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FISCAL IMPACT REPORT

ORIGINAL DATE 2/3/2020
 SPONSOR Papen LAST UPDATED 2/10/2020 HB _____
 SHORT TITLE Assisted Outpatient Treatment Act Changes SB 128/aSPAC
 ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
HSD/BHSD Staff	\$0.0	\$71.0	\$71.0	\$142.0	Recurring	General Fund
Program	\$0.0	\$36.9	\$36.9	\$73.8	Recurring	General Fund
Program	\$0.0	\$110.6	\$110.6	\$221.2	Recurring	Federal Medicaid Funds
Total	\$0.0	\$218.5	\$218.5	\$437.0	Recurring	General Fund/Federal Funds

(Parenthesis () Indicate Expenditure Decreases)

SB128 relates to SB182, Behavioral Health Community Integration Act.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General’s Office (NMAG)
 Children, Youth and Families Department (CYFD)
 Human Services Department (HSD)

SUMMARY

Synopsis of SPAC Amendments

The Senate Public Affairs Committee amendments to Senate Bill 128 remove district attorneys as persons who may file a petition for an order authorizing assisted outpatient treatment (AOT).

Synopsis of Original Bill

Senate Bill 128 (SB128) proposes to expand the definition of “assisted outpatient treatment” to

include comprehensive community support services (CCSS) and intensive outpatient program (IOP) services.

SB128 also proposes to add a district attorney to the persons who may file a petition for an order authorizing assisted outpatient treatment (AOT).

SB128 also proposes removal of the sunset provision of the Assisted Outpatient Treatment statute scheduled for July 1, 2021.

FISCAL IMPLICATIONS

The Human Services Department reports, if enacted, SB128 would allow district courts to order treatment plans that include CCSS and IOP as a part of AOT services. The Human Services Department Behavioral Health Services Division (HSD/BHSD) would need an additional FTE at pay band 70 for increased training and technical assistance, and to perform general monitoring and oversight of new CCSS and IOP providers as those services expand to ensure compliance with court-ordered treatment.

SB128 would also increase costs to Medicaid by adding CCSS and IOP to the definition of AOT. A total number of referrals for treatment in the AOT program across all state district courts was not readily available to HSD; therefore, HSD calculated an assumption of fiscal impact based on the following methodology:

The 3rd Judicial District Court serving Dona Ana County reported to HSD that over the past three years, approximately 50 referrals for AOT treatment were made each year. Assuming that the approximate number of referrals for services provided by the 3rd Judicial District Court is uniform across the 13 state district courts, and proportionate between the state population and Medicaid enrollees (below 50 percent), the estimated number of referrals for Medicaid under the provisions of the bill could be approximately 190 recipients per year. The cost for each recipient who may be referred to IOP and CCSS services each year is shown in the table below.

Service	Base Rate per unit	Allowed Units	Estimated recipients to get the services Proportion=190	Cost per client	Total annual Cost
IOP	\$ 64.43	4	190	\$ 257.72	\$48,967
CCSS	\$ 32.42	16	190	\$ 518.72	\$98,557
Total					\$147,524

The total program cost of \$147.5 can be matched with federal funds at a rate of \$36.9 thousand in state funds and \$110.6 thousand in federal funds.

SIGNIFICANT ISSUES

The Attorney General’s office indicates including district attorneys as parties that may petition the court for an order authorizing assisted outpatient treatment may create conflicts for the respective district attorneys.

HSD indicates in rural and frontier areas, adding a district attorney to the list of persons who may

file a petition for an order authorizing AOT could be beneficial where distances may make other authorized persons difficult to access.

PERFORMANCE IMPLICATIONS

HSD reports starting January 2019, behavioral health provider types eligible to provide comprehensive community support services (CCSS) expanded to include behavioral health agencies in addition to core service agencies (CSAs), federally-qualified health centers (FQHCs), and community mental health centers (CMHCs). Although intensive outpatient program (IOP) has been extended to provide services for mental health disorders, of the 47 providers providing IOP in the state, there are currently only three mental health IOP providers in the state, all of which are in Albuquerque.

Comprehensive community support services (CCSS) are intended to surround individuals and families with the services and resources necessary to promote recovery, rehabilitation and resiliency. Community support activities address goals specifically in the following areas: independent living; learning; working; socializing and recreation.

Expansion of comprehensive community support services (CCSS) and intensive outpatient program (IOP) to support assisted outpatient treatment (AOT) mandated services statewide would require the Human Services Department's Behavioral Health Services Division (BHSD) provide additional training and technical assistance to agencies to prepare them to provide these services for AOT clients, to collect data in coordination with its administrative services organization, and to monitor service delivery and outcomes to ensure high fidelity to standards of care.

The service expansion proposed in SB128 would also require that the Medical Assistance Division of the Human Services Department track the costs and utilization of the additional AOT services.

The Administrative Office of the Courts reports the bill's proposal to allowing district attorneys to submit petitions to the court should not affect the performance of the court in managing the process.

HSD reports best practice in behavioral health requires a clinical assessment to determine the appropriate level of care to ensure that clients are placed in the least restrictive level consistent with their diagnosis and needs. Evidence-based behavioral health treatment models are generally voluntary when implemented to fidelity.

Research shows that IOP services are designed to improve treatment adherence, reduce relapse and re-hospitalization, and decrease the likelihood of dangerous behavior or severe deterioration among sub-population of patients with severe mental illness.

<https://www.nasmhpd.org/sites/default/files/NAMI%20AOT%20Webinar--FINAL.pdf>

ADMINISTRATIVE IMPLICATIONS

HSD indicates the Behavioral Health Services Division BHSD would need an additional FTE at pay band 70 for training and technical assistance, and general monitoring and oversight of new CCSS and IOP providers as those services expand, to ensure compliance with court-ordered

treatment.

TECHNICAL ISSUES

The Attorney General’s office indicates including district attorneys as parties that may petition the court for an order authorizing assisted outpatient treatment may create conflicts for the respective district attorneys. The district attorney may be in a position where they are criminally prosecuting a “defendant” in a criminal action that is also a “patient” under the Assisted Outpatient Treatment Act. Should parallel proceedings occur, issues could arise regarding what information is discoverable in the criminal proceedings given that the assisted outpatient treatment action is being brought by the district attorney.

Also, since the outpatient treatment action will presumably contain protected health information, federal Health Insurance Portability and Accountability Act (HIPAA) issues could also likely arise.

OTHER SUBSTANTIVE ISSUES

The Administrative Office of the Court (AOC) reports that the Assisted Outpatient Treatment Act (AOT) allows any municipality or county that wishes to provide “assisted outpatient treatment” to do so, but requires the municipality or county wishing to offer the program to enter into a memorandum of understanding with its local district court.

Assisted outpatient treatment is a community-based treatment program to assist individuals who, as a result of severe mental illness, are unable to access community mental health services voluntarily. The AOT statute allows a “parent, spouse, adult sibling or child, hospital director, community residential provider, qualified professional or surrogate decision-maker” to file a petition [NMSA § 43-1B-4(B)]. The U.S. Department of Justice and SAMHSA have recognized AOT as an evidence-based practice based on studies demonstrating its effectiveness in improving treatment outcomes and enhancing public safety.

In 2018, the City of Albuquerque was awarded a multi-year grant from the federal Substance Abuse and Mental Health Services Administration (SAMHSA) to implement an AOT program with the Second Judicial District Court. The grant is scheduled to end on September 30, 2022. Removing the sunset clause will allow the Second Judicial District Court’s AOT program to continue with support from SAMHSA through September 30, 2022.

The Second Judicial District Court’s AOT Program is based on a therapeutic model involving private counsel representation of the petitioner. In the Third Judicial District’s AOT Program, the district attorney’s office represents the petitioner.

HSD reports a randomized controlled study in North Carolina (part of the so-called Duke Study) in 1999 demonstrated that intensive routine outpatient services alone, without a court order, did not reduce hospital admission. However, when the same level of services (at least three outpatient visits per month, with a median of 7.5 visits per month) were combined with long-term AOT (six months or more), hospital admissions were reduced 57 percent, and length of hospital stay was reduced by 20 days compared to individuals receiving the services alone.

The Duke Study in North Carolina found that long-term AOT combined with intensive routine

outpatient services was significantly more effective in reducing violence and improving outcomes for severely mentally ill individuals than the same level of outpatient care without a court order. <https://www.treatmentadvocacycenter.org/storage/documents/aot-implementation-guide.pdf>

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