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

SPONSOR Feldman **ORIGINAL DATE** 01/30/12 **LAST UPDATED** **HB**

SHORT TITLE Legislative Approval for Medicaid Changes **SB** 174

ANALYST Geisler

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY11	**FY12**		
	$35.0	Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplication: HB 173, SB 153

SOURCES OF INFORMATION
LFC Files

Responses Received From
Human Services Department (HSD)

SUMMARY

Synopsis of Bill

Senate Bill 174 establishes a pre-requisite for legislative approval of Human Services Department proposed changes to the Medicaid program. When proposing to make changes to the Medicaid program that have a fiscal impact of more than $1 million, or that modify eligibility standards or change program benefits, or add or modify cost-sharing or premium obligations for recipients, HSD would be required to obtain legislative approval before submitting any of the following documents to the federal government for approval: (a) amendments to the state Medicaid plan; (b) a waiver of state Medicaid plan requirements; and (c) amendments to an existing waiver of state Medicaid plan requirements.

FISCAL IMPLICATIONS

The bill provides $35 thousand from the general fund for HSD administrative support necessary to seek legislative approval of Medicaid changes. In terms of the impact of the bill on total Medicaid expenditures, no specific amount can be determined. From the legislative perspective, requiring pre-approval of Medicaid changes would allow the legislature to weigh the projected costs and benefits of changes before they are implemented. HSD notes that they may lose the capability to operate within a specified budget due to the inability to respond timely and

effectively to budgetary constraints and that additional administrative costs could be incurred.

SIGNIFICANT ISSUES

State general fund appropriations of approximately $857 million support $3.7 billion of total Medicaid spending in FY12, including Salud! (physical health managed care), the State Coverage Insurance (SCI) program, the Coordination of Long Term Services or CoLTS (long term managed care), and the fee-for-service programs. However, changes to any of these programs– for example, new benefit designs, new enrollment procedures, or eligibility changes – can carry significant implications for state funding needs.

By requiring the department to receive legislative approval for proposed Medicaid changes, the Legislature and DFA would be better informed about future Medicaid budget needs and services available for Medicaid clients.

According to a February 2011 LFC program evaluation of CoLTS, "State plan amendments do not require statutory change and thus circumvent the normal process for the Legislature to weigh in on major policy changes and assess their fiscal impact. In addition, implementation of CoLTS was not considered a program expansion during the budget development, despite the addition of new costs to the Medicaid program in the form of managed care." The report indicates that the CoLTS waiver added an estimated $68 million in additional Medicaid costs for managed care administration, profit, and taxes. In addition, the personal care option (PCO) is an optional amendment to the Medicaid state plan that creates an entitlement service. PCO costs have increased from a little over $50 million in FY01 to over $334 million in FY10.

Human Services Department Concerns:

HSD notes that Senate Bill 174 would require the executive branch to cede significant authority in operating New Mexico's Medicaid program to the legislature which would result in a number of serious consequences. New Mexico's legislature meets for only 90 days over a two-year period. Since the vast majority of state plan amendments, state plan waivers and waiver amendments would exceed the $1 million fiscal impact threshold, the Medicaid program would be unable to respond quickly to changing fiscal conditions, changes in federal regulations and changes in health care delivery practices.

Additionally, many state plan amendments are initiated by the Department because the Centers for Medicare and Medicaid Services (CMS) requires them. For example, state plan amendments are now required for establishing payment rates for new services, implementing new federally required Medicare rates, and implementing rates for new procedure codes issued quarterly by standard-setting organizations such as the American Medical Association and the American Dental Association. The bill also does not recognize that many state plan amendments are initiated at the request of CMS in order to comply with new Federal regulations. Again, most of these changes would have an impact greater than $1 million. If enacted, this bill would prevent the Department from responding to CMS in a timely manner, potentially putting federal matching funds at risk.

Significant changes in Medicaid program benefits, payment levels, and eligibility standards and requirements are already published in the state register, both as proposed rules and final rules, and always with a process for taking public comments through a public hearing. This method of

changing the program rules is consistent with the requirements applicable to the Executive Branch of state government, which appropriately administers state programs. CMS requires that waivers and waiver amendments have sufficient public input. The legislature also has the power of the purse and can use this power to influence the direction of the program.

Furthermore, the Human Services Department has been designated as the single state Medicaid agency to administer the Medicaid program for New Mexico, pursuant to 42 U.S.C. 1396a(a)(5). Senate Bill 174 would provide the Legislature with final approval of any changes to the Medicaid program, potentially violating the Separation of Powers language of Article III, Section 1 of the New Mexico Constitution.

PERFORMANCE IMPLICATIONS

HSD notes that the time frames requested by CMS for state plan and/or waiver changes may not be met under the requirements specified in this bill, putting federal matching funds at risk. Essential and necessary changes in payment, eligibility, or benefits may be significantly delayed.

ADMINISTRATIVE IMPLICATIONS

HSD states that the bill would add additional requirements to an already cumbersome process and which already requires significant effort on the part of HSD Medical Assistance Division.

RELATIONSHIP

Senate Bill 174 is duplicated by House Bill 173 and Senate Bill 153.

ALTERNATIVES

HSD suggests Legislation could be considered which does not prevent HSD from responding quickly to state plan and/or waiver changes and interrupt the communications and relationship between HSD and the federal government.

HB 373, pocket vetoed by the Governor in 2011, required submission of a fiscal impact report and description of proposed changes to the LFC and DFA at least sixty days, or as soon as practicable, prior to submitting for federal approval amendments to the Medicaid state plan, a waiver of state Medicaid plan requirements, or amendments to an existing waiver of state Medicaid plan requirements.

GG/lj