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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/10
 LAST UPDATED 02/06/10 **HB** 109/aHAFC

SPONSOR Lujan, B.

SHORT TITLE Human Services Department Contract Procedures **SB** _____

ANALYST Earnest

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	See Fiscal Implications Section		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of House Appropriations and Finance Committee Amendment

The HAFC amendment is a technical change to replace “is” with “shall be” on page 2, line 17.

Synopsis of Bill

House Bill 109 creates a new section of the Public Assistance Act to create a Human Services Department Reimbursement Suspense Fund in the state treasury and allow HSD to contract with a person (likely, an attorney) on a contingency fee basis for recovery of medical expenses paid by HSD.

When a claim has been resolved, the money is placed into the suspense fund and the contractor is paid from the new fund. Balances remaining in the suspense fund are deposited in the general fund and appropriated to HSD to reimburse it for public assistance payments and, if required, the federal government.

FISCAL IMPLICATIONS

While it is difficult to determine a specific fiscal impact by allowing contingency fee contracts,

HSD suggests a positive impact for its programs. Contingency fee contracts would provide an incentive for third parties to pursue outstanding claims that the department does not have the resources to recover. A percentage of the amount recovered would be paid to the contractor and the balance would be appropriated to HSD for public assistance programs.

Subsection C of Section 1 calls for a distribution from the new fund to the general fund and then an appropriation to the department. The distribution to the general fund would be an unusual step, and the appropriation to the department could be made directly from the newly created fund. Alternatively, the bill could leave any balances in the new fund for future appropriation by the Legislature.

Continuing Appropriations Language

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

According to the AGO, “under a contingency fee contract, a client does not pay its attorney directly. Instead, the attorney’s compensation depends on whether the attorney obtains a monetary judgment for the client in the legal proceedings. Under a typical contingent fee contract, if money is recovered, the attorney is paid a percentage of the amount recovered. If no money is recovered, the attorney receives no compensation. HSD notes that most of the agency’s public assistance programs use a combination of state and federal funds. “When these funds are recovered from a third party the federal share must be returned to the federal program and only the state share is available to pay the contractor and to be re-appropriated for a public assistance program.”

AGO also states “the bill is intended to provide specific legislative authorization for contingency fee arrangements between HSD and attorneys representing HSD. Absent authorization by statute, the permissibility of contingency fee arrangements is questionable under laws requiring state agencies to deposit money they receive into the general fund and constitutional provisions requiring an appropriation before an agency can spend public money.”

ADMINISTRATIVE IMPLICATIONS

HSD reports little administrative impact as the department already has the capacity to establish contingency fee contracts.

TECHNICAL ISSUES

HSD initially raised a concern about a conflict with existing rules but has since revised that opinion.

DUPLICATION

House Bill 109 is a duplicate of Senate Bill 156.