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FISCAL IMPACT REPORT

SPONSOR: Varela DATE TYPED: 3/5/03 HB 535/aHBIC

SHORT TITLE: Coordinated Investigation of Abuse SB _____

ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
 Department of Health (DOH)
 Health Policy Commission (HPC)
 Children Youth and Families Department (CYFD)
 Office of the Attorney General (AOG)
 Department of Human Services (HSD)
 State Agency on Ageing (SAA)

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee Amendments make the following revisions to the bill:

- Removes the language of “long-term care” and inserts in its place “health facilities”. The new language is consistent with the intent of the bill.
- Changes the language of the bill to allow for investigations to be conducted within the strict time frames established by each protocol member’s rules. This provides protocol members with much more flexibility in administering the program. The amendment addresses the concerns that various department’s raised in the original bill.
- Changes the language pertaining to information received by agencies and the acceptance of that information as “potential” evidence to initiate and conduct and investigation. The previous language did not contain the word “potential”. The change allows protocol members more flexibility in evaluating the evidence for a case to be investigated.

Synopsis of Original Bill

House Bill 535 amends the Public Health Act as it applies to licensure of health facilities. It provides for clean up language including substituting the term “rules” for “regulations”. The substantive change amends the Section 1; paragraph L., which relates to the investigation of abuse, neglect and exploitation of health facilities. The substitute language has the Department of Health developing a “long term care protocol” in conjunction with HSD, AG’s Medicaid Fraud Control Unit, CYFD’s Adult Protective Services, Office of the Long Term Care Ombudsman and other appropriate agencies, necessary to protect the health, safety and rights of individuals in long term care settings.

Significant Issues

The bill specifies the development of a protocol to: 1) “cross-reference” among agencies; 2) investigate allegations of physical abuse or life-threatening situations within eight hours; 3) investigate allegations of neglect when actual harm has occurred, within 24 hours; 4) investigate allegations of substandard care and financial exploitation; 5) share investigative information among agencies, and 6) require the receiving agency to accept information submitted under the protocol as evidence to initiate and conduct investigations.

This bill potentially increases the volume of investigations that will be conducted by CYFD’s Protective Services Division and increases caseworker workloads. CYFD expresses concerns that the bill mandates an investigation of all abuse or neglect in long-term care facilities and thereby removes any discretion by social workers on prioritizing reports.

Currently, social workers use an assessment tool to prioritize reports and determine an appropriate time frame for responding to each individual case. This bill, CYFD assumes, may create situations where low risk cases in a long-term care facility are investigated before high-risk cases in a private home. The bill requires specific time frames for responding to allegations of abuse and neglect requiring changes to existing policies and procedures for the screening and investigation of abuse, neglect and exploitation.

CYFD’s Prevention and Intervention Division investigates allegations of abuse, neglect and/or exploitation in residential treatment centers, group homes, day treatment programs and treatment foster-care agencies (not treatment foster-care homes). Because the term “long-term care” is not defined in the bill, and is not used in other sections of the statute, it is not clear to CYFD if it includes CYFD programs such as attendant care, home care, and adult day care, or if it only pertains to health care facilities.

FISCAL IMPLICATIONS

The fiscal implications are discussed under significant issues above, and in the analyses below.

ADMINISTRATIVE IMPLICATIONS

DOH notes that the requirement to investigate allegations within the prescribed timelines cannot be met with current resources. An additional 10 FTE and funding would have to be allocated to the Department of Health, Division of Health Improvement to meet the required timelines.

If the long-term protocol mandates response times to allegations (as stated in the bill) and if these mandated times apply to CYFD's Behavioral Health Licensing and Certification Unit's investigations in residential treatment centers, group homes, day treatment programs and foster care agencies, then the workload of this unit would be impacted.

TECHNICAL ISSUES

Section N focuses attention on child care facilities. It is unclear, to CYFD, if the intention of this bill considers child care facilities as a "long-term care" facility. It is also unclear if the term "child care facilities" refers to child care center (homes) or RTCs.

The bill refers to CYFD regarding the licensure of health facilities and childcare settings. However, it does not clarify that the Department of Health is responsible for the licensure of health facilities and that CYFD is responsible for the licensure of childcare facilities.

The phrase "cross reference" on line 17, page 7 should read "cross referral".

The word "require" on page 8 line 7 is repetitive of the "require" on page 7, line 16 and should be deleted.

The bill does not clearly define the terms "life-threatening" and "actual harm" clearly.

OTHER SUBSTANTIVE ISSUES

It is also not clear whether the specified timelines apply to *all* agencies identified in the protocol, or to the Department of Health. There are federal requirements specifying investigation timelines for DOH/Health Facility Licensing and Certification as well as other state/federal requirements for other agencies in the protocol. If the timelines specified in the bill are intended to be controlling, then statutes affecting DOH and the other agencies (such as the adult protective services act) would also need to be amended.

DOH expresses concerns on the language in items 1-3 which assumes that all *allegations*, as defined, should be investigated. The department concern is that even spurious complaints would have to be investigated per law. The typical process used by most agencies is to review allegations and then to make judgments based upon the triage process as to the validity of an allegation before sending investigators out to conduct an investigation.

AMENDMENTS

This proposed language below from DOH is based upon a modified version of a State Agency on Aging proposal:

The Department shall coordinate with the Human Services Department, The New Mexico Provider Fraud Control Unit, Adult Protective Services of the Children, Youth and Families Department, the Office of the State Long Term Care Ombudsman and other appropriate agencies to develop, implement, and maintain a Long Term Care Joint Protocol Committee. The purpose of the LTC Joint Protocol Committee is to assure member agencies work collaboratively to promote the health, safety, and rights of individuals in long-term care settings.

Member agencies shall collaborate and jointly investigate complaints when possible. If joint investigation is not feasible, member agencies will share results of individually conducted investigations. Member agencies shall promptly cross-refer, communicate and cooperate in the management and investigation of allegations of abuse, neglect, and exploitation. Member agencies shall share investigative findings and documentation. Member agencies shall utilize documentation and evidence to initiate and enhance investigations and improve the quality of care for long-term care residents. Collectively, the LTC Joint Protocol Committee shall adopt and implement operational guidelines for the management of referrals and for expeditiously conducting investigations of abuse, neglect and exploitation. The LTC Joint Protocol Committee shall identify issues, patterns and trends and collectively develop and implement strategies to address such. The Committee shall produce written reports and recommendations to remedy such issues.

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