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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/09

SPONSOR Rehm LAST UPDATED \_\_\_\_\_ HB 41

SHORT TITLE Medical Practice Act Insurance Exceptions SB \_\_\_\_\_

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)

Medical Board (MB)

Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of Bill

This bill amends Section 61-6-17 NMSA 1978 of the Medical Practice Act, to include insurance adjusters in the current list of various health care providers and services that are exempt from licensure and other requirements of the Medical Practices Act. The Medical Practice Act was established to control the granting and use of the privilege to practice medicine and to establish a medical board to implement and enforce the laws and rules under the Act.

In particular, under this bill, the list of exempt persons from the Medical Practice Act would be amended to include: “an insurance adjuster licensed under the New Mexico Insurance Code who is engaged in handling, interpreting or adjusting a claim for medical payment or reimbursement for medical treatment under an agreement, contract, statute or common law relationship that exists between a person seeking the payment or reimbursement and a claimed or alleged third-party payer or the third-party payer's representative.”

### SIGNIFICANT ISSUES

The Medical Practice Act defines the practice of medicine to include, in part, “offering medical peer review, utilization review or diagnostic service of any kind that directly influences patient

care.” Any review of an insurance claim that involves on-going patient care falls within this definition, because approval or denial of a claim directly influences the care, treatment, or medication the patient may receive.

Health insurance companies in New Mexico comply with this section of the Medical Practice Act by, at a minimum, having a physician with a current NM medical license on staff to review and be responsible for all determinations made by insurance claims adjusters.

The only insurance entity that does not currently comply with the Medical Practice Act in this manner is the New Mexico workers compensation system. The determinations made by claims representatives and adjusters for workers compensation are not reviewed or approved by a licensed NM physician.

HB41 proposes to exempt all insurance claims adjusters from the Medical Practice Act, meaning that even the insurance companies that now have licensed medical doctors to provide oversight for the claims system would no longer need them. Claims adjusters for all insurance companies, as well as for the workers compensation system, would be free to make medical decisions about the care and treatment of patients with no physician involved in the process.

The NM Medical Board receives frequent complaints from consumers unhappy with their workers compensation experience – they complain about the limited care provided, and about their inability to obtain health care they feel is necessary. The Medical Board has also received complaints from physicians who are treating patients within the workers compensation context – the physicians complain that claims adjusters will not authorize the treatments they feel their patients need, and that when they attempt to act as the patient’s advocate they are removed from the case. The physicians argue that by making these sorts of decisions, the claims adjusters are practicing medicine without a license.

The Medical Board considers this a very serious matter. The idea of submitting a proposed amendment to the Medical Practice Act to exempt all insurance adjusters did not originate with the Medical Board and HB41 was written and introduced without any discussion with the Board.

The Medical Board voted to strongly oppose the exemption in 2007 when it was proposed in an identical bill. The Medical Board has not addressed the issue in 2009; however, it is doubtful their position will change.

## **ADMINISTRATIVE IMPLICATIONS**

All of the other current exemptions to the Medical Practice Act (except for religious and domestic situations) involve individuals who are medically trained personnel of some sort, working under the supervision of a licensed physician. The exception proposed by HB41 would be the first to involve medical decisions made by individuals without medical training, working without physician supervision.

## **TECHNICAL ISSUES**

Although this bill would exempt licensed insurance adjusters from coverage under the Medical Practice Act, it would not exempt them from other Acts that regulate medical professions regulated by the RLD – Boards and Commissions Division (i.e., osteopathy, dentistry, podiatry, nursing, optometry, psychology, chiropractic, pharmacy, acupuncture and oriental medicine, and physical therapy).

**OTHER SUBSTANTIVE ISSUES**

The Medical Practice Act defines the practice of medicine to include, in part, “offering medical peer review, utilization review or diagnostic service of any kind that directly influences patient care.” Insurance adjusters make decisions regarding continued coverage for patients. When an adjuster is making decisions to continue or deny the payment of certain medical services recommended by a patient’s physician, the adjuster is directly influencing a patients care and under the current act considered to be practicing medicine.

Currently, health insurance companies in New Mexico comply with this section of the Medical Practice Act by having a physician with a current NM medical license on staff to review and assume responsibility for decisions made by insurance claims adjusters that directly affect patient care.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

CS/mt:svb