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FISCAL IMPACT REPORT

SPONSOR: Maes DATE TYPED: 03/04/01 HB _____
 SHORT TITLE: Mental Health Discrimination SB 688
 ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	NFI		NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Health Policy Commission (HPC)
 State Agency on Aging
 Attorney General (AG)
 Department of Labor (DOL)

SUMMARY

Synopsis of Bill

SB 688 amends the duties of the Human Rights Commission to include language which permits the Commission to hear complaints, issue orders, and hold hearings in cases alleging mental health discrimination.

Significant Issues

Section 28-1-4 NMSA, 1978 is amended with the addition of language that permits the Human Rights Commission and the Human Rights Division of the Department of Labor to add mental health discrimination to unlawful discriminatory practices.

The amendment allows “due process” for individuals in cases alleging mental health discrimination.

DOL questions the need for the change in legislation by indicating that the NM Human Rights Act already provides that “mental handicap” discrimination is illegal in Section 27-1-7 (A). Mental handicap is a form of mental health that under NMSA 1978 Section 28-1-4 (A) (1), (2) the Commission currently has the right to hold hearings and complaints, and issue orders for persons claiming mental handicap discrimination.

ADMINISTRATIVE IMPLICATIONS

Although DOL indicates that the legislation expands the duties of the New Mexico Human Rights Commission to include holding hearings in cases alleging mental health discrimination, the department does not reveal any administrative concerns.

TECHNICAL ISSUES

The AG provides the following concern with the legislation:

The Human Rights Act provides that the Commission “may” hear complaints and issue orders. The statute is so worded because it allows the Human Rights Division to investigate a complaint, conciliate it, and then make a determination of whether there is probable cause to believe discrimination exists. If the parties successfully conciliate, then there is no hearing. If the Division concludes there is no probable cause, there is no hearing. This is true for all types of discrimination allegations, including discrimination based on “mental handicap” in the areas of employment, union membership, housing, public accommodations and lending.

SB 688 provides that the Commission “shall” hear complaints and issue orders on charges of mental health discrimination. It is unclear how the courts will understand this amendment except that it stands alone as the only mandatory hearing the Commission is to undertake. If this is the way the courts construe SB 688, then conciliation will be less meaningful because it likely will not prevent a hearing. In addition, respondents to allegations of mental health discrimination will have to go to a hearing even if the Division concludes there is no probable cause to believe discrimination exists.

OTHER SUBSTANTIVE ISSUES

HPC specifies that SB 688 adds language that clarifies that individuals can be and often are, discriminated against due to mental health conditions that are beyond the control of the individual, just like cancer, diabetes, and other serious physical health problems.

The following information was made available by the HPC:

- Of American adults, 5.4 percent have a serious mental illness. (Kessler, R.C. et al. 1998 “ A Methodology for Estimating the 12-Month Prevalence of Serious Mental Illness” In Mental Health, United States, 1999, edited by R.W. Manderscheid and M.J. Henderson, 99-109. Rockville, MD: Center for Mental Health Services.)
- Twenty-three percent of American adults (ages 18 and older) suffer from a diagnosable mental disorder in a given year, but only half report impairment of their daily functioning due to the mental disorder. Six percent of adults have addictive disorders alone, and three percent have both mental and addictive disorders. (<http://www.nami.org.htm>)
- Almost half of all adults with serious and persistent mental illnesses are between the age of 25 and 44. (<http://www.nami.org.htm>)
- Four of the ten leading causes of disability in the United States and other developed countries are mental disorders, which include major depression, bipolar disorders, schizophrenia, and obsessive-compulsive disorder. (<http://www.nami.org.htm>)

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