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FISCAL IMPACT REPORT

SPONSOR SJC DATE TYPED 3/18/05 HB _____

SHORT TITLE Mental Health Treatment Directives SB CS/749/aSfI#1/aSfI#2

ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$0.1		

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of SFI Amendment #2

The Senate Floor amendment number two strikes Senate Floor amendment number one and clarifies the language relating to a successful challenge to a determination of incapacity.

Synopsis of SFI Amendment #1

The Senate Floor amendment #1 seeks to provide clarifying changes to the bill. However, the proposed changes do not track with the substitute bill.

Synopsis of Substitute Bill

The Senate Judiciary Committee substitute for SB 749 leaves the Uniform Health Care Decisions Act (UHCDA) as is and enacts the newly proposed Mental Health Care Decisions Act separately. SB 749 as originally written added confusion and complexity to the UHCDA and unintentionally added new and restrictive provisions to the UHCDA.

SB 749/SJCS provides for mental health treatment directives (advance directives) as follows:

- Section 1 cites the title of the Act.
- Section 2 provides definitions for use within the Act.
- Section 3 states conditions for acceptance and use of advanced health care directives regarding persons with mental illness, their agents and mental health providers.

- Section 4 explains prohibited practice for insurers or other providers of benefits.
- Section 5 allows for revocation of an advance directive for mental health treatment. Clarifies that an advance health-care directive and an advance directive for mental health treatment will be treated separately.
- Section 6 proposes an “optional form” for an advance directive for mental health treatment that includes preferences and instructions about treatment, facilities and physicians; appointment of agents; addresses conflicting provisions relating to legal rights and child care desires.
- Section 7 clarifies decisions by a guardian as opposed to an agent or ward.
- Section 8 describes the legal obligations of mental health treatment providers pursuant to the Act.
- Section 9 clarifies the rights of a person authorized to make mental health treatment decisions for another, to have access to health information.
- Section 10 provides immunity from civil or criminal liability or discipline for unprofessional conduct for providers or facilities that act in good faith and in accordance with accepted standards of care.
- Section 11 describes statutory damages for violations of the Act.
- Section 12 describes capacity and determinations of lack of capacity. A determination of incapacity may only be made by two persons; a physician or qualified health care professional and a licensed mental health professional. Provides an optional examiner’s certificate to determine the need for mental health treatment and capacity to participate in decisions about mental health treatment.
- Section 13 states copies of a written directive the same as original.
- Section 14 further clarifies the intention of the Mental Health Care Treatment Decisions Act.
- Section 15 further states the Act does not impair a guardianship, living will, durable power of attorney, right-to-die statement or other similar document.

In practical terms, “advance directives” is a term used for the various means by which people communicate their wishes about end-of-life care to their health care providers. Advance directives are legal documents that tell others what an individual’s treatment preferences or services needs are. They are directions for others to follow that are made in advance of a need for certain kinds of treatment or that express a treatment decision in both physical health and mental health contexts. New Mexico’s Uniform Health-Care Decisions Act already makes such provisions for physical health decisions and much of the UHCDA provisions were pulled into the proposed Mental Health Care Decisions Act.

Significant Issues

This bill seeks to help resolve ethical issues related to mental health treatment.

New Mexico has no comparable legal provisions at this time that are specific to mental health consumers. Advance directives will allow consumers to designate mental health treatment modalities and their duration for those times when they may be unable to make those decisions. These changes in the treatment-decision process will assist individuals with mental health disabilities to self-direct in accessing services.

All states in the United States have a statute allowing advance directives for general medical purposes. During the past few years, 20 states have passed legislation specific to mental health ad-

vance directives because general laws did not address the specific treatment and recovery needs of people receiving mental health treatment. Where states have thorough and robust existing statutes, such as New Mexico's Uniform Health-Care Decisions Act, they have often enacted amendments to those statutes rather than creating separate legislation.

PERFORMANCE IMPLICATIONS

Mental health services providers funded by Medicaid or Medicare will need to include mental health advance directives in their care and treatment of consumers.

FISCAL IMPLICATIONS

Additional staff training costs on implementing advance directives for mental health treatment could be significant and will need to be absorbed by agencies, facilities and other health care systems.

Proper planning for mental health care can help prevent and reduce costs associated with involuntary psychiatric hospitalization and care in an overburdened public health system.

According to the 2003 report of the President's New Freedom Commission on Mental Health, major mental illness ranks first among illnesses that cause disability in the United States, Canada and Western Europe. The National Alliance for the Mentally Ill says that 23% of North American adults will suffer from a clinically diagnosable mental illness in a given year. In addition to its harm to people and their families' lives, mental illness comes with a high financial cost. In the U.S., the annual economic, indirect cost of mental illnesses is estimated to be \$79 billion. Mental health expenditures are predominantly publicly funded at 57%, compared to 46% of overall health care expenditures.

ADMINISTRATIVE IMPLICATIONS

SB749 is consistent with New Mexico's mental health policies as expressed in the creation of the Interagency Behavioral Health Purchasing Collaborative and its subsequent adoption of values and principles.

Congress has noted the importance of advance directives and requires providers participating in Medicaid or Medicare programs to inform patients about the state law concerning such directives.

NMCD notes effective administration of mental health services at the Department's facilities could significantly be impaired if some patients can disallow their treatment. The Department believes this situation may severely endanger the lives of the patient, other inmates and NMCD staff.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

There will be no provisions for mental health treatment advanced directives in New Mexico.

AHO/sb