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## FISCAL IMPACT REPORT

SPONSOR Altamirano DATE TYPED 02-10-04 HB \_\_\_\_\_

SHORT TITLE Use of Funds Recovered from Medicaid Fraud SB 213a/SJC

ANALYST Bransford

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative	Recurring	OSF

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	(Unknown)		Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Attorney General (AG)  
 Human Services Department (HSD)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Amendment specifies that the Medicaid Fraud Control Unit may retain up to \$250 thousand in FY 04, \$125 thousand in FY 05, and \$75 thousand in FY 06 from penalties, and the costs of investigation. All other money collected shall be remitted to the state treasurer for deposit in the general fund.

### Synopsis of Original Bill

Senate Bill 213 amends Section 30-44-8 NMSA 1978, Medicaid Fraud Act, to allow the Medicaid Fraud Control Unit to retain penalties, legal fees and costs of investigation and civil enforcement instead of sending the money collected from penalties to the general fund.

### Significant Issues

The change to §30-44-8 C was requested by the Medicaid Fraud Division (MFD) of the Attorney General's Office. The request was prompted by a change in U.S. Department of Health and Human Services (DHHS) - Office of the Inspector General Program policy which permits states to retain state penalty monies provided the state has appropriate legislation enabling such retention. According to the AG, DHHS policy says that a state may retain any penalty recollected pursuant to the State's Medicaid Fraud Act and **provided that 1) full reimbursement of the Federal overpayment is made and 2) the state Medicaid Program is reimbursed in full.**

### **FISCAL IMPLICATIONS**

HSD is concerned that if all penalties and costs go to MFCU rather than to the general fund, it could have significant fiscal consequences for the general fund. HSD also has said that if penalties and costs were to continue going into the general fund or, instead to the Human Services Department, the money could be appropriated or utilized to help reduce the state's Medicaid budget.

### **ADMINISTRATIVE IMPLICATIONS**

The AG reports that the ability of the Medicaid Fraud Division to retain penalty and/or investigation costs is **absolutely necessary** for the division to litigate complex white collar crimes and resident abuse and neglect cases. Medical and/or financial experts are needed not only to investigate cases, but also to prosecute complex cases in court. The Medicaid Fraud Division has said they will only be able to pursue one complex case per year with expert witnesses without additional funds to contract with more experts.

### **TECHNICAL ISSUES**

HSD is also concerned that if the title of the bill suggests that the "unit" described in the bill is the Medicaid Fraud Unit of the Attorney General's Office (MFCU), it would appear to conflict with other sections of the Medicaid Fraud Act, including 30-44-2(R) and 30-44-3(A), which would define "unit" to include any agency that could prosecute or bring civil suit under the Medicaid Fraud Act, such as a district attorney or the Human Services Department.

**VB/yr:dm**