

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3806-01
Bill No.: SB 844
Subject: Attorney General, State; Civil Procedure; Courts; Medicaid
Type: Original
Date: March 27, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(\$18,790)	(\$19,487)	(\$19,974)
Total Estimated Net Effect on General Revenue Fund	(\$18,790)	(\$19,487)	(\$19,974)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Federal*	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

*Income and costs of approximately \$50,000 would net to \$0.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator, the Department of Social Services–Division of Legal Services, the Missouri State Highway Patrol, the Department of Mental Health, the State Public Defender, the Department of Corrections, and the Office of Prosecution Services** assume this proposal would not fiscally impact their agency.

Officials from the **Department of Social Services - Division of Medical Services (DMS)** state they currently have a collaborative agreement with the Attorney General’s Office to prosecute Medicaid fraud. DMS assumes there would be an increase in the number of cases handled by the Attorney General’s Office, but would not have a fiscal impact on the DMS.

Officials from the **Department of Health and Senior Services (DOH)** assume this proposal would not fiscally impact their agency. DOH assumes if a fiscal impact were to result, funds to support the program would be sought through the appropriation process.

Officials from the **Office of Attorney General (AGO)** assume that reviewing materials associated with potential claims of fraud, filing pleadings as intervenors and bringing causes of action alleging Medicaid fraud will require additional staff. AGO assumes it would require 1

ASSUMPTION (continued)

Assistant Attorney Generals and one-half FTE Investigator to meet the requirements of this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
GENERAL REVENUE			
<u>Costs</u> - Office of Attorney General			
Personal Services (1.5 FTE)	(\$10,998)	(\$13,527)	(\$13,865)
Fringe Benefits	(\$4,846)	(\$5,960)	(\$6,109)
Expense and equipment	<u>(\$2,946)</u>	<u>\$0</u>	<u>\$0</u>
Total Costs - Office of Attorney General	(\$18,790)	(\$19,487)	(\$19,974)
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(\$18,790)</u>	<u>(\$19,487)</u>	<u>(\$19,974)</u>
FEDERAL			
<u>Income</u> - Office of Attorney General			
Program Reimbursement	\$56,368	\$58,461	\$59,922
<u>Costs</u> - Office of Attorney General			
Personal Services (1.5 FTE)	(\$32,993)	(\$40,581)	(\$41,595)
Fringe Benefits	(\$14,537)	(\$17,880)	(\$18,327)
Expense and equipment	<u>(\$8,838)</u>	<u>\$0</u>	<u>\$0</u>
Total Costs - Office of Attorney General	<u>(\$56,368)</u>	<u>(\$58,461)</u>	<u>(\$59,922)</u>
ESTIMATED NET EFFECT ON FEDERAL	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This proposal provides that any person may bring an action for Medicaid fraud on behalf of the person and the state. The person bringing the action must give a copy of the petition to the Attorney General, and must also disclose to the Attorney General substantially all material information in the person's possession.

The petition shall be filed in camera, and shall remain under seal for at least 120 days, or until the state elects to intervene, whichever occurs first. Service of the petition shall not be made on the defendant until ordered by the court.

On behalf of the state, the Attorney General may elect to intervene and proceed with the action, not later than 120 days after the date the attorney general received the petition and information. This deadline may be extended for good cause shown. The court and the Attorney General may consent to a dismissal of an action at any time during which the petition remains under seal. If the state elects not to intervene, the person bringing the action may conduct the proceeding, but the state may request copies of any pleadings and depositions, and may intervene at a later date for good cause shown.

No person other than the state may intervene or bring a related action based on the same underlying facts as an action brought under this section. If the state intervenes, it shall have the primary responsibility for investigating and prosecuting the action, and is not bound by any act of the person bringing the action, except that if the state files a motion to dismiss, the person who initiated the action shall have the opportunity for a hearing.

The state may limit the participation of the person who initiated the action if it finds that the person's participation would cause harassment, or would unduly delay investigation or prosecution of the action, or would be repetitious or irrelevant. Limitations may include, but are not limited to, limiting the number of witnesses, limiting length of testimony, limiting cross-examination of witnesses, or staying discovery up to sixty days.

Even if an action has been brought under this act, the state is free to pursue the claim through any alternate remedy available, including administrative proceedings. The person bringing the initial action will have the same rights in an alternate proceeding as are provided by this act, and any final finding or conclusion in the alternate proceeding shall be conclusive on all parties to the initial action.

DESCRIPTION (continued)

The person who initiated the action is entitled to at least ten percent, but no more than twenty-five percent, of the proceeds of any action brought under this section, unless the court finds that the person bringing the action planned and initiated the violation on which the action is based, in which case it may reduce the share of the proceeds to the extent it deems appropriate. If the person bringing the action is convicted of criminal conduct arising from the role in the violation, the court may dismiss the person from the action, and the person may not receive any share of the proceeds of the action. A dismissal under this section of the person who initiated the action shall not prejudice the right of the state to continue such action.

If the state does not elect to intervene in the action, and the person bringing the action conducts it, the court may award to the defendant reasonable attorneys' fees and expenses if the defendant prevails in the action, and the court finds that the claim of the person bringing the action was clearly frivolous, vexatious, or brought primarily for the purposes of harassment.

A person may not bring an action under this act that is based on allegations that are the subject of another civil suit or administrative penalty proceeding which has already commenced, and in which the state is a party.

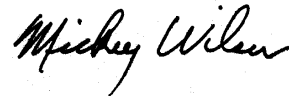
A person may not bring an action under this act that is based on the public disclosure of allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person bringing the action is the original source of such information.

The proposal also contains "whistle-blower" protections, providing that a person who is discharged, demoted, suspended, threatened, harassed, or in any way discriminated against in terms of employment due to a lawful act taken by the person in furtherance of an action for Medicaid fraud shall be entitled to reinstatement with the same seniority status, not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as the result of such discrimination.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of State Courts Administrator
Department of Social Services–
 Division of Legal Services
 Division of Medical Services
Missouri State Highway Patrol
Department of Mental Health
State Public Defender
Department of Corrections
Office of Prosecution Services
Department of Health and Senior Services
Office of Attorney General



Mickey Wilson, CPA
Director
March 27, 2006