25 FTE Budget/Research Analyst would be needed to assist House members with the advisory work groups. MHR assumes costs would be \$14,573 in FY07, \$17,132 in FY08 and \$17,561 in FY09.

Oversight assumes the MHR could absorb a .25 FTE.

Officials from the **Office of Prosecution Services (OPS)** did not respond to our fiscal note request. In a similar fiscal note, SCS for SB 1210, 1244 & 844 (L.R. 5340-03) the OPS assumed the proposal would not fiscally impact their agency.

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
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GENERAL REVENUE

<u>Costs - Department of Corrections</u>			
Program costs	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Costs - Office of State Auditor</u>			
Personal Services (1 FTE)	(\$30,750)	(\$37,823)	(\$38,768)
Fringe Benefits	<u>(\$13,545)</u>	<u>(\$16,665)</u>	<u>(\$17,081)</u>
Total Costs - Office of State Auditor	(\$44,295)	(\$54,488)	(\$55,849)

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
<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	<u>(\$31,224)</u>	<u>(\$34,059)</u>	<u>(\$34,913)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(\$114,681 to \$214,681)</u>	<u>(\$122,222 to \$222,222)</u>	<u>(\$125,280 to \$225,280)</u>
FEDERAL			
<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)

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
<u>Costs - Department of Social Services - Division of Medical Services</u>			
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** **\$0** **\$0** **\$0**

<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 a person commits a "knowing" violation of sections prohibiting Medicaid fraud if he or she has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. Current law provides that any person committing such a violation shall be guilty of a Class D felony upon a first conviction, and shall be guilty of a Class C felony upon subsequent convictions; this proposal provides that such person shall be guilty of a Class C felony upon a first conviction, and shall be guilty of a Class B felony upon subsequent convictions. Any natural person who has committed such violations shall be forever excluded from participation as a Medicaid provider. Also, no person convicted of such a violation shall be eligible for parole, probation, conditional release, or suspended imposition or execution of sentence until he or she has served at least 85 percent of any term of imprisonment ordered as punishment if the violation results in a total loss in excess of \$50,000. No person that commits such violation shall receive a suspended imposition of sentence in which total loss is in excess of \$10,000. No person shall receive a subsequent suspended imposition of sentence when the loss is of any amount.

DESCRIPTION (continued)

Any natural person who willfully prevents, obstructs, misleads, delays, or attempts to do any of the aforementioned with regard to communication of information relating to a violation of Medicaid fraud shall be guilty of a class D felony, and shall forever be excluded from participation as a Medicaid provider.

This proposal provides that any person may bring an action for Medicaid fraud on behalf of the person and the state. In such an action, a person who commits a violation is liable as provided by subsection 11 of Section 191.905, RSMo, but the amount of any civil penalty assessed by the court shall be reduced by the amount of any civil monetary penalty which the person has paid for a violation of the federal False Claims Act, if the violation is based on the same underlying facts upon which the state action was brought. 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 120 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 120 days after the date the Attorney General received the petition and information. This deadline may be extended for good cause shown. During the time the petition remains under seal, the Attorney General may elect to initiate discussions with the accused provider in an attempt to resolve 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 which the petition remains under seal. If the state elects not to intervene, the action shall be dismissed, notwithstanding any objection by the person initiating the action.

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, and limiting cross-examination of witnesses.

DESCRIPTION (continued)

Even if an action has been brought under this proposal, 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 proposal, 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 twenty to thirty-five percent of the proceeds of any action brought under this section, unless the court finds that the action is based primarily on information not provided by the person initiating the action, in which case the court shall award the person no more than fifteen percent of the proceeds. If the court finds that the person bringing the action planned and initiated the violation on which the action is based, it may reduce the share of the proceeds to the extent it deems appropriate. However, any person convicted of a violation shall not be entitled to any share of the proceeds, and shall be dismissed from the action.

A person may not bring an action under this proposal 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 proposal 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.

The Attorney General shall establish guidelines for enforcing the provisions of this act, which shall be modeled upon the standards established by the U.S. Department of Justice, outlined in its "Guidance on the Use of the Civil False Claims Act in Civil Health Care Matters."

Venue for these actions shall be in Cole County. An action brought under this proposal shall not be brought more than five years after the date on which the violation was committed, but nothing within this proposal shall be deemed to alter the statutes of limitations for medical malpractice or wrongful death actions.

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

DESCRIPTION

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 proposal provides that the Attorney General's office and the Department of Social Services shall make a detailed report to the General Assembly and the Governor regarding implementation and administration of the provisions of this act, as provided therein. Additionally, a financial audit of the Medicaid fraud unit within the Attorney General's office and of the program integrity unit of the Department of Social Services shall be annually conducted by the state auditor, to quantitatively determine the amount of money invested in such units and the amount of money actually recovered by them.

The proposal also authorizes the Attorney General to commence state prosecution for alleged violations of Medicaid fraud, and gives the Attorney General authority to apply for and obtain warrants to search, seize, or copy information relevant to investigations for fraud.

The proposal also provides that all Medicaid health care providers shall maintain adequate records regarding services provided, claims submitted, and payments requested, and shall maintain such records for at least five years after the date payment was received or for at least five years after the date on which the claim was submitted, if payment was not received. No person shall conceal or destroy such records before five years time, or he or she shall be guilty of a Class A misdemeanor.

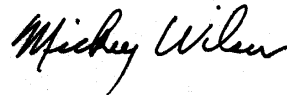
Beginning September 1, 2006, an advisory working group is created to determine whether an office of inspector general shall be established. The advisory working group shall consist of the following: (1) Five members of the house of representatives appointed by the speaker; and (2) Five members of the senate appointed by the pro tem. The directors of the department of social services, the department of health and senior services, and the department of mental health or the directors' designees shall serve as ex officio members of the advisory working group. Members of the advisory working group shall be reimbursed for the actual and necessary expenses incurred in the discharge of the member's official duties.

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 the Governor

NOT RESPONDING: State Public Defender and Office of Prosecution Services



Mickey Wilson, CPA
Director
April 11, 2006