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FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/07
 LAST UPDATED 03/05/07 HB 832/aHCPAC/aHJC

SPONSOR Maestas

SHORT TITLE THIRD PARTY LIABILITY CLAIM TIME LIMITS SB _____

ANALYST Weber

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 411

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)
 Attorney General Office (AGO)

SUMMARY

Synopsis of HJC amendment

The House Judiciary Committee amendment to House bill 832 makes 6 changes. The first five are clarifying language changes. The sixth adds the following new section at the end of the bill.

Nothing in this section shall be construed to preclude the application of common law principles in determining equitable reimbursement from any third-party source for New Mexico or a health insurer, including self-insured plans, group health plans, service benefit plans, managed care organizations, pharmacy benefit managers or other parties.

Synopsis of HCPAC amendment

The House Consumer and Public Affairs Committee amendment only eliminates a few words on page three lines 2 and 3 that were included twice. There is no substantive change to the bill.

Synopsis of Original Bill

House Bill 832 amends §27-2-23, NMSA 1978 to specify that it is the Income Support Division of the Human Services Department (the “Division”) that is the agency having the responsibility to determine whether any third parties may be liable for all or any part of the medical costs of injury, disease or disability to a person receiving Medicaid assistance, and recognizing that the Division is entitled to any payment the Medicaid recipient would otherwise be entitled to receive from the third party payer for the medical costs paid by the Division.

The Attorney General describes the changes are “significant”.

The bill proposes new subsection “C” that constitutes a significant addition to existing law. This subsection imposes a duty on all entities providing health insurance by statute, agreement, or contract within the State to:

C(1) provide information to the Division, at its request, concerning health coverage provided by that health insurer to any person receiving services paid by the Medicaid program.

C(2) accept New Mexico’s right of recovery, and assignment to New Mexico of any right, of an individual or entity to payment from the party for an item or service for which payment has been made under the Medicaid program.

C(3) require the provider to respond to an inquiry from the State regarding payment of any payment for health care (not limited to just Medicaid-related payments) made within three years of the payment.

C(4) preserve legal defenses for the health insurer provider that New Mexico’s subrogation claim was not timely or for failure to “present proper documentation at the point-of-sale”, if the Division makes its subrogation claim within three years from the date of service, and commences a legal action to collect on the subrogation claim within six years of the Division making a subrogation claim.

FISCAL IMPLICATIONS

There are no direct fiscal implications but the Human Services Department anticipates an increase in third party claim recoveries but does not quantify the amount. In state fiscal year 2006, HSD collected \$1.7 million related to third party liability of which most was collected from tort recoveries. This legislation could mean more revenue to HSD because the timeline for claim submission is being extended and the legislation also enables the Department to get information from entities that currently are not forthcoming with such information.

SIGNIFICANT ISSUES

The Attorney General adds.

Section C(2) may be read to eliminate the ability of the health insurance provider to contest the State’s right to those funds.

The bill is silent with respect to the effect of any prior payment from the private pay health insurer to the insured person on account of claims made by the Division, or if the provider would

be able to assert prior payment to the covered Medicaid recipient as a defense to a claim from the Division.

The meaning of the phrase “present proper documentation at the point-of-sale” is unclear and may be subject to various interpretations.

It might be appropriate to address matters regarding privacy rights of victims of domestic violence otherwise protected under §59A-16B-6, NMSA 1978.

It might be appropriate to consider whether delay by an insurer in paying an insured is reasonable for the purposes of §39-2-1, NMSA 1978 (imposing attorneys fees and costs upon a finding that the insurer acted unreasonably in failing to pay a claim), if the insurer had reason to believe the Division might make a subrogation claim.

It might be appropriate to address in this bill or another bill the consequences eliminating the right of the health insurance provider to contest the States’ right to those funds. The Medical Assistance Division’s (MAD) Medicaid Provider Agreement contains a provision for a fair hearing for adverse actions taken against a provider. This could include actions such as denial of submitted claims, demand for recoupment of overpayments, etc. A provider may attempt to

claim that this provision violates the Provider Agreement “right to fair hearing”.

The Human Services Department notes this language is significant because the federal Deficit Reduction Act (DRA) language specifies that states must enact such language into statute. Third Party Liability cost avoidance and recoveries have become an important issue to the Centers for Medicare and Medicaid Services (CMS). CMS has stated that failure for states to enact such legislation could result in a loss of federal revenues to the states.

MW/nt