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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/13

SPONSOR     Powdrell-Culbert     LAST UPDATED                      HB   220  

SHORT TITLE     Mental Health Certification of Probable Harm     SB                     

ANALYST     Geisler    

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 271

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Human Services Department (HSD)  
 Regulation and Licensing Department (RLD)  
 Medical Board (MB)  
 Board of Nursing (BN)  
 Attorney General’s Office (AGO)  
 Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

House Bill 220 (HB 220) would amend the Mental Health and Developmental Disabilities Code to expand the type of health care practitioners permitted to certify that a person presents a likelihood of serious harm to self or others and reconciles multiple amendments to the same section of the Code. The bill amends Section 43-1-3 of the Code to delete the definition of “physician” or “certifying psychologist” and adds a definition of “licensed practitioner”. The proposed new definition defines seven classes of individuals as licensed practitioners:

- Physicians
- Osteopathic physicians
- Licensed psychologists
- Certified psychiatric nurse practitioners
- Psychiatric physician assistants

- Licensed independent social workers
- Licensed professional clinical mental health counselors

HB 220 further amends Section 43-1-10, to permit these new classes of individuals to certify that a person, as a result of a mental disorder, presents a likelihood of serious harm to him or herself or to others and that immediate detention is necessary to prevent such harm. Such a certification authorizes transport, by peace officers, of the individual to an evaluation facility for further assessment to determine whether there are reasonable grounds to detain the individual for evaluation and treatment. Although immediate transport to such an evaluation facility is preferred in the code, provision is also made that in cases of extreme emergency for protective custody an individual may be detained in a detention facility for no longer than twenty-four hours.

### **FISCAL IMPLICATIONS**

No fiscal impact has been identified.

### **SIGNIFICANT ISSUES**

The intent of HB 220 is to expand the types of health care providers that can perform emergency evaluations, which increases the probability of successful intervention in the cases of individuals that may harm themselves or others. A few issues noted by agencies include:

#### **Scope of Practice & Training**

The Department of Health (DOH) notes among the implications of HB 220 is the potential impact that without sufficient training and education, an individual may be being detained for transportation to an evaluation facility inappropriately and under circumstances that impact their freedom. They could further be detained in a jail or detention facility for up to twenty-four hours. Although other states do permit these levels of practitioners to initiate emergency or other protective custody detention, some require specific training in civil involuntary detention procedures or at least minimum practice standards related to years of practice and specific mental health training.

However, the Regulation and Licensing Department (RLD) points out that the scope of practice for Licensed Independent Social Workers and Licensed Professional Mental Health Counselors would not need to be amended as they already allow for the licensee to perform evaluations. The Board of Nursing would request inclusion of psychiatric clinical nurse specialists (CNS) under licensed practitioner.

#### **Use of the Term “Mental Disability”**

In Section 1 of HB 220 (definitions as used in the Mental Health and Developmental Disabilities Code), 43-1-3 P, the word ‘disability’ replaces “disorder” without the change being noted. The definition remains the same. This change in terms would affect not only Section 43-1-10 as amended in HB 220, but also provisions of the Code not amended in this bill. For example, the Code’s thirty-day civil commitment process of Section 43-1-11 also contains the term “mental disorder”.

Changing the term to “mental disability” may also have unintended consequences by placing any civilly committed person under the provisions Americans With Disabilities Act of 1990, Pub. L.

No. 101-336, 104 Stat. 328 (1990) (ADA). The ADA applies to an individual who “... is perceived by others as having such impairment.”

The DOH notes that individuals with intellectual/developmental disabilities would be impacted in that they may be referred with greater frequency for assessment and/or involuntary commitment, particularly those that live in more rural areas, not currently having as many “physicians” or “certified psychologists” as larger communities and localities. Also, some of the practitioners included in the new list may not have the training needed to distinguish behaviors attributable to their intellectual/developmental disability (e.g. autism) and those attributable to a treatable mental health issue, thus perhaps causing additional referrals to be made.

### **ADMINISTRATIVE IMPLICATIONS**

HB 220 could result in more emergency referrals to New Mexico Behavioral Health Institute requiring more intake assessments and increased coordination of transportation if admission is denied.

### **RELATIONSHIP**

HB 220 relates to SB 271, which also seeks to broaden the number of practitioners that can request emergency mental health evaluations.

### **TECHNICAL ISSUES**

The bill substitutes the word “licensed” for the word “certified” wherever the phrase “certified psychologist” occurs in the Code, except at line 23 of page 3. The DOH provided the following additional input on language in the bill:

- ICF/MR—Intermediate Care Facility for the Mentally Retarded—should be renamed to be consistent with Center for Medicaid Services (CMS) guidelines—It should be ICF/ID due to the fact the accepted federal language is now “individuals with Intellectual Disabilities.”
- The code itself should be renamed to reflect this language—“Mental Health and Intellectual/Developmental Disabilities Code.”
- On page 3, Section I, lines 12 through 16: bring this definition in line with language reflecting “intellectual developmental disability” instead of “mental retardation.”
- On page 3, Section I, line 21, “Los Lunas medical center” needs to say “Los Lunas Community Program ICF/ID” instead.

### **AMENDMENTS**

The Medical Board notes that in section 1M (5) the role of “psychiatric physician assistant is defined. Although there are a few physician assistants who work for and with psychiatrists, they are not licensed as “psychiatric physician assistants.” Section 1M (5) of HB 220 should be amended to read: “(5) a physician assistant licensed pursuant to the Medical Practice Act who specializes in mental health and is under the supervision of an MD or DO psychiatrist, licensed respectively under the Medical Practice or the Osteopathic Physician’s Acts, whose specialty is in psychiatry and mental health”.