

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/07
 LAST UPDATED 2/09/07 HB 319/a HHGAC/aSJC

SPONSOR Wirth

SHORT TITLE Adult Protective System Services & Penalties SB _____

ANALYST Hanika Ortiz

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	\$0.1 see narrative		recurring	general fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Office of Guardianship (OG)
- Department of Health (DOH)
- Aging & Long Term Services Department (ALTSD)
- Public Defender Department
- Children, Youth & Families Department (CYFD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment allows an adult or the adult’s legal representative to petition the court to order a change of services or transfer of residence pursuant to an order for nonemergency protective services or placement.

Synopsis of HHGAC Amendment

The House Health and Government Affairs Committee Amendment corrects a typographical error in the bill by inserting a comma between surrogate and spouse on page 31, line 21.

Synopsis of Original Bill

House Bill 319 amends the Adult Protective Services Act to allow ALTSD to assess civil

penalties if denied access to records; for interference with protective services or placement; for unlawful release of information or records; or for failing to report (including financial institutions) an abused, neglected, or exploited adult. The bill also requires the Department to collect data and report findings; establish multidisciplinary teams for case management; and emphasize prevention education.

The bill modifies the Department's responsibilities relating to investigating cases of abuse, neglect and exploitation, including those in which the adult is incapacitated.

The Act is amended as follows:

- (1) Section 27-7-14 is amended to expand on the Act's purpose in specifying that adults with need of protective services or placement be addressed through a short-term services program.
- (2) Section 27-7-16 clarifies and adds definitions to include;
 - a. "ability to consent" relating to adults refusing protective services or placement
 - b. "abuse" expanded to include "sexual abuse"
 - c. "conservator" and "guardian" amended to delete minors (who are not served by this Act)
 - d. "department" is changed to reflect statutory duties of ALTSD as opposed to CYFD
 - e. "facility" includes any licensed entity serving adults except jails
 - f. "incapacitated adult" to show some measure of incapacity must exist
 - g. "multidisciplinary team" reflects group providing consultation and case management
 - h. "provider" includes all unlicensed entities providing protective services or placement
 - i. "self-neglect" is defined to strengthen awareness of situations self imposed
 - j. "substantiated" refers to information obtained to support findings
 - k. "surrogate" describes a person legally authorized to act on one's behalf.
- (3) Section 27-7-17 states Act's performance subject to funding; defines ALTSD's new duties to include;
 - a. data collection and reporting requirements
 - b. use of multidisciplinary teams for case management
 - c. coordination among agencies with similar population served
 - d. emphasizes on prevention education and programs.
- (4) Section 27-7-19 and 27-7-21 amends investigation and penalty assessments and;
 - a. reclarifies the process for investigations; reflects that services are short term with a termination date in place to include a plan for follow-up care
 - b. adds that the Department can only access records in accordance with state or federal privacy laws
 - c. assesses civil penalties for interference, breaches of confidentiality and for failure to report suspected abuse, neglect or exploitation, up to \$10k; requires certain due process procedure (hearing) before penalty assessment
 - d. allows the department to bill for services rendered in certain cases.

- (5) Section 27-7-23 and -24 clarifies voluntary and involuntary situations;
 - a. voluntary protective services and placement are identified as services consented to rather than requested from
 - b. involuntary protective services and placement are identified as services provided by court order
 - c. allows the department to petition for appointment of conservator; emphasizes least restrictive approach to obtaining custody.
- (6) Sections 27-7-25, 27-7-26, and 27-7-27 defines and clarifies circumstances and procedures relating to;
 - a. ex-parte orders; describes petition requirements
 - b. circumstances clarified under which a law enforcement officer can intervene
 - c. identifies situations in which involuntary protective services or placement may be ordered
 - d. expands on duty of counsel in a hearing or petition
 - e. requires a comprehensive evaluation for one whom an order for nonemergency services or placement is being sought
 - f. “financial institutions” now required to report suspected exploitation.

FISCAL IMPLICATIONS

Although the bill authorizes the Department to assess civil fines and penalties, no fiscal impact is anticipated this fiscal year. Regulations will need to be promulgated, a process that takes time, and the incidence of the imposition of fines is expected to be minimal based upon the anticipated low number of convictions for these offenses. This bill is intended to establish the threat of penalty, and to grant the Department the authority to enforce certain provisions of the Act.

SIGNIFICANT ISSUES

DOH states the amendments in the bill further the purpose of the Adult Protective Services Act by increasing the availability of protective services or placement to all adults in need. Additionally, the expanded protective services system includes the use of multidisciplinary teams to develop treatment strategies and consultation and management for complex cases of abuse, neglect or exploitation; the coordination among various state or local agencies that serve protected adults; and an emphasis on the need for education for prevention of abuse, neglect or exploitation of an adult.

PERFORMANCE IMPLICATIONS

ALTSD reports that the transition from CYFD has necessitated revisions to the Act, which has not been revised for ten years. In 2005, over 12,000 reports of suspected abuse, neglect or exploitation of elders were made throughout the statewide centralized intake report line. Over 6,000 reports were forwarded to the Adult Protective Services Division for investigation. ALTSD is revising the process in which reports are made, investigations are conducted and protective services or protective placement is provided to ensure maximum safety of adults in New Mexico. Further, through the Aging and Disability Resource Center, the Department has the ability to respond to needs of adults, even when abuse, neglect or exploitation is not substantiated. The revisions to the Adult Protective Services Act establish the foundations for these changes, and enhance the department's ability to respond to needs of incapacitated or protected adults in a timely, efficient and compassionate manner.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

ALTSD states a conflict with SB 157, which changes the name of the Department in charge of the Adult Protective Services Act to the Infants, Children, Youth and Families Department.

The Adult Protective Services Division which administers the Adult Protective Services Act is under ALTSD.

Relates to HB 319, the Employee Abuse Registry Act

TECHNICAL ISSUES

The Office of Guardianship is concerned that, under the definitions, a “substantiated” allegation of abuse, neglect or exploitation of an incapacitated or protected adult needs only proof by “*preponderance* of collected and assessed credible information”. However, under 27-7-26, the courts can deny involuntary non-emergency protective services or protective placement if the evidence is not clear and convincing. The standard of proof should be the same in both, clear and convincing.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current Act will not reflect the most efficient use of state agencies staff and resources.

AHO/mt