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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/06
 SPONSOR Rodella LAST UPDATED 2/8/06 HB 588/aHCPAC
 SHORT TITLE Chimayo Health & Mental Health Services SB _____
 ANALYST Lewis

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	175.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Similar to SB298 (Espanola-Area Health Care & Drug Prevention).
 Relates to SB 519 (Chimayo Youth Corps Drug Abuse Prevention)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)
 Health Policy Commission (HPC)
 Attorney General's Office (AGO)

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment removes language directing that the appropriation shall go to drug prevention efforts coordinated with public and private agencies at the John Hyson Family Resource Center in Chimayo.

Synopsis of Original Bill

House Bill 588 appropriates \$175,000 from the general fund to the Department of Health for health, mental health and community development services in the Chimayo and Espanola areas in district two of the Public Health Division. The appropriation shall go to drug prevention efforts coordinated with public and private agencies at the John Hyson Family Resource Center in Chimayo.

FISCAL IMPLICATIONS

The appropriation of \$175,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the general fund.

SIGNIFICANT ISSUES

According to the Department of Health (DOH), in 2002 (most recent data available) Rio Arriba County had the highest combined alcohol- and drug-related death rate (134.5 per 100,000) in the state. The rate was almost seven times the national rate. Alcohol-related chronic liver disease (AR-CLD) is the principle driver of New Mexico's consistently high alcohol-related chronic disease death rate. AR-CLD death rates are extremely high among American Indians, both male and female, and Hispanic males. Rio Arriba County stands out with high death rates due to AR-CLD, and has consistently had among the highest death rates in the state from alcohol-related causes. DOH notes that the devastation caused by alcohol abuse is not limited to death, but can also be linked to domestic violence, crime, poverty, and unemployment, as well as chronic liver disease, motor vehicle crashes and assault injuries, mental illness, and a variety of other medical problems. Researchers have discovered that a large percentage of those who have alcohol or drug problems also have at least one personality disorder or mental illness.

DOH adds that the Espanola Valley has long been an epicenter of heroin abuse. Despite several crackdowns by law enforcement, the region continues to have the nation's highest per capita overdose death rate.

According to the DOH, the appropriation in HB 588 is not part of the DOH executive budget.

According to the Health Policy Commission (HPC), ArribaCare, a project established to address barriers to access to healthcare in Rio Arriba County, reports that Rio Arriba has achieved notoriety nationally for having one of the highest drug-related death rates in the nation, with heroin and cocaine use reaching epidemic proportions, according to hospital admission statistics. Death rates from alcohol-related causes (alcoholism, liver disease, and auto accidents) are also among the highest in the nation. The standardized mortality ratio for cirrhosis of the liver is twice the New Mexico average and three times the national average.

The HPC asserts that faith-based health care utilizes volunteer and professional resources to provide multi-healthcare and social services and programs for their communities, but does not necessarily promote religion as its primary criteria for participating in those services or programs. The HPC adds that, although there is controversy regarding the intent of faith-based services and organizations, the Health Resources and Services Administration (HRSA) has partnered with community-based and faith-based organizations for the provision of local services.

Constitutional issues:

However, according to the Attorney General's Office (AGO), HB 588 raises serious and substantial federal and state constitutional questions. HB 588 implicates (1) the Establishment Clause of the First Amendment and (2) N.M. Const. art. IV, § 31.

1. Establishment Clause of the First Amendment

A direct or indirect appropriation to faith-based entities implicates the First Amendment Establishment Clause. First Amendment Establishment Clause inquiries involve a three-prong test. The governmental action (1) must have a secular legislative purpose, (2) the primary effect must be one that neither advances nor inhibits religion, and (3) the action must not foster an excessive government entanglement with religion. *Lemon v. Kutzman*, 403 U.S. 602, 512-13 (1971). HB 588 probably could be challenged under all three aspects of the test.

(1) First, lack of secular legislative purpose will invalidate governmental action as a violation of the Establishment Clause. The motivation behind the governmental action must be secular. It is appropriate to ask what is the actual purpose of the legislation. While the legislative purpose of providing aid to agencies that provide drug education and prevention is secular, HB 588 specifies that the appropriation is to go to the John Hyson Family Resource Center in Chimayo, a division of Catholic Charities, thereby funding “faith-based” entities. The Department of Health is charged with providing services related to the public health of the people of the state. The Legislature already appropriates millions of dollars for this purpose. Making a specific appropriation to faith-based entities is contrary to the position that HB 588 has a secular legislative purpose, because there is no particular reason for HB 588 unless the purpose and intent is other than secular.

(2) Second, the principle or primary effect of the government action must not be to endorse or inhibit religion. By making an express statement that the appropriation is to fund “faith-based” entities, it is hard to defend HB 588 as neutral legislation. The question is whether the governmental action promotes religion. Symbolic benefit to religion is enough; it “need not be material and tangible advancement.” *Friedman v. Bd. of County Comm'rs of Bernalillo County*, 781 F. 2d. 777, 781 (10th Cir. 1985). Because HB 588 specifies funding to DOH for faith-based entities, it is difficult to see how HB 588 does not promote religion.

(3) The third test is that the governmental action must not foster an excessive government entanglement with religion. Although the “excessive entanglement” test will be determined according to the facts of the specific government action, programs that involve vulnerable populations are usually highly regulated by state agencies. Public funding of these services typically involve outcome results measures and other oversight responsibilities. The public funding source frequently analyses service delivery models to determine program effectiveness and cost benefits. The programs usually involve compliance with minimum program criteria for services, minimum qualifications for service providers, and periodic fiscal and program audits. Budget and program oversight mechanisms are routine. It would be unusual for a government agency to fund a service in such a sensitive area and not mandate minimum reporting requirements and possible on site visits. Funding of faith-based programs to provide health care could very likely involve government intrusion into all aspects of the funded programs sufficient for a court to find excessive government entanglement in religion.

2. N.M. Const. art IV, § 31.

Art. IV, § 31 states in pertinent part: “No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state....” Although the appropriation is identified as going to DOH, a state agency, HB 588 expressly mandates that DOH fund the “John Hyson Family Resource Center,” a faith-based entity. A valid constitutional challenge may be raised on the theory that HB 588 attempts to do indirectly (make an appropriation to private entity not under the abso-

lute control of the state) that it cannot do directly. This indirect appropriation to private entities may be held by a court to be a violation of N.M. Const. art. IV, § 31.

ADMINISTRATIVE IMPLICATIONS

DOH notes that, as this appropriation is specific to Behavioral Health Services, it is likely that the resources would be appropriated and managed through the Behavioral Health Collaborative process. Existing appropriations for substance abuse and mental health services are provided through a contract with Value Options New Mexico.

OTHER SUBSTANTIVE ISSUES

DOH suggests that the pre-selection of the John Hyson Family Resource Center may violate the New Mexico Procurement Code.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The HPC suggests that, without this appropriation, rural location and cost may continue to be barriers to Chimayo and Espanola area residents who might otherwise be helped to manage their mental health and drug related crisis. The need for targeted prevention programs and treatment services for residents of Chimayo and the Espanola area will continue to be substantial.

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