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FISCAL IMPACT REPORT

SPONSOR: Nava DATE TYPED: 02/26/03 HB _____

SHORT TITLE: Prerelease Benefits Assistance Act SB 852

ANALYST: Weber

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
Human Services Department
Department of Health

No Responses Received From
Adult Parole Board
Department of Corrections

SUMMARY

Synopsis of Bill

Senate Bill 852 (SB852) would create a system and procedures for providing benefits and cash assistance and to otherwise facilitate the reintegration of incarcerated persons with mental disorders or developmental disabilities into the community upon release of the person from jail, prison, detention centers or other correctional facilities.

Significant Issues

The Human Services Department (HSD) offers a section by section review of the pertinent issues involved in SB 852. A variety of technical concerns and contradictions with federal law are pointed out.

Section 4A

HSD would have to adopt rules and establish procedures for the "suspension" of food stamp benefits and Medicaid while the person is incarcerated. HSD would be prohibited from terminating food stamps and Medicaid unless the person no longer meets the eligibility criteria under which he had previously qualified and the person is not eligible for food stamps or Medicaid under "any eligibility category" (page 3, lines 18-25; page 4, lines 1-3).

The term "suspended" would mean that HSD would have to place a person's food stamp benefits in an inactive status rather than terminate benefits, but would not provide the benefits to an incarcerated person (page 3, lines 4-11).

Medicaid Issues:

- The Medicaid program does not currently "suspend" eligibility.
- It could be accomplished, however adjustments in the claims processing system would be required so as to disallow any billings while the individual was incarcerated.
- An individual's period of eligibility is normally twelve months, at the end of which eligibility must again be established. Suspension may only extend to the date of the next required determination, as federal regulations require that eligibility be determined at least every twelve months.
- Final eligibility upon release would be dependent upon current circumstances and a final determination cannot be made until the individual's living circumstances are assessed.
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Food Stamp Program Issues:

- A person who is incarcerated is considered a resident of an institution in the Food Stamp Program and is not eligible for food stamp benefits at any time that the individual is incarcerated. 7 CFR 273.1(b)(7)(vii)
- A resident of an institution means an individual who resides in a dwelling that provides the individual with the majority of his meals as part of the institution's normal services. A jail or juvenile correctional facility is an example of the meaning of an institution.
- A person who is receiving food stamp benefits at the time he is incarcerated cannot have benefits suspended. There is no provision in the Federal Food Stamp Program for suspension of benefits. HSD must terminate that person's participation in the Food Stamp Program. (FSP).
- The reference to "any eligibility category" appears to be a reference to Medicaid and the myriad Medicaid categories administered by the Medical Assistance Division. It does not apply to the FSP.
- The FSP only allows a suspension of benefits (a state option) if the State Agency needs to determine whether a person or household remains eligible for food stamp (FS) benefits. A household member's continued eligibility is determined by sending an adverse action notice allowing the household to establish the person is still a household member. A person who is incarcerated cannot remain a household member, therefore his FS benefits cannot be suspended
- In some circumstances the United States Department of Agriculture (USDA) Food and Nutrition Services or any higher entity may suspend food stamp benefits, like a disaster declaration

Section 4B

HSD would be required to fully restore food stamp and Medicaid eligibility upon release of the person from the correctional facility unless HSD determines the person is no longer eligible for food stamps or Medicaid under "any eligibility category" (page 4, lines 4-11).

Food Stamp Program Issues:

- HSD cannot make a prospective determination of eligibility for participation in the FSP, nor can HSD fully restore food stamp eligibility upon the release of an incarcerated individual.
- An individual becomes ineligible to participate upon leaving the household and it is the responsibility of the household to report the absence of the individual. It is also the responsibility of the household to report when the individual rejoins the household.

Section 5A

HSD, the Corrections Department, Children Youth and Families Department (CYFD) and jail administrators are directed to work together to ensure that suspended or terminated food stamp benefits, Medicaid, or cash assistance from Social Security Administration (SSI or Social Security Disability) are promptly restored to the person (page 4, lines 14-25).

Issues:

- HSD cannot work to ensure the restoration of suspended cash assistance (SSI or SSD benefits) because HSD does not administer such programs.

Section 5A Part 1

HSD, Corrections, CYFD and jail administrators must "take reasonable actions" to identify incarcerated persons whose food stamps or Medicaid were suspended and to ask those persons if they want to receive benefits upon release (page 5, lines 2-6).

Food Stamp Program Issues

- Again, the concept of restoring suspended benefits is not possible because such a situation cannot occur in the FSP. HSD cannot "hold" benefits based on an assumption of eligibility after release.
- HSD cannot ask an incarcerated person if he wants to receive food stamp benefits upon his release because HSD cannot determine the eligibility of a resident of an institution. HSD must be able to establish that a person resides in the project area in which he is making application, must determine household composition and mandatory household members, income and resource amounts for the household as well as work registration status of the person (among other eligibility factors).

Section 5A Part 2

SB 852 makes HSD, Corrections, CYFD and jail administrators responsible for ensuring that a person who does want to receive benefits upon release receives an application for reinstatement,

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as well as assistance in completing the application, filing the application and is given a copy of the completed and filed application (page 5, lines 7-13).

Issues:

- HSD can make applications for food stamp benefits available to correctional facilities so that the person who is released can file an application upon release. A person in an institution is not potentially eligible for food stamp benefits until release from the institution and verification of all eligibility factors (including release).

Further, SB 852 makes HSD, Corrections, CYFD and jail administrators responsible for providing assistance to an incarcerated person with a mental disorder throughout the application process and must ensure that competent staff that are familiar with the "characteristics of successful applications" assist those individuals (page 5, lines 14-17).

Issues:

- HSD provides assistance with the application process to any person applying for food stamp benefits or Medicaid.
- Assistance is provided to an applicant by trained eligibility staff, supervisors and county directors. All staff is familiar with the application process and can guide a person through the questions on the application. HSD staff will rarely fill out the application for a person but may certainly assist a mentally or developmentally challenged person in this way. HSD encourages applicants to assign an authorized representative to conduct business for the applicant (see 7 CFR 273.1(f)).

Section 5A Part 3

SB 852 provides for the assistance either directly from HSD, Corrections, CYFD and jail administrators or from contracted entities. The assistance must include the distribution of application forms, assistance with securing medical or other information required to support an application and assistance with completing and submitting application forms (page 5, lines 17-22).

- SB 852 would require HSD, Corrections Department, CYFD and jail administrators to enter in an agreement to assist an incarcerated person with the application process. If the HSD, Corrections Department, CYFD and jail administrators elect to contract with an outside entity, these agencies would have to enter into a contract with the outside entity.

Section 5B

A copy of the person's completed application must be provided to a family member or other person designated by the incarcerated person who will be assisting the person upon release. Distribution of a copy of an application for a minor under age fourteen is not required (page 5, 23-25; page 6, lines 1-3).

Issues

- HSD encourages the use of an authorized representative, as provided by federal law, for purposes of the application process as well as the ongoing responsibilities for eligibility in the FSP. 7 CFR 273.1(f)

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- Providing a copy of the application is not a standard operating procedure, but may be made available upon request by the applicant or participant household.
- An application from an incarcerated person would immediately be denied based on ineligibility due to residence in an institution. The individual's fair hearing rights would be preserved.

Section 6

SB 852 relates to negotiating a prerelease agreement with the Social Security Administration. The CYFD, Corrections Department and jail administrators would be responsible for:

1. implementing the provisions of an agreed upon prerelease agreement as soon as practicable;
 2. ensuring that the SSA promptly considers any application for SSI or SSD income on behalf of an incarcerated person with a mental disorder; and
 3. notifying the SSA of the expected and actual release date of persons with mental disorders whose applications are pending or have been approved.
- (page 6, lines 4-25)

Section 7

SB 852 provides for an application process for incarcerated persons with mental disorders whose food stamp benefits or Medicaid was terminated while the person was incarcerated or who were not receiving food stamp benefits or Medicaid at the time the person was incarcerated. HSD, the Corrections Department, CYFD and jail administrators would be required to assist persons currently incarcerated to apply to receive benefit upon their release (page 7, lines 4-13).

Issues:

- The provision in SB 852 would require HSD to establish a unique procedure for application filing and eligibility determination for incarcerated people. At a minimum, HSD would have to establish procedures for taking applications and interviewing applicants in the institution, for making an assumption the person would remain in New Mexico after release, for establishing a place of residence and therefore, household composition (and mandatory members) according to FSP requirements. This scenario is in conflict with federal law (see 7 CFR 273.2, Office operations and application processing)
- HSD cannot assist persons who are incarcerated to apply for food stamp benefits upon their release. HSD can offer information on how the person can apply for benefits after his release.
- HSD cannot make an eligibility determination for a person in an institution because HSD cannot determine the person's circumstances upon release (like residence in NM, income, resources available or where the person will be living)
- The application process includes filing and completing an application, being interviewed and having certain information verified (7 CFR 273.2(a)(2))
- There is a provision in the federal FSP that allows a person who resides in an institution to apply for food stamps prior to release from the institution but the application date, and begin date for determination of eligibility is the date of release from the institution (7 CFR 273.2(c)(1))

Specifically, HSD must establish application procedures to acquire benefits for incarcerated persons with mental disorders in anticipation of the incarcerated person's release and must promptly review the application and complete the review prior to the person's release. In all cases the application review must be completed within thirty days from the date of receipt of the person's application (page 7, lines 14-22).

Issues

- The FSP mandates a 30-day time limit for completing a food stamp application and ensuring an opportunity to participate if the household is eligible
- A review of eligibility cannot be completed prior to the release of a person who is incarcerated

The review of the application by HSD, Corrections Department, CYFD and jail administrators must "assess" whether the incarcerated person is eligible for, or likely to be eligible for SSI, Social Security disability, Medicaid or food stamp benefits. If HSD determines a person to be eligible to be enrolled while incarcerated, then HSD must enroll the person and suspend benefit eligibility. At the same time HSD must furnish the person the proper documentation to enable him to receive benefits upon release (page 7, lines 23-25; page 8, lines 3-9).

Medicaid Issues

- The Social Security Administration's SSI program does allow for the processing of an SSI application several months before an individual's anticipated discharge or release from a public institution. A pre-release agreement can be developed between an institution and the local Social Security office.

Food Stamp Program Issues

- HSD cannot determine eligibility for SSI or Social Security Disability benefits because HSD is not responsible for the administration of such programs
 - HSD cannot determine a person eligible while the person is incarcerated
 - HSD cannot suspend benefit eligibility until the person is released
- HSD can only furnish the proper documentation to eligible households once a determination has been made that the applicant household is eligible to participate in the Food Stamp Program.

HSD, Corrections Department, CYFD, and jail administrators must provide assistance to incarcerated persons throughout the application process and must use competent staff familiar with the characteristics of successful applications. In providing assistance the agencies may provide direct services or contract with outside entities and the assistance must include distribution of application forms, assistance with securing medical and other information required to support applications and assistance with completing application forms (page 8, lines 10-18).

The Corrections Department and CYFD must arrange for the incarcerated person to be issued photo identification upon release (page 8, lines 19-22).

Section 9

HSD is required to apply for an amendment to the Medicaid state plan within 90 days of the effective date of the act and HSD must take reasonable steps to obtain federal approval of such amendment (page 8, lines 23-25; page 9, lines 1-4).

FISCAL IMPLICATIONS

Medicaid costs would increase incrementally and there would be administrative costs to supply the additional services.

ADMINISTRATIVE IMPLICATIONS

Medicaid

As indicated above, changes must be made to the claims processing system so that claims are not paid on a suspended case. For individuals who were on a home and community based waiver prior to incarceration, their case would close after sixty days of non-receipt of waiver services in accordance with regulations and the waiver agreement between the state and the Centers for Medicare and Medicaid Services (CMS). Promulgation of state Medicaid regulations would be required as well as the submittal of an amendment to the home and community based services waivers. The Department of Health's Long Term Services Division (LTSD) may need to amend its process for allocations to the Developmental Disabilities Waiver. LTSD would also need to address how to deal with the slot of an individual on the waiver who becomes incarcerated.

Food Stamp Program

For the Food Stamp Program, HSD would have to ask for a waiver of 7 CFR 273.1 and 7 CFR 273.2 (at a minimum). The entire CFR that guides the Food Stamp Program would have to be reviewed and analyzed to determine if any additional CFR sections would need to be included. The USDA-Food and Nutrition Services does not waive statutory provisions contained in the Food Stamp Act or Code of Federal Regulations as amended.

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