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FISCAL IMPACT REPORT

SPONSOR Stewart DATE TYPED 3/15/05 HB 85/aHCPAC/aHJC/aHAFC
SHORT TITLE Prerelease Benefits Assistance Act SB _____
ANALYST Weber

SOURCES OF INFORMATION

LFC Files

Responses Received From
Human Services Department (HSD)
Corrections Department (CD)
Adult Parole Board
Division of Vocational Rehabilitation (DVR)

SUMMARY

Synopsis of HAFC Amendment

The amendments by the House Appropriations and Finance Committee removed language the amendments made by the House Consumer and Public Affairs Committee for an appropriation to the Human Services Department

Additional amendments made by the House Appropriations and Finance Committee remove requirements for the determination of Medicaid for federal Supplemental Security Income or federal Social Security Disability benefits for an individual in jails or correctional facilities operated by Class A counties.

Language was added to clarify Medicaid and cash benefits to specifically indicate Medicaid and federal Supplemental Security Income or federal Social Security Disability benefits. Amendments also removed the requirement for a determination on food stamp benefits.

Significant Issues

This information was supplied by the human Services Department.

The appropriation of \$225,000.00 for fiscal year 2006 to implement the Prerelease Benefits Assistance Act was removed by the House Appropriations and Finance Committee. The amendments to remove the requirement for Human Services Department to determine eligibility for Food Stamp benefits and making Medicaid eligibility determinations in jails and correctional

facilities operated by a Class A county, the additional appropriation and staff is not essential. The appropriation would be required if the Class A county detention centers and the Food Stamp Program were required by this bill.

In calendar year 2004 there were 71,153 persons released from correctional facilities in Type A counties and adult state correctional facilities. Approximately 69,511 of the 71,153 persons released were from jails and detention centers in Class A counties.

The State agencies identified will need to negotiate for a prerelease agreement with the federal Social Security Administration for federal Supplemental Security Income or federal Social Security Disability benefits.

Synopsis of HJC Amendments

The House Judiciary Committee Amendments removed language in Paragraph D and E of Section 3 on page 3 under definitions for "suspending" Medicaid or Food Stamp benefits, as the department is unable to suspend benefits per federal rules.

Language was also removed in Paragraph B in Section 6 on page 8 that contained the following language on lines 7 through 11: "If the human services department determines that the person is eligible to be enrolled while incarcerated, the person shall be enrolled but the person's benefits eligibility shall be placed on suspended status." The language was removed, as the Medicaid and Food Stamp program cannot "suspend" a person's eligibility or determine an individual to be eligible while incarcerated.

Synopsis of HCPAC Amendments

The House Consumer and Public Affairs Amendments to House Bill 85 make an appropriation to the Human Services Department of \$225 thousand from the general fund for expenditures in FY06 for the purpose of implementing the Prerelease Benefits Assistance Act. Any unexpended or unencumbered balance remaining at the end of the fiscal year shall revert to the general fund.

Significant Issues of Amended Bill

Human Services contributed the following.

Language was deleted on the first page in the preamble to the Act and in Section 4 on page 3 that would have required Human Services Department to adopt rules to ensure that an incarcerated person's federal Social Security Income, federal Social Security Disability income, Medicaid or Food Stamp benefits status be suspended rather than terminated upon incarceration.

The language that was deleted through the amendment on the first page under the preamble to the Act and in Section 4 on page 3 would have required the Human Services Department to adopt rules to ensure that an incarcerated person's federal Social Security income, federal Social Security Disability income, Medicaid or Food Stamp benefits status be suspended rather than terminated upon incarceration. The language to correspond with this amendment should be removed from Section 3, Paragraph D because it is inapplicable to Human Services Department programs per federal rules. The Human Services Department does not determine eligibility for the Social Security programs, and it is unable by federal law to suspend Medicaid or food stamp

benefits.

Paragraph E in Section 3, page 3 should be renumbered but remains applicable for the suspending of benefits under the federal Supplemental Security Income and Social Security Disability programs.

Paragraph B in renumbered Section 6 (former Section 7) on page 8 contains the following language on lines 7 through 11: "If the human services department determines that the person is eligible to be enrolled while incarcerated, the person shall be enrolled but the person's benefits eligibility shall be placed on suspended status." The Medicaid and Food Stamp program cannot determine an individual to be eligible while incarcerated. This language should be deleted because the Department cannot "suspend" a person's eligibility. The Department is not able to complete the determination process until the individual is released and further documentation is provided, and it cannot suspend the payment, as eligibility cannot be determined while the person is incarcerated.

The appropriation to HB 85-a of \$225 thousand for Fiscal Year 2006 to implement the Prerelease Benefits Assistance Act is not stated as ongoing, but renumbered Section 6 (former Section 5) mandates the Human Services Department on an ongoing basis to assist incarcerated persons with mental disorders with their applications, complete prompt reviews of their application, and determine eligibility for the Medicaid and Food Stamp programs.

Each year, several thousand persons are released from correctional facilities in Type A counties and adult state correctional facilities. The Metropolitan Detention Center (MDC) in City of Albuquerque/Bernalillo County released 37,786 persons calendar year 2004, releasing approximately 3,000 persons per month. The Doña Ana Detention Center in Las Cruces released 12,184 persons calendar year 2004, releasing approximately 1,000 persons per month. The Santa Fe County Detention Center in Santa Fe released 9,841 persons calendar year 2004, releasing approximately 820 persons per month. The San Juan Detention Center in Farmington released approximately 9,700 persons during calendar year 2004, releasing approximately 800 persons per month. From these four facilities, there were 69,511 persons released during calendar year 2004, which equaled approximately 5,620 persons per month. In addition, the New Mexico Corrections Department released approximately 1,600 persons during calendar year 2004, releasing approximately 130 persons per month. The total number of persons released during calendar year 2004 was approximately 71,111 persons, or approximately 5,750 persons per month.

Approximately 11 additional FTE (10 staff and 1 supervisor) will be required to meet this requirement of the Act at an estimated FTE cost of \$157,088.60. Additional administrative costs will require the purchase of computers at approximately \$15,000.00; access line charge for the automated eligibility system at \$43,000 year; employee travel at \$9,000; and furniture at approximately \$3,500. These costs amount to a total fiscal year cost of \$227,588.60. Most of these costs (approximately \$209,088.60) will remain ongoing costs, and appropriations will be required for ongoing Fiscal Years for funding the FTE, employee travel and data access line charges.

The Human Services Department has been a part of the HJM 53 multi-agency task force, convened by the Department of Corrections, that is studying barriers to, among other things, public benefits. As part of that initiative, HSD is prepared to conduct training sessions for

Correction Department Discharge Planners and other personnel as appropriate, to allow them to assist soon to be paroled individuals in the completion of applications for assistance, including Medicaid. It is anticipated that this process would allow HSD to make a determination of eligibility very quickly after an individual is paroled.

FISCAL IMPLICATIONS

The appropriation of \$225 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY06 shall revert to the general fund.

Synopsis of Original Bill

House Bill 85 creates the “Prerelease Benefits Assistance Act.” This act facilitates the community reintegration of persons with mental disorders or developmental disabilities (hereinafter included with mental disorders) upon their release from jail, prison, detention centers or other correctional facilities. It would enable released persons to receive benefits for which they are entitled promptly upon their release from incarceration.

HB85 requires the Human Services Department to adopt rules providing that when a person with a mental disorder is enrolled in Medicaid or Food Stamps and becomes incarcerated the person’s eligibility for those programs (1) shall be suspended for as long as is permitted by federal regulations; and (2) shall not be terminated unless the Department determines that the person no longer meets the eligibility criteria under which originally qualified. The rules would also provide that when such a person is released from incarceration, benefits would be fully restored unless the Department determined that he was no longer eligible under any category.

The bill requires HSD, in conjunction with Corrections, CYFD and administrators of jails and delinquency facilities to ensure the prompt restoration of benefits to an incarcerated person with a mental disorder whose federal eligibility for federal Supplemental Security Income (SSI), Social Security Disability Income (SSDI), Medicaid or food stamp benefits has been suspended or terminated during incarceration. These agencies shall take reasonable actions to ensure that cash benefits are reinstated upon release. Reasonable actions will be taken to (1) identify incarcerated persons with mental disorders whose benefits from any of these programs were suspended and ask if they wish to receive benefits upon release; (2) ensure that the person wishing to receive benefits is given an application for reinstatement and provided assistance in completing and filing the application at least thirty days prior to release; and (3) provide assistance to the person throughout the application process from competent staff.

Corrections, CYFD and administrators of jails and delinquency facilities shall take reasonable action to negotiate a prerelease agreement with the local office of the federal social Security Administration.

HSD shall (1) establish application procedures for benefits on behalf of incarcerated persons with mental disorders in anticipation of their release; and (2) promptly review the applications and complete the review prior to each person’s release, provided that such reviews shall be completed within thirty days from the date of receipt of the person’s application. The review shall assess whether the person is eligible for SSI, SSDI, Medicaid or Food Stamps or is likely to be eligible upon release. If determined eligible, while still incarcerated, he shall be enrolled but

his benefits suspended. The person shall be provided proper documentation to enable receipt of benefits upon release.

If implementation of the Prerelease Benefits Assistance Act requires an amendment to the Medicaid state plan, HSD shall apply for such an amendment within ninety days of the effective date of the act and take reasonable actions to obtain federal approval of the amendment.

Significant Issues

The Human Services Department notes the following.

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.

The Medicaid program does not currently "suspend" eligibility. It is not clear as to whether the current eligibility system (ISD2) could be modified in order to allow cases to suspend. Adjustments in the Medicaid claims processing system would also be required so as to disallow any billings while the individual was incarcerated. An individual's period of eligibility is normally either six or twelve months, at the end of which eligibility must again be established. Any suspension may only extend to the date of the next required re-determination, as federal regulations require that eligibility be re-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.

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.

DVR reports through contact with the Social Security Administration that cooperation already exists between this federal program and the Department of Corrections. The agreement even allows for a telephone application under certain circumstances when a prisoner is scheduled for release with 30-90 days. Attached is a copy of the agreement.

FISCAL IMPLICATIONS

No appropriation is attached to HB 85 but it is anticipated expenditures would be incurred, especially by the Human Services Department and/or Corrections. HSD projects the total annual cost at \$1.75 million with a need for 34 FTE comprising the principal expenditure. The 34 FTE puts one caseworker in each of the primary 34 county ISD offices.

ADMINISTRATIVE IMPLICATIONS

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.

It is estimated that the additional workload on ISD county offices would require 34 additional FTE in FY 2006.

MW/lg:yr Attachment

AGREEMENT BETWEEN
THE SOCIAL SECURITY ADMINISTRATION
AND
THE NEW MEXICO DEPARTMENT OF CORRECTIONS

I. Purpose, Definitions and Anticipated Results

A. Purpose

The purpose of this agreement is to identify and formalize procedures which will facilitate timely entitlement to Supplemental Security Income (SSI) and Social Security benefits for disabled and aged inmates of the New Mexico Department of Corrections (NMDOC) system. These prerelease application procedures will allow inmates to file for SSI benefits prior to their release providing for a smoother transition back into the community.

B. Definitions

1. "SSA" means Social Security Administration.
2. "NMDOC" means New Mexico Department of Corrections.
3. "SSI" means Supplemental Security Income. SSI is a Federal needs-based benefit provided under title XVI of the Social Security Act. It is paid to aged (65 and older), blind, or disabled individuals who meet all eligibility criteria (e.g., limited income, resources, citizenship, etc.).

4. "RSDI" means Retirement, Survivors, and Disability Insurance. RSDI refers to Social Security benefits that are funded from the Social Security trust fund. RSDI benefits are provided under title II of the Social Security Act.
5. "Disability" is defined by the Social Security Administration as: A condition severe enough to keep you from performing any type of substantial gainful activity for at least 12 months or longer, or a condition which is expected to result in death.
6. "Concurrent claim" is defined as a claim for both SSI and RSDI filed at the same time.
7. "Medicare" is a Federal health insurance program that is funded out of the Medicare trust fund and provided for under title XVIII of the Social Security Act. Medicare is available at the age of 65 for those individuals eligible for Social Security retirement benefits. It is also available to individuals who have been entitled to Social Security disability benefits for two years (24 months). Medicare coverage is also available to some individuals who can "buy-in" to it at age 65 or for some patients on renal dialysis.
8. "Medicaid" is a State medical assistance program that provides medical assistance to the needy, and it is provided for under title XIX of the Social Security Act. In the State of New Mexico, individuals who are entitled to an SSI payment are almost always entitled to Medicaid.

C. Anticipated Results

It is anticipated that with both SSA and NMDOC staff working together, eligible inmates will have their eligibility for SSI and/or RSDI benefits substantially developed before they are released from prison.

II. Responsibilities of Each Agency

A. Responsibilities of New Mexico Department of Corrections

1. NMDOC will screen inmates who are potentially eligible for SSI benefits and who can be released within 30 days after SSA has established potential eligibility including the disability determination if needed.

2. NMDOC will provide a "Prisoner SSI Prerelease Claims Flag" as written notification to SSA when an inmate is identified as a prerelease claim candidate.
 - a. SSI disability claims, and Disability Insurance claims if filed concurrently, should be initiated no earlier than 90 days prior to the inmate's expected release date.
 - b. SSI claims for aged individuals should be initiated no earlier than 30 days prior to the inmate's expected release date.
 - c. Although the prerelease application procedure is a process unique to the SSI program, RSDI applications filed concurrently with SSI applications will be included in prerelease procedures in this agreement. Inmates, who are eligible only for RSDI benefits but not the SSI prerelease process, should be referred to the local SSA District Office to have their claims taken upon release from prison.
3. NMDOC will make the inmate available to SSA for a telephone claims interview.
4. NMDOC will notify the local SSA DO promptly of any changes in circumstances that affect the release of the inmate. NMDOC will also notify SSA when the inmate leaves the facility and provide the new residence address and telephone number.
5. NMDOC will advise its correctional facilities about this agreement.
6. Although some individuals who are disabled or of retirement age may not be eligible for RSDI benefits themselves while incarcerated, they may have family members who can receive RSDI benefits on their record. NMDOC will accommodate telephone interviews by Social Security employees with such inmates.
7. NMDOC will designate a liaison at each facility to serve as the contact point for any issues related to this prerelease agreement.

B. Responsibilities of the Social Security Administration

1. Upon receipt of the written notification of a prerelease claim candidate, SSA will schedule a telephone appointment to complete the SSI/SSA applications and appropriate related forms. SSA will notify the NMDOC contact regarding the date and time for the interview.

2. SSA will contact the New Mexico Disability Determination Services (DDS) and arrange for the DDS to train NMDOC personnel on SSA's disability process and policies. Such training will help NMDOC (1) identify individuals who are most likely to meet SSA's definition of disabled, (2) assist inmates in completing disability forms, and (3) be aware of what types of medical evidence are needed by the DDS to make a correct disability decision.
3. SSA shall provide the name, address, and telephone number of the SSA District Office contact for each NMDOC facility that will participate in the prerelease procedure.
4. SSA will create a prerelease flag to be associated with the claims file.
5. SSA will process all claims in an expeditious manner.
6. SSA will issue a memorandum to all New Mexico SSA District Offices detailing the prerelease process with NMDOC.

III. Duration and Modification of the Agreement

A. Duration

This agreement will be effective when signed by both parties and shall remain in effect until terminated by either party.

B. Modification

This agreement may be amended at any time by a written modification of this agreement that satisfies both parties.

IV. Other NMDOC-SSA Agreements

This agreement does not alter any existing agreements between NMDOC and SSA such as the "Incentive Payment Memorandum of Understanding" for the payments to NMDOC for timely reporting its inmates.

V. Signatures

Signature in witness hereto, the parties have executed this agreement by their duly authorized officials.

SOCIAL SECURITY ADMINISTRATION

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By: _____ Date: _____
Horace L. Dickerson, Jr.
Regional Commissioner, Dallas

NEW MEXICO DEPARTMENT OF CORRECTIONS

By: _____ Date: _____
Jim Burleson
Cabinet Secretary, New Mexico Department of Corrections