

LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

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FISCAL IMPACT STATEMENT

LS 6871

BILL NUMBER: SB 310

NOTE PREPARED: Jan 1, 2012

BILL AMENDED:

SUBJECT: Medicaid Fraud.

FIRST AUTHOR: Sen. Hershman

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill specifies that "public assistance or relief" includes medical assistance. It also includes applicants and recipients of public assistance or relief in the crime of welfare fraud. The bill provides that a person who is convicted of public assistance fraud or tax fraud is ineligible for medical assistance for a specified time. The bill allows the Office of Medicaid Policy and Planning (OMPP) to adopt rules to establish a process for suspending a person from receiving medical assistance if OMPP has reasonable suspicion that the person has committed public assistance fraud.

The bill requires a Medicaid recipient to notify the office within 30 days after the recipient asserts a claim or files a legal action against a third party for medical services costs that were paid for by OMPP. It requires OMPP to send: (1) an itemized list of the medical services provided to the recipient; and (2) a notice of intent to perfect a lien for the expenses; to the third party. It also prohibits certain actions from becoming final before first allowing OMPP written notice and a reasonable opportunity to perfect a right of recovery. The bill repeals a provision requiring OMPP to send an itemized statement of medical expenses for certain recipients to perfect a lien.

Effective Date: July 1, 2012.

Explanation of State Expenditures: *Lien Provision:* The bill requires that a Medicaid recipient or a guardian is required to notify OMPP of a claim or legal action filed against a third party for costs related to medical expenses paid by Medicaid. A knowing failure to notify OMPP of an action may make the recipient subject to penalties related to welfare fraud. (See *Welfare and Tax Fraud Provisions* below.)

Welfare and Tax Fraud Provisions: The fiscal impact of this provision would depend on the number of

persons convicted of welfare and tax fraud and whether the conviction occurred before or after the person received any public assistance or relief. Department of Correction (DOC) data indicates that 13 individuals were sentenced to correctional facilities for welfare fraud and tax fraud in CY 2010. The bill provides that a person convicted of a misdemeanor is ineligible to receive medical assistance for a period of one year.

The existing Class A misdemeanor applies to welfare fraud convictions of first-time offenders that involve public assistance amounts of less than \$250. All other criminal penalties applying to amounts of welfare fraud over \$250 constitute Class D or Class C felonies. The tax fraud penalties are Class D felonies. Persons with felony convictions for welfare fraud and tax fraud (including failure to file) would be ineligible to receive medical assistance for a period of 10 years. There are no data regarding the number of individuals that might be convicted and sentenced to probation with restitution ordered. Medical assistance is defined broadly to include any kind of medical assistance.

The bill would also allow OMPP to adopt rules establishing a process to suspend a person from receiving medical assistance if a reasonable suspicion exists that the person engaged in welfare fraud. OMPP should be able to promulgate rules within the level of resources currently available. If an investigation determines that an individual fraudulently applied for or received public assistance and criminal prosecution is not an available avenue to pursue, an administrative hearing may be an appropriate process to order restitution and disqualify recipients from receiving benefits. The level of resources required to implement an administrative hearing process would depend on the rules promulgated and the number of cases that might be heard.

Background: DOC data indicates that 13 persons with felony convictions for welfare fraud were sentenced to correctional facilities in CY2010. No tax fraud convictions were sentenced to correctional facilities in CY 2010. OMPP reported that in CY 2010, 138 Medicaid member fraud cases were substantiated by the Bureau of Investigations within the Family and Social Services Administration (FSSA). Of the total, 24 cases were prosecuted with 11 receiving felony convictions. The court ordered restitutions of \$24,554. OMPP reported that the agency cannot prosecute cases, being dependent on local prosecutors to take the cases. Further, the OMPP may not have sufficient evidence to meet the prosecutorial level needed to file a case in court.

Explanation of State Revenues: *Welfare and Tax Fraud Provisions and Lien Provisions:* The level of restitution of welfare benefits ordered and subsequently recovered would depend on the individual circumstances of each case.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: OMPP, FSSA

Local Agencies Affected:

Information Sources: DOC data base, FSSA.

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