LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 6, 2011

TO: Honorable Jim Pitts, Chair, House Committee on Appropriations

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: **SB23** by Nelson (Relating to efficiency, cost-saving, fraud prevention, and funding measures for certain health and human services and health benefits programs, including the medical assistance and child health plan programs.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for SB23, As Engrossed: a positive impact of $467,805,251 through the biennium ending August 31, 2013.

This positive impact only reflects certain provisions of the bill; there are a number of provisions in the bill, particularly in SECTION 12, that could have a substantial cost, offsetting this positive impact, but those costs cannot be determined at this time.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	$125,961,544
2013	$341,843,707
2014	$360,148,700
2015	$361,288,596
2016	$362,352,904

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/ (Cost) from *General Revenue Fund* 1	Probable Savings/ (Cost) from *Vendor Drug Rebates-Medicaid* 706	Probable Savings/ (Cost) from *GR Dedicated Accounts* 994	Probable Savings/ (Cost) from *Federal Funds* 555
2012	$125,961,544	$4,984,006	$0	$177,430,841
2013	$274,500,832	$27,072,352	$477,712	$368,881,311
2014	$276,468,140	$26,947,883	$477,712	$370,198,377
2015	$277,608,036	$26,947,883	$477,712	$371,700,622
2016	$278,672,344	$26,947,883	$477,712	$373,092,697

Fiscal Year	Probable Savings/ (Cost) from *State Highway Fund* 6	Probable Savings/ (Cost) from *Other Special State Funds* 998	Probable Revenue (Loss) from *Vendor Drug Rebates-Medicaid* 706	Probable Revenue Gain from *General Revenue Fund* 1
2012	$0	$0	($4,984,006)	$0
2013	$3,158,986	$16,393	($27,072,352)	$50,507,156
2014	$3,158,986	$16,393	($26,947,883)	$62,760,420
2015	$3,158,986	$16,393	($26,947,883)	$62,760,420
2016	$3,158,986	$16,393	($26,947,883)	$62,760,420

Fiscal Year	Probable Revenue Gain from *Foundation School Fund* 193	Change in Number of State Employees from FY 2011
2012	$0	(36.0)
2013	$16,835,719	(36.0)
2014	$20,920,140	(36.0)
2015	$20,920,140	(36.0)
2016	$20,920,140	(36.0)

Fiscal Analysis

SECTION 1 of the bill would eliminate the Texas health opportunity pool as a beneficiary of revenue from the fee imposed on certain sexually oriented businesses. The Comptroller of Public Accounts would be required to collect the fee until a court, in a final judgment upheld on appeal or no longer subject to appeal, finds the enabling statute or its predecessor to be unconstitutional.

SECTION 2 of the bill would require the Health and Human Services Commission (HHSC) to ensure that certain Medicaid recipients eligible under the community-based alternatives (CBA) program are first provided attendant care services under a Medicaid state plan program. HHSC would also be required to consider developing risk management criteria under home and community-based services waiver programs. The Department of Aging and Disability Services (DADS) would be required to ensure that local mental retardation authorities are informing and counseling certain persons about all available program and service options, to educate the public related to home and community-based services, and to post certain data on their website related to programs for which interest lists are maintained. The executive commissioner of HHSC would be required to pursue amendments to community living assistance and support services (CLASS) and home and community-based services (HCS) program waivers to authorize the provision of personal attendant services.

SECTION 3 of the bill would require HHSC to develop an objective assessment process for acute nursing services in the Medicaid fee-for-service and primary care case management delivery models and to take actions to implement the process within the STAR and STAR+Plus Medicaid managed care programs. After implementing the process for acute nursing services, the commission would be authorized to implement the process for therapy services if determined to be feasible and beneficial. If cost-effective and feasible, the commission would be required to implement (by September 1, 2012) an electronic visit verification system related to the delivery of Medicaid acute nursing services.

SECTION 4 of the bill would add outpatient pharmacy benefits to Medicaid managed care contracts, subject to certain restrictions. HHSC would also be authorized to allow MCOs to establish a step therapy or fail first protocol for prescription drugs only if certain conditions are met. The bill would apply existing sanctions and penalties for submission of improper claims in the vendor drug program to network pharmacy providers enrolled through MCOs or their subcontractors.

SECTION 5 of the bill would abolish the State Kids Insurance Program (SKIP) and allow children previously enrolled in that program to enroll in the Children’s Health Insurance Program (CHIP). Employees Retirement System of Texas (ERS) would be prohibited from providing dependent child coverage under SKIP after the first annual open enrollment period that begins under the employee group benefits program after the effective date of the bill (September 1, 2011). HHSC would be required to establish a process to ensure automatic enrollment of eligible children in CHIP and to

modify administrative procedures to ensure children maintain continuous coverage.

SECTION 6 of the bill would eliminate existing requirements related to electronic fingerprint- or photo-imaging of recipients of assistance under the Temporary Assistance for Needy Families (TANF) program or Supplemental Nutrition Assistance Program (SNAP), and would require HHSC to implement a program to use cost-effective technology to confirm the identity of recipients. HHSC would also be required to make reasonable efforts to ensure the prevention of criminal or fraudulent conduct by certain parties under programs administered by the commission.

SECTION 7 of the bill would require additional initiatives for streamlining certain aspects of Section 1915(c) waiver programs. DADS and HHSC would be required to jointly explore the development of uniform licensing and contracting standards related to these waiver programs and DADS would be required to perform utilization review of services in all Section 1915(c) waiver programs.

SECTION 8 of the bill would require DADS to implement an electronic visit verification system under appropriate Medicaid programs administered by the department, if cost-effective.

SECTION 9 of the bill would require HHSC to prepare a written report regarding individuals who receive long-term-care services in nursing facilities under the Medicaid program.

SECTION 10 of the bill would authorize the executive commissioner of HHSC to adopt rules related to certain community-based services agencies, nursing institutions, criminal or fraudulent conduct, and adult day-care facilities.

SECTION 11 of the bill would exempt certain facilities funded by the Department of State Health Services (DSHS) from assisted living facility licensing requirements under Chapter 247, Health and Safety Code.

SECTION 12 of the bill would require HHSC to implement the Medicaid managed care program as part of the health care delivery system developed under former Chapter 532, Government Code, as it existed on August 31, 2001. It would repeal the prohibition on providing Medicaid using a health maintenance organization (HMO) in Cameron, Hidalgo, and Maverick counties. HHSC would be required to ensure that all children residing in the same household be allowed to enroll in the same health plan, to evaluate certain Medicaid STAR+Plus services, and to ensure that MCOs promote the development of patient-centered medical homes. The bill would direct extra consideration for certain organizations in the awarding of managed care contracts and establish new requirements of MCO contracts. HHSC would also be required, to the extent possible, to ensure that MCOs provide payment incentives to certain providers and to provide a single portal through which providers in any MCO network may submit claims and prior authorization requests and obtain information.

SECTION 13 of the bill would direct state agencies to request any necessary federal waiver or authorization to implement any provision in the bill and would authorize delaying implementation until the waiver or authorization is granted.

SECTION 14 of the bill would require HHSC to submit a report to the legislature related to development of patient-centered medical homes for Medicaid recipients.

SECTION 15 of the bill would apply certain provisions related to Medicaid managed care contracts included in SECTION 12 to contracts entered into or renewed on or after the effective date of the bill.

Methodology

SECTION 1 is assumed to have no fiscal impact. Fees are currently being deposited to a suspense account and not to the Sexual Assault Program Fund or any other fund; it is assumed that collections will continue to be made and deposited to the suspense account.

SECTION 2: Requiring CBA recipients to first receive attendant care services through a Medicaid state plan program, which are reimbursed at a lower rate than in CBA, is estimated to save $33.3 million in All Funds beginning in fiscal year 2012. One-time costs for automation changes necessary

to implement the provision of services through a state plan program are estimated to be $0.4 million in All Funds in fiscal year 2012. Adding personal attendant services as a benefit in the CLASS and HCS waivers could result in a savings but the amount cannot be determined. Attendant care rates are generally lower than those for habilitation, a current benefit in CLASS and HCS; to the extent that attendant care services would replace habilitation services, there would be a savings. If adding attendant care services increased the overall amount of services received by clients in CLASS and HCS instead of replacing an existing service, there could be a cost from adding the new benefit.

SECTION 3 would implement the recommendation in the report “Implement an Objective Client Assessment Process for Acute Nursing Services in the Texas Medicaid Program” in the Legislative Budget Board’s Government Effectiveness and Efficiency Report, submitted to the Eighty-second Texas Legislature, 2011. Administrative costs related to implementation of the assessment process for nursing services total $0.9 million in All Funds in fiscal year 2012 increasing each fiscal year to $2.1 million in All Funds in fiscal year 2016. It is assumed that the assessment process will be implemented by September 1, 2012 with client services savings estimated to be $2.7 million in All Funds in fiscal year 2013 increasing each fiscal year to $9.7 million in All Funds in fiscal year 2016. No costs or savings are assumed from implementing an objective assessment process for therapy services, which the bill requires only be considered after implementation of the process for acute nursing services, estimated to occur in fiscal year 2013; if determined feasible and beneficial, it is unlikely the process could be implemented prior to fiscal year 2014, and as such no costs or savings would be expected during the fiscal 2012-13 biennium. HHSC estimates implementation of electronic visit verification for acute nursing services could reduce expenditures for these services by 2 percent; client services savings are estimated to be $9.3 million in All Funds in fiscal year 2013 increasing each fiscal year to $10.8 million in All Funds in fiscal year 2016.

SECTION 4: It is assumed that prescription drugs could be included in Medicaid managed care plans by March 1, 2012. Administrative costs associated with implementation are estimated to be $0.7 million in All Funds in fiscal year 2012, $0.8 million in All Funds in fiscal year 2013, and $0.6 million in fiscal year 2014 forward; these costs include those associated with 1.0 full-time equivalent in each fiscal year. Including prescription drug coverage in Medicaid managed care plans is estimated to save $16.1 million in All Funds in fiscal year 2012 and $137.8 million in All Funds in fiscal year 2013 and subsequent fiscal years. These savings would be offset by a loss of vendor drug rebate revenue estimated to be $5.0 million in fiscal year 2012, $27.1 million in fiscal year 2013, and $27.0 million in fiscal year 2014 and subsequent fiscal years. It is assumed that HHSC would continue to collect the vendor drug rebates, but that there would be some loss of rebates due to reduced utilization. Paying for prescription drugs through premiums to MCOs is assumed to result in increased premium tax revenue collections estimated to be $26.6 million in fiscal year 2013 and $43.0 million in fiscal year 2014 and subsequent fiscal years.

SECTION 5: Abolishing the SKIP program and enrolling eligible children in CHIP is estimated to have a net savings of $3.0 million in All Funds in fiscal year 2013 and subsequent fiscal years; estimated savings to General Revenue Funds ($13.2 million) are higher due to the federal matching rate for CHIP, which results in a smaller proportion of funding from General Revenue Funds in CHIP than in SKIP. It is assumed that eliminating the SKIP program will result in a savings to the state from no longer paying annual premium subsidies or providing the state share of insurance coverage for an average of 6,472 families. The savings at ERS is estimated to be $23.4 million in All Funds, including $19.2 million in General Revenue Funds, in fiscal year 2013 forward. It is assumed that CHIP caseloads will increase by an average of 12,426 children per month for a total estimated cost of $20.4 million in All Funds, including $6.1 million in General Revenue Funds, in fiscal year 2013 forward. No savings is assumed in fiscal year 2012 because the first annual open enrollment period beginning after the effective date of the bill would occur during the summer of 2012. There would likely be additional administrative costs due to the requirement that HHSC auto-enroll children moving from SKIP to CHIP; those costs cannot be estimated at this time.

SECTION 6: The commission estimates savings of $3.0 million in fiscal year 2012 and $3.3 million in fiscal year 2013 and subsequent fiscal years. A one-time cost for system modifications to the Texas Integrated Eligibility Redesign System (TIERS) of $0.1 million in All Funds is assumed in fiscal year 2012. HHSC indicates TIERS provides an alternative means of identifying duplicate participation, including electronic verifications of identity and other personal information. HHSC estimates

elimination of the fingerprint-imaging requirement would reduce time spent by staff on processing eligibility, resulting in a reduction of 37.0 full-time equivalents in each fiscal year. Additional savings would be realized through elimination of a contract for fingerprint-imaging. Requirements related to prevention of criminal or fraudulent conduct under programs administered by HHSC are assumed to have no significant fiscal impact.

SECTION 7: Provisions related to streamlining, licensing, contracting, and utilization review in Section 1915(c) waivers are assumed to have no significant fiscal impact. DADS began performing utilization review in waivers during fiscal year 2011; no additional savings from utilization review are anticipated as a result of requirements in the bill.

SECTION 8: According to DADS, implementation of electronic visit verification for programs administered by DADS could be achieved by December 1, 2011 and would save an estimated $22.2 million in All Funds in fiscal year 2012 and $30.2 million in All Funds in fiscal year 2013 and subsequent fiscal years. Savings are net of any increased contract costs from expanding an existing pilot program related to electronic visit verification.

SECTIONs 9 and 10: It is assumed any cost to prepare the report and adopt rules would not be significant and could be absorbed within the available resources of HHSC.

SECTION 11: According to DSHS, no significant fiscal impact is anticipated from the exemption.

SECTION 12 would implement a recommendation in the report "Repeal the Prohibition of Health Maintenance Organizations in Medicaid in South Texas" in the Legislative Budget Board's Government Effectiveness and Efficiency Report, submitted to the Eighty-second Texas Legislature, 2011. There would be no direct fiscal impact from repealing the prohibition; however, it is assumed that repealing the prohibition would result in HHSC implementing an HMO model of care throughout south Texas, including the three counties where it is currently prohibited. According to HHSC, implementation of both the STAR and STAR+Plus delivery models could be expected in March of 2012, resulting in a net savings of $235.8 million in fiscal year 2012 and $456.9 million in fiscal year 2013 and subsequent years; these savings include client services and administrative savings. Expanding managed care would also result in an increase to premium tax revenue; HHSC estimates additional premium tax revenue of $40.7 million beginning in fiscal year 2013.

The fiscal impact of other provisions in SECTION 12 of the bill cannot be determined at this time. Additional requirements to be included in MCO contracts could have a substantial impact to administrative and client services costs included in managed care premiums statewide, potentially increasing expenditures; in particular, requiring that MCOs demonstrate that services will be accessible to recipients through their network to the same extent that health care services would be available under a fee-for-service or primary care case management model could impede the MCOs ability to achieve savings by managing the care of their enrollees.

Technology

One-time costs associated with systems changes related to SECTIONs 2, 3, and 6 are estimated to total $1.4 million in All Funds, including $0.4 million in General Revenue Funds, in fiscal year 2012.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission

LBB Staff: JOB, KK, MB, LR, NB