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DATE PREPARED: April 11, 2011  
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**LB 541**

Revision: 01

Revised to include a new agency response

# FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

| ESTIMATE OF FISCAL IMPACT – STATE AGENCIES * |              |         |              |         |
|--|--------------|---------|--------------|---------|
|  | FY 2011-12   |         | FY 2012-13   |         |
|  | EXPENDITURES | REVENUE | EXPENDITURES | REVENUE |
| GENERAL FUNDS                                |              |         |              |         |
| CASH FUNDS                                   |              |         |              |         |
| FEDERAL FUNDS                                |              |         |              |         |
| OTHER FUNDS                                  |              |         |              |         |
| TOTAL FUNDS                                  |              |         |              |         |

\*Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

This bill requires the Department of Health and Human Services to enter into one or more contracts with recovery audit contractors in the Medicaid Program. The services under the contract or contracts include the following: 1) cost-avoidance through identification of third-party liability, 2) cost recovery of third-party liability through post payment reimbursement, 3) casualty recovery of payments by identifying and recovering costs for claims that were the result of an accident or neglect and payable to a casualty insurer, and 4) reviews of claims submitted by providers of services or other individuals furnishing items and services which payment has been made to determine whether providers have been underpaid or overpaid and take actions to recover any overpayments identified. The department is also authorized to enter into other contracts deemed to increase the efforts to promote the integrity of Medicaid. Contracts may be on a contingent fee basis. It is the intent of the Legislature that initial contracts are entered into on or before July 1, 2011. The bill has the emergency clause.

The contract provisions in Section 2, Subsection 1 relate to federal requirements under the Patient Protection and Affordable Care Act (PPACA). According to the Nebraska Department of Health and Human Services, the Centers for Medicaid and Medicare recently pulled back regulations relating to this part of PPACA. The Department of Health and Human Services has an RFP prepared for this type of contract, but has not issued it because of the temporary withdrawing of the federal regulations. That RFP could be used to begin the contracting process required under this bill. Based on a 2006 state audit, overpayments were estimated to be .85%. Based on total Medicaid payments, there is a potential recovery of \$13.5 million. Of this amount, a maximum of 12.5% is allowed under federal regulation for contingency fee contracts. The balance of the recovery would be split between the state and federal share. The general fund savings would be a maximum of \$4 million, which assumes 100% recovery. Assuming an 85% recovery rate, the savings would be \$3.4 million GF.

The department currently has an RFP out to do an evaluation of how to proceed with a health insurance premium assistance program. A health insurance premium assistance payment program is required under Section 2, Subsection 2 of this bill. This assessment will provide guidance on what needs to be done to establish a health insurance premium assistance program and will also include a cost/benefit analysis of whether a contractual arrangement or an in-house arrangement is most beneficial to the state. This portion of the bill would result in savings to the Medicaid Program; however, an amount has not been determined.

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FISCAL NOTE

LEGISLATIVE FISCAL

2011

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

State Agency or Political Subdivision Name: (3) Department of Health and Human Services

Prepared by: (3) Willard Bouwens

Date Prepared: (4) April 8, 2011

Phone: (5) 471-8072

|               | FY 2011-2012 |         | FY 2012-2013 |         |
|---------------|--------------|---------|--------------|---------|
|               | EXPENDITURES | REVENUE | EXPENDITURES | REVENUE |
| GENERAL FUNDS | 105,000      |         | 109,026      |         |
| CASH FUNDS    |              |         |              |         |
| FEDERAL FUNDS | 105,000      |         | 109,027      |         |
| OTHER FUNDS   |              |         |              |         |
| TOTAL FUNDS   | 210,000      | \$0     | 218,053      | \$0     |

Return by date specified or 72 hours prior to public hearing, whichever is earlier.

Explanation of Estimate:

CMS has estimated the rules will be final at the end of the 2011 calendar year. Nebraska Medicaid will implement on July 1, 2012. Implementation would involve the start of transmissions of specified Medicaid claims data with a RAC contractor. Analysis and investigation by the RAC contractor would be required before any overpayments could be identified. Notification of providers subject to these recoupments and recoveries must occur as well as the allowable disputes and appeals by the providers. Any recoupments or recoveries are not expected to be received until after June 30, 2013. Because of these factors, any potential savings would not be realized in the 2011-2013 biennium.

Centers for Medicare and Medicaid Services (CMS) caps the contingency percentage allowed on the program integrity audits at a maximum of 12.5 percent. Based on an audit of Medicaid overpayments by the Nebraska State Auditor in 2006, the rate of overpayments by Nebraska Medicaid was approximately .85 percent. Applying that ratio to average annual Medicaid claim amounts of \$1.59 billion would result in an estimated \$13.5 million in overpayments. Applying the maximum allowable 12.5 percent contingency amount to the total \$13.5 million would result in a possible maximum recoupment of approximately \$11.8 million in total funds (\$4.7 million in general funds). The federal portion would have to be returned to CMS. The recoupment amount would be less in practice without 100 percent compliance with the collection process. If Nursing Facility claims are not included in RAC reviews the potential recoupment amounts will be much lower.

Additional FTE in DHHS would be required to manage the recovery efforts once the RAC is implemented. A Medicaid Provider Fraud and Abuse Investigator and an Accountant I would be necessary. The first year cost for 1.0 FTE Medicaid Provider Fraud and Abuse Investigator would be \$82,458 (\$41,229 GF) and a 1.0 Accountant I would be \$65,495 (\$32,748 GF).

Costs for changes to the Medicaid Management Information Systems (MMIS) are estimated to be \$210,000 (\$105,000 GF) in SFY2012 in order to implement the RAC, while on-going annual systems costs are estimated to be \$70,000 (\$35,000 GF).

**MAJOR OBJECTS OF EXPENDITURE**

**PERSONAL SERVICES:**

| POSITION TITLE                                 | NUMBER OF POSITIONS |       | 2011-2012<br>EXPENDITURES | 2012-2013<br>EXPENDITURES |
|--|---------------------|-------|---------------------------|---------------------------|
|  | 11-12               | 12-13 |                           |                           |
| Medicaid Provider Fraud and Abuse Investigator |                     | 1.0   |                           | \$48,316                  |
| Accountant I                                   |                     | 1.0   |                           | \$36,200                  |

|                           |  |  |                  |                  |
|---------------------------|--|--|------------------|------------------|
| Benefits.....             |  |  |                  | \$33,807         |
| Operating.....            |  |  | \$210,000        | \$87,290         |
| Travel.....               |  |  |                  |                  |
| Capital Outlay.....       |  |  |                  | \$12,440         |
| Aid.....                  |  |  |                  |                  |
| Capital Improvements..... |  |  |                  |                  |
| <b>TOTAL.....</b>         |  |  | <b>\$210,000</b> | <b>\$218,053</b> |