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FISCAL IMPACT REPORT

SPONSOR: Rawson DATE TYPED: 3/3/03 HB _____

SHORT TITLE: Consumer Direction Act SB 839

ANALYST: Dunbar

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB392, SB332, SB338.

SOURCES OF INFORMATION

Responses Received From

Department of Health (DOH)

Health Policy Commission (HPC)

Human Services Department (HSD)

Governor's Committee on Concerns for the Handicapped (GCCH)

SUMMARY

Synopsis of Bill

SB839 enacts the Consumer Direction Act, which gives consumers or their surrogates the right to direct their own care and personal assistance services by hiring, supervising and training the attendant(s) of their choosing. The purpose of the Act is to maximize personal assistance service availability and satisfaction.

Significant Issues

Under SB 839, PAS is defined as a prescribed course of personal care, including activities of daily living assistance (bathing, dressing, grooming, eating, toileting, shopping, transporting, medication administration and communicating), hygiene and mobility that permit individuals to

remain in their home, rather than living in a long term care institution, where similar services would be rendered in a congregate living setting.

SB 839 would require all departments and agencies providing PAS to implement a consumer directed program utilizing personal attendants and fiscal intermediaries. The rising cost of Medicaid has opened policy makers to consider PAS and other consumer directed models of care that have proven to be cost effective, particularly in the Medicaid Personal Care Option Program.

As part of New Mexico's response to service provision in the most integrated settings possible, the Medicaid Personal Care Option (PCO) was implemented in 2001, and currently has more than 6,000 participants, who otherwise would be in long-term care (LTC) facilities. The PCO has two service models: 1) a consumer-delegated option, wherein a consumer delegates the coordination and provision of services to a service provider; and 2) consumer-directed option, wherein the consumer hires, trains and manages his own personal care attendant(s) and a fiscal intermediary assists with handling of employer related responsibilities, including payroll.

The DOH, Long Term Services Division has initiated a "Self-Directed Pilot Program" through State General Funds that provides services to a small group of individuals with developmental disabilities. An annual budget of up to \$2,600 is available to purchase services and support to address the individual's disability needs. This consumer directed pilot program uses a fiscal intermediary to support individuals in paying for services and managing employer related responsibilities, including payroll deductions.

In addition, SJM 54 requested the Governor's Committee on Concerns of the Handicapped (GCCH) to convene a task force to develop a comprehensive, coordinated and effective state plan in response to Olmstead. The GCCH submitted its report to the Health and Human Services Interim Committee, developing a draft Initial Olmstead State Report, on October 16, 2002. The report's Vision Statement and Guiding Principles support an individualized service and support systems that enable people with disabilities choices to live and work in the most integrated setting possible.

If SB 839 were enacted, all Medicaid programs, which offer personal assistance services to Medicaid clients, would be affected. For example the Developmentally Disabled, Disabled & Elderly, Medically Fragile and HIV/Aids Waivers would have to be changed to offer consumers the option of directing his/her own care under these waivers. The current language in SB 839 would put waiver programs in violation of the terms and conditions with the Center for Medicare and Medicaid Services (CMS), which do not permit a consumer-directed option. SB 839 would also create a fiscal intermediary requirement to contract with the department, and to provide services between the consumer and the department.

FISCAL IMPLICATIONS

Enacting SB 839 could demonstrate cost savings to the DOH, allowing more consumers to be served and reducing waiting lists.

ADMINISTRATIVE IMPLICATIONS

The redirection of current contract dollars would involve DOH staff time, but could be handled with existing staff.

SB 839 would create a requirement that HSD contract with a fiscal intermediary to provide services between the consumer and HSD. Reports would have to be provided to the Legislative Finance Committee and Legislative Health and Human Services annually on services provided by HSD. A comparison and evaluation of the effectiveness of the program would also need to be done annual. Additionally, a consumer satisfaction survey would need to be completed with respective means of service delivery.

SB 839 would require the DOH to assess its current programs and develop a plan for the provision of consumer directed care, regardless of funding source. Consumer directed options could result in a redirection of current contract dollars. SB 839 does not include any appropriation. Consumer directed service and support options would have to be made available under current levels of funding for both the Medicaid Home and Community Based Waivers (DD and D&E) Programs and State General Fund programs.

RELATIONSHIP

Relates to:

SB392, Medicaid Self-Directed Option, requiring that the Human Services Department establish a Self-Directed Care option in the Disabled and Elderly (D&E) and Developmentally Disabled (DD) Medicaid Waiver Programs, which would allow clients to direct their own care services and still have those services reimbursable by Medicaid.

SB332, Medicaid Reform Committee Program, requesting the HSD to initiate studies and pilot projects based on the Medicaid Reform Committee recommendations, which includes a Personal Care Option.

SB338, Medicaid Reform Committee Recommendations, directing the HSD to implement program changes based on the Medicaid Reform Committee recommendations, which includes a Personal Care Option

TECHNICAL ISSUES

The definition of "attendant" includes "allowable family member," but "allowable" is not defined.

OTHER SUBSTANTIVE ISSUES

DOH reports that PAS programs have become a part of national focus since the 1999 U.S. Supreme Court decision in the Olmstead v. L.C., with the President Bush weighing in on this issue. As part of his New Freedom Initiative to remove barriers to equality for 54 million Americans with disabilities and to promote full access to community life, he issued Executive Order 13217. This Order requires the departments of Justice, Health and Human Services (HHS), Education, Labor and Housing and Urban Development and the Social Security Administration to "evaluate the policies, programs, statutes and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities" and to report back to the President with their findings. Health and Human Services, Secretary Tommy G. Thompson submitted *Delivering on the Prom-*

ise: Preliminary Report of Federal Agencies' Actions to Eliminate Barriers and Promote Community Integration, in December 2001.

CMS has addressed President Bush's New Freedom Initiative, through the creation of the Independence Plus Option for Self-Directed Medicaid Waivers. Components of the CMS definition of self-directed service option, which are not part of the current New Mexico DE Waiver and DD Waiver program framework, include: a fiscal agent and a brokerage agency to support families and individuals as they direct their own services; and / or allowing eligible families and individuals to receive a cash allowance to purchase services.

The GCCH reported to the Health and Human Services Interim Committee, in FY 00 the average annual cost for the 4,667 people served in nursing homes was \$40,000.00; while the average annual cost for the 5,300 people through the PCO was \$15,000 for consumer directed and \$19,000 for consumer delegated (based on 100 hours of PCA services/month). Nearly 100% of stakeholders surveyed would not chose to live in a nursing home, yet 76% of service placements were to nursing homes in 2000. According to the Home and Community Based Services Resource Network, surveys indicate that savings are achieved with independent providers and consumer choice was significantly associated with consumer satisfaction.

In 2002, the NM Governor's Committee on the Concerns of the Handicapped created a task force of stakeholders to study the implementation of the *Olmstead Plan* in the state (*Initial State Olmstead Plan in response to SJM54*, October 16, 2002) The stakeholders' report and recommendations to the Legislative Health & Human Services Interim Committee included (but were not limited to) the following:

- Pass a Consumer Direction Bill that would mandate that the waiver programs include a consumer directed option.
- Less expensive to have services provided by family members or friends, and more accessible for rural community residents.
- Cash & Counseling services allow clients to have control over own money (programs in Florida, Arkansas and New Jersey).
- Consumer direction option saves \$4,560 annually per person receiving 100 hours per month.
- Develop training programs for families and other caregivers who desire to be the provider of services.

HPC states that consumer-directed services lack quality assurance structures such as training of the caregivers, professional supervision, and provision of technical services by professionals. Yet, the services may be better than agency care because of the ability to make the services custom-made to suit clients.

In a recent HSD Medicaid Assistance Division (MAD) symposium held in Albuquerque, health provider agencies in NM expressed concern about potential liabilities in consumer directed care, particularly financial risks.

BD/yr