

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 10, 2013**

**TO:** Honorable Richard Peña Raymond, Chair, House Committee on Human Services

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: SB1803** by Huffman (Relating to investigations of and payment holds relating to allegations of fraud or abuse and investigations of and hearings on overpayments and other amounts owed by providers in connection with the Medicaid program or other health and human services programs.), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB1803, Committee Report 2nd House, Substituted: a negative impact of (\$1,258,902) through the biennium ending August 31, 2015.

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
2014	(\$551,008)
2015	(\$707,894)
2016	(\$781,250)
2017	(\$774,340)
2018	(\$774,340)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>GR Match For Medicaid</i> 758	Probable Savings/(Cost) from <i>Federal Funds</i> 555	Change in Number of State Employees from FY 2013
2014	(\$551,008)	(\$613,204)	14.0
2015	(\$707,894)	(\$794,323)	21.0
2016	(\$781,250)	(\$864,445)	23.0
2017	(\$774,340)	(\$857,431)	23.0
2018	(\$774,340)	(\$857,431)	23.0

## **Fiscal Analysis**

The bill would amend Chapter 531 of the Government Code to establish the definition of abuse, allegation of fraud, credible allegation of fraud, among other Medicaid fraud-related terms. The bill would require the Health and Human Services Commission (HHSC) through the Office of Inspector General (OIG) to conduct a preliminary investigation of any received complaint of Medicaid fraud or abuse.

The bill would require the OIG to provide certain information to a provider upon imposing a payment hold related to a determination that a credible allegation of fraud exists. The bill would require the OIG to file a request with the State Office of Administrative Hearings (SOAH) or the appeals division of HHSC upon timely written request from a provider subject to a payment hold for an expedited administrative hearing. The bill would require the OIG and the provider to evenly split the costs of the administrative hearing at SOAH. The bill would authorize the executive commissioner at HHSC and SOAH to jointly adopt rules to require the provider to advance security for the costs before the hearing.

The bill would establish rules for a provider subject to a payment hold to request, and the OIG to schedule, an informal resolution meeting. The bill would require the OIG to employ a medical director, who is a licensed physician, and a dental director, who is a licensed dentist, to review investigative findings. The bill would require the OIG in consultation with the state's Medicaid fraud control unit to adopt rules regarding fraud and abuse investigations, training requirements, and criteria for determining when good cause exists to not impose a full payment hold.

The bill would establish rules for preliminary investigations of allegations of fraud or abuse, requiring a report. The bill would require the OIG to discontinue a payment hold if the Medicaid fraud control unit or other law enforcement agency declines to accept the Medicaid fraud referral from the OIG, unless it is authorized under other federal or state authority. The bill would require the OIG to request a certification from the Medicaid fraud control unit and other law enforcement agencies that a fraud referral is still under investigation and warrants a continued payment hold. The bill would require the OIG to post on its website a description and video explaining the process and procedures used to determine a payment hold.

The bill would establish rules and procedures for informal resolution of proposed recoupment of overpayments or debt, including notice to the provider, time frames for a provider to request an informal resolution, and the requirement that the state and the provider split the cost of an administrative hearing, and authority for certain appeals of final orders. The bill would require HHSC to employ a person independent of the OIG to attend the informal resolution meetings as a neutral third-party observer, and to report on the proceedings and outcome to the executive commissioner.

## **Methodology**

Total costs for implementing the provisions of the bill in fiscal years 2014-15 are estimated to be \$1,258,902 in General Revenue and \$2,666,427 in All Funds.

HHSC anticipates needing in total an additional 21.0 FTEs in fiscal years 2014 and 2015 and 23.0 FTEs in fiscal years 2016-2018. HHSC estimates needing an additional 1.0 administrative law judge and 1.0 administrative assistant for expedited administrative hearings in the commission's appeals division, assuming a 10% increase in requests for hearings at the commission.

The OIG is currently in the process of hiring a physician, so there is no new fiscal impact for implementing the medical director provision of the bill. However, the OIG anticipates needing to hire 1.0 licensed dentist for the dental director position.

The OIG currently employs 6.0 investigators who could be allocated toward the requirements of the bill; however, OIG estimates needing an additional 14.0 investigators, 1.0 investigator supervisor and 1.0 manager related to the preliminary investigations of allegations of fraud or abuse. The OIG assumes 1,840 allegations per year with a workload of 84 preliminary investigations per investigator per year.

HHSC estimates there will be 293 informal resolution meetings in fiscal year 2014, 410 in fiscal year 2015, and 620 in each subsequent year. HHSC assumes 2.0 FTEs would be needed for every 300-400 cases and would need 2.0 FTEs in fiscal years 2014-15 and 4.0 FTEs in each subsequent year to serve as the neutral third-party observer.

Assuming a ramp up in the hiring of the OIG investigators, salary, benefits, and non-salary (including travel) employee All Funds costs for all FTEs are estimated to be \$1,164,211 in fiscal year 2014, \$1,502,217 in fiscal year 2015, \$1,645,695 in fiscal year 2016, and \$1,631,770 in each subsequent year.

SOAH indicates the bill could possibly decrease the number of cases referred to SOAH related to payment hold because of the new provision that providers may request the hearing at the appeals division of HHSC, but providers may continue to request SOAH because it could be viewed as a more independent adjudicative body. However, SOAH costs are assumed to be covered by payments from HHSC and providers; therefore, there is no significant impact assumed. The Office of Court Administration indicates any additional work resulting from the enactment of the bill could be accomplished within existing resources.

## **Technology**

FTE-related technology costs include seat management services (PC and telecommunications) and data center services. Technology costs are \$26,061 in fiscal year 2014, \$29,144 in fiscal year 2015, \$27,894 in fiscal year 2016, and \$26,473 each subsequent year.

## **Local Government Impact**

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

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 360 State Office of Administrative Hearings, 529 Health and Human Services Commission, 503 Texas Medical Board, 508 Board of Chiropractic Examiners, 512 Board of Podiatric Medical Examiners, 520 Board of Examiners of Psychologists

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