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FISCAL IMPACT REPORT

SPONSOR SPAC DATE TYPED 2/6/04 HB _____

SHORT TITLE Health Care Registry Act SB 9/SPACS

ANALYST Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	\$50.0			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB245

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Human Services Department (HSD)

SUMMARY

Synopsis of Bill

Senate Public Affairs Committee Substitute for Senate Bill 9 appropriates \$50,000 from the General Fund for FY 05 and subsequent fiscal years for the Department of Health (DOH) to create, maintain and administer a registry of employees determined guilty of abuse, neglect or misappropriation of property. Its purpose is to ensure the safety of individuals who are developmentally disabled, physically disabled and/or elderly and who are receiving care through a community provider.

Oversight of developmentally disabled providers is administered by the DOH.

Oversight of service providers to the disabled and elderly, and the Personal Care Option Attendant Program are administered through the Human Services Department. Included in the bill is

- the requirement to check the Registry prior to hiring any individual or entering into or renewing any contract;
- the prohibition to hire anyone listed in the Registry; a “hold harmless” clause for failure

- to hire or retain an employee listed on the registry;
- the authority to investigate abuse, neglect, or exploitation (ANE), and
- to hold fair hearings for those accused of perpetrating ANE.

Significant Issues

The Committee Substitute for SB9 addresses the major concern HSD expressed regarding HSD's precise role in its previous analysis of the original bill.

Section 3(F) of the Committee Substitute allows HSD the option of not entering into or renewing a contract with all providers of services to the affected population, including personal care option providers, if they fail to comply with the Act's requirements that they not hire or contract with an employee included in the registry. HSD would be required to execute a memorandum of understanding (MOU) or joint powers agreement (JPA) with DOH in order to have access to the health care registry.

The Committee Substitute offers HSD a useful tool to ensure that HSD providers are ensuring the safety and well being of the Medicaid clients they serve.

The substitute clarifies definitions for abuse, neglect and misappropriation of property, deletes managed care organizations except for providing respite, makes technical language changes such as deleting the term "governmental entities", clarifies the process to determine abuse, neglect and misappropriation of property, and clarifies the fair hearing process. The Substitute addresses the concerns expressed by DOH in its previous analysis.

FISCAL IMPLICATIONS

The appropriation of \$50.0 contained in this bill is a recurring expense to the General Fund. Any unexpended or unencumbered balance remaining at the end of a Fiscal Year shall **not** revert to the General Fund.

The language as written permits the department to keep fund balances remaining in subsequent fiscal years. DOH recognizes there will be costs for increases in the fair hearing process and the increased workload to investigate reports of abuse, neglect and exploitation.

ADMINISTRATIVE IMPLICATIONS

If the bill is enacted, HSD would be required to enter into an MOU or JPA to gain access to the registry. In addition, HSD's current policy for community providers needs to be revised to mandate provider compliance with the Act. HSD is required to create a quality assurance process to ensure that providers check the registry prior to hiring potential services providers. HSD would also need to establish a process to verify that potential providers are not on the registry prior to contracting with them.

TECHNICAL ISSUES

HSD points out since Section IV (C) (5) provides an employee's failure to request a hearing within 30 days will result in the employee's name being placed on the registry, it creates a potential loophole in the system that would allow an individual to obtain employment with another agency during the 30-day waiting period.

OTHER SUBSTANTIVE ISSUES

The bill expands the definition section to define abuse, neglect and misappropriation of property. These are the federal definitions used in other programs involving federal funds.

Section 3 (G) includes the word "reports" when describing acts that are protected from liability, not just persons who refuse to hire a person listed on the Registry. This section also expands the discussion of immunity for reporting and utilizing the Registry to specify that a provider acting in good faith is immune from both civil and criminal liability. A provider acting in bad faith or with malicious purpose is specifically denied immunity from liability.

Section 3 (H) now grants all persons listed on the Registry the opportunity to petition for removal from the Registry after a period of five years. The previous version permitted a petition after one year for neglect cases only. This is an important clarification of an inadvertent omission from the original draft.

Section 4 (A) states that the Department will review the reports of abuse, neglect or misappropriation of property it receives from CYFD, APS or other protective agencies. It does not direct the Department to wait till the protective agency has completed their investigation to proceed.

Section 4, (D) is a new provision that mandates the Department to phase in the Registry beginning July 1, 2004 for providers to adults and children with developmental disabilities, by July 1, 2005 for providers to adults and children with physical disabilities and providers to the elderly by July 1, 2005, and to personal care attendants funded through the Medicaid program by July 1, 2006.

BD/yr:lg