F I S C A L I M P A C T R E P O R T

SPONSOR Ortiz y Pino **ORIGINAL DATE** 02/10/14 **LAST UPDATED** **HB**

SHORT TITLE Behavioral Health Services Working Group **SM** 29

ANALYST Geisler

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal			Nonrecurring	General and other funds

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)
New Mexico Health Sciences Center (UNMHSC)
Children, Youth and Families Department (CYFD)
New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

Senate Memorial 29 requests the Legislative Council to appoint a multidisciplinary behavioral health services review working group to conduct a thorough review of the state's publicly funded behavioral health services system to determine the best means for efficiently delivering excellent behavioral health services to recipients of Medicaid and other publicly funded programs. SM 29 would specify the members of the working group to include members of the leadership of the legislature, representatives of the Behavioral Health Services Division of the Human Services Department, private behavioral health providers, consumers and their family members, managed care companies participating in Centennial Care, experts in health law and health care, and staff of the secretary of insurance.

SM 29 would require the working group to:

- Include in its review best practices in behavioral health service delivery, administration and finance learned from stakeholder recommendations, other states and industry practices;

- Conduct meetings that are coordinated with interim committee meetings and open to the public and provide for public testimony;
- Make recommendations for changes to state law to facilitate implementation of best practices in service delivery, finance and administration and results in a system that meets the needs of recipients, their families and the state; and
- Report its finding by November 1, 2014 to the Governor, Legislative Health and Human Services Committee and Legislative Finance Committee.

FISCAL IMPLICATIONS

No funding has been allocated for this memorial. HSD and UNMHSC note that substantial time will be involved for all members of this workgroup to review best practices, attend meetings, and to develop a report. Presumably time for legislators and state employees to attend will come out of their current work effort. Clinicians who attend will need to take time away from their clinical duties in order to attend. There is no funding allocated for travel for workgroup members who may be attending from rural communities.

SIGNIFICANT ISSUES

Senate Memorial 29 is needed to address the crisis in the state's behavioral health system which has escalated due to the recent replacement of 12 New Mexico providers with Arizona-based providers.

However, the scope of the effort and the limited timeframe has generated concern among key agencies. HSD and UNMHSC note that the working group charged by SM 29 to do this work contains neither the specialized expertise, the time, the budget, nor the authority to do the work required by SM 29. UNMHS provides that substantial time will be involved for all members of this workgroup to review best practices, attend meetings, and to develop a report.

UNMHSC notes the memorial convenes a large workgroup to give policy recommendations for a very complicated system of care within a short period of time without funding. In order to prepare a useful report, the final report should contain action items that are congruent with federal Center for Medicare and Medicaid Services (CMS) and the changing landscape of the Affordable Care Act. State Medicaid regulations are extremely complicated and although experts in health care law and finance are to be included in this workgroup, it is of concern that the workgroup will not have sufficient time or resources to undertake a review of current evidence and adapt this knowledge for the New Mexico context.

There is no language in this memorial to ensure that there is adequate representation in this workgroup for rural communities. Similarly, there are no travel funds to ensure that members from rural communities can consistently participate in meetings. One of the challenges in the New Mexico public behavioral health system is that national best practices must be adapted to small communities with limited workforce who are serving vulnerable and isolated clients. There is very little research evidence about how to implement best practices in behavioral health in rural communities; therefore, it is vital that rural input be meaningfully obtained.

There is no language in this memorial to ensure that there is adequate representation for Native American communities. The Native American health care system is also complicated and includes a range of tribally run services and publicly funded state and federal services with

different regulatory and financial considerations than other Medicaid populations. It is also important that health services delivered in these communities are culturally sensitive. Since Native Americans comprise approximately 10 percent of the New Mexico population, and many are eligible for Medicaid, it is crucial to include representation for this population in such a workgroup.

Finally, UNMHSD notes that there are no representatives from the Department of Health, state Medicaid director, Children Youth and Families, Public Education, and the Corrections Department – all of whom are important public stakeholders in this process and who are involved in the oversight and delivery of behavioral health services for their constituents who often represent very vulnerable populations. Any policies developed by the workgroup will need to be translated into these settings and it is of concern that these departments will not be part of this process from the outset.

ADMINISTRATIVE IMPLICATIONS

HSD notes that administrative implications of SM 29 are considerable both for HSD and for other Departments who administer behavioral health services. The Memorial calls for a working group of twenty members, only two of whom are members of the executive departments charged with statutory responsibility for behavioral health services.

HSD also notes the proposed Senate Memorial impinges upon the Executive's obligations to administer the State's public behavioral health care programs in accordance with both state and federal law. Under state law, the Legislature created the "New Mexico Interagency Behavioral Health Collaborative," which mandates the Collaborative perform many of the functions requested to be performed by this memorial. For example, the Legislature empowered the Collaborative to "identify behavioral health needs statewide . . . ," and develop a comprehensive plan to deliver such services. See, NMSA 1978, §9-7-6.4. Moreover, the proposed group set forth in the memorial would be charged with overseeing the state's public behavioral health program. This impinges on the executive's power to administer the State's Medicaid program, a public health program, designed in collaboration with the federal government. The State Medicaid program, under both state and federal law, can only be administered by a single state agency, the New Mexico Human Services Department. In addition, the federal government must approve all Medicaid services prior to inclusion as a Medicaid benefit. Therefore, in HSD's view SM 29 is not needed (as the work requested therein is legislatively mandated to the Collaborative) and would impact the State's Medicaid program (which must be approved by the federal government).

OTHER SUBSTANTIVE ISSUES

<u>2011 Behavioral Health Stakeholder Input Workgroup</u>

UNMHSC notes that a lot of effort was put into a study in 2011 with questionable impact. In 2011, members from the UNM Department of Psychiatry worked with representatives of the Behavioral Health Services Division to obtain stakeholder input and develop policy recommendations regarding the decision to reintegrate behavioral health and physical health services through a new Medicaid waiver. This experience demonstrated how complicated a process it is to obtain informed stakeholder input. During this process, three all day meetings

were scheduled with stakeholders who represented clinicians, health care service agencies, health care recipients, family members and others. Funding had been allocated for facilitators, facilities, co-ordination, expert consultation, and travel for rural participants. During this process, national experts were brought out to provide training to the participants and to give an overview of healthcare law, clinical best practices, and CMS regulations. An extensive reading list was generated and disseminated to all participants. After this training, the participants were invited to share their views and make policy recommendations based on their new knowledge and their own personal experiences. The community input obtained during this process was extremely valuable. However, despite the resources associated with this endeavor and the concerted attempt to begin this process with substantial education and training, it was difficult to translate the conversations and input into actionable steps that were consistent with federal regulations. It is of concern that it will be similarly difficult for the process outlined in this memorial to result in meaningful and actionable policy recommendations.

Input from HSD: 2002 Behavioral Health Study and Role of Behavioral Health Collaborative

In response to a previous legislative directive, the Department of Health commissioned a thorough analysis that was reported in 2002 identifying the gaps and needs in behavioral health services and making recommendations to address improvements. This study involved months of study by a wide array of stakeholders, including public meetings and opportunities for input. The study recommended that the legislature create an ongoing executive branch collaborative to systemically address the issues and made other recommendations. The Behavioral Health Needs & Gaps in New Mexico report was produced by a project team of 18 experienced professionals from New Mexico and around the country who utilized a variety of state of the art methods including data analysis, focus groups, literature and document review, and computer-supported modeling. SM 29 purports to charge a very different working group of people to do the same thing in less than nine months and no budget.

The charge of the behavioral health services study working group would be to facilitate best practices in behavioral health service delivery administration and finance. This goal is similar to the goal of the NM Behavioral Health Purchasing Collaborative (Collaborative). The Collaborative has operated since 2004 and includes the heads of the major agencies involved in behavioral health services. Yet, SM 29 includes in the proposed working group only one of the 15 agencies concerned with behavioral health services and policies. The Legislature has given the responsibility for managing behavioral health services to a number of state agencies that are not represented on the working group. The Department of Health is charged with operating inpatient behavioral health facilities. The Children, Families and Youth Department is charged with providing protective services for children who are victims of abuse, juvenile justice services for youth with behavioral health needs and regulating child care and treatment facilities. The Human Services Department is charged with providing the safety net of community based state and federally funded behavioral health services as well as administering all Medicaid behavioral health services. The Administrative office of the Courts is charged with operating services through Drug and other specialty problem solving Courts. The Vocational Rehabilitation Department is charged with providing rehabilitative services to individuals with behavioral health needs. The Public Education Department is charged with providing a free appropriate education to children with behavioral health challenges. Each agency has developed expertise and experience meeting the complex challenges of statewide behavioral health services in New Mexico. And yet, only one part of one of these agencies is included in the proposed working group.

The New Mexico Interagency Behavioral Health Purchasing Collaborative (Collaborative) was created by statute in 2004 to bring together the executives of the 15 state agencies that work daily with behavioral health issues. The agencies include service areas such as corrections, aging, vocational rehabilitations, Indian affairs, office of the courts, developmental disabilities, aging, public education, insurance, child protective services, health, and others. This Collaborative of state executives is well positioned to understand the complexities of behavioral health and create the state agency resources to make the needed changes.

While the Collaborative agencies are themselves reviewing how to better operationalize the functioning of this critical coordinating body, since 2004, the Collaborative has fulfilled its purpose managing a $350 million contract for behavioral health services to 84,000 individuals from the appropriations of four state agencies (both state and federally funded). The number of individuals served has increased over the term of the two Collaborative contracts and are likely to further increase within Centennial Care. The Collaborative is a signatory to the Centennial Care contracts with four managed care organizations who are charged with an integrated healthcare approach that reflects best practice nationally.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

UNMHSC notes that if this memorial is not passed, it will still be crucial for the NM Behavioral Health Purchasing Collaborative to develop a process to develop a strategic plan for the state public behavioral health system and to ensure that meaningful public input is sought. The purchasing collaborative should continue to work in partnership with representatives from higher education at UNM, NMSU, and UNMHSC who are the key institutions providing behavioral health workforce training and health services research.