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## FISCAL IMPACT REPORT

ORIGINAL DATE 1-30-06  
 SPONSOR Sandoval LAST UPDATED 2-7-06 HB 353/aHCPAC  
 SHORT TITLE Money Follows the Person in NM Act SB \_\_\_\_\_  
 ANALYST Collard

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	\$0.1	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 371

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY06	FY07	FY08	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	N/A	\$80.0	\$80.0	\$160.0	Recurring	General Fund
<b>Total</b>	N/A	\$80.0	\$80.0	\$160.0	Recurring	Title XIX

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Aging and Long-Term Services Department (ALTSD)

Department of Health (DOH)

Human Services Department (HSD)

Developmental Disabilities Planning Council (DDPC)

### SUMMARY

#### Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to House Bill 353 requires federal approval from the Centers for Medicare and Medicaid Services (CMS) of any waiver submitted before mandating that the act be followed and requires ALTSD to provide information to only Medicaid-eligible individuals residing in nursing homes.

HSD indicates this amendment clarifies the intent of the legislation.

Synopsis of Original Bill

House Bill 353 creates the Money Follows the Person in New Mexico Act, which requires ALTSD to obtain federal funds and use medical assistance funds to enable the elderly or disabled who are eligible for community-based living to choose, from available options, the type of service that best meets the individual's needs. The bill also requires ALTSD to develop and implement a quality improvement system to evaluate the level and effectiveness of participation of individuals who are eligible for community-based services and to ensure that the services and support an individual receives are adequate.

**FISCAL IMPLICATIONS**

Although the bill does not contain an appropriation, ALTSD indicates it administers the Disabled and Elderly Medicaid Waiver program (D&E waiver) and currently allows individuals to move from a nursing facility to the community and receive home and community-based services and supports through a community reintegration allocation. This bill would not change this process.

Additionally, in development is a new self-directed waiver, called *Mi Via*, scheduled for implementation in early FY07. *Mi Via* would provide an avenue for individuals allocated to the D&E waiver or other existing Medicaid Home and Community Based Waivers (HCBS) to use their waiver funds to purchase services and supports within a wide range of options identified in *Mi Via*.

**SIGNIFICANT ISSUES**

ALTSD indicates the bill implies that federal approval, presumably a waiver that ALTSD is to obtain, is for a self-directed waiver. ALTSD, HSD and DOH, along with stakeholders, have developed a self-directed waiver, *Mi Via*, for implementation early FY07. ALTSD states there are significant differences between the proposed legislation and what the Centers for Medicare and Medicaid Services (CMS) will allow as a HCBS waiver.

Self-directed HCBS waivers are currently being developed, and have been approved, in other states. The *Mi Via* waiver application would allow persons eligible to receive waiver services through an existing HCBS waiver, such as the D&E waiver, to utilize the allotted waiver service funds in a manner which they choose and to enable the person to live in their community instead of an institution such as a nursing facility.

The *Mi Via* waiver, however, would not allow a person access to all Medicaid funds available to them for any service, as indicated on page 1, line 25 of this bill. Participants in self-directed waivers do have access to funds used to provide Medicaid health care; access is not limited to waiver service funds.

In addition, ALTSD is not authorized to apply for a federal Medicaid waiver. The designated single state agency, HSD, Medical Assistance Division, is the only agency that can submit a waiver application to CMS.

The bill directs ALTSD to allow individuals who reside in a long-term care facility the opportu-

nity to receive community-based services and supports pursuant to the Money Follows the Person in New Mexico Act. Individuals currently residing in a nursing facility would be able to move to the community and receive services and supports to allow him or her to remain in the community. The home and community-based services would be paid by the Medicaid funds currently used to pay for the nursing facility care.

The D&E waiver is managed by the ALTSD, and currently allows eligible individuals who reside in a nursing facility to transition from the nursing facility to D&E waiver services through a community-reintegration allocation. The ALTSD D&E waiver program budget currently resides in the HSD/MAD budget. The money spent for nursing facility services essentially follows the person to D&E waiver home and community-based services. CMS requires that the cost of D&E waiver services, in the aggregate, be less than the cost of nursing facility services. Therefore, the total cost of nursing facility services does not “follow the person” to their D&E waiver services. ALTSD also notes only the portion of their nursing facility costs that are needed for D&E waiver services become available for waiver services.

Many of the quality improvement activities required by the bill would be completed by ALTSD or HSD/MAD as part of *Mi Via*. Many of the quality improvement activities are currently completed by ALTSD or HSD as part of the D&E waiver. As a result, there may be some duplication of service.

DOH notes the bill does not explicitly include persons with developmental disabilities although it clearly could impact persons with developmental disabilities residing in nursing homes and the federal program includes persons living in Intermediate Care Facility (ICF-MR). Section (3) of the bill identifies the target population as “elderly or disabled individuals” that could be construed to limit participation to individuals who meet nursing level of care under the state’s D&E waiver.

The bill mirrors a federal “Money Follows the Person” initiative that would allow persons who are institutionalized in a nursing home or an intermediate care facility for the mentally disabled to have a choice to live in the community and have the money being expended on their institutional care follow them to provide for their community-based care.

The D&E waiver and the Developmental Disabilities Medicaid Waiver (DD waiver) programs already allow individuals to move from nursing facilities and ICF-MR facilities to the community and receive home and community-based services and supports. Funding for these conversions to community-based living do not, however, “follow the person” from the institutional setting to the community setting but must be funded through state appropriations to these waiver programs. If individuals with developmental disabilities are included in the scope of the legislation and funding was to “follow the individual”, Medicaid funding currently used to support individuals in nursing and ICF-MR facilities would need to be transferred to DOH so these individuals could be included in the DD or Medically Fragile waivers. A similar “transfer” of funds will need to occur for disabled or elderly individuals who wish to convert from nursing facilities to the D&E waiver administered by ALTSD.

DOH indicates, without additional federal support, the only way to maintain cost neutrality under such a process would be to reduce the number of “beds” maintained at nursing and ICF-MR facilities as individuals convert services from institutional care to community-based care.

Approximately 110 individuals with developmental disabilities currently receive services in nursing homes and have been evaluated by DOH program in regards to their residential service/support needs. For persons who are inappropriately placed a community transition plan is initiated. Therefore, it is anticipated that relatively few of those individuals, currently served, would transition, even if the intent of the legislation included persons with developmental disabilities.

### **PERFORMANCE IMPLICATIONS**

ALTSD states the bill has no specific performance implications as written. However, it implies support for the *Mi Via* waiver application through *Section 3 - COMMUNITY-BASED LIVING – CHOICE OF OPTIONS*. Implementation of the *Mi Via* Waiver is an activity identified in the *HSD Strategic Plan*, under Goal 2: *Assure New Mexicans can easily access the health and human services they need, and improve health status outcomes*. Specifically, the activity states: “Develop and implement self-directed waiver (SDW) program for Developmentally Disabled, Disabled and Elderly, HIV/AIDS, individuals with brain injuries and Medically Fragile Children.”

### **ADMINISTRATIVE IMPLICATIONS**

HSD indicates if the bill is enacted in the absence of the *Mi Via* Waiver, HSD/MAD would have additional costs to implement. It is anticipated that approximately 2 FTE, for a cost of \$160 thousand, of which half is from the general fund and half is from a 50/50 federal administrative match, would be necessary to implement the quality improvement activities.

### **DUPLICATION**

House Bill 353 duplicates Senate Bill 371.

### **TECHNICAL ISSUES**

ALTSD suggests the following amendments: page 1, line 18 and 19 – delete “department” and insert “Human Services Department” and page 1, line 25 – after “assistance” insert “allowed home and community based waiver”.

DOH indicates the bill does not explicitly include persons with developmental disabilities residing in nursing homes or ICF-MR facilities. The federal program associated with this initiative (“Money Follows the Person – Rebalancing Initiative”) does include persons with developmental disabilities.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

DPPC notes the money follow the person is a system of flexible financing for long-term services and supports that enables available Medicaid funds to move with an individual from an institutional setting such as a nursing facility or other institution to a home or community-based residence. The Money Follows the Person has been successfully implemented in several other states.