

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5340-07
Bill No.: HCS for SS for SCS for SB 1210, 1244 & 844
Subject: Attorney General, State; Auditor, State; Civil Procedure; Courts; Crimes and Punishment; Medicaid
Type: Original
Date: May 9, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(\$75,519 to \$175,519)	(\$88,547 to \$188,547)	(\$90,762 to \$190,762)
Total Estimated Net Effect on General Revenue Fund	(\$75,519 to \$175,519)	(\$88,547 to \$188,547)	(\$90,762 to \$190,762)

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 9 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)** did not respond to our fiscal note request. However, in a similar proposal, the SAO stated the 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 increasing the penalties associated with medicaid fraud and providing mandated reports to the General Assembly and the Governor would require additional staff. AGO assumes it would require one-half Assistant Attorney General to meet the requirements of the proposal.

ASSUMPTION (continued)

Oversight assumes the AGO could absorb a one-half FTE.

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

Costs - Department of Corrections

Program costs	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
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Costs - Office of State Auditor

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 - Department of Social Services -</u>			
<u>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>(\$75,519 to \$175,519)</u>	<u>(\$88,547 to \$188,547)</u>	<u>(\$90,762 to \$190,762)</u>
FEDERAL			
<u>Income - Office of Attorney General</u>			
Program Reimbursement	\$82,137	\$101,028	\$101,109
<u>Income - Department of Social Services -</u>			
<u>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>Costs - Department of Social Services -</u>			
<u>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	<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 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 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.

Any person who is the original source of the information used by the Attorney General to bring an action shall receive ten percent of any recovery by the Attorney General unless such person planned, initiated, or participated in the conduct upon which the action is brought, in which such person shall not be entitled to any percentage of the recovery.

Any person who is the original source of information about the willful violation by any person of section 36.460, RSMo, shall receive ten percent of the amount of compensation that would have been paid the employee forfeiting his or her position under section 36.460, RSMo, if the employee was found to have acted fraudulently in connection with the state medical assistance program.

An employer shall not discharge, demote, suspend, threaten, harass, or otherwise discriminate against an employee in the terms and conditions of employment because the employee initiates, assists in, or participates in a proceeding or court action under sections 191.900 to 191.910.

By January 1, 2007, and annually thereafter, the Attorney General's office shall report to the General Assembly and the Governor the following: (1) The number of provider investigations

DESCRIPTION (continued)

conducted by the Attorney General, (2) The number of referrals due to allegations of violations under sections 191.900 to 191.910, (3) The total amount of overpayments identified as the result of completed investigations, (4) The amount of fines and restitutions ordered to be reimbursed, with a delineation between amounts the provider has been ordered to repay, including whether or not such repayment will be completed in a lump sum payment or installment payments, and any adjustments or deductions ordered to future provider payments, (5) The total amount of monetary recovery as the result of completed investigations, and (6) The total number of arrests, indictments, and convictions as the result of completed investigations.

An annual financial audit of the Medicaid fraud unit within the Attorney General's office shall be conducted and completed by the State Auditor in order to quantitatively determine the amount of money invested in the unit and the amount of money actually recovered by such office.

By January 1, 2007, and annually thereafter, the Department of Social Services shall report to the General Assembly and the Governor the following: (1) The number of medicaid provider and recipient investigations and audits relating to allegations of violations under sections 191.900 to 191.910 completed within the reporting year, including the age and type of cases, (2) Number of medicaid long-term care facility reviews, (3) Number of medicaid provider and recipient utilization reviews, (4) The number of referrals sent by the department to the Attorney General's office, (5) The total amount of overpayments identified as the result of completed investigations, reviews, or audits, (6) The amount of fines and restitutions ordered to be reimbursed, with a delineation between amounts the provider has been ordered to repay, including whether or not such repayment will be completed in a lump sum payment or installment payments, and any adjustments or deductions ordered to future provider payments, (7) The total amount of monetary recovery as the result of completed investigation, reviews, or audits, and (8) The number of administrative sanctions against medicaid providers, including the number of providers excluded from the program.

An annual financial audit of the program integrity unit within the Department of Social Services shall be conducted and completed by the State Auditor in order to quantitatively determine the amount of money invested in the unit and the amount of money actually recovered by such office.

No person knowingly with the intent to defraud the medical assistance program shall destroy or conceal such records as are necessary to fully disclose the nature of the health care for which a claim was submitted or payment was received under a medical assistance program, or such records as are necessary to fully disclose all income and expenditures upon which rates of payment were based under a medical assistance program. Upon submitting a claim for or upon

DESCRIPTION (continued)

receiving payment for health care under a medical assistance program, a person shall not destroy or conceal any records for five years after the date on which payment was received, if payment was received, or for five years after the date on which the claim was submitted, if payment was not received. Any provider who knowingly destroys or conceals such records is guilty of a class A misdemeanor.

Any person who intentionally files a false report or claim alleging a violation of sections 191.900 to 191.910 is guilty of a class A misdemeanor. Any person who previously has been convicted of making a false report or claim under this section and who is subsequently convicted of making a false report or claim under this section is guilty of a class D felony and shall be punished as provided by law. Any person who receives any compensation in exchange for knowingly failing to report any violation of subsections 1 to 3 of section 191.905 is guilty of a class D felony.

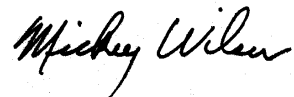
Beginning September 1, 2006, an advisory working group is created for the purpose of conducting a study to determine whether an office of inspector general shall be established. Such office would be responsible for oversight, auditing, investigation, and performance review to provide increased accountability, integrity, and oversight of state medical assistance programs, to assist in improving agency and program operations, and to deter and identify fraud, abuse, and illegal acts. The working group shall review the experience of all states that have created a similar office to determine the impact of creating a similar office in this state. 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. No more than three members from each House shall be of the same political party. 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. A chair of the advisory working group shall be selected by the members of the advisory working group. The advisory working group shall meet as necessary.

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

NOT RESPONDING: State Public Defender, the Office of State Auditor, and Office of Prosecution Services



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Director
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