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FISCAL IMPACT REPORT

ORIGINAL DATE 01/29/10
 LAST UPDATED 02/03/10 HJM 34

SPONSOR Vaughn

SHORT TITLE Study Licensure in Behavioral Health Care SB _____

ANALYST Escudero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	None*		

(Parenthesis () Indicate Expenditure Decreases)

*Costs to conduct the study will be borne by affected agencies

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)
 Regulation and Licensing Department (RLD)
 Human Services Department (HSD)
 Aging and Long Term Services (ALTSO)

SUMMARY

Synopsis of Bill

House Joint Memorial 34 (HJM34) requests the Department of Health (DOH) to study the role of licensure in ensuring that persons being discharged from the Behavioral Health Institute at Las Vegas in need of residential care are admitted to the appropriate residential care facilities. HJM34 requests the DOH consult with the state ombudsman; an association representing mental health providers; residents of residential care facilities; family members of persons with mental illness; the Behavioral Health Services Division of the Human Services Department; and the statewide entity for behavioral health services in identifying the necessary steps to comply with the requests in HJM34.

HJM 34 further requests that DOH consider developing additional regulations to set standards and oversee quality in residential care facilities that serve residents who do not meet the criteria to be placed in or who do not choose to live in a licensed residential care facility. HJM34 requests DOH provide a report on the findings to the interim Legislative Health and Human Services Committee by December 1, 2010.

SIGNIFICANT ISSUES

Department of Health indicated as follows:

DOH's, Office of Facilities Management oversees the operations of the New Mexico Behavioral Health Institute at Las Vegas. Proper discharge placement has been a challenge for the Institute. It is important that patients have appropriate placements on discharge in order to facilitate recovery and reintegration into the community.

There are residential providers that fall under the radar of the DOH's Division of Health Improvement's (DHI) ability to survey, sanction and maintain minimum standards. Current residential care facilities are licensed predicated on the delivery of two (2) or more activities of daily living (ADL). ADLs are identified as needed assistance with eating, bathing, dressing, grooming, oral hygiene, mobility and toileting. Medication management is not considered an ADL under current licensure. Most behavioral health (BH) clients do not need support for the approved categories of ADLs.

Discharges to residential care facilities (licensed or unlicensed) are a concern for all inpatient providers who treat mental illness

FISCAL IMPACT

Memorials do not contain appropriations, but the conduct of studies entails time and staff resources.

HSD indicates that costs are accrued by personnel within Collaborative agencies and other stakeholders attending the task force meetings and completing associated tasks.

It is estimated that it will take a minimum of one hundred and sixty (160) work hours for implementation for the organization of meetings, the writing, editing and review of reports as well the completion of research.

Any costs to HSD Medicaid Assistance Division would place an additional burden on its already-strained budget.

SIGNIFICANT ISSUES

Aging and Long Term Services indicates as follows:

The current New Mexico adult residential care regulations overseen by DOH, (7.8.2.NMAC), are intended for facilities that provide care to individuals who need assistance with activities of daily living, such as bathing, grooming, etc. The individuals with behavioral health support needs who are discharged from NMBHI into residential care facilities do not require the same type of care that is generally understood to be activities of daily living. The adult residential care regulations, 7.8.2 NMAC, were not intended for behavioral health populations and many residential care facility owners may ignore the licensing requirement in order to operate without state health and safety oversight. Given that many behavioral health residents receive a very limited fixed income, and there are few housing options available to them, the repercussions of facility owners electing not to apply for the necessary resident care license should be reviewed for necessary regulatory amendments to better protect the intended population.

The Ombudsman Program and Adult Protective Services of the Aging and Long-Term Service Department, as health and protection oversight programs, have certain statutory responsibilities for the individuals in question. However, the Ombudsman Program and Adult Protective Services Division do not have the regulatory authority to ensure that the safety and quality of care issues provided by residential care facilities are met. Regulatory oversight needs to be reviewed with the critical stakeholders to ensure a more comprehensive mechanism is in place to determine how to better meet the needs of vulnerable individual living in residential care facilities in Las Vegas, New Mexico and elsewhere in New Mexico.

HJM 34 would provide the Department of Health and Aging and Long Term Services Department the formal opportunity to study this vital issue as well as collaborate to address and better protect vulnerable populations they all are required to serve.

PERFORMANCE IMPLICATIONS

As stated by Department of Health, HJM34 relates to the FY11 Strategic Plan; Goal 3: Improving the Health System; Objective 6: Improve resident care services in Department of Health facilities.

Department of Health indicated as follows:

According to staff at DOH/BHI, a number of board and care homes in New Mexico have chosen to drop their licenses in the last few years due to the costs associated with compliance with licensing requirements and the lack of adequate compensation for providing all services required with licensure. As such, many vulnerable adults reside in community-based housing options that are unregulated. The Behavioral Health Planning Council (BHPC) has been concerned with this issue for a number of years. In addition, the Mental Health Association of New Mexico has expressed concern about this situation.

As reported in the final report of the President's New Freedom Commission on Mental Health, a recent study shows that people who rely solely on SSI benefits, as many people with serious mental illnesses do, have incomes equal to only 18% of the median income and cannot afford decent housing in any of the 2,703 housing market areas defined by the U.S. Department of Housing and Urban Development (HUD). HUD reports to Congress show that as many as 1.4 million adults with disabilities who receive SSI benefits, including many with serious mental illnesses, pay more than 50% of their income for housing. (<http://www.mentalhealthcommission.gov/reports/FinalReport/FullReport-03.htm>).

While New Mexico is moving towards more community-based supported housing opportunities for adults with mental illness in the state, unlicensed residential care facilities often are the only alternative to homelessness when no other housing options are available.

Finally, many of the individuals leaving BHI often require housing situations with more structure and support than is currently available or funded through NM public funding streams.

Aging and Long Term Services indicates as follows:

HJM 34 is in alignment with the following goals as outlined in the executive's Performance and Accountability Outline for a Healthy New Mexico:

- Improving outcomes for vulnerable individuals and families by enforcing "zero tolerance" of abuse, neglect and exploitation;

- Improving outcomes for vulnerable individuals and families by providing or linking low income seniors, veterans and disabled individuals to health, long-term, and other human services; and
- Improving outcomes for vulnerable individuals and families by promoting independence and quality of life for individuals with physical and developmental disabilities.

ADMINISTRATIVE IMPLICATIONS

Department of Health indicated as follows;

HJM34 requests expansion of DHI survey activities for non-licensed residential facilities. This expansion could require hiring of additional staff to comply.

Human Services Department indicated as follows;

Any requests for allocating staff and resources to unfunded initiatives and completing associated tasks will be particularly challenging because of the current vacancy levels at all levels of HSD and the state hiring freeze.

No HSD IT impact unless as part of this initiative, HSD is directed to develop an information system to collect information that would be needed in order to report out the findings related to the study. At this time, the process for the collection of this information is unclear.

TECHNICAL ISSUES

According to Human Services Department, HJM 34 does not specify whether the ‘State ombudsman’ refers to the HSD Behavioral Health Ombudsman or the ALTSD State Long Term Care Ombudsman. Both should be included, as both have contact with the individuals. Representation is also needed from ALTSD’s Adult Protective Services Division

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to Department of Health, it would not be required to study and provide a report on the role of licensure in ensuring that persons being discharged for the behavioral health institute at Las Vegas in need of residential care who are admitted to the appropriate residential care facility

According to Aging and Long Term Services, quality of care may not be provided at residential care facilities serving individuals with behavioral health needs if they are not licensed and complying with safety requirements. This is an already vulnerable population of adults who need protection against abuse, neglect and exploitation. There will be continued delay in considering the best options for addressing this growing problem.

ALTERNATIVES

According to Human Services Department, if HJM 34 were not to be passed, BHSD staff may be able to utilize Housing First to provide stability and increased functioning to this consumer population.

AMENDMENTS

According to Department of Health, consideration should be given to including the Aging and Long Term Care Department's Adult Protective Services section to the study group as they are frequently involved with behavioral health clients in facilities and institutions.

Human Services Department indicated as follows:

- A. Amend the language in page 2, lines 2-4 to read as follows "...upon discharge from the institute, many individuals are in need of ~~continuing supervision~~, treatment, supportive housing, shelter or and residential care; and, in some cases structure and supports" The term "continuing supervision" erroneously suggests patients discharged from BHI (or any behavioral health facility) are "supervised" which does not happen in most cases upon discharge.
- B. Amend Page 4, line 10 to specify both the Medicaid Behavioral Health Ombudsman and the ALTSD State Long Term Care Ombudsman. The ALTSD Long Term Care Ombudsman Program has health facility oversight responsibilities outlined by state statute (NMSA 1978,28-17-4, Long-Term Care Ombudsman Act; 42 U.S.C. A, 3058(g).
- C. Amend Page 5, line 3 to add, "human services department, department of aging and long term services, collaborative CEO, and"

PME/mt:svb