

Synopsis of HCPAC Amendments

The House Consumer and Public Affairs Committee amendments to House Bill 727 do the following:

- Restores member agencies that the original bill proposed to remove from the collaborative, including the secretaries of human services, labor, transportation, and the directors of the administrative office of the courts, and the New Mexico mortgage authority. The amendment also restores the division of vocational rehabilitation to the collaborative. However, a technical amendment is needed to clarify that the “director” and not the “chair” of the division of vocational rehabilitation is a member of the collaborative.
- Clarify that the behavioral health budget request accounts for funding at the behavioral health program at the human services department and for behavioral health services from other collaborative agencies that will be used in contracting for services. The amendment strikes language that proposed to limit the collaborative contract authority to only funds appropriated to the collaborative. These changes would require agencies that do not have funding appropriated in the behavioral health program at human services to still account for behavioral health services funding requests in a consolidated behavioral health budget request.
- Clarify that the collaborative would appoint a director of the collaborative who would coordinate day-to-day activities of the collaborative (with collaborative agency staff) but would not have the additional duty of overseeing the behavioral health services division. This change does not have a fiscal impact since the collaborative has already appointed a collaborative chief executive officer.
- Make technical changes, including clarifying portions of the enacting clause and replacing required reporting elements of the collaborative annual report to clarify that the collaborative should also report the number of people receiving services “by race, gender and ethnicity” and striking “the most frequently treated diagnosis.” Expenditures by type of service is still reported.

Synopsis of Original Bill

House Bill 727 amends Section 9-7-6.4 NMSA 1978. It redefines the membership of the collaborative as follows:

- The secretary of aging and long-term services
- The secretary of health
- The secretary of corrections
- The secretary of children, youth and families
- The secretary of Indian affairs
- The secretary of finance and administration
- The secretary of public education
- The director of the governor’s commission on disability
- The administrator of the developmental disabilities planning council
- The administrator of the New Mexico health policy commission

The secretaries of human services, labor, transportation, and the directors of the administrative

office of the courts, and the New Mexico mortgage authority would no longer be statutory members of the collaborative.

The collaborative would also include the following non-voting members:

- The chair and vice chair of the legislative health and human services committee
- A member of the house of representatives from a party other than that of the chair of the legislative health and human services committee
- A member of the senate from a party other than that of the vice chair of the legislative health and human services committee
- Four members selected by the collaborative, with the governor's consent, representing other state agencies

The governor would appoint a chair of the collaborative for a two-year period, subject to confirmation by the Senate. The collaborative would elect a vice chair from among its members. This provision would replace the current structure of the secretary of human services serving as permanent co-chair with the other co-chair alternating between the secretaries of health and children, youth and families. The collaborative would be administratively attached to the human services department.

HB 727 would require the collaborative to adopt rules through the human services department for (1) standards of delivery for behavioral health services provided through contracted behavioral health entities, and (2) approval of contracts and contract amendments by the collaborative.

The collaborative would submit a separately identifiable consolidated behavioral health budget request and could only contract for programs and services from funds appropriated to it by the legislature.

The bill requires the collaborative to appoint, with the consent of the governor, a “director of behavioral health services” who would be responsible for the coordination of the collaborative’s and the behavioral health services division’s day-to-day activities.

The collaborative would also provide a quarterly report to the legislative finance committee on performance measure outcome measures, and an annual report providing information on strategic plans and goals, contractors and providers, and the number of people receiving services, among other data related to services rendered and program operations.

FISCAL IMPLICATIONS

Minimal fiscal impact.

HB 727 requires the collaborative to adopt rules governing standards for the delivery of behavioral health services provided through its contractors, currently ValueOptions New Mexico. Current law requires the collaborative to create a single statewide behavioral health system and for participating agencies to comply with its comprehensive plan. To streamline rules governing the system, each agency has to go through a separate rulemaking process, presumably at the direction of the Collaborative. Based on comments from the Human Services Department and other collaborative agencies, the drafting, public input and publication of rules could have minimal costs.

HB 727 requires the appointment of a “director of behavioral health services.” The director of behavioral health services would be “responsible for the coordination of day-to-day activities of the collaborative and the behavioral health services division, including the coordination of staff from the collaborative member agencies.” As a result, the bill would consolidate director positions of the current collaborative CEO and the director of BHSD and therefore result in savings. Any resultant savings could be used to fund a management analyst that HSD assumes that coordination duties of the director would require. Collaborative agencies indicate that the bill is unclear whether the “director” is a new position, or whether the “director” is the current director of the Behavioral Health Services Division (BHSD) housed at Department of Health (DOH). However, LFC notes that HSD indicates that there already exists such a position that, while not appointed, sits on the Governor’s Cabinet and performs all of the duties outlined in the bill. As such the bill should not have a fiscal impact. Of note, HB 371 and SB 212 contain an executive proposal to transfer BHSD from DOH to HSD.

HB 371 and SB 212 contain an executive proposal to transfer BHSD from DOH to HSD. As a result, approximately 94 percent of funding for the collaborative contract with ValueOptions New Mexico will flow through HSD. HSD notes that coordination of staff from collaborative member agencies and budget work may necessitate two additional FTE at an annual cost of at least \$120,000 total. LFC notes that since the bill attaches the collaborative to HSD for administrative support, and since the vast majority of funding for the collaborative contract comes from HSD no additional FTEs should be required to submit the budget request.

Finally, the LFC budget recommendation creates a new program in HSD called Medicaid behavioral health program in anticipation of consolidating BHSD funding into HSD. Consolidating these appropriations would aide in streamlining the budget request process for 94 percent of collaborative contracted behavioral health services.

SIGNIFICANT ISSUES

LFC provided input:

LFC Performance Review. The LFC conducted a review of the collaborative during the 2006 interim. The report indicated that improvements were needed to fulfill the promise of New Mexico’s behavioral health reform efforts. Specifically the report said “the collaborative lacks clear authority to efficiently streamline rules governing access and quality of care standards. Administering about \$300 million in funding through a “virtual department” may prove ineffective over time. And, finally, appropriations and performance measures remain spread across multiple agencies, limiting the executive’s accountability to the Legislature.”

The report recommended changes, including granting the collaborative rulemaking authority, requiring a consolidated behavioral health budget - both of which were supported the Welfare Reform Oversight Committee and the Health and Human Services Committee. The report also recommended authorizing the collaborative to appoint the director of BHSD should the legislature transfer the division to HSD, require quarterly performance reports and an annual report to the Legislature. All these recommendations are contained in HB 727.

Rulemaking. The collaborative is statutorily charged with creating a single statewide behavioral health system, which should, therefore, require an alignment of service requirements across multiple agencies and programs. The LFC performance review indicated that aligning agencies’

rules through multiple and separate processes is inefficient, and complicates effective public participation in critical decisions regarding quality of behavioral health services. In addition, using the contract process to make or align policy as is current practice, is not contemplated by state law and puts the public at a disadvantage to effectively participate in the process. HB 727 provides limited rulemaking authority to ensure the collaborative does not encroach on members' "single state agency" status.

HSD input:

Membership. HB 727 proposes to remove from voting membership in the Collaborative the Human Services Department (HSD), the Administrative Office of the Courts (AOC), the New Mexico Mortgage Finance Authority (NMFA), the Governor's Health Policy Coordinator, the Vocational Rehabilitation Division of the Public Education Department and the Transportation Department (NMTRD), all of which, together with the agencies proposed to remain part of the Collaborative, provide policy direction or funding for behavioral health services in New Mexico. Drug and mental health courts, supported employment, housing and transportation funded or supported by these agencies are among the most critical missing community support services to support the recovery of persons with mental illness and/or substance abuse.

HB 727 proposes to add as non-voting members of the Collaborative the chair and vice-chair of the Legislative Health and Human Services Committee (LHHS); members of the house of representatives and the senate, appointed by the speaker and the president pro tempore, respectively, from a party other than the one to which the chair of the LHHS belongs; and four members representing other state agencies, selected by the Collaborative with the governor's consent.

The current membership of the Collaborative, plus the addition of some Agencies (e.g., HED, Indian Affairs Department, Aging and Long Term Services Department) that were not Cabinet-level Agencies at the time that the Collaborative were created, is critical to achieving the goals of coordination, efficiency, and effectiveness of behavioral health services. Currently, each voting member of the Collaborative has an equal voice. This contributes to the Collaborative's ability to establish policies and guidelines broadly and equitably.

Given that the Collaborative is an Executive entity, it would be an unusual precedent to include four legislators in its membership. All Collaborative meetings are public and include public comment in the agenda. There is currently ample opportunity for legislative input, as well as input from all other stakeholders and interested parties.

HB 727 proposes that the governor shall appoint a chair of the Collaborative for a two-year period, subject to confirmation by the senate, and that the Collaborative shall elect a vice-chair from among its members.

The Behavioral Health Purchasing Collaborative was initially designed to bring different state departments and their behavioral health dollars together into a collaborative whole, while still maintaining the identity and essential functions of the departments. By giving the Collaborative role-making authority and a separate budget, it essentially creates a new "department" or "division", thus significantly changing the original intent and function of this structure.

Rulemaking. The section of HB 727 that requires the Collaborative to adopt certain rules is

unnecessary. Rules currently exist surrounding all of the areas mentioned in the bill. These rules are mostly through Medicaid Managed Care regulations, but other member Agencies also have rules that pertain to their behavioral health programs. While the Collaborative chairs have expressed support for giving the Collaborative rule-making authority, this would have to be done carefully to avoid duplication or inconsistency with single state agencies responsible for various federal dollars. It would be duplicative for the Collaborative to make additional rules in these same areas.

Operations. HB 727 imposes requirements for contracting that are excessive and go beyond the contracting rules set forth for other Executive entities. Given the dynamic nature behavioral health services and of some of the programs that are part of the Collaborative, these requirements would limit necessary flexibility, limit the Agencies' abilities to live within their appropriated budgets while maximizing services, and have an adverse effect on service delivery for behavioral health consumers.

HB 727 unnecessarily requires that there be an appointed Director of Behavioral Health Services. There already exists such a position that, while not appointed, sits on the Governor's Cabinet and performs all of the duties outlined in the bill.

HB 727 unnecessarily requires quarterly and annual reports to the LFC and LHHS. All of the reporting items mentioned in the bill are already produced. They have been regularly reported publicly at Collaborative meetings and at Legislative committee hearings.

PERFORMANCE IMPLICATIONS

HSD notes the Governor has developed a comprehensive performance and accountability contract. This contract has many behavioral health markers by which progress is being measured. Such progress was predicated on the belief that behavioral health improvement is dependent on a multi-disciplinary, holistic approach to intervention. At the state level, it was predicated on the synergy of multiple departments working collectively together toward the comprehensive improvement of the system and the consumers utilizing it. By giving the Collaborative a separate budget (thus presumably pulling money from other agencies), we potentially weaken the collaborative nature of the structure, reduce the "buy-in" from other departments, and lose some of the comprehensive nature of the project. Were this to occur, it could potentially weaken the ability to meet the Governor's performance and accountability outcomes and the Legislature's goal of cross-agency coordination and accountability.

LFC notes that the bill provisions are consistent, would complement, and, in fact, enhance, the Governor's performance and accountability outcomes. Currently these measures cross agencies, programs and funding streams. Requiring a consolidated behavioral health budget will allow the Legislature and Governor to assess both funding levels and resulting performance in a streamlined format. Currently, the General Appropriations Act contains funding and performance measures for behavioral health services across multiple agencies. These measures are, according to the collaborative, obsolete since these funds are blended and braided through the single entity contract.

ADMINISTRATIVE IMPLICATIONS

HSD notes that HB 727:

1. Would create an entirely new budgeting process.
2. Would create a single chairperson, instead of the rotating co-chair approach currently utilized. This would be another loss of potential “buy-in” from Collaborative members.
3. By giving the Collaborative rule-making authority, some of the functions of the Collaborative may need to change to accommodate this authority.
4. The Collaborative would have to create a process for selecting four non-voting members.

Throughout state government, there are a number of behavioral health related programs housed in several different agencies. Should legislation be passed and signed that would consolidate all behavioral health related programs state-wide, there would be significant administrative implications. Several statutes governing all affected State agencies may require updates to reflect new duties and responsibilities; organization of FTE, space, telecommunications, information technology and level of funding would also require considerable effort. This effort in fact, could involve over 15 different state agencies, courts, district attorneys and the state general control agencies, such as Department of Finance. LFC notes that the bill does not provide for the transfer of programs or consolidation of staff, etc.

Administratively attached agencies may or may not operate administratively independent of the agency to which they are attached. In this case an entire administrative services staff would be needed to support human resources, information systems, payment, accounting and federal reporting.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to: HB 371/SB 212, which proposes to transfer of the behavioral health services division of DOH to HSD; SB 1179, which proposes to grant the collaborative rulemaking authority; and SB 1102 which proposed to require the collaborative to present a single behavioral health budget to the Legislative Finance Committee and other appropriate agencies.

OTHER SUBSTANTIVE ISSUES

HSD provided input:

New Mexico has undertaken a major transformation of its behavioral health system. Changes on such a large scale typically takes 7-10 years to be fully implemented. A significant aspect of the transformation process was the formation of the Collaborative. The Collaborative has been formed for only two and a half years at this point and has just completed 18 months of implementation utilizing the new system. There are major strategies yet to be implemented in the transformation process.

The changes proposed by HB 727 would have a significant impact on the participatory nature of the different departments currently in the Collaborative. While potentially creating some degree of simplification, it would likely weaken its Collaborative nature, reduce active participation, and create an entirely new bureaucratic structure. It would also create significant additional transition issues that would detract from the Collaborative’s work of improving services delivery

and outcomes in New Mexico. More time is required to allow the current structure to be fully activated. Elements of what are proposed in this bill may be helpful as the Collaborative process matures, but at this time such changes seem premature.

LFC provided input: According to the LFC performance review, the recommendations contained in HB 727 would build on the collaborative's initial innovations and better position the Legislature to assist in the long-term sustainability of New Mexico's behavioral health reforms. The Welfare Reform Oversight Committee recommended granting rulemaking authority to the collaborative and the Legislative Finance Committee and Health and Human Services Committee recommended a consolidated behavioral health budget and associated performance measures.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

LFC provided input:

The work of the Collaborative in its current structure will continue, but without the oversight provisions contained in the bill that are necessary to allow the Legislature to effectively assist in the long-term reforms of the behavioral health system. The collaborative will not be able to streamline behavioral health rules and will continue using a process for setting rules that puts the public at a disadvantage for impacting important standards for delivery of services. The Legislature's oversight, budgeting and accountability monitoring ability would continue in current format, which, according to the LFC review, limits executive agencies accountability to the Legislature for behavioral health expenditures and outcomes.

HSD provided input:

The work of the Collaborative in its current structure will continue. As more time passes and more knowledge are gained, changes in the Collaborative structure may be warranted. However, such dramatic changes at this time have the potential to hurt the process more than help it. Also, more time would allow the Collaborative agencies, interested legislators and legislative committees to craft together any future statutory changes after additional experience with the current structure.

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