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FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/13

SPONSOR Miera LAST UPDATED _____ HJM 36

SHORT TITLE Expand NM Long-Term Care Ombudsman Program SB _____

ANALYST Wojahn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0 - \$63.6		\$0.0 - \$63.6	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Aging and Long Term Services Department (ALTSD)

Human Services Department (HSD)

SUMMARY

Synopsis of Bill

House Joint Memorial 36 (HJM 36) requests the Aging and Long Term Services Department to convene a work group to study the feasibility of expanding the long-term care ombudsman program to independently advocate for individuals receiving services in the home.

The work group would include representatives from the Department of Health, the Aging and Long Term Services, the Governor's Commission on Disability, the Veterans' Services Department, the Indian Affairs Department, the Medical Assistance Division of the Human Services Department, home health care consumers, home health care consumer advocates, home care providers, and the MCO's responsible for the administration of benefits to consumers receiving services at home and in the community.

HJM 36 would require the work group to provide consumers and all stakeholders impacted by the expansion of ombudsman services opportunities to comment and make recommendations.

A full report of findings and recommendations shall be presented to the governor, the Legislative Finance Committee, and the interim Legislative Health and Human Services Committee by December, 2013.

FISCAL IMPLICATIONS

The study to expand the Long-Term Care Ombudsman Program (LTCOP) would require a serious commitment of time and resources for the ALTSD. The LTCOP would need to recruit representatives from the many required groups/stakeholders, communicate and coordinate with them, facilitate meetings, amass information, hold public meetings to collect input from consumers and other stakeholders, and write and publish a report. This additional work would tax the current resources of the Ombudsman Program, negatively impacting service delivery with regard to advocacy for its current clients – residents of long-term care facilities.

Participation in the work group would require one HSD Medical Assistance Division staff person, yet there no allocation of funding for HSD staff to participate in the study. The HSD estimates it would cost \$63,675 for one ombudsman.

SIGNIFICANT ISSUES

The ALTSD reports thirteen states and the District of Columbia have implemented home ombudsman programs. These states and the District of Columbia have done so through statutory and regulatory amendments, largely by expanding the definition of “resident” to include those served in the home setting. The current federal and state authority of the Ombudsman Program only pertains to “residents” within long term care facilities and all funding received is used only to advocate for residents of long-term care facilities.

If the State of New Mexico were to expand the LTCOP to include advocacy for those in their own homes, New Mexico statutes and regulations would need to be amended to expand the definition of “resident” to include those residing in their own homes. The law would need to include parameters for access to those homes, the breadth of settings and providers, and confidentiality provisions along with any additional appropriations. Amendment of statutes and regulations would require additional financial resources. Expansion of services to include an additional, significantly large, group of consumers to be served by the LTCOP would require significant additional financial resources. As this would be a state, not a federal mandate, none of the program’s federal funds could be used for this expansion. The additional funds would need to come from the state general funds.

Any type of in-home advocacy program would need to be structured to protect privacy for people living in their own homes, and would need to be consumer-driven. Citizens would need to be able to request, or refuse the service; and not be subject to advocate’s unsolicited intervention in their homes.

The composition of the proposed work group, if it is adhered to, will serve to gather a full range of views. Many of those included will have self-interested views on this proposal and the groups specified will be able to provide a wide range of views.

PERFORMANCE IMPLICATIONS

Currently the LTCOP is charged with, amongst other duties, investigating and resolving complaints that may arise among 12,000 long-term care facility residents in the state. This translates to over 4,000 complaints in fiscal year 2012. The LTCOP has limited staff and resources to cover its currently mandated client-base. Without additional funding, carrying out

the ambitious study of HJM 36 and serving as the head of the large work group could divert already scarce time, resources and employees from LTCOP's federal and state mandate of advocacy for long-term care facility residents.

ADMINISTRATIVE IMPLICATIONS

HJM 36 has no funding attached. The work group, study and reports will require a great deal of time and resources.

TECHNICAL ISSUES

HJM 36 designates the LTCOP as the leader in convening the work group, choosing the members and preparing the report. The LTCOP would be better served as a member of the work group rather than heading the task force.

It is unclear whether or not the intention of HJM 32 is to provide the LTCOP with final approval of the report prior to its submission to the legislature. If the intention is that all participants in the work group prepare a portion of the report then the language could more clearly reflect that intent.

OTHER SUBSTANTIVE ISSUES

Many options currently exist for consumers of home care to receive advocacy services if needed. Most insurance plans, including managed care organizations, offer ombudsman and advocacy services for the individuals enrolled in their plans. The ALTSD, through both its Senior Medicare Patrol and State Health Insurance Programs, provides advocacy with regard to all health care services provided to Medicare and Medicaid beneficiaries, including home care services. The Department's Adult Protective Services Division investigates and addresses reports of abuse, neglect and exploitation that occur in clients' homes, including those they may involve home care, or lack of home care. The Department's Aging Network legal services providers, the Senior Citizen Law Office and Lawyer Referral for the Elderly, provide statewide advocacy services for older adults, including those with issues and concerns regarding in-home care. Area Agencies on Aging provide oversight of home care services funded through ALTSD. The NM Human Services Department provides oversight of services provided with Medicaid funding; and the NM Department of Health provides oversight of licensed home care agencies. The Consumer Protection Division of the NM Attorney General's Office, provides advocacy services for consumers, including consumers of home care.

ALTERNATIVES

The ALTSD offered the following alternatives:

- Maintain the current system of advocacy for consumers of home care services.
- Wait until the reauthorization of the Older Americans Act. One version of the proposed reauthorization includes the expansion of the ombudsman's purview to include home advocacy.
- Wait until the newly selected Centennial Care providers and their federal and state funders launch the statewide delivery system of services commencing January 2014, which will include quality of care oversight. Only after the system is launched might it be appropriate to consider a new, and potentially costly, layer of services and oversight.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The LTCOP would continue to advocate for residents of long-term care facilities. Individuals receiving care in their own homes would continue to access the currently available advocacy services.

AMENDMENTS

New Mexico has no “money follows the person” funding; this portion of the HJM should be deleted.

MEW/blm