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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/09

SPONSOR Garcia, M. P. LAST UPDATED _____ HJM 5

SHORT TITLE Bring End to Jackson Lawsuit SB _____

ANALYST Chabot

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	TBD	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General
 Department of Health (DOH)
 Developmental Disabilities Planning Council (DDPC)
 Human Services Department (HSD)
 New Mexico Health Policy Commission (HPC)

SUMMARY

Synopsis of the Bill

House Joint Memorial 5 resolves that DOH and the New Mexico protection and advocacy system be requested to collaborate and take the necessary steps to bring an end to the *Jackson* lawsuit; DOH intensify efforts to comply with the joint stipulated agreement on disengagement (JSD) and meet the requirements by the end of fiscal year 2010, or, if not achievable, DOH attempt to amend the agreement; and, DOH bring a progress report to the Legislative Health and Human Services Committee by November 1, 2009. A copy of the memorial is to be transmitted to the Secretary of Health.

FISCAL IMPLICATIONS

The costs to end the lawsuit are undetermined. DOH will spend approximately \$5 million this year in legal costs related to the lawsuit. Since 2003, \$23.6 million has been spent on legal issues. In 2003, the cost was approximately \$1.2 million and has been increasing annually. DOH pays all legal costs including plaintiff legal costs, court costs and agency expenses.

SIGNIFICANT ISSUES

Jackson v. Los Lunas Hospital and Training School, et al. (The Jackson Lawsuit) is a class action lawsuit originally filed in July, 1987 and went to trial in 1989. The plaintiff class is comprised of former residents of the Los Lunas and Fort Stanton Hospital and Training Schools and was certified, by the court, in May of 1989. The class sought remedial relief for constitutional and statutory violations through the strengthening of a community-based service delivery system, transition into the community, and support for additional services. Currently, there are 357 class members. Defendant agencies include the Department of Health, Human Services Department, and the Division of Vocational Rehabilitation. Intervenors, the ARC of New Mexico and various families, are those who originally opposed the closure of the institution but sought to upgrade them. (DOH Jackson Compliance Office, Litigation Fact Sheet—December 2008)

DOH has been ordered by the court to complete a plan of action to comply with the complaints against the state. The plan is the JSD and DOH has successfully disengaged from 34 of the 53 outcomes in the plan of action; however, no outcomes were satisfied in 2007 and only one in 2008. DOH has met 46 of the 70 continuous improvement requirements, and at the end of 2008, 245 of 325 activities were completed. DOH and the plaintiffs meet monthly with US Magistrate Judge Karen Molzen in an effort to bring the lawsuit to a close. However, due to the lack of progress, both parties agreed to hire a “706 Expert” to help speed the process. This expert is similar to a “Special Master” in other proceedings. The 706 Expert, Dr. Sue A. Gant, has the authority to mediate and resolve disputes informally. DOH pays for the costs associated with the 706 expert and hopes the individual will be a neutral technical expert who could assist in the lawsuit disengagement. In her August, 2008 report, Dr. Gant states she has provided more structure through facilitation and hopes to make meetings between the plaintiffs and the state more meaningful. She cites there is cycle in the process where the plaintiffs ask for information, the state provides what they think is the answers, the plaintiffs ask for more information and the state must get more information to respond. As a result, the cycle continues with no action to resolve specific issues.

Dr. Gant assess that “Defendant’s pattern of failure to comply with the corrective action process is a significant reason for the defendants’ protracted lack of compliance” (Jackson 706 Expert’s Report: By Sue A, Gant August 2008). DOH has stated that this is not a fair representation of DOH’s efforts. Dr. Alfredo Vigil, DOH Secretary, stated the presiding judge has indicated there is merit to the DOH assessment and wants an unbiased assessment.

DOH points out that it does not have the authority to amend the JSD without plaintiff and judicial concurrence.

PERFORMANCE IMPLICATIONS

Ending the Jackson lawsuit would allow DOH to use the appropriations spent on the lawsuit to enroll approximately 200 additional clients.

TECHNICAL ISSUES

On Page, 4, line 2, after the word “requested” insert “work with the plaintiffs and the court”.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

DOH will continue to pursue resolution of the Jackson lawsuit.

POSSIBLE QUESTIONS

1. What are the critical issues preventing resolution of the Jackson lawsuit?
2. What are the estimated costs to conclude the lawsuit?
3. What incentives do the plaintiffs need to end the lawsuit?

GAC/svb