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FISCAL IMPACT REPORT

SPONSOR Park DATE TYPED 03/08/05 HB 436

SHORT TITLE Third Party Medicaid Liability SB _____

ANALYST Weber

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates Appropriation in the General Appropriation Act
Relates to Appropriation in the General Appropriation Act

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
\$350.0	\$700.0		Recurring	Other State Funds

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Human Services Department

SUMMARY

Synopsis of Bill

House Bill 436 amends Section 27-2-23 NMSA 1978 to clarify that Medicaid is the payor of last resort; to require an applicant, recipient or legal representative to inform HSD when the recipient has any rights to third-party benefits; and to require health care providers to notify HSD that a third party may be liable for payment of health care services provided to a Medicaid recipient.

Further the bill states that an application for Medicaid benefits constitutes an assignment to HSD of the applicant's right to any settlement, judgment or award from a third party for the total

amount of medical assistance that the Medicaid program paid on the applicant's behalf, and that the assignment to HSD shall be considered a statutory lien on any settlement, judgment or award the applicant/recipient receives from a liable third party.

With respect to HSD's lien rights, the bill permits HSD to compromise or even waive its lien, the latter only in cases of hardship. Finally, the bill provides that when a Medicaid recipient initiates the action that leads to the Department's recovery under its lien, the recipient's attorney is entitled to one third of the settlement for a case settled pre-trial or to two fifths of the settlement, judgment or award in a case that goes to trial.

Significant Issues

Human Services reports.

HB 436 provides that a Medicaid applicant's assignment of rights to the Department of any settlement, judgment or award the applicant receives from a liable third party constitutes a statutory lien to the Department for the full amount of medical assistance the Medicaid program paid on the applicant's behalf. The bill permits the Department to compromise or even waive its liens in hardship cases and to make allowance for the efforts of the attorneys of Medicaid recipients who brought the cases.

As a lien holder, the Department will have a stronger legal remedy to collect Medicaid's share of judgments, settlements or awards from liable third parties in cases Medicaid recipients have initiated. On the basis of the two New Mexico court cases construing the Department's subrogation and assignment statutes, the Department has been forced to reach "equitable" settlements of its third-party liability claims. See Other Substantive Issues below. This law will take precedence over those cases and enable the Department to recover a larger percentage of its Medicaid claims. Many other states have similar lien laws, and those have been upheld in every state but one.

This amendment clearly defines the duties and rights of all parties with respect to third-party liability when the Medicaid program has provided medical assistance on behalf of Medicaid recipients.

FISCAL IMPLICATIONS

HB 436 should significantly increase collections to offset Medicaid program expenditures made on behalf of recipients. Since Medicaid costs continue to escalate, this bill should help to ensure that Medicaid funds are returned to the program for the use of future needy recipients. Currently, HSD collects about one third of the potential available on third party liability cases that the Medicaid program has expended. Under this law, HSD expects to recover two thirds or more of the potential collections.

ADMINISTRATIVE IMPLICATIONS

This amendment to Section 27-2-23 should simplify the Department's efforts to recover Medicaid's share of settlements, judgments or awards from liable third parties in cases initiated by Medicaid recipients. The bill is expected to reduce both program and legal staff time devoted to the Department's collection efforts.

TECHNICAL ISSUES

Human Services advises the following technical issues deserve attention.

For clarification, on page 3, line 8, in paragraph I of Section 27-2-23, insert “of its payment for medical assistance” after the words “department’s recovery”.

On page 3, line 12, in paragraph I of Section 27-2-23, insert “ and costs” after “Attorney fees” before “shall not exceed.” The preceding sentence cites to “attorney fees and costs.” The word “costs” was inadvertently omitted.

OTHER SUBSTANTIVE ISSUES

Human Services notes that New Mexico courts construing the current third-party liability statutes that describe the Department’s subrogation (NMSA 1978, Section 27-2-23) and assignment rights (NMSA 1978, Section 27-2-28(G)) have severely limited the Department’s third-party liability recoveries by concluding in White v. Sutherland, 92 N.M.187 (Ct. App. 1978), and in Kahrs v. Sanchez, 125 N.M. 1 (Ct. App. 1997, cert.denied 1998), that the Department’s reimbursement rights are subject to equitable reduction. The net result of those two cases is that the Department’s recoveries from third-party liability cases have been severely compromised.

Many states have been sanctioned by the federal government for their failure to collect sufficient funds from liable third parties. This bill should prevent New Mexico from receiving a federal sanction.

MW/lg:yr