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FISCAL IMPACT REPORT

SPONSOR Komadina DATE TYPED 2/22/05 HB _____

SHORT TITLE Opiate Replacement Treatment Programs SB 426/aSPAC

ANALYST Woods

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	\$250.0			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to the appropriation for the Corrections Department in the General Appropriations Act.
Relates to HB267

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (NMCD)

New Mexico Department of Health (DOH)

SUMMARY

Synopsis of SPAC Amendment

Senate Public Affairs Committee amendment to SB426 amends the legislation as follows:

- *On page 1, line 18:* After the word “program,” inserts the phrase, “for inmates with a history of opiate dependence”
- *On page 1, line 23:* After the period, inserts the sentence, “Priority shall be given to inmates approaching release into communities with operational methadone clinics.”
- *On page 2, line 5:* After the period, inserts the sentence, “The criteria shall be consistent with existing department of health guidelines.”
- *On page 2, line 7:* Deletes the phrase, “and buprenorphine”

- *On page 2, between lines 8 and 9:* Inserts the following new subsection:

“E. The corrections department, in conjunction with the epidemiology and response division of the department of health, shall collect the following outcomes data:

- (1) recidivism of methadone-treated inmates versus counseling-only treated inmates;
- (2) positive urine drug screens among methadone-treated parolees versus counseling-only treated parolees, as followed by the adult probation and parole division of the corrections department;
- (3) the rates of newly acquired hepatitis B, hepatitis C, human immunodeficiency virus and methacillin-resistant staphylococcus aureus as a result of sharing needles during injection drug use, in methadone-treated inmates versus counseling-only treated inmates; and
- (4) the rate of reduced disciplinary infractions while incarcerated of methadone-treated inmates versus counseling-only treated inmates.”

Senate Public Affairs Committee amendment to SB426 attaches no additional appropriation to the legislation.

Synopsis of Original Bill

Senate Bill 426 – Relating to Health Care; Providing for Treatment; Making an Appropriation – seeks to establish an opiate replacement treatment program in the state’s correctional facilities in accordance with the following criteria:

- The corrections department shall establish an opiate replacement treatment program.
- The opiate replacement treatment program shall provide opiate replacement treatment in New Mexico correctional facilities operated by the corrections department and publicly or privately operated correctional facilities that house inmates lawfully committed to the corrections department.
- Participation in the opiate replacement treatment program shall be offered on a voluntary basis to inmates lawfully committed in a New Mexico correctional facility. The corrections department shall coordinate with the department of health to establish the criteria for assessment and enrollment of an inmate in the opiate replacement treatment program.
- Currently accepted treatment practices, including methadone and buprenorphine treatment, shall be used in the opiate replacement treatment program.

The bill appropriates \$250,000 from the general fund to the Corrections Department for expenditure in FY06 for an opiate replacement treatment program. Any unexpended or unencumbered balance remaining at the end of FY06 shall revert to the general fund.

The bill additionally addresses the regulation of methadone clinics by the Department of Health in accordance with the following criteria:

- In compliance with federal requirements, the department of health shall regulate the establishment and continuance of methadone clinics in the state.
- In regulating methadone clinics, the department of health shall perform an assessment of the need for clinics and develop clinical and administrative standards as required by federal law. The department may consider other factors it deems necessary to ensure the provision of drug abuse treatment services and the protection of the health and safety of state residents.
- For the purposes of this section, “methadone clinic” means a public or private facility that dispenses methadone for the detoxification or maintenance treatment of narcotic addicts.

Significant Issues

DOH indicates that Opioid addiction treatment is the generic term referencing various treatment modalities employed to treat opioid dependent individuals. Opiate or opioid replacement treatment refers to legally prescribed medications (methadone hydrochloride and buprenorphine) that reduce or alleviate the craving for heroin, morphine and other opioid drugs, which include prescription drugs such as Oxycontin, Percocet, Percodan, Codeine, and Darvon. Buprenorphine is a Drug Enforcement Agency-approved daily oral medication that, when combined with Naloxone, effectively blocks the action of heroin and other narcotics. People treated with Buprenorphine/Naloxone feel normal and have no drug cravings.

DOH is the federally designated State Methadone Authority and Single State Agency for substance abuse services. It received statutory authority to regulate Opioid Treatment Programs (OTPs) in the 2003 legislative session. The draft regulations have been to public hearing and are waiting for final approval from the DOH Office of the General Counsel.¹ The regulations include both clinical and administrative standards. All OTPs operate under federal law as well.²

An OTP located in any NMCD facility would be required to operate under the State of New Mexico regulations, Drug Enforcement Administration (DEA) regulations and the federal 42 CFR Part 8. This will apply to the NMCD or any contractor who may provide OTP services in an NMCD facility.

FISCAL IMPLICATIONS

The appropriation of \$250,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY06 shall revert to the general fund.

ADMINISTRATIVE IMPLICATIONS

NMCD notes that this bill places several “significant and onerous administrative requirements on the Corrections Department in administering and assessing the treatment program” including:

¹ Statutory Authority: Department of Health Act, NMSA 1978 section 9-7-6 (e). title 7: Requirements for Opioid Treatment Programs, Chapter 32 Alcohol and Drug Abuse, Part 8: Regulations for opioid treatment programs.

² Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, 42 CFR Part 8: Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction.

- It will probably take many manpower hours to determine the relevant recidivism rates and related requested information, and may take Department staff away from their normal duties.
- Staff may well need extensive training on how to administer and assess the pilot project.
- New policies and procedures would need to be developed and implemented for administering and assessing the pilot project.
- The department will need to draft and implement a written memorandum of understanding with the Department of Health to properly administer that portion of the pilot project.

NMCD states that implementation of this legislation, "...would be a major administrative undertaking for the Corrections Department."

CONFLICT, DUPLICATION, COMPANIONSHIP OR RELATIONSHIP

Relates to the appropriation for the Corrections Department in the General Appropriations Act.

Relates to HB267 in that HB267 seeks to appropriate appropriates \$250,000 from the general fund to the Corrections Department for expenditure in FY06 and FY07 for the creation of an opiate replacement therapy pilot project – utilizing buprenorphine-naloxone – for thirty women with a history of heroin or other opiate addiction who are incarcerated at and later released on parole from the New Mexico women's correctional facility in Grants. HB267 also requires the Corrections Department to collaborate with the Department of Health to:

- administer the opiate replacement therapy and to contract for the services of a qualified physician to evaluate and treat the women participants;
- evaluate and determine the recidivism rate for the women participants as compared with the recidivism rates for women not treated with the designated drug;
- evaluate and determine the use of psychotropic medication by women participants as compared to women with opiate dependence who are not treated with the designated drug;
- evaluate and determine the number of opiate-positive urine drug screens among women participants as compared to women with opiate dependence who are not treated with the designated drug;
- evaluate and determine the rate and frequency of infection, self-inflicted injury and the need for medical care for women participants as compared to women with opiate dependence who are not treated with the designated drug; and
- report independently to the appropriate interim legislative committee on the evaluations, treatments and outcomes of the pilot project participants by December 1, 2006 and December 1, 2007.

The pilot project is proposed to run from July 1, 2005 through June 30, 2007, and any unexpended or unencumbered balance remaining at the end of FY07 shall revert to the general fund.

OTHER SUBSTANTIVE ISSUES

With respect to this legislation, DOH suggests the following items merit additional attention:

- It may be possible for DEA to grant a waiver to provide methadone in the prisons, but, under current law, each facility providing methadone will have to become a Narcotic Treatment Program. This can be costly.
- If the Corrections Department contracts a methadone clinic, the cost will be in excess of the \$250,000 allocated.
- There are 5 private prisons and 5 public prisons. The cost of treatment for all units could be far more than the \$250,000 allocated.
- Inmates are transferred from facility to facility as their levels change and would need to have the opiod replacement medications available to them at each facility.

DOH further observes that prison and jail facilities in other states and in other countries that provide opiate replacement with buprenorphine/naloxone or methadone show a statistically significant reduction in transmission of infectious diseases, inappropriate drug seeking from medical personnel, and less violence and aggressive behavior toward prison staff and other inmates. Safety of correctional officers and other inmates did improve with introduction of opiate replacement with buprenorphine/naloxone.³

DOH notes that the proposed legislation includes the opiate treatment drug buprenorphine as well as methadone. Methadone is a synthetic agent that works by “occupying” the brain receptor sites affected by heroin and other opiates. In 1997 the US National Institutes of Health (NIH) determined that “methadone maintenance treatment (MMT) is effective in reducing illicit opiate drug use, in reducing crime, in enhancing social productivity and in reducing the spread of viral diseases such as AIDS and hepatitis.” DOH provides the following as background information on the issue:

- Among heroin addicts not on methadone, there are more than 250,000 arrests per year.⁴ The MMT inmate treatment program would provide the first medical intervention to break the cycle of repeated crimes to support persistent drug addiction.
- Methadone treatment began in the Canadian Correctional System in 1998 and was expanded nationwide in 2002 due to Department of Justice decisions and effective outcomes. Inmates treated with methadone showed lower prevalence of heroin injection, needle sharing, and lower HIV-related risky behavior. Within 12 months, Canadian inmates started on MMT were shown to be 28 percent less likely to return to prison and were less likely to be unlawful or use alcohol while on parole. Parolees showed a 50 percent reduction in burglaries and thefts, with even greater reductions in drug dealing.

³ Lind, Chen, Weatherburn and Mattick 2004.

⁴ *Corrections Professional*, Jan.7, 2005.

- A frequently posed question asks if treatment with methadone is just substituting one addictive drug for another. There are major differences between use of illegal heroin use and medically administered methadone. Heroin lasts 4-6 hours and used in ever-increasing doses by dangerous injection, snorting or smoking. Methadone lasts 24 to 36 hours and is swallowed safely as a liquid. 95 percent of heroin users admit to criminal behavior to obtain money to buy drugs. Participants in abstinence-oriented programs were much more likely to fail and return to drug use. The U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) refers to MMT as the most effective treatment for opiate addiction. Well-run MMT programs, with appropriate drug monitoring, counseling services, vocational resources and referrals have been demonstrated to decrease heroin use and related crime, increase employment, and improve physical and mental health.⁵
- The World Health Organization supports the use of MMT for inmates to prevent the spread of HIV and AIDS among intravenous-drug users, noting in a 2004 policy brief:

Prisoners on methadone maintenance prior to imprisonment should be able to continue this treatment while in prison. In countries in which methadone maintenance is available to opiate-dependent individuals in the community, this treatment should also be available in prisons.

- Health care providers have documented episodes of ongoing heroin use in New Mexico prisons, despite efforts by security to confiscate drugs. Heroin use in NM prisons has resulted in deaths, serious overdoses, Hepatitis C infections and life-threatening staph infections requiring surgery, prolonged hospitalization, and expensive antibiotic therapy.⁶
- Buprenorphine is used nationwide in community-based drug treatment programs. The medication can be prescribed in an office setting by any certified physician. New Mexico presently has 20 certified physicians and 30 eligible for certification. The medication is also available through Opioid Treatment Programs. The availability of the medication means that prisoners returning to their communities can continue treatment, which significantly reduces the opportunities for relapse and /or overdose.

DOH suggests that the program detailed in the present legislation could be proposed as a pilot project, with a small population. Outcomes will be easier to evaluate for expansion to the larger system. Further, that it is advisable that inmates be assessed for possibility of relapse upon discharge and enrollment in a pilot project to begin opiate treatment prior to discharge and ensure that they continue treatment in the community.

BFW/lg:yr

⁵ McClellan *et al.*

⁶ McGuire 2005.