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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/13/09  
 LAST UPDATED 3/13/09      HB 676/HBICS

SPONSOR HBIC

SHORT TITLE Expand Dental Hygienist Scope of Practice      SB \_\_\_\_\_

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to, SB 302

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
<b>Total</b>	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	Dental Health Board

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)

Attorney General's Office (AGO)

Department of Health (DOH)

Health Policy Commission (HPC)

Department Higher Education (HED)

### SUMMARY

#### Synopsis of HBICS Substitute

The House Business and Industry Committee Substitute of House Bill 676 (HB676s) expands the scope of practice for dental hygienists, including the authority to only administer local anesthesia when emergency medical services are accessible; and the ability to prescribe, administer, and distribute fluoride supplements. HB676s outlines the functions of a community dental health

coordinator (also referred as a certified dental assistant). In consultation with the Board of Pharmacy, the New Mexico Board of Dental Health Care and the New Mexico Dental Hygienists Committee has the authority to create and maintain a formulary of medications that may be administered or dispensed by dental hygienists.

HB676s provides the following provision to the New Mexico Drug, Device and Cosmetic Act:

- Modifies the definition of “prescriptive device” in Subsection Y of Section 26-1-2 NMSA 1978 in the New Mexico Drug, Device and Cosmetic Act, by adding a dental hygienist to be included as a profession listed on the caution label of prescription devices.

HB676s provides the following provisions to the Dental Health Care Act:

- Section 61-5A-2 NMSA 1978 is amended to determine that the New Mexico Board of Dental Health Care is responsible for certifying qualified dental assistants and community dental health coordinators.
- Section 61-5A-3 NMSA 1978 is amended to:
  - Correct the definition of “Certified Dental Assistant” by properly referring to the Dental Assisting National Board.
  - Include the definition of “Community Dental Health Coordinator,” which is as a dental assistant, licensed dental hygienist, or other trained dental personnel that:
    - Meets the educational criteria and is certified in one or more functions for a community dental health coordinator established by the New Mexico Board of Dental Health Care;
    - Provides educational, preventative, limited palliative, and assessment services; and
    - Works collaboratively under the general supervision of a licensed dentist in settings other than traditional dental offices and clinics.
  - Include the definition of “Dental Hygiene Focused Examination,” which is the documentation of existing oral and relevant systemic conditions, and the identification of potential oral disease to develop, communicate, implement, and evaluate a plan of oral hygiene care and treatment.
  - Correct the definition of “Dental Hygienist” by properly referring to the Commission on Dental Accreditation.
  - Correct the definition of “Dentist” by properly referring to the Commission on Dental Accreditation.
  - Include the definition of “Palliative Procedures,” which are non-surgical reversible procedures that are meant to alleviate pain and stabilized acute or emergent problems.
  - Include the definition of “Teledentistry,” which refers to a dentist’s use of health information technology in real time to provide limited diagnostic and treatment planning services in cooperation with a dental student, community dental health coordinator, licensed dental hygienist, or another licensed dentist.
- Section 61-5A-4 NMSA 1978 is amended to:
  - Change the scope of practice of dentistry to include the responsibility of providing limited diagnostic and treatment planning via "teledentistry".

- Change the scope of practice of dental hygiene to determine that a dental hygienist in a collaborative dental hygiene practice may perform the procedures listed in this section without general supervision in a cooperative working relationship with a consulting dentist, pursuant to the rules promulgated by the New Mexico Board of Dental Health Care and the New Mexico Dental Hygienists Committee. The practice of dental hygiene includes:
  - Prophylaxis, which is the removal of plaque, calculus, and stains from tooth structures as a means to control local irritational factors;
  - Removal of diseased crevicular tissue and related non-surgical periodontal procedures;
  - Assessment for the application of pit and fissure sealants without a dentist’s evaluation, except upon the clinical evaluation of a tooth surface, a sharp explorer exhibiting resistance to removal;
  - Application of pit and fissure sealants without mechanical alteration of the tooth;
  - Application of fluorides and other topical therapeutic and preventive agents;
  - Exposition and assessment of oral radiographs for abnormalities; and
  - Performance of dental hygiene focused examinations.

According to NMHPC, a dental hygienist may be certified to administer local anesthetic under general supervision on the written prescription of a dentist once the dental hygienist has administered local anesthesia under the indirect supervision of a dentist for at least two years and has documentation, with a signed affirmation by the dentist, demonstrating the competent completion of 20 cases during that period. This is only applied if emergency medical services are available and in accordance with the rules promulgated by the New Mexico Board of Dental Health Care.

According to NMHPC, dental hygienists may prescribe, administer, and distribute fluoride supplements, topically applied fluoride and antimicrobials, pursuant to the rules adopted by the New Mexico Dental Hygienists Committee and the New Mexico Board of Dental Health Care. A dental hygienist is required to prescribe, administer, or distribute under the direction of a supervising licensed New Mexico dentist, who may be the designated consulting dentist for a collaborative dental hygiene practice and within the parameters of a drug formulary approved by the Board of Dental Health Care in consultation with the Board of Pharmacy and guidelines established pursuant to Subsection M of Section 61-5A-10 NMSA 1978. The distribution process must comply with State laws regarding prescription packaging, labeling, and record-keeping requirements. Dental hygienists are not authorized to dispense dangerous drugs or controlled substances.

HB676s eliminates the definition of “Collaborative Dental Hygiene Practice” in this section of statute.

- Section 61-5A-5 is amended, creating a new section to the statute, which determines the responsibilities of a community dental health coordinator working under the indirect supervision of a dentist and in accordance with the rules and regulations established by the New Mexico Board of Dental Health Care.
  - A community dental health coordinator may:
    - Place temporary and sedative restorative material in unexcavated carious lesions and unprepared tooth fractures;

- Collect and transmit data and images using health information technology;
  - Dispense and apply medications on the specific order of a dentist;
  - Provide limited palliative procedures for dental emergencies in consultation with a supervising dentist as allowed by the rules of the Board; and
  - Perform such other related functions that are not expressly prohibited by statute or rules of the Board.
- HB676s correctly refers to the United States Department of Veterans Affairs in this section.
  - Section 61-5A-6 is amended, determining that a certified dental assistant, community dental health coordinator, or dental assistant certified in expanded functions are required to adhere to the educational requirements, examinations, recertification criteria, and fees established by the New Mexico Board of Dental Health Care. Certificate holders may be fined or placed on probation if found guilty of violating the Dental Health Care Act.
  - Section 61-5A-10 is amended, determining that the New Mexico Board of Dental Health Care and the New Mexico Dental Hygienists Committee has the authority to create and maintain a formulary, in consultation with the Board of Pharmacy, of medications that may be administered, or dispensed by dental hygienists.

Also, this section of statute is amended to no longer reflect gender inferences, thus the term “chairman” was replaced with “chair.”

## **FISCAL IMPLICATIONS**

NFI

## **SIGNIFICANT ISSUES**

According to RLD, HB676 significantly expands the scope of practice for a dental hygienist and specifically authorizes prescriptive authority to administer local anesthesia. While the bill requires the supervision of a dentist it is limited to general supervision which does not require the dentist to be physically present.

According to the Department of Health, access to care is largely affected by an overall shortage of dental providers in New Mexico, as well as a shortage of dental providers practicing in rural and underserved areas. The federal government has designated all or part of 29 New Mexico counties as Dental Health Professional Shortage Areas. HB676 could address key issues related to increasing the accessibility of dental services for all New Mexicans.

According to the New Mexico Health Policy Commission, HB676 would allow a certified dental assistant and a registered dental hygienist to perform the same procedures of practice as an expanded functional dental auxiliary. A certified dental assistant and a registered dental hygienist have different educational requirements and examinations. In many cases, a certified dental assistant is not mandated to have a formal education in an area of dentistry, just on the job experience. A registered dental hygienist has a substantially stronger educational background and more experience in dentistry than a certified dental assistant.

HB 676 also amends the Dental Health Care Act to give limited prescriptive authority to registered dental hygienists.

The National Conference of State Legislatures reported in October 2001 that 24 states have passed legislation to expand the scope of practice for dental hygienists. The extent of the expanded scope of practice within each state varies. Generally, states have expanded the scope of practice for dental hygienists by issuing restricted licenses, limiting practice settings or putting restrictions on the type of persons served.

According to the Department of Health, many states are looking for ways to extend access to oral health care, especially for patients living in underserved areas, and see mid-level providers like dental hygienists as one solution. Last year, South Carolina's state dental board fought a legislative ruling that eliminated a requirement that dentists examine children before dental hygienists could perform care through the school system. The Federal Trade Commission later supported the hygienists' right to see the children first. On the other hand, the Maryland State Dental Association supported expanded duties for hygienists in public health settings as a sensible division of labor. As of Oct. 1, dental hygienists in Maryland will be able to provide limited services under general supervision in public health settings without direct dental supervision.

Currently, 18 states allow dental hygienists to practice with limited supervision, though state laws restrict the setting, the services or the duration of time over which hygiene care may be provided. Colorado is the only state with unlimited unsupervised dental hygiene practice, but Maine is about to become the second.

The New Mexico Department of Workforce Solutions (NMDWS) has provided a projected number of dentist and dental hygienists that will be in demand through its New Mexico 2006-2016 Occupational Projections.

According to the Department of Health, the 2006-2016 projected demand for total dentists needed in New Mexico is (917) and dental hygienists (968). Given the overall shortages for dentists, and an expanded scope of practice for dental hygienists, it is not unreasonable to anticipate an increase in overall demand for dental hygienists.

## **PERFORMANCE IMPLICATIONS**

An additional performance implication for the Dental Board, as a result of this bill, will be the issuance of licenses to expanded function dental auxiliaries and community dental health coordinators.

Compliance is a substantial part, already, of the dental board's staff work; under this bill, with the additional levels of licensure and expanded practice, compliance will take on even more importance and require additional time and work.

## **ADMINISTRATIVE IMPLICATIONS**

RLD—Boards and Commissions will need to complete the rule-making process to implement this legislation. The new sections of the Act will need to be integrated into these rules, specifically: expanding the practice of a dental hygienist; authorizing prescriptive authority for the administration of anesthesia; licensing of dental health coordinators; and licensing of the expanded function dental auxiliary.

The Board’s staff will also need to spend additional time reviewing applications for licensure in these areas.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

According to the Department of Higher Education, this expanded scope of practice for dental hygienists will call for an increase in educational program development at New Mexico postsecondary institutions, quite possibly in the form of additional baccalaureate degree programs.

According to the AGO, HB 676 relates to and may conflict with SB 302 insofar as it addresses “expanded function dental auxiliaries” and how these specially trained and certified dental hygienists and dental assistants may perform certain dental procedures.

HB676 does **not** address SB302’s amendment to allow for the temporary licensure of students enrolled as Dental Residents at UNM.

HB 543 also amends Section 26-1-2(Y) to add euthanasia technician.

HB676 also relates to:

- HB47, which appropriates \$225,000 to New Mexico State University to support the dental hygiene program at Dona Ana Community College;
- HB54, which appropriates \$100,000 to the New Mexico Department of Health to contract with a non-profit school-based portable dental program that provides dental screening examinations and dental sealants to uninsured low income children not enrolled in Medicaid, but eligible for the free or reduced price school lunch program in Shiprock and Crownpoint agencies of the Navajo Nation;
- HB231, which appropriates \$230,000 to the Higher Education Department to increase the number of slots for dental students seeking support from the Western Interstate Commission for Higher Education (WICHE);
- HB338, which appropriates \$10,000 to the New Mexico Department of Health to conduct a study in conjunction with the Public Education Department that evaluates the costs and benefits of requiring dental examinations for all children prior to entering school or preschool;
- SB132, which creates the Dental Amalgam Waste Reduction Act (DAWRA), requiring dental offices to remove mercury amalgam prior to discharge of its wastewater by December 31, 2010; and
- SB302, which amends the Dental Health Care Act and expands the scope of practice for certified expanded function dental auxiliaries.

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

The New Mexico Drug, Device and Cosmetic Act and the Dental Health Care Act would not be amended to allow dental hygienists prescriptive authority and the scope of practice for dental auxiliaries, dental hygienists, and community dental health coordinators would not be expanded.