

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2/15/2016

SPONSOR HHC LAST UPDATED \_\_\_\_\_ HB CS/HB201/HHCS

SHORT TITLE Medicaid False Claims Changes SB \_\_\_\_\_

ANALYST Boerner

### REVENUE (dollars in thousands)

<u>Estimated Revenue</u>			<u>Recurring or Nonrecurring</u>	<u>Fund Affected</u>
<u>FY16</u>	<u>FY17</u>	<u>FY18</u>		
	Positive but Indeterminate*	Positive but Indeterminate*	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\* The amendments would allow New Mexico to retain an additional 10 percent in recoveries made under the Act. See Fiscal Implications in narrative.

Relates to HM 71, Medicaid Fraud And Abuse Working Group

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Human Services Department (HSD)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Committee Substitute for House Bill 201

House Bill 201 amends both the Medicaid False Claims Act (MFCA) and the Fraud Against Taxpayers Act.

HB 201 amends the Medicaid False Claims Act to bring it into compliance with guidance from the federal Department of Health and Human Services (HHS) Office of Inspector General (OIG) providing for incentives if states mirror the language of the Federal False Claims Act. The amendments would allow New Mexico to retain an additional 10 percent in recoveries made under the Act.

These amendments include provisions:

- establishing liability to the state for false or fraudulent claims as described in the Federal False Claims Act;
- providing for the effective means of rewarding and facilitating qui tam actions;
- containing a requirement for filing an action under seal for 60 days with review by the State Attorney General; and
- containing a civil penalty that is not less than the amount of the civil penalty authorized under the MFCA.

Additional amendments to the Medicaid False Claims Act include the insertion of a provision allowing for civil investigative demands, a provision which allows for attorneys' fees, and the granting of authority for the of the Office of the Attorney General to litigate cases under the Act.

HB 201 also amends the Fraud Against Taxpayers Act to allow for civil investigative demands, and attorneys' fees to fund the staffing of whistleblower cases handled by the Office of the Attorney General. It also clarifies the definition of public disclosure of the elements of a false or fraudulent claim.

## **FISCAL IMPLICATIONS**

Enactment of this bill would allow the state to retain an additional 10 percent of all Medicaid money recovered under the Act. Presently, the federal government shares in New Mexico's recoveries in the same proportion as the Federal Medical Assistance Percentage (FMAP - refers to the state's federal matching rate for Medicaid), approximately 70 percent to the federal government and 30 percent to the state. The federal government has provided an incentive for states to bring their false claims statutes into compliance by allowing states to retain an additional 10 percent of recoveries, bringing NM's share to 35 percent with the amendments.

Additionally, allowing attorneys' fees collected in successful actions assists in funding the personnel to successfully handle whistleblower cases, taking a burden off the general fund.

## **SIGNIFICANT ISSUES**

The bill's amendments bring the Medicaid False Claims Act into compliance with federal guidelines allowing the state to retain an additional 10 percent of recoveries made under the Act. The Act as amended has passed informal review with HHS OIG. No substantive changes can be made to the present form of the Act without the risk of losing HHS OIG approval.

## **PERFORMANCE IMPLICATIONS**

None noted for HSD

## **ADMINISTRATIVE IMPLICATIONS**

**For HB201 Original Bill HSD noted:** With regard to 27-14-7(F); recommend keeping the struck sentence "Failure by the attorney general to notify the department of its determination within the specified time period shall be construed as consent to proceed." Removing this sentence may inhibit the Human Services Department (HSD) from protecting Medicaid funds and taking timely administrative action.

With regard to 27-14-7(G); recommend adding the “department” so that HSD may take civil action should the AG decline.

Both recommendations above are supported by Title 42 Code of Federal Regulations Part 455, U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, letter SMD# 13-003 dated March 18, 2013, to the State Medicaid Director, and Title XIX of the Social Security Act and its implementing regulations.

Any HSD IT changes created out of HB201hcs to the New Mexico Medicaid Fraud and Abuse Detection System would be covered under existing contract operations and maintenance.

**For Committee Substitute for HB201 HSD notes:** The substitute makes changes in Sec. 27-14-7 Civil Action For False Claims, in sub. A, B, C, D, E(1) and G to require both the Attorney General and HSD to investigate suspected violation, to require that both the AG and HSD be served with any qui tam complaints and to permit both to pursue civil action for violations. The language “Failure by the attorney general to notify the department of its determination within the specified time period shall be construed as consent to proceed,” in sub. F is still proposed to be removed. Thus, the concern that this removal will limit HSD’s ability to pursue administrative action to recover Medicaid funds remains. As noted above, the inclusion of this language is in keeping with CMS recommendations. The time period for the AG to notify HSD whether it may proceed with civil action is changed from sixty working days to sixty calendar days.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Until New Mexico comes into compliance with federal guidance by HHS OIG, it will be unable to take advantage of the financial incentive allowing the state to retain an additional 10 percent of recoveries.

CB/jo/jle