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

SPONSOR Sanchez, M. **ORIGINAL DATE** 01/29/14 **LAST UPDATED** 01/31/14 **HB**

SHORT TITLE No Confidence in Human Services Secretary **SR** 2

ANALYST Chabot

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI					

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

SUMMARY

Synopsis of Bill

Senate Resolution 2 expresses the Senate's lack of confidence in the ability of the Secretary of Human Services to fairly and faithfully execute the duties of that office.

SIGNIFICANT ISSUES

The Secretary of the Human Services Department, Sidonie Squier, was confirmed by the Senate on March 2, 2011. According to the resolution, because of her actions relating "to halt funding for behavioral health care providers…through Medicaid" has "effectively dismantled the state's already fragile behavioral health care system and threatened the well-being of New Mexicans." In addition, her comments relating to hunger and food insecurity "make her unsuitable to administer food assistance programs."

Concern is expressed as to whether the Secretary's actions were prudent, responsible and followed due process.

HSD provides the following:

- In its most incredible clause, the resolution would provide that Secretary Squier's stewardship of the programs that assist New Mexico's most vulnerable residents "has been marred" by the Secretary's adherence to federal law. The resolution ignores the fact that the Obama administration made the battle against fraud a central element of

the new health care law, the Patient Protection and Affordable Care Act (ACA). Moreover, the requirement that Medicaid payments to a provider be withheld upon a determination of the existence of a credible allegation of fraud is set forth in the regulations to the ACA.

- The Senate resolution contains a preposterous reference to "unproven allegations of fraud" when federal law specifically states that once an allegation of fraud is determined to be "credible," the matter is to be referred to the State's Medicaid fraud control unit and Medicaid payments to the provider are to be withheld. "Proven" allegations result in prison sentences; "credible" allegations result in pay withholds and referrals to law enforcement for investigation.

- The Secretary's "refusal" to release the audit findings, as the Senate is well aware, has been at the request of the New Mexico Attorney General's Office and has been upheld by two different district court judges as being proper. These credible allegations of fraud are under investigation by law enforcement. As in any law enforcement investigation, such evidence is not revealed until charges are brought.

- The Senate's allegation that the refusal to restore funding to most of the providers that are under criminal investigation has resulted in a "dismantling" of the State's behavioral health system is a gross distortion of the actual facts. The Senate ignores all contrary empirical evidence in making this claim.

- The Senate finds significance that the Attorney General's Office has determined that there is no substantial evidence of fraud in their investigation of one of the fifteen providers under criminal investigation. The Senate ignores the fact that the criminal investigations of other state and federal law enforcement agencies are ongoing, including against the provider for which the Attorney General has found no substantial evidence of Medicaid fraud in their claims investigation. This still does not excuse the fact that the provider overbilled by hundreds of thousands of dollars, which HSD will seek to recover.

OTHER SUBSTANTIVE ISSUES

HSD also provides the following:

Multiple studies, including the Legislature's own Legislative Finance Committee, have cited concerns about fraud, waste and abuse in Medicaid programs. The LFC program evaluation "Human Services Department and Office of the Attorney General Medicaid Fraud, Waste, and Abuse Controls," July 14, 2011, states:

> *The amount of Medicaid funds lost to fraud is poorly understood. During the same time period that the state enacted its Medicaid Fraud Act and was increasingly moving to managed care, the US Department of Health and Human Services, Office of the Inspector General (DHHS OIG) released a report that identified an overpayment rate of 14 percent or $23 billion in 1997. The National Healthcare Anti-Fraud Association predicted in FY10 that fraud accounts for 3 percent of all healthcare expenditures, or $60 billion. A recent overview in the 2010 American Criminal Law Review predicts the portion of this cost of healthcare fraud to taxpayers to be about $36 billion a year nationally.*

This resolution, as well as several bills introduced in the Senate, would limit the effectiveness of both the New Mexico Attorney General's Office and the Human Services Department in combatting such fraud and waste. Senate Bills 33, 50 and 126, each of which conflicts with federal law and regulations, would severely restrict the state's ability to combat fraud, waste and abuse. While the vast majority of Medicaid providers are in no way involved in fraudulent schemes, limiting the state's ability to root out those who seek to defraud and overbill the Medicaid program jeopardizes the entire system. The state must prevent the flow of millions of precious Medicaid dollars into the pockets of unscrupulous and irresponsible providers instead of into services for the State's most vulnerable citizens. Better oversight – including a combination of audits, technical assistance and, when necessary, investigations – is necessary to ensure taxpayer dollars are spent appropriately. The LFC report made several recommendations in this regard, including:

- "The HSD should comply with the requirement for providers to disclose ownership interests and business transactions that could constitute conflicts of interests as recommended by CMS." The audit report by the Public Consulting Group cited many significant issues with ownership and business relationships that are currently under investigation.
- "The HSD should pursue punitive sanctions or phase out terminations of providers guilty of fraud, waste, and abuse to allow other providers to come in and establish themselves, minimizing service disruption."
- "The HSD should reinstitute an on-site audit plan that includes periodic planned audits, as well as spontaneous site visits by the HSD staff or a contracted audit firm."

GAC/svb:ds