F I S C A L I M P A C T R E P O R T

SPONSOR SJC **ORIGINAL DATE** 02/24/15 **LAST UPDATED** 03/19/15 **HB**

SHORT TITLE Medicaid for Certain Incarcerated Persons **SB** 42/SJCS/aHJC

ANALYST Boerner

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
ISD & MAD FTE Costs	$299.1	$291.6	$291.6	$882.3	Recurring	GF and Federal Matching Funds
ASPEN/MMIS Costs	$2,064.5	$0.0	$0.0	$2,064.5	Non-Recurring	GF and Federal Matching Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From (regarding similar legislation):
Human Services Department (HSD)
NM Corrections Department (NMCD)

SUMMARY

Synopsis of House Judiciary Committee Amendments

HJC amendments amend a section of the Public Assistance Act and generally change references from continued "enrollment" to continued "eligibility" for consistency with standard use of HSD terms.

SJC amendment 5 inserts a new section regarding eligibility requirements that states a person is eligible for public assistance grants under the Public Assistance Act if…the person is not an inmate of any public nonmedical institution at the time of receiving assistance, *except that an inmate may be eligible for medical assistance programs administered by the medical assistance division of the department…*

HJC amendment 19 inserts two paragraphs:

- Subsection E indicates HSD will not be required to pay for services on behalf of any incarcerated individual except as permitted by federal law.
- Subsection F provides that correctional facilities shall inform HSD when an eligible

individual is incarcerated and notify the department upon that eligible individual's release.

HJC amendment 23 provides a definition of "eligibility," indicating a finding by HSD that an individual has met the criteria established in state and federal law and the requirements established by HSD rules to enroll in Medicaid.

Synopsis of Original Bill

The Senate Judiciary Committee substitute for Senate Bill 42 establishes that incarceration shall not be a basis on which to deny or terminate enrollment in Medicaid, and that after release from incarceration, a previously incarcerated person shall remain enrolled in Medicaid unless determined ineligible for reasons other than incarceration.

The bill provides that a person who was not enrolled in Medicaid when he or she became incarcerated would be permitted to submit an application for Medicaid enrollment while incarcerated. Additionally, HSD would be required to create of a process for assisting incarcerated individuals with the Medicaid application process in compliance with federal requirements. HSD would not permitted to refuse to process a Medicaid application on the grounds the individual is incarcerated.

The bill stipulates that the provisions of this section shall not be construed to abrogate:

- any deadline that governs the processing of applications for enrollment in Medicaid pursuant to existing federal or state law; or
- requirements under federal or state law that the human services department be notified of changes in income or residency.

Finally, HSD is required to adopt and promulgate rules and collaborate with NM Corrections Department (NMCD), the Children, Youth, and Families Department (CYFD), and the administrators of state correctional facilities as necessary to carry out the provisions in this bill.

FISCAL IMPLICATIONS

A summary of HSD's fiscal analysis for a similar bill are provided below (the fiscal impact to HSD does not appear to have changed from HSD's previous estimate).

The cost to implement all of the changes to HSD information technology systems is estimated at $2,064,510 (non-recurring) over three years. The base cost for the changes, not including the interfaces ($1,775,760) is $288,750. These changes would be required no matter the number of facilities interfaced with. Each interface with a facility is $31,710, assuming HSD utilizes the same file format we used in ASPEN for NMCD. The general fund portion of these costs could range from 10 percent to 50 percent depending on federal review and approval.

Estimated FTE costs are outlined in the table above, also subject to substantial federal financial participation rates.

It should be noted that the department is adept at modifying the functions of its ASPEN IT system to maintain compliance with ever-changing federal and state requirements.

- Not included in HSD's fiscal analysis are the savings in state uncompensated care costs due to larger numbers of patients being covered by Medicaid as a result of the requirements outlined in this bill (many of whom, estimated at 90 percent, would qualify as "newly eligibles" under Medicaid expansion and therefore covered by 100 percent federal funds in FY16, stepping down to 90 percent in later years).

- Further, according to the Substance Abuse and Mental Health Services Administration (SAMHSA), significant savings can be gained when discharged inmates have ready access to the health care coverage they need for substance use and/or mental disorders (nationally, 68 percent of jail inmates have substance abuse disorders and 16 percent have severe mental disorders).

- SAMHSA notes also that treatment saves $12 dollars for every $1 dollar spent ($7 in criminal justice costs and $5 in medical costs). Further, when this population receives the treatment it needs it has been shown to result in less criminal recidivism, slower spread of Hepatitis and HIV, less complications resulting from addiction, and fewer hospitalizations for mental and physical health issues.

SIGNIFICANT ISSUES

Following a local physician's request regarding Medicaid coverage for incarcerated individuals in New Mexico, the Centers for Medicare and Medicaid provided a response in an August 2013 letter which is outlined below:

- Incarceration does not preclude an individual from being determined Medicaid eligible. Inmates are permitted to file an application for Medicaid coverage during the time of their incarceration, and assuming they meet all applicable Medicaid eligibility requirements, may be enrolled in the Medicaid program before, during and after the period of time spent in the correction facility. However, incarceration does affect the state's ability to claim federal financial participation (FFP). This is a payment exclusion only, not an eligibility exclusion, and does not affect the eligibility of the individual inmate for the Medicaid program.
- States can receive FFP for Medicaid-covered state plan services provided to Medicaid-enrolled inmates when inmates become inpatients in hospitals, nursing facilities, juvenile psychiatric facilities, or intermediate care facilities.
- The payment exclusion does not apply when the inmate is paroled, on probation, or on home release, except when the individual reports to the prison for an overnight stay. The exclusion does apply where the individual is an inmate awaiting criminal proceedings, penal dispositions, or other involuntary detainment determinations.
- CMS has a longstanding policy permitting states to establish a process under which a Medicaid-eligible inmate is placed in a suspended eligibility status while the inmate exclusion is applicable. This suspension process prevents the state from erroneously claiming FFP for services furnished to the incarcerated individual while ensuring that the individual returns to active enrollment when the inmate exclusion no longer applies (absent a redetermination that termination or other reasons).
- CMS has informed states there is no legal basis for terminating the Medicaid eligibility of inmates of public institutions solely on the basis of their status as inmates. The suspension policy provides for continuity of care so the individual can immediately access covered benefits when the inmate exclusion no longer applies, and enables the state to receive FFP for

such benefits.

- CMS is aware many states are dealing with legacy [information technology] eligibility and enrollment system challenges when placing Medicaid-eligible incarcerated individuals in a suspended status. The availability of enhanced federal funding for new or improved eligibility systems, as specified in the final rule, "Federal Funding for Medicaid Eligibility Determination and Enrollment Activities," that CMS published in April 2011, should help many of these states make the necessary modifications to their Medicaid eligibility systems to incorporate this functionality. Subject to certain standards set by CMS, states can receive 90 percent FFP for the design, development, and installation or enhancement of Medicaid eligibility determination systems and 75 percent FFP is available for maintenance and operation of these systems. Previously, the state was only eligible to receive a 50 percent federal matching rate for these activities. The enhanced funding provided by the new rule was intended to help states prepare for the Medicaid improvements and expansion that materialized in 2014 as part of the Affordable Care Act.

HSD noted regarding a previous version of this bill that the requirements to provide additional services and processes for Medicaid application for incarcerated individuals could possibly require increased staffing; however, the processes may be achievable through current or additional staff of the respective correctional/jail/detention facilities. HSD currently provides "train the trainer" services with an existing agreement with NMCD to ensure these processes are current and accurate. HSD is willing to extend these services to all correctional facilities and agencies willing to participate.

PERFORMANCE IMPLICATIONS

The impact of the number of applications, and subsequent eligibility for other public assistance applications that may be anticipated, is unknown. SB 42 may potentially increase the amount of applications received by HSD Income Support Division county offices by incarcerated individuals who have not yet submitted or have been determined eligible for Medicaid.

ADMINISTRATIVE IMPLICATIONS

HSD estimates there are 10 correctional facilities, 13 juvenile detention centers and 33 county jails statewide. To ensure timely processing of the applications in accordance with the processing standards required by the Centers for Medicare and Medicaid Services and SB 42, ISD would require three additional FTE, as outlined in Fiscal Implications.

HSD noted regarding a similar bill that since 2013, the department has been working on administrative efforts to address most of what is contemplated in SB 42. HSD/MAD has begun work with NMCD, Bernalillo County Detention Center and the Santa Fe County Jail to establish a presumptive eligibility (PE) training program specific for correctional and county jail staff to certify them as presumptive eligibility determiners and allow them to issue presumptive eligibility determinations for incarcerated individuals upon release. To date, 63 staff members have been certified as PE determiners at these sites. MAD will continue to train as many staff at the correctional facilities and county jails as request such training.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

HSD noted it would continue to collaborate with NMCD and other correctional facilities, as has

been done since 2013, to train staff as PE determiners in order to provide immediate Medicaid coverage to incarcerated individuals upon release. Additionally, MAD staff will continue to work with the Bernalillo County Detention Center on a pilot project that ensures PE determinations upon release with linkages to intensive care coordination provided through the Medicaid Managed Care Organizations (MCOs). While obtaining Medicaid coverage for these individuals remains an important initiative, it is also critical for these individuals to understand how to navigate the healthcare system in order to access the most effective care in the most appropriate setting, which will be facilitated by the MCOs' care coordination program. Determining Medicaid eligibility for all incarcerated individuals ensures that coverage is available but does not ensure that care is accessed and utilized appropriately to achieve optimal health outcomes.

CEB/bb/je