

Colorado Legislative Council Staff Fiscal Note

**STATE
FISCAL IMPACT**

Drafting Number: LLS 15-0758
Prime Sponsor(s): Rep. Joshi

Date: February 12, 2015
Bill Status: House Public Health Care and Human Services
Fiscal Analyst: Clare Pramuk (303-866-2677)

BILL TOPIC: THIRD PARTY MEDICAID PAYMENT RESPONSIBILITY SYSTEM

| Fiscal Impact Summary* | FY 2015-2016 | FY 2016-2017 | FY 2017-2018 |
|--|---------------------------|-------------------------|---|
| State Revenue General Fund | | | Increase. See State Revenue section. |
| State Expenditures | <u>\$1,074,675</u> | <u>\$578,263</u> | <u>\$663,323</u> |
| General Fund | 531,489 | 282,375 | 324,905 |
| Federal Funds | 531,489 | 282,375 | 324,905 |
| Centrally Appropriated Costs** | 11,697 | 13,513 | 13,513 |
| FTE Position Change | 0.9 FTE | 1.0 FTE | 1.5 FTE |
| Appropriation Required: \$1,062,978 - Department of Health Care Policy and Financing (FY 2015-16) | | | |

* This summary shows changes from current law under the bill for each fiscal year.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

Summary of Legislation

This bill requires the Department of Health Care Policy and Financing (HCPF) to establish a matching system for determining whether a third party insurer (insurer) or self-insured plan (plan) is responsible for a Medicaid client's medical expenses resulting from an accident or injury. Prior to paying \$2,000 or more on a bodily injury claim, an insurer or plan is required to exchange information with HCPF to determine if an insurance claimant is a Medicaid client. If HCPF determines that there is a match, HCPF will provide a notice of lien to the insurer or plan for the recovery of medical expenses. The lien is subordinate to a lien or claim for attorney fees. HCPF is required to commence recovery action within two years of an accident or injury.

A Medicaid client has the right to request a hearing to remedy grievances resulting from actions under the bill. Insurers, plans, insurance claim data collection organizations, and their employees acting on their behalf, are immune from civil liability. If an action is brought against a person who is found to be immune, that person is entitled to recover reasonable attorney fees and costs from the person who brought the action.

Background

Medicaid is the payer of last resort when a client has other insurance or a third party is responsible for paying the claim. A Medicaid client is required by current law to provide HCPF with written notice within 15 days after the filing of an action or claim against a third party. The Tort and Casualty Unit in the Benefits Coordination section of HCPF recovers money from a third party when

HCPF has paid claims on behalf of a Medicaid client but another payer, such as an auto or homeowner's insurance company, is responsible for the expenses. Medicaid has an automatic lien by statute in these situations. In FY 2013-14, HCPF opened 7,764 cases based on notices received from Medicaid clients, and recovered approximately \$8 million on the enforcement of \$21 million to \$25 million in liens. In many cases, the Medicaid lien exceeds the amount available from third parties. HCPF is expected to recover \$15 million from third parties in FY 2014-15.

State Revenue

The matching system is expected to be online by August, 2017. As a result, any increase in recoveries from third parties will not begin until FY 2017-18. The amount of recoveries cannot be determined because the amount of third party responsibility that is not being recovered by the current recovery procedures is unknown.

TABOR Impact

This bill increases state revenue from third party recoveries, which will increase the amount required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

State Expenditures

This bill is expected to increase expenditures for the HCPF by \$1,074,675 and 0.9 FTE in FY 2015-16, \$578,263 and 1.0 FTE in FY 2016-17, and \$663,322 and 1.5 FTE in FY 2017-18. One half of these expenditures will be General Fund and the other half will be federal funds. These numbers are detailed in Table 1 and explained below.

| Table 1. Expenditures Under HB15-1179 | | | |
|--|--------------------|-------------------|-------------------|
| Cost Components | FY 2015-16 | FY 2016-17 | FY 2017-18 |
| Personal Services | \$57,420 | \$63,800 | \$63,800 |
| FTE | 0.9 | 1.0 | 1.5 |
| Operating Expenses and Capital Outlay Costs | 5,558 | 950 | 950 |
| Legal Services | | | 85,059 |
| Computer Programming and Maintenance | 1,000,000 | 500,000 | 500,000 |
| Centrally Appropriated Costs* | 11,697 | 13,513 | 13,513 |
| TOTAL | \$1,074,675 | \$578,263 | \$663,322 |

* Centrally appropriated costs are not included in the bill's appropriation.

HCPF. Developing a cost estimate for a data matching system requires preparation of specifications and a procurement process which will not be undertaken until the bill is effective. Based on the cost of systems of similar complexity, the fiscal note estimates a project cost of \$1,000,000 with an annual maintenance cost of \$500,000. HCPF will hire a project manager to administer the procurement process and manage the contract on an ongoing basis. Accounting for the time required for the procurement process, system development, testing and implementation, the matching system is expected to be online by August, 2017.

Department of Law. Once the matching system is operational in FY 2017-18, HCPF will begin identifying matches and issuing liens. Because liens are automatic under current law, the manual process of attaching liens will require an increase in legal services costs from the Department of Law beginning in FY 2017-18. These are estimated to be 900 hours per year at a total cost of \$85,059 and 0.5 FTE.

Judicial Department. Beginning in FY 2017-18, the trial courts may see an increase in case filings due to the provisions of the bill, but these are expected to be minimal and not require additional appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

| Cost Components | FY 2015-16 | FY 2016-17 | FY 2016-17 |
|--|-------------------|-------------------|-------------------|
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | \$7,247 | \$8,053 | \$8,053 |
| Supplemental Employee Retirement Payments | 4,450 | 5,460 | 5,460 |
| TOTAL | \$11,697 | \$13,513 | \$13,513 |

*More information is available at: <http://colorado.gov/fiscalnotes>

Technical or Mechanical Defects

The bill has a number of provisions that conflict with federal Medicaid requirements that are part of HCPF's existing recovery process. These conflicts which could limit HCPF's ability to make third party recoveries.

Effective Date

The bill takes effect August 5, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2015-16, the Department of Health Care Policy and Financing requires an appropriation of \$1,062,978 of which \$531,489 will be General Funds, and \$531,489 will be federal funds, and an allocation of 0.9 FTE.

State and Local Government Contacts

Health Care Policy and Financing
Regulatory Agencies

Judicial Department
Law