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FISCAL IMPACT REPORT

ORIGINAL DATE 2/01/09

SPONSOR Rodefer LAST UPDATED _____ HB 173

SHORT TITLE Tuberculosis & Public Safety Act SB _____

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1 indeterminate	\$0.1 indeterminate		Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 397; Isolation of Persons with Tuberculosis

SOURCES OF INFORMATION

LFC Files

Responses Received From

Health Policy Commission (HPC)
 Corrections Department (CD)
 New Mexico Medical Board (NMMB)
 Department of Public Safety (DPS)
 Department of Health (DOH)
 Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 173 enacts the tuberculosis and public safety act and provides for the following:

- requires notification to DOH by a physician or other person that a person has an infectious form of tuberculosis (TB);
- upon receipt of notification, DOH is required to prescribe a treatment plan;
- if DOH has knowledge that a person has failed to comply with the treatment plan, DOH is required to petition the court for an order of protection for that persons to comply;
- sets out requirements for the petition for an order of protection, that states the person "...is actively infectious or poses a risk of relapse or development of a therapy-resistant strain" of TB;
- upon the filing of a petition for an order of protection, the court is required to determine probable cause and if yes, grant ex parte a temporary order of protection to isolate and administer a program of "directly observed therapy", or isolate if the person refuses;

- cause the temporary order of protection and notice of hearing to be served on the person, including the rights to representation and re-petition for termination of an order of protection;
- within 5 days after the granting of the temporary order of protection, hold an evidentiary hearing to determine if the court shall continue the order of protection;
- the order of protection must be continued until completion of therapy;
- the court must review its order of protection every ninety days;
- provides immunity from civil liability for a person who in good faith reports that a person has an infectious form of TB; and
- allows the person reported as having TB to sue for damages sustained as a result of negligent or intentional reporting or the disclosure of information to an unauthorized person.

FISCAL IMPLICATIONS

DOH reports that the estimated cost of providing a 9 month course of TB treatment (for a typical case of TB) at a secure residential treatment center is \$166 thousand. The estimated cost of providing a 24 month course of TB treatment (for multi-drug resistant TB) is \$443 thousand. DOH expects to reduce the high cost of treatment at secure residential treatment facilities by assuring medication compliance with outpatient “directly observed therapy”.

AOC reports a fiscal impact on the Court Attorney Fees Fund to be determined by the number of potential new cases that may be filed.

SIGNIFICANT ISSUES

People with active TB in New Mexico receive each dose of TB medications from a public health nurse until a curative course of treatment is completed. This strategy for treating TB is called “directly observed therapy”. There is currently no legal mechanism for the DOH to obtain a court order for directly observed therapy in New Mexico.

DOH reports that to prevent the evolution and spread of resistant forms of TB, public health professionals need the authority to enforce TB treatment. The Institute of Medicine, in its report “Ending Neglect: The Elimination of Tuberculosis in the United States”, states “To permanently interrupt the transmission of TB and to prevent the emergence of multidrug-resistant TB, all states (should) have health regulations that mandate completion of therapy (treatment to cure) for all patients with active TB.”

PERFORMANCE IMPLICATIONS

DOH reports that the bill conflicts with the Public Health Act. The Public Health Act covers cases of threatening communicable diseases, which includes TB. The proposed bill only addresses TB and conflicts with existing law which only provides for an order to detain (isolation). HB 173 will allow for an order for directly observed therapy, an order for isolation (detain) or an order for both.

AOC notes that the bill permits DOH to determine whether a program of directly observed therapy, isolation, or therapy and isolation is appropriate. There is no mention of choosing the least restrictive alternative. This may present an opening for an argument that the provisions in the bill may not meet constitutional due process requirements.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB 397; Isolation of Persons with Tuberculosis

TECHNICAL ISSUES

The bill requires a physician or other person with knowledge to notify DOH that a person has an infectious form of TB. AOC suggests a change in the language of the bill that would *permit* (instead of *require*) someone other than a medical professional to report a case of infectious TB to a medical professional. But would still *require* a medical professional to report the case to DOH.

The bill does not indicate where the isolated individual will be held.

The bill does not provide penalties for failure to notify DOH of an infected person, or failure for an infected person to comply with an order or protection.

OTHER SUBSTANTIVE ISSUES

HPC reports that in 2005, New Mexico was ranked 37th in the nation for TB cases with a rate of 2 per 100 thousand people, or 39 cases. Since then, the emergence of drug-resistant forms of TB has been of particular concern. In 2007, DOH reported an increased rate of 2.54 per 100 thousand people, or 51 reported cases. Forty-seven percent of the cases were among foreign-born individuals. Seventy nine percent of these individuals were from Mexico and 13 percent from Asia. Twelve percent of these individuals had a form of TB with resistance to at least one TB medication.

ALTERNATIVES

DOH supports its HB 397 which will allow the department to seek a court order to assure medication treatment compliance for an infectious TB patient. DOH states that HB 397 amends the Public Health Act to ensure that all statutory requirements are met to obtain a lawful court order.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There will not be mandatory or court ordered treatment for individuals with infectious TB.

AHO/svb