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FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/13

SPONSOR Rodriguez LAST UPDATED _____ HB _____

SHORT TITLE Developmental Disabilities Service Changes SB 458

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund, Federal Medicaid Matching Funds

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

Relates to HB 322, Developmental Disability Reimbursement Rates; SB 323, Developmental Disability Reimbursement Rates; HB 323, Developmental Disabilities Waiver Program; SB 324, Developmental Disabilities Home Waivers; and SB 364, Developmental Disabilities Services Rates

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 458 (SB 458) would require the Human Services Department (HSD) and the Department of Health (DOH) to obtain prior legislative approval before submission of any application for, renewal of, or modification to the Developmental Disabilities Home and Community-Based Services Waiver (DD Waiver) to the federal Centers for Medicare and Medicaid Services (CMS) that would result in changes to how eligibility or a recipient's level of care or supports is determined.

The bill would also require that, no later than August 1, 2013, the DOH and the HSD pursue a modification to the current state Medicaid plan requirements to reestablish the provisions of the DD Waiver that were in effect as of June 1, 2011.

FISCAL IMPLICATIONS

SB 458 contains no appropriation.

The FY13 operating budget for the DOH's Developmental Disabilities (DD) Medicaid Waiver Program includes a total of \$94.4 million in general fund revenue for the DD Waiver. For FY14, the LFC budget recommendation for the DD waiver includes an additional \$4.6 million in general fund revenue for the DD Waiver services to serve 227 people on the waiting list, and the Executive recommendation includes an additional \$5 million for the same purpose. The LFC recommendation utilizes an improved federal Medicaid matching rate to achieve the same service level as the Executive. The House Appropriations and Finance Committee adopted the LFC recommendation.

Since FY06, the average cost per individual increased from \$66,831 to \$77,457 in FY10. In FY09, New Mexico ranked sixth in the nation for the average cost per person for the DD Waiver services. The national average cost per individual in FY09 was \$56,650 (Lakin, et al., *Residential Services for Persons with Developmental Disabilities: Status and Trends Through 2009*). The DOH projects that the average cost per person, as a result of the current DD Waiver redesign, will decrease from the current average cost per person of \$73,333 to \$68,883 in FY16.

As the cost to provide services to individuals on the DDW continued to increase, the demand for services also increased. Currently, there are approximately 6,000 individuals waiting for services and the average length of time an individual waits for services is eleven years. As of December 31, 2012, there were 3,714 individuals receiving services on the DD Waiver compared to the 6,000 individuals waiting for services currently.

SIGNIFICANT ISSUES

Pursuant to 42 CFR§431.10 (e), the Medicaid agency must retain the authority to exercise administrative discretion to issue policies, rules and regulations for the DD Waiver. Changes to the DD Waiver are communicated to the Legislative Health and Human Services Committee and the Disabilities Concerns Subcommittee through testimony provided by the DOH. The DOH is not aware of any other state run program that requires legislative approval prior to implementing changes. Timing of legislative sessions and committee work would be very difficult to coordinate with the timelines required by the CMS.

The HSD indicates research has been conducted over a two-year period by the DOH Developmental Disabilities Supports Division (DDSD), in collaboration with the HSD Medical Assistance Division (MAD) to utilize an assessment process that both identifies support needs and can be used to accurately determine funding such needs for individuals receiving the DD Waiver services. Key components to the DD Waiver Program that were changed include the use of the Supports Intensity Scale (SIS), completion of a comprehensive service provider rate study, updated program standards and regulatory updates.

The HSD indicates if New Mexico were to re-establish provisions of the DD Waiver Program at the level that had been in existence in June 2011, the state would run the risk of the following:

- Not complying with the federal CMS requirements for cost neutrality of the DD Waiver plans;
- The DD Waiver Program being unsustainable because of unlimited, increasing costs and expenditures; and
- The 6,113 individuals currently on the statewide central registry (waiting list) for allocation to the DD Waiver Program (with an average waiting time of 10 + years) remaining on the list with no foreseeable access to waiver program services.

ADMINISTRATIVE IMPLICATIONS

SB 458 would require the DOH to submit a waiver amendment to the federal CMS, revise the Medicaid DD Waiver regulations, the DD Waiver fee schedule, and the DD Waiver service standards. Changes to the budget sheets and modifications to the Medicaid Management Information System (MMIS) would be necessary. Pursuant to 42 CFR§431.10 (e), the Medicaid agency must retain the authority to exercise administrative discretion to issue policies, rules and regulations for the DD Waiver.

The HSD indicates the Department would need to construct an additional process for legislative authorization beyond the current stakeholder public input process, and this would require additional staff time and duties. Administrative work completed over the past year would need to be revisited including the DD Waiver budget projections and the reimbursement/payment system mechanism.

Timing of the legislative session and interim hearings could be difficult to coordinate with the CMS' review process. Renewal and modifications to the DD Waiver must be submitted to the CMS, and under the provisions of the bill, the required legislative approval could conflict with the CMS timing and delay timely action.

TECHNICAL ISSUES

The HSD is questioning if the bill is non-compliant with the state Constitution's separation of powers be the Executive and the Legislative branches of government.

The DOH indicates section 1 contains a sentence that may create ambiguity in the bill. The bill states that “[t]he human services department and the department of health shall obtain prior legislative approval of any application, renewal or modification that would result in changes as to how eligibility or a recipient's level of care or supports is determined *that the department seek to make a federal waiver of the requirements of the federal Social Security Act....*” The introductory purpose of the bill and the title of this section suggest that the bill is intended to require legislative approval prior to any change to the criteria regarding how the DD Waiver recipients' eligibility or level of care or supports are determined, but it's not entirely clear from this sentence.

Page 2 line 14, modifications to the DD Waiver do not relate to Medicaid State Plan requirements.

OTHER SUBSTANTIVE ISSUES

The DOH indicates in 2009, the DOH, in collaboration with the HSD, began work to reconfigure the developmental disabilities system to maintain person centered supports while improving the overall cost effectiveness of the program. Throughout the process both departments received technical guidance from the CMS quality contractors and accessed national experts on the development of the new waiver program. The state submitted the application to the CMS on April 1, 2011, and the application was approved by the CMS on June 30, 2011. The waiver renewal was effective July 1, 2011. Additionally, the state worked with stakeholders to solicit comments and feedback approximately two and a half years prior to the submission of the waiver application to the CMS. After the state submitted the application to the CMS, it continued to work with stakeholders in 2011, 2012 and 2013.

The DDS established a DD Waiver Renewal Task Force two and a half years prior to the submission of the waiver renewal to the CMS. The DDS conducted 12 statewide public meetings in October and November 2010 to discuss changes to the DD Waiver Program and to obtain additional feedback. Additional public hearings were held by MAD in August 2012 to review proposed regulations, with final rules published effective November 1, 2012.

The goal of the DDW renewal is to transform the system into one that is cost-effective, fair and equitable. The waiver changes will ensure that community based services, through the DD Waiver are available for current users and will improve access for the 6,000 individuals waiting for services. Additionally, in 2010, the New Mexico Legislative Finance Committee (LFC) conducted an audit of the DD Waiver and determined the need to make the waiver more cost effective and sustainable as part of the DD Waiver renewal process.

The changes made to the DDW outlined in the waiver approved by the CMS are necessary to ensure the waiver delivery system is sustainable; individuals receive services based on their assessed needs; services and delivery models are focused on increasing functional independence and integration into the community; and serve more people on the registry.

Medicaid Home- and Community-Based Waiver Programs are not entitlement programs/benefits. States make the decision to conduct these waiver programs and guarantee the budget projections satisfy the sustainability of the services proposed under the waiver. The CMS requires waiver submissions to include budget projections over a five-year timeframe. New Mexico provided its DD Waiver projections to the CMS and received approval for the five-year period starting July 1, 2011. If New Mexico were to return to the provisions for the waiver that were in existence as of June 1, 2011, the state would be proceeding with costs that involve service definitions and associated costs significantly out of compliance with budget projections that already have been authorized by the CMS.

RAE/svb