

Analysis

Item 30: Department of Justice

Medicaid Fraud Unit

Analyst: John Borden

Request: Increase the Other Funds expenditure limitation by \$52,526 and Federal Funds expenditure limitation by \$157,578 for personal services costs in the Medicaid Fraud Unit.

Recommendation: The Legislative Fiscal Office recommends that the interim Joint Committee on Ways and Means recommend that the Department of Justice Other Funds expenditure limitation for the Civil Division be increased by \$53,241 and Federal Funds expenditure limitation be increased by \$159,723, and full-time equivalents be increased by 0.25, in a budget reconciliation bill during the 2018 legislative session, for the Medicaid Fraud Unit.

Analysis: The Department of Justice, Civil Enforcement Division's Medicaid Fraud Unit (MFU) is responsible for the investigation and prosecution of Medicaid fraud in Oregon. Each state is required by federal law to have a MFU for the state to continue to receive valuable Medicaid funds. The MFU prosecutes fraud under both state civil and criminal codes and is charged with the recovery of funds. The general factors impacting fraud are the number of senior citizens in long-term care facilities, the size of the Medicaid budget, and the number of Medicaid providers.

The 2017-19 legislatively adopted budget for the MFU totals \$5.8 million and includes 20 positions (19.39 FTE). The Legislature in 2017 funded a policy package for the MFU in the amount of \$607,957 and three positions (2.64 FTE) to keep pace with Medicaid growth in Oregon. The MFU is funded with Federal Funds (75%) and Other Funds in the form of a portion of civil settlement recoveries.

Over the last 11 years of the MFU's existence, the Unit handled an average of 37 cases each federal fiscal year, of which 26 (or 71%) were criminal and 11 (or 29%), were civil cases. Gross recoveries over this period total \$102.6 million, of which \$2.8 million (or 3%) were criminal and \$99.8 million (or 97%), were civil. There can be a large variation in civil recoveries each year.

MFU is projecting a personal services budget shortfall of \$210,104 total funds due to four positions being hired above either budgeted classification, step, or authorized full-time equivalency (FTE). DOJ is requesting that the budgeted line-item for pay differentials be increased to temporarily resolve the shortfall this biennium. DOJ would then need to seek a permanent funding solution, either administratively or through the budget process, during the 2019-21 biennium.

A permanent resolution of MFU's underlying budget issues would require the upward reclassification of two Assistant Attorney General positions to Senior Assistant Attorney General, an upward reclassification of a Principal Executive Manager C to a D (Chief Investigator), and adding 0.25 FTE to an existing Legal Secretary position budgeted at 0.75 FTE. This could be done at a cost of \$212,964 total funds, or \$2,860 more than DOJ's requested increase for a temporary solution.

The Legislative Fiscal Office recommends approval of the permanent solution and that the interim Joint Committee on Ways and Means recommend an increase of \$53,241 Other Funds, \$159,723 Federal Funds, and a 0.25 FTE increase for the Department of Justice - Civil Division's Medicaid Fraud Unit.

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Request: The Department of Justice, Civil Enforcement Division's Medicaid Fraud Unit is requesting an expenditure limitation increase of \$52,526 Other Funds and \$157,578 Federal Funds to support the unanticipated Personal Services cost increases associated with Medicaid Fraud Enforcement.

Recommendation: Approve the request during the 2018 Legislative Session.

Discussion: The Department of Justice (DOJ), Civil Enforcement Division (CE), Medicaid Fraud Unit (MFU) is funded by federal government grants at 75 percent and the remaining 25 percent from Other Funds, based on recoveries due to MFU cases. Since 2010, the unit's caseload has grown by over 85 percent. The work of the unit has returned millions of dollars to the federal Medicaid program and thousands to the State of Oregon.

During the 2017 Legislative Session, the Legislature funded three positions (2.64 FTE) in Policy Package 131. This package funded two MFU investigators and one Assistance Attorney General position, and added \$152,344 Other Funds and \$455,613 Federal Funds expenditure limitation to their budget. The division made the request once the federal government approved their budget plans. These plans addressed demands associated with the increased caseloads and caseload complexity over the past five years.

The 2017 Legislative Adopted Budget, captured some vacancy savings within DOJ, which impacted the unit. The reduction inadvertently impacted the Personal Services portion of their operating budget, which has hindered their ability to move forward with hiring the positions approved in Policy Package 131. Additionally, the unit has several existing positions budgeted below actual costs. For several biennia the division has used vacancy saving within their budget to fund three positions working out of class. These positions are being paid according to the work being performed.

The agency's request to increase Other Funds expenditure limitation allows the division and the unit to manage their federal government funded grants appropriately and pursue cases related to physical or financial abuse and neglect for residents of Medicaid funded facilities.

Legal Reference: Increase Other Funds expenditure limitation established by chapter 576, section 2 (3) Oregon Laws 2017, for the Department of Justice, Civil Enforcement Division, by \$52,526 for the 2017-19 biennium.

Increase Federal Funds expenditure limitation established by chapter 576, section 3(1) Oregon Laws 2017, for the Department of Justice, Civil Enforcement Division, by \$157,578 for the 2017-19 biennium.



DEPARTMENT OF JUSTICE

December 4, 2017

The Honorable Senator Richard Devlin, Co-Chair
The Honorable Representative Nancy Nathanson, Co-Chair
Interim Joint Committee on Ways and Means
900 Court St NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of the Request

The Department of Justice requests an increase in the Other Funds and Federal Funds expenditure limitations in the Civil Enforcement Division's Medicaid Fraud Unit to accommodate higher salaries and other personnel expenses that are approved by the Unit's federal grant and that support the Unit's investigation and prosecution of Medicaid fraud.

Agency Action

In order to receive federal funding for a State Medicaid Program, federal law requires a state to have a Medicaid Fraud unit to pursue provider fraud and abuse cases. The Department of Justice ("DOJ") operates Oregon's Medicaid Fraud Unit ("MFU"), which deters, investigates and prosecutes fraud by Medicaid providers, as well as handles cases relating to physical or financial abuse and neglect of residents of Medicaid-funded facilities. The MFU is funded 75% from federal grant funds and 25% from recoveries due to MFU's cases (i.e., Other Funds). As a result of MFU's work, millions of dollars have been returned to the Medicaid Program, including hundreds of thousands of dollars to the State of Oregon.

Over the past several biennia, demand for MFU's services has increased for a number of reasons, including: an increasing number of Oregonians residing in long-term care facilities; the enactment of the Affordable Care Act, which caused significant growth in the Oregon Medicaid Program; and the increasing sophistication of health care fraud schemes. Referrals to the program have nearly doubled since 2010, growing from 189 in 2010 to 351 in 2016. During this same time period, the work of MFU resulted in an average of 23 criminal convictions each year, as well as significant return of funds to victims and the State of Oregon.

Each year, MFU must submit a proposed a budget to the federal government, who reviews the request and determines whether to approve it and provide the 75% funding to MFU. Due to the increasing workload faced by our MFU, this past year we requested authority to add 3 new positions – 1 Assistant Attorney General and 2 Investigator 3 positions. The federal government

supported and approved the request, which was then submitted to the Oregon Legislature as POP# 131 and approved in the recent budgeting process.

Despite the federal government approving the MFU budget and funding 75% of the dollars for that work, the MFU does not have sufficient expenditure limitation from the Oregon Legislature to fully operate as approved. In part, this relates to higher costs resulting from having an Assistant Attorney General In Charge (AAIC) and a Senior Assistant Attorney General (Senior AAG) in two positions budgeted as regular Assistant Attorney General (AAG) positions, a PEM D in a PEM C position, and a position filled fulltime that has only 0.75 FTE budget. Organizing and staffing the Unit in this manner is necessary to continue to operate in the most efficient manner and to meet the expectations of the federal government under the grant funds allotted to Oregon. In fact, in 2016, the Unit underwent a federal audit and received positive feedback for the work they do. The lack of sufficient expenditure limitation in this Unit will make it difficult to continue the good work of the Unit and fully utilize the allotted federal funds.

The Medicaid Fraud Unit has delayed hiring of the newly approved Assistant Attorney General position and one of the Investigator 3 positions in an effort to offset the reduced limitation. The Unit has also delayed hiring vacancies as necessary to offset the reduced limitation.

Action Requested

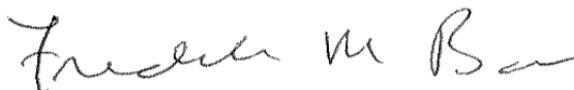
We request an increase of \$52,526 Other Funds and \$157,578 Federal Funds expenditure limitation for Personal Services in the Civil Enforcement Division's Medicaid Fraud Unit.

Legislation Affected

Increase the Other Funds expenditure limitation established by chapter 576, section 2(3), Oregon Laws 2017, for the Department of Justice, Civil Enforcement Division, by \$52,526 for the 2017-19 biennium.

Increase the Federal Funds expenditure limitation established by chapter 576, section 3(1), Oregon Laws 2017, for the Department of Justice, Civil Enforcement Division, by \$157,578 for the 2017-19 biennium.

Sincerely,



Frederick M. Boss
Deputy Attorney General

cc: Ellen Rosenblum
Lisa Udland
Art Ayre
Robert Schiewe