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FISCAL IMPACT REPORT

SPONSOR: Campos DATE TYPED: 02/09/01 HB

SHORT TITLE: Medical Assistance Department Act SB 135

ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative			

Conflicts with House Bill 60

SOURCES OF INFORMATION

Health Policy Commission
Human Services Department

SUMMARY

Synopsis of Bill

SB 135 creates the Medical Assistance Department by removing it from the Human Services Department (HSD) and establishing a Cabinet level department.

In addition to creating a new enabling statute for the Medical Assistance Department and an appeals statute, the bill would amend most, but not all, of the existing statutes that specifically concern or affect HSD's Medical Assistance Division (MAD).

Significant Issues

The following are key points of SB 135:

- Establishes a department secretary who would be appointed by the Governor, and confirmed by the Senate, and who would have all authority over medical assistance programs for the state.

- Without specifically naming any organizational units of the new department, provides for all division directors to be exempt employees, with the exception of the director of the Child Support Enforcement Division.

- Transfers all existing resources and responsibilities of the Medical Assistance Division of the HSD to the new department.

- Establishes the new department as the "single state agency" for dealing with the federal government and Title 19 and Title 21.

- Proposes new statutory provisions for hearings for applicants who have been denied medical assistance, and appeals from those hearings.

- Amends the following NMSA laws by inserting *medical assistance department* for HSD and other language clean-up:

There is a precedent in 12 other states for a separate Medical Assistance Department (see attached memo) or detached type of structure for the functions of medical assistance. The creation of a stand alone Medical Assistance Department follows a national trend. In 1982 only 3 states reported the Medicaid Agency in a stand alone status. In 2000, there were 12 states reporting stand alone status. On the other hand, in 1982 there were 30 states in which the head of the agency also administered the TANF program. In the same period, 4 states moved to the Health Department and one state moved to an umbrella agency (both TANF and Health) Neighboring states that have moved to stand alone status include Colorado and Oklahoma. Arizona has always administered the Medicaid program by a stand alone agency.

LFC contacted the states of Oklahoma and Colorado who recently established a stand alone agency for the Medicaid program. The following summarizes the states comments on changing to a stand alone agency:

1. Provides for an equal sounding board for Human Services program issues and Medicaid program issues in the governor's office and with the legislature.
2. Secretaries of integrated departments had bent toward Human Services issues and Medicaid took on a secondary status.
3. The delinking of Medicaid from TANF created two separate programs with different agenda's and therefore different needs.
4. Splits political agendas (health care vs welfare reform).
5. The change provided for a Medicaid voice at cabinet level where the Medicaid budget was always a major issue. Previously there was not a Medicaid voice at that level.
6. Following the transition, Human Services Program staff reported that the change allowed them to focus more clearly on issues relating to their programs by not having to cope with over-whelming Medicaid budget issues.
7. States contacted suggested establishing a coordinating council composed of staff from the effected departments and the governor's office to assist in the transition process. The council would be responsible for dividing resources and setting objectives and outlining joint powers agreements.
8. Transition in both states was difficult and additional costs occurred.
9. Colorado is considering transferring Developmental Disabilities(DD) and Mental Health to the Medicaid Department.

FISCAL IMPLICATIONS

HSD believes that creating a new department would require additional FTE to the current MAD staff. As a result of new FTE, it would be necessary to increase appropriations for personnel, rent, supplies and other related items. New FTE, which could be created and/or partially transferred from HSD, would include administrative personnel, legal staff, and additional fiscal staff to perform the functions currently conducted by HSD's Administrative Services Division (ASD). The exact number of FTE's

has not been determined, but a minimal estimate from the department is $1,000.0. The general fund cost would be $500.0. The department did not provide information on the additional $1,000.0 expenditure. The department does not elaborate on the number of positions and the type of positions that would be created with the new money. Therefore, it is difficult to evaluate the need for these positions and whether the $1,000.0 is a legitimate estimate. A transfer of a proportionate share of support staff from HSD to the Medical Assistance Department could reduce the need for additional FTE's.

HB 135 does not specify the manner of the transition or separation from HSD, nor appropriate any costs associated with it.

ADMINISTRATIVE IMPLICATIONS

As established in HB 135, the Medical Assistance Department's budget would be the second largest in state government.

Currently, the MAD has all classified staff including a director, deputy and staff plus bureau chiefs heading up separate divisions. As described in HB 135, division directors would be established and appointed by the Secretary. Reclassification of positions would be necessary to establish the division director positions.

Transition to the new department would require extensive coordination efforts. For example, the local Income Support offices of HSD are responsible for eligibility determinations and applications for Medicaid recipients. HSD would also be responsible for receiving and transferring appropriate data to the new department. The Medical Assistance Department would be the lead agency responsible for writing and distributing policy material in this coordination effort. Joint operating agreements will need to be negotiated between HSD, DOH and the new medical assistance department.

CONFLICT

Conflicts with HB 60 which amends the Medicaid Provider Act. This bill amends different language for different purposes. However, the bill that is last signed takes effect, eliminating the language of the other.

TECHNICAL ISSUES

The following is HSD identification of issues with the legislation and the Legislative Council Service response to the issues brought forth by HSD:

(1) In Section 11, which amends the definitions section in the Public Assistance Act, § 27-2-2, the definitions of "department" and "secretary" in subsections A and I refer only to HSD and not to the new Medical Assistance Department. Thus, all other subsequent amendments to the Public Assistance Act that specifically reference the Medical Assistance Department lack an appropriate definitional basis. In addition, the drafter has amended subsection G, "recipient," to include a person receiving public assistance or medical assistance but has overlooked a similar amendment to subsection F, "applicant."

Legislative Council Service response- *Section 11 amends Section 27-2-2 NMSA 1978 to distinguish public assistance from medical assistance. The terms "department" and "secretary" continue to refer, in Chapter 27, Article 2 to the human services department (HSD) because it continues to have responsibility over non-medical assistance provisions in that*

article. All other provisions in Chapter 27, Article 2 that are amended in this bill relating to medical assistance specifically refer to the medical assistance department, and not simply "department" which would mean (HSD).

However , Council Service suggest amending Subsection F as follows: ""applicant" means a person who has applied for public or medical assistance or services under the Public Assistance Act;."

(2) In Section 11, which amends § 27-2-2(E), and in every other section of the bill in which the word "regulation" appears in statute, the drafter has improperly substituted "rules" for "regulations," probably in conformity with the Uniform Statute and Rule Construction Act. Despite the requirements of the Act, which treats regulations as rules, "regulations" have a distinct meaning in the law; they implement statutes, as distinct from "rules," which are procedural in nature. See Section 5 (E), p. 6 ("The secretary may make and adopt such reasonable and procedural rules"), omitting "and regulations," found in all present enabling statutes, including HSD's; see also Section 12, amending § 27-2-12, p. 13; Section 18, amending § 27-2-16(A), p. 22; and Section 24(B), New Material ("Fair Hearing"), p.25.

Legislative Council Service response- *The Uniform Statute and Rule Construction Act (USRCA) states that a "rule" means a rule, regulation, order, standard or statement of policy, including amendments thereto or repeals thereof, promulgated by an administrative agency, that purports to affect one or more administrative agencies other than the promulgating agency or that purports to affect persons who are not members or employees of the promulgating agency; [emphasis added]. Despite HSD's contention that "regulations" have a distinct meaning in the law, the New Mexico USRCA provides for the use of "rule" to mean or include regulation. For the most part all new or amended legislation refers to "rule."*

(3) SB 135 omits an appropriate amendment to § 27-2-12.8 ("Mammograms for Medicaid recipients.") in the Public Assistance Act.

Legislative Council Service response- *In a bill of this magnitude, it's not uncommon to overlook sections or references to specific provisions or entities. Thus, there is a temporary provision (Section 59 in SB135) stating that "all references in law to the medical assistance division, medicaid or Title 19 or Title 21 of the Social Security Act shall be deemed to be references to the medical assistance department." This is somewhat of a "catch-all" phrase to provide for the appropriate references.*

(4) SB 135 omits an appropriate amendment to § 27-2-13 ("Conflict in federal and state laws.") in the Public Assistance Act.

Legislative Council Service response- *HSD comments are addressed by response 3 above.*

(5) SB 135 omits an appropriate amendment to § 27-2-17 ("Custodian of funds.") in the Public Assistance Act.

Legislative Council Service response- *HSD comments could be addressed by response 3 above. However , Council Service suggest amending Section 27-2-17 NMSA 1978 in SB135 to indicate "medical assistance department or public assistance department" rather than "state department."*

(6) SB 135 omits a critical, federally mandated amendment to § 27-2-28, “Liability for repayment of public assistance.”) in the Public Assistance Act, which forms the basis of MAD’s third-party liability recoveries and is a corollary to § 27-2-23, which the drafter properly amended.

Legislative Council Service response- *HSD comments are addressed by response 3 above. However , Council Service suggest amending Section 27-2-28 NMSA 1978 to substitute "medical assistance" for "human services" in Subsection G.*

(7) SB 135 omits appropriate amendments to the definitions section, § 27-5-4, s subsections G and I, and to § 27-5-6 (“Powers and duties of the board.”), subsection F, in the Indigent Hospital and County Health Care Act.

Legislative Council Service response- *HSD comments are addressed by response 3 above. However , Council Service suggest amending Subsections G and I in Section 27-5-4 NMSA 1978 and Subsection F in Section 27-5-6 in SB135 to change "human services department" to "medical assistance department."*

(8) SB 135 omits appropriate amendments to §§ 27-11-4 (“Retention and production of records.”) and 27-11-5 (“Rules.”) in the Medicaid Provider Act.

Legislative Council Service response- *HSD comments are addressed by response 3 above. However , Council Service suggest amending Sections 27-11-4 and 27-11-5 NMSA 1978 to indicate "medical assistance department" and "secretary of medical assistance."**

(9) In Section 5 [New Material], subsection (B)(9) (“Secretary—Duties and General Powers.), the secretary is required to “provide cooperation, at the request of heads of administratively attached agencies, in order to (a) … (b) … and (c).” The new Medical Assistance Department would not be administratively attached to any agency. Does the drafter mean agencies administratively attached to HSD?

Legislative Council Service response- *Section 5 B (9), re "administratively attached agencies" - The Medical Assistance Department would be administratively attached to HSD/ISD because ISD would continue to provide intake for Medicaid eligibility as well as for other assistance such as food stamps and cash assistance. There is also a refernce in Section 3 that the [medical assistance] "department shall coordinate with other state departments and agencies for the administration of medical assistance ..." The intent was to keep ISD in HSD but ensure that MADept has final say on medicaid issues.*

(10) In Section 17, which amends § 27-2-12.6(A), the drafter failed to strike the word “by” before the deletion of “July 1, 1995.”

Legislative Council Service response- *Council Service suggest amending S Section 17 to have "by" deleted.*

OTHER SUBSTANTIVE ISSUES

The HPC provided the following historical information:

- Since 1995, there have been 5 Secretaries of the Human Services Department, the largest and most complex department in NM State government.

- Since 1995, two major initiatives have been implemented in the HSD, resulting in massive changes in programs, staff functions, information systems, and operational control functions. These new programs were the New Mexico Works program/TANF (formerly AFDC) and SALUD! (Medicaid managed care).

- In recent years, the HSD has been criticized for information systems problems, accountability and performance expectations and rapid change without accounting for infrastructure.

- The rapid shift to managed care affected the Native American population, and after much controversy, in 1999, the Governor changed his policy from requiring Native Americans to "opt out" to allowing them to choose to "opt in" to SALUD! or receive services through the Indian Health Service.

- The behavioral health managed care program has generated the most controversy, and due, in part to criticism of the Behavioral Health Organizations(BHO) from providers, advocates, and consumers and in part to a study of the program by a national watchdog agency who released information in 2000 (Bazelon Center for Mental Health Law).

  The federal Health Care Financing Administration (HCFA) denied the behavioral health portion of the state waiver renewal application, mandating a change back to fee for service by February 28, 2001 for those behavioral health services included within SALUD!.

- The Legislative Finance Committee (LFC) audit staff, as requested in HJM 18 (1999) completed an audit in 2000 which was highly critical of the operations, information systems, and accountability of the Medicaid managed care program, MAD, and HSD.

POSSIBLE QUESTIONS

Would the current Social Services agencies' intra and inter-agency connectivity, standardization and accessibility projects now being led by HSD's CIO be adversely affected?

How would this bill effect the state's ability to comply with federal HIPAA (Health Insurance Affordability and Accountability Act) requirements?

Why should the Child Support division director position remain classified while other state government division director position are exempt under the personnel system?

BD/ar:prr