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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/10

SPONSOR Keller LAST UPDATED HB

SHORT TITLE Prohibit Certain Medicaid Cuts SB 34

ANALYST Earnest

APPROPRIATION (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
IT & Staff	\$500.0	\$1,200.0	\$0.0	\$1,700.0	Non recurring	SGF and Fed Match
HSD Medicaid Programs	*	\$18,300.0	\$48,300.0*	\$48,300.0*	Recurring	SGF

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications Section

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)
 Department of Health (DOH)
 Developmental Disability Planning Commission (DDPC)
 Health Policy Commission (HPC)

Other Comments Received From

The NM Center on Law and Poverty

SUMMARY

Synopsis of Bill

Senate Bill 34 seeks to prohibit cuts to funding or services (or “hold harmless”) for any person enrolled in Medicaid and the Developmental Disability Waiver program as of the date of enactment. The bill carries an emergency clause.

FISCAL IMPLICATIONS

HSD projects a budget shortfall in the Medicaid program budget of \$23 million in general fund revenue. To eliminate the current shortfall, those FY10 expenditures will be “pushed forward” into FY11. Depending on the FY11 appropriation adopted by the Legislature, the department is projecting a \$17 to \$30 million general fund shortfall in FY11. This includes the assumption that Congress enacts a six-month extension of enhanced federal matching rates for Medicaid.

HSD estimated that by preventing implementation of cost containment initiatives, SB34 would increase the FY10 shortfall from \$23 million to \$29 million, increasing the amount “pushed forward” into FY 11 by \$6 million. The FY11 shortfall would increase by approximately \$12 million for unrealized cost containment measures prevented by this bill. The department planned for additional cost containment measures affecting benefits and services to be in place at the beginning of FY11. The bill would prevent the department from implementing these measures, adding approximately an additional \$6.3 million to the FY11 shortfall. Thus, a total GF shortfall for FY11 if this bill was to be enacted would be, conservatively, \$48.3 million. The program would begin FY12 with a similar shortfall.

See “Administrative Implications” sections for discussion of the impacts on HSD’s information technology systems.

SIGNIFICANT ISSUES

SB34 would exempt persons currently enrolled in the state Medicaid program from any actions by the 49th Legislature that could reduce current levels of funding or services. This proposed action could limit the legislature’s flexibility to address the projected budget shortfall in FY11 requiring additional cuts or program modification in other areas of the state budget.

DOH and HSD report that the bill may create a dual system within the Medicaid program. Such a system is not allowed in the Developmental Disabilities Waiver program, where services provided are linked to level of care, not to date of entry into the program. HSD reports that “new enrollment in Medicaid, some of which involves mandatory populations, will continue but due to the funding shortfalls exacerbated by the bill, the department would be unable to provide services to new enrollees at the level of the “grandfathered” group of currently eligible enrollees. Thus, lesser benefits and fewer services will be available for new enrollees although they may be in the same income and eligibility status as those currently enrolled.... If current enrollees are mandated to continue to receive benefits and services at the current level and there is no funding allocated to provide those benefits and services, then new enrollees who are eligible will be treated inequitably causing federal regulatory and statutory issues.

The Human Services Department could be subject to lawsuits if this bill is enacted for denial of equal protection of the law by treating similarly situated individuals differently.”

According to the Department of Health, the Developmental Disabilities Waiver Program currently serves approximately 4,000 individuals. Over 4,000 additional people have applied for this program and are waiting for services. At current levels of state and federal funding, a program deficit of approximately \$9 million is projected for FY11. In order to maintain services to those currently enrolled, the average per person cost must be reduced or additional funding must be provided.

ADMINISTRATIVE IMPLICATIONS

According to HSD:

Impact on staff and systems to manage current enrollees and new enrollees in potentially different benefit programs is significant. New regulation, contracting, federal waiver development and application, and other administrative activities would require new staff. The department is currently unable to hire these required staff. Systems changes to manage different eligibility cohorts would be required. The changes would take at least 4 months to complete and implement, and would require other system changes needed to support the program to be delayed. Total administrative changes are approximated at \$500,000 for staff in FY10 and FY11 and \$1.2 million for system changes in the Medical Assistance Division in FY10.

In addition to the changes within the Medical Assistance Division, Northrop Grumman Corporation has evaluated this bill and its impact on ISD2 and this was very difficult to determine based upon the categories of eligibility that are affected by this bill. If we need to maintain two different flavors of each category it would cost about \$120,000 per category of eligibility, given that there are over 40 categories for Medicaid and most likely not all would be involved, if 20 categories are impacted by this bill the cost for the changes would be \$2.4 million.

TECHNICAL ISSUES

HSD also reports that “the use of ‘hold harmless’ implies a contractual relationship in which one party absolves the other of some type of liability for an action. No contractual relationship arises between the legislature and the enrollees of the Medicaid program. The use of ‘hold harmless’ does not meet the legal definition nor does it actually accomplish what the bill title states, “Prohibiting a cut to funding or services”. The language in the bill doesn’t prohibit the legislature from making a cut to benefits or services by use of the term “hold harmless”, it merely enables those enrolled to continue to receive services and benefits regardless of subsequent budget cutting legislation passed.”

OTHER COMMENTS

The New Mexico Center on Law and Poverty provided comments about the effects of not enacting this bill. In summary, the Center expressed concerns about HSD’s potential Medicaid restructuring plans, the loss of federal matching funds, the loss of economic activity supported by Medicaid spending in the health care sector, cost shifting to commercial insurance, and the impact of cuts to healthcare providers.

BE/mew