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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/09  
 SPONSOR Vaughn LAST UPDATED 02/20/09 HJM 46/aHHGAC  
 SHORT TITLE Behavioral Health Residential Care Licensure SB \_\_\_\_\_  
 ANALYST Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$0.1			Recurring	Various

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)  
 Human Services Department (HSD)  
 HSD/ Behavioral Health Services Division (BHSD)  
 Aging and Long-Term Care Services (ALTSD)

### SUMMARY

#### Synopsis of HHGAC Amendment

The House Health and Government Affairs Committee Amendment strikes “supervision” and replaces the word with the clarifying term “treatment, supportive housing” referring to the needs patients may have upon discharge; requires the DOH to study the role of licensure of residential care facilities with the “Medicaid Behavioral Health Ombudsman and ALTSD; requires the study group to report any findings and recommendations to the Behavioral Health Planning Council’s Adult Subcommittee in addition to the interim Legislative HHS Committee; and provides for a copy of the memorial to be given to HSD and ALTSD in addition to DOH.

#### Synopsis of Original Bill

House Joint Memorial 46 requests DOH to study the role of licensure in ensuring that persons being discharged from the Behavioral Health Institute (BHI) at Las Vegas in need of residential care are admitted to the appropriate residential care facilities.

The Memorial provides for the following:

- the BHI at Las Vegas is an inpatient psychiatric facility whose purpose is the observation, diagnosis, treatment, care and maintenance of the mentally ill;
- the mentally ill persons admitted to BHI are, at the time of their admission, psychiatrically unstable individuals, unable to manage their own affairs on a temporary basis;
- some of the patients in the BHI are there involuntarily, secondary to a legal commitment proceeding;
- upon discharge from the BHI, many patients are in need of continuing supervision, shelter and residential care;
- upon discharge from the BHI, a careful assessment of the needs and desires of a patient must be accomplished to determine the most appropriate setting for residential shelter care for that patient;
- there exists an array of adult residential care facilities, some that are licensed and some that are not, and that are called by various names, including board and care homes, shelter care homes and adult residential shelter care homes;
- residential care facilities are required to be licensed in the state if they care for two or more individuals in need of assistance with two or more activities of daily living;
- licensed residential care facilities are capable of addressing a more complex level of care and can provide closer supervision for a patient in need of that level of care;
- unlicensed residential care facilities may offer an alternative dwelling for a patient whose care needs are stabilized and who desires more independence;
- residential care facilities that are not licensed are not required to demonstrate the same standard of care as those that are licensed;
- licensed residential care facilities are required to meet standards such as liability insurance, training for cardiopulmonary resuscitation and first aid, testing for communicable diseases and criminal background checks;
- licensed residential care facilities are required by regulation to provide nutritious meals, limit the number of residents in each room and separate residents by gender;
- the resident of a residential care facility may still be in need of assistance with taking psychotropic and other medications, and the licensed residential care facility is required to employ people with knowledge and understanding of the uses and side effects of these drugs and the symptoms of mental illness;
- licensed residential care facilities are required to meet all these standards and more, and are surveyed on a regular basis for compliance with these standards;
- while the regulations that require a licensed residential care facility to meet these standards are necessary and important for some residents with complex care needs, a less regulated environment might be appropriate for residents requiring less supervision and intervention; and
- despite the different levels of need that may be demonstrated by a resident, there is currently only one set of regulations that addresses adult residential shelter care and sets the standards for residential care facilities.

The Memorial further provides that a report of the findings and recommendations of the study be presented to the interim Legislative Health and Human Services (HHS) Committee by December 1, 2009.

## **FISCAL IMPLICATIONS**

The costs are staffing time within Collaborative agencies and other stakeholders attending the task force meetings and completing associated tasks. Such a study group will need to meet regularly and frequently in order to complete the required report and present to the interim Legislative HHS Committee by December 1, 2009.

HSD/BHPC reports that people with serious mental illnesses have incomes equal to only 18% of the median income and cannot afford decent housing in any of the 2,703 housing market areas defined by the U.S. Department of Housing and Urban Development (HUD). HUD reports to Congress show that as many as 1.4 million adults with disabilities who receive SSI benefits, including many with serious mental illnesses, pay more than 50% of their income for housing.

## **SIGNIFICANT ISSUES**

HSD/BHPC reports that issues of discharge to such homes and the treatment of residents have been concerns of the BHPC. The exact number of adults discharged from BHI or other behavioral health facilities who reside in community-based unregulated housing options is unknown at this time. According to staff at BHI, several board and care homes in New Mexico have chosen to drop their licenses in the last few years due to the costs associated with compliance with licensing requirements and the lack of adequate compensation for providing all services required with licensure.

HSD/BHPC further reports that *The New Mexico Behavioral Health Purchasing Collaborative Long Range Supportive Housing Plan* (December 2007) clearly delineates that the preferred housing option for most persons with mental illness is permanent supportive housing. The Collaborative's Supportive Housing Program is piloting a state wide permanent supportive housing project that brings together service providers, landlords, developer, Mortgage Finance Authority and other house stakeholders to provide and integrate the necessary financial and service supports to help persons with mental illness be able to obtain and maintain decent, safe, affordable community the housing. It is recommended that members of the Supportive Housing Program be included in the study group to insure that permanent supportive housing concepts are included within the memorial analysis.

Unlicensed residential care facilities often are the only alternative to homelessness when no other housing options are available.

## **PERFORMANCE IMPLICATIONS**

DOH is being requested to consult with the state ombudsman; residents of residential care facilities; family members of persons with mental illness; the BHSD of HSD; and the Statewide Entity for Behavioral Health Services in identifying the necessary steps to comply with provisions in this Memorial.

DOH reports that Adult Residential Care (ARC) regulations were developed solely for the chronically ill elderly population. These regulations are based on the elderly individuals needing assistance with "Activities of Daily Living" (ADL) such as dressing, bathing and assistance with meals. They were not designed to regulate individuals with behavioral health/mental health issues and most facility staff are not trained to deal with these individuals. ADLs do not include the administration of medications. This can only be done by licensed staff. Current regulations do not require these facilities to have licensed staff employed. These ARC facilities may assist with "Self Administration" of medication if trained.

## **ADMINISTRATIVE IMPLICATIONS**

DOH is being requested to study the role of licensure in ensuring that persons being discharged from the behavioral health institute at Las Vegas in need of residential shelter care are admitted to the appropriate residential care facilities. DOH is also being requested to consider the merits of developing additional regulations to set standards and oversee quality in residential care facilities that serve residents who do not meet the criteria to be placed in a licensed facility or who do not choose to live in a licensed residential care facility.

## **TECHNICAL ISSUES**

HSD/BHPC states HJM 46 only addresses the discharge of individuals from BHI. Other facilities around the state are not addressed.

HSD/BHPC further states HJM 46 does not specify whether the ‘ombudsman’ refers to the Medicaid Behavioral Health Ombudsman or the State Long Term Care Ombudsman in ALTSD.

Representation is also needed from ALTSD’s Adult Protective Services Division.

## **OTHER SUBSTANTIVE ISSUES**

DOH reports that placement options for individuals suffering from severe mental illness are extremely difficult to obtain because there is lack of appropriate housing options as many of these individuals are not capable of living independently.

## **ALTERNATIVES**

DOH notes that the study may be more efficiently directed to the Collaborative and the BHPC.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Health agencies note that there may not be a comprehensive approach to establishing a state policy on the role of particular kinds of licensure or oversight as a means of ensuring the safety of persons discharged from behavioral health facilities.

## **AMENDMENTS**

HSD/BHPC suggests the following amendments:

- A. Amend Page 1, line 11 and pages 4 and five to direct the study and recommendations required by this Memorial to the Behavioral Health Planning Council’s Adult Subcommittee.
- B. Amend the language in page 2, line 3 to read as follows “...upon discharge from the institute, many patients are in need of continuing ~~supervision~~ treatment, supportive housing, shelter or ~~and~~ residential care;” The term “continuing supervision” erroneously suggests patients discharged from BHI (or any behavioral health facility) are “supervised” which does not happen as a matter of law except in very rare circumstances (i.e., a person with a mental illness and a developmental disability who is authorized/required to receive 24 hour care.) Otherwise, patients are not “supervised” and they receive “continuing treatment” when they can access such treatment and consent to it.

**House Joint Memorial 46/aHHGAC– Page 5**

- C. Amend Page 4, line 10 to specify both the Medicaid Behavioral Health Ombudsman and the ALTSD State Long Term Care Ombudsman. The ALTSD Long Term Care Ombudsman Program has health facility oversight responsibilities outlined by state statute (NMSA 1978, 28-17-4, Long-Term Care Ombudsman Act; 42 U.S.C. A, 3058(g).
- D. Amend Page 5, line 3 to add, “department of human services, department of aging and long term services, and”

AHO/mt