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FISCAL IMPACT REPORT

SPONSOR Campos **LAST UPDATED** 02/20/23
ORIGINAL DATE 02/10/23
BILL
SHORT TITLE Integrated Substance Abuse Programs **NUMBER** Senate Bill 377/ec
ANALYST Hitzman

APPROPRIATION* (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|------------------------------|-----------------------------|
| FY23 | FY24 | | |
| \$1,300.0 | | Nonrecurring | Consumer Settlement Fund |

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|---------|------|--------|--------|----------------------|------------------------------|------------------|
| HSD FTE | | \$45.9 | \$45.9 | \$91.7 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Sources of Information

Duplicates SB377
 Relates to HB214, SB379

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Department of Finance and Administration (DFA)
 Human Services Department (HSD)
 Department of Health (DOH)

SUMMARY

Synopsis of Senate Bill 377

Senate Bill 377 appropriates \$1.3 million from the consumer settlement fund to the Local Government Division of the Department of Finance and Administration for the purpose of establishing integrated substance use disorder programs in San Miguel County. The

appropriation would be available in fiscal years 2023 through 2025.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

The appropriation of \$1.3 million contained in this bill is a nonrecurring expense to the consumer settlement fund. Any unexpended or unencumbered balance remaining at the end of FY25 shall revert to the consumer settlement fund. However, it is unclear whether recurring funding will be needed because the bill does not specify whether the funding shall be used for a new program or to fund existing programs, nor does it specify the length of the programs intended to be funded. If creating a new program or investing in a long-term program, there could be an expectation that funds will need to be allocated in future years to support the program.

Further, the Office of the Attorney General (AG) notes:

It is important to note that all consumer settlements are placed into the Consumer Settlement Fund, although much of the fund is restricted for certain purposes, which includes the Opioid Settlement Fund. Unlike other legislation that specifically reference the Opioid Settlement Fund (such as SB 425), SB 377 does not specify whether the funds are intended to be paid from any specific restricted funds within the Consumer Settlement Fund.

The current unrestricted balance of the Consumer Settlement Fund is approximately \$34 million. Approximately 50 percent of the Office of the Attorney General's operating budget is funded from the consumer settlement fund; therefore, funding this project with the current unrestricted fund balance could conflict with appropriations within HB2 and affect future budget projections.

The Human Services Department (HSD) notes its role in overseeing and providing technical assistance from the Behavioral Health Services Division's (BHSD's) clinical team for any new substance use disorder treatment programs. Oversight of these new programs, according to HSD, will require 0.5 FTE calculated at a pay band 70, for a total annual cost of \$45,856.

SIGNIFICANT ISSUES

SB377 proposes to appropriate \$1.3 million of opioid settlement revenue for construction of a treatment facility in San Miguel County. The proposed uses are likely in conflict with the allowable uses of the settlement agreement and could result in the claw back of funds. Construction is likely not an allowable use of opioid settlement revenue because it replaces general government costs and does not advance specific, evidence-based practices to abate the opioid crisis.

All settlements related to opioid settlements refer to the national settlement's "Exhibit E" which provides an exhaustive list of allowable uses. The intention of this exhibit is to present the sole list of allowable uses of opioid settlement revenue. Anything not specifically included on this list should be considered disallowed to ensure the annual audit of uses does not result in claw backs.

If passed, SB377 may bring the state out of compliance with the settlement. The state agreement specifies that all distributions made of opioid settlement funds be audited. If funds are distributed in conflict with the settlement, the funds are required to be redirected away from the unallowable use to an allowable use.

Further, it may be against the intent of the settlement for the state to appropriate settlement revenues in a manner that solely benefits resident of one region. San Miguel County received \$2.4 million in opioid settlement revenues. The settlement sets out that local government funds are to be distributed by the settlement administrator, not appropriated by the Legislature.

Further, as drafted, the bill does not define the term “integrated substance use disorder programs” and does not clarify which programs that address substance use disorder would be eligible for funding. According to NMAG, this poses issue because opioid settlement funds are restricted by court order to be expended on specific types of opioid abatement activities. The office reports working with New Mexico counties and municipalities to ensure that opioids-related settlement funds are directed to those entities and notes that all opioid settlement funds are restricted by court order to be expended on specific types of opioid abatement and treatment efforts.

The bill does not require funded programs be evidence- or research-based, so it is unclear whether investments in unspecified substance use disorder programs will have positive outcomes on its participants.

Further, NMAG provides the following:

If the intent of SB377 is to allocate funds from the Opioid Settlement Fund (restricted funds within the Consumer Settlement Fund), the funds may only be spent on approved expenses. In New Mexico, the allocation and use of opioid settlement dollars are governed by an Allocation Agreement between the state and local governments.¹ The Allocation Agreement directs 45 percent of funds to the state and 55 percent to local governments. The share of funds going to local governments is divided across Regions— a Region can take different forms, such as a single city or a county and the cities within it. Settlement funds must go towards approved opioid related expenditures consistent with categories outlined in the National Settlement Agreement, such as increased naloxone or support for comprehensive syringe services programs, as well as other approved interventions.² It is unclear what the “integrated substance use disorder programs” include, and how much if any of the program costs fall within approved expenditures under the opioid settlements. Further detail is needed to determine the specific use of the funds before it can be determined how much could be paid from the Opioid Settlement Fund (restricted funds) or would otherwise have to come from the balance of unrestricted funds in the Consumer Settlement Fund.

The investment in this bill is also targeted to just one county, and it is unclear whether the investment is adequate to support needs in the intended community. According to the 2019

¹ See <https://nationalopioidsettlement.com/wp-content/uploads/2022/03/2022.03.15-NEW-MEXICO-OPIOID-ALLOCATION-AGREEMENT.pdf>

²See https://nationalopioidsettlement.com/wp-content/uploads/2022/03/Final_Distributor_Settlement_Agreement_3.25.22_Final.pdf

Health Note – Status of Substance Abuse Treatment and Outcomes published by the Legislative Finance Committee (LFC), San Miguel County experienced 23 alcohol-related deaths and 10 drug overdose deaths in 2018, equating to a death rate of 69.9 per 100 thousand people for alcohol deaths and 33.8 per 100 thousand people for drug overdose deaths, placing San Miguel within the top 10 counties in New Mexico for substance use disorder deaths. More recently, the Human Services Department finds “San Miguel County has the 2nd highest rate of drug overdose deaths and the 8th highest rate of alcohol use related deaths in New Mexico,” according to the Human Services Department’s 2022 Data Book. The Department of Health also cited data showing San Miguel County has greater negative health outcomes related to substance use than the state average. For instance, the agency notes between 2016 and 2020, San Miguel County had rates that exceed the state average for the following indicators: alcohol-related death, chronic liver disease and alcohol-related chronic disease rates, rates of opioid overdose related Emergency Department events, and rates of amphetamine overdose related Emergency Department events.

Further, a 2020 *Progress Report – Addressing Substance Use Disorders* by the LFC finds that “The Covid-19 pandemic may have contributed to the number of avoidable deaths in 2020...and the most severe consequences of substance use disorders continue to worsen despite increased access to services [which] indicates treatment is an essential but incomplete solution. The state must also improve its prevention and early intervention programs, particularly those that can address the complex, underlying causes of substance abuse, including poverty and childhood trauma.” Therefore, while the \$1.3 million investment into substance use disorder programs may improve the rate of abuse and deaths in the county, other services and interventions may be needed to implement programs effectively. As written, the bill does not provide for these additional services or strategies.

DOH further notes:

This bill aims to address the high rate of substance use disorder among San Miguel County residents by increasing access to programs for individuals with substance use disorder through investment in integrated substance use disorder programs in San Miguel County. Integrated treatment refers to the focus of treatment on two or more conditions and to the use of coordinated services, such as specialty treatment for Substance Use Disorder (SUD) and traditional medical care (Integrated Treatment of Substance Use and Psychiatric Disorders - PMC (nih.gov)). Integrated care can encompass the integration of SUD treatment in primary care settings or SUD and behavioral health.

Presently, only one health system in San Miguel County, Alta Vista Hospital, facilitates an integrated treatment model for patients experiencing SUD alongside other comorbidities. In San Miguel County, there are between four and seven licensed behavioral health providers to treat a population of 27,150 individuals; most behavioral health providers in New Mexico work in behavioral health organizations separate from primary, inpatient, and emergent care (Provider Shortages and Limited Availability of Behavioral Health Services in New Mexico’s Medicaid Managed Care (OEI-02-17-00490; 09/19) (hhs.gov)). Appropriated funds to support integrated SUD programs in San Miguel County can enhance access to treatment services for SUD by increasing funding for healthcare facilities to employ a greater breadth of qualified staff to treat such patients.

According to [Substance Use and Mental Health Services Administration] SAMHSA, better improved health outcomes resulting from integrated treatment include reduced or discontinued substance use, improvement in psychiatric symptoms and functioning, improved quality of life, decreased hospitalization, increased housing stability, and fewer arrests (Co-Occurring Disorders (samhsa.gov)).

DOH goes on to note the county’s highly diverse population and notes “that racial and ethnic minorities with addiction disorders are at greater risk for leaving treatment largely due to socioeconomic factors.” SB377, according to the department, could help positively impact health disparities resulting from substance use disorders experienced by minority populations through greater access to treatment.

PERFORMANCE IMPLICATIONS

As noted above, approximately half of NMAG’s operating budget is funded from the consumer settlement fund, so any additional appropriations from the fund “may affect other performance based initiatives that are dependent upon funding from the consumer settlement fund.”

ADMINISTRATIVE IMPLICATIONS

The bill does not specify whether the funding will support existing or new programs, so it is unknown whether there will be additional administrative costs or burdens on administrators of such programs or on the county. However, the Local Government Division (LGD) of the Department of Finance and Administration notes the need to enter into a grant agreement with San Miguel County to obligate funds and issue payment reimbursements for valid expenditures. LGD would be tasked with ensuring the legal requirements of the grant agreement are met and that the funding is monitored throughout its life cycle. In addition, the Human Services Department anticipates the need for an additional 0.5 FTE to assist in implementing the programs.

Further, this proposal would also affect the work of the Behavioral Health Services Division (BHSD) of the Department of Health (DOH), as they are the entity charged with provision and administration of behavioral health services in New Mexico. This proposal may also affect the work of the Human Services Department (HSD), as the entity that administers Medicaid. However, the agency notes there would be no administrative or fiscal impacts on DOH related to this bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill duplicates House Bill 29. This bill also relates to a similar bill proposed during the 2022 legislative session to address substance use in San Miguel County and relates to HB214, which appropriates new monies from the consumer settlement fund totaling \$13.4 million for NMAG, \$934 thousand for the Administrative Office of the Courts, and \$8,000 to NMAG for Gold King mine costs. Further, the bill relates to SB379, which appropriates \$39 million to DFA for a behavioral health facility in Curry County.

ALTERNATIVES

According to the Attorney General’s office, counties and cities around New Mexico have received and will continue to receive their own settlement payments as a result of the state’s various opioid settlements with manufacturers, distributors, and retail pharmacies. These settlement payments will be separate and distinct from any funds the State receives into the consumer settlement fund.

According to Local Government Division of DFA, “The role of the Behavioral Health Services Division (BHSD) of the Human Services Department (HSD), as the mental health and substance abuse authority for the state, is to address the need, services, planning, monitoring and continuous quality of services across the state; therefore BHSD may have better expertise and oversight for this appropriation.”

AMENDMENTS

NMAG notes the bill could “provide further clarification for the exact use of the funds and, if intended, name the opioid settlement fund as the funding source if the type of expenditures are permitted by the settlement.”

JH/al/ne/rl/mg