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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/09

SPONSOR Lopez LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Professional Licensing Board Review Act SB 174

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

| Appropriation |      | Recurring<br>or Non-Rec | Fund<br>Affected |
|---------------|------|-------------------------|------------------|
| FY09          | FY10 |                         |                  |
|               | NFI  |                         |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)  
Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

Senate Bill 174 (SB174) would establish a new Professional Licensing Board Review Act to provide a coordinated procedure for the review of proposed changes in the scope of practice of existing health professionals licensed by the state. SB174 would establish a mechanism whereby any proposed change would be reviewed as part of a public hearing process by the pertinent professional licensing board, with findings and recommendations to be provided to the Legislature and Governor.

SB174 would also establish a mechanism whereby any proposal for creation of a new licensed health profession would be reviewed by the Regulation and Licensing Department as part of a public hearing process, with findings and recommendations to be provided to the Legislature and Governor.

SB174 would direct that either of the new review processes use the same criteria in evaluating proposals for new or changed health professional scopes of practice:

- Whether the proposal would offer potential harm to the health, safety and welfare of health care consumers;

- Whether the proposal offers benefit to the health, safety and welfare of health care consumers;
- The economic impact on overall health care delivery that would result from the proposal;
- Whether the potential benefits of the proposal outweigh any potential harm; and
- To what extent the proposal will affect the availability, accessibility, delivery and quality of health care in New Mexico.

No effective date is specified for these changes. No appropriation is included to support this expanded activity.

### **FISCAL IMPLICATIONS**

There is no appropriation contained in SB 174. The impact on each board that proposes a change in rules or statute or receives a request for change from the public could be significant.

### **SIGNIFICANT ISSUES**

According to the Department of Health, the new health professional scope of practice review requirements proposed in SB174 would establish a potentially more coordinated mechanism for objective review of the scope of all proposals. The new review processes would also permit public comment in settings other than a legislative forum. This might permit a more comprehensive review of all health professional scope of practice proposals than can be accomplished during a legislative session.

According to RLD, SB 174 does not differentiate between statute and rules, which mean an extensive research and reporting requirement, would be added to the current rule making process and legislative oversight of statutory change and adoption.

Also, there is no limitation on the requests a Board must respond to and no process for the Board to deny an irrational, meaningless or illogical request prior to the analysis process.

RLD also believes SB 174 does not clarify whether the Board must wait to adopt new rules until after the Governor and Legislature review the required reports. Waiting for a review would significantly delay necessary changes to scope of practice that may be based on national professional standard changes and federal regulatory changes. Such a delay could ultimately decrease public safety and the Boards ability to maintain professional standards.

According to the Medical Board, SB 174 as written does not adequately address the issues that are critical to a comprehensive review of proposed changes in a profession's scope of practice. Involvement of public meetings, a "technical assessment *if necessary*", and "testimony from persons with special knowledge" may be appropriate adjuncts to the process, but the sort of ad hoc committee process proposed by the Federation of State Medical Boards focuses more specifically on the stakeholders and the experts needed for the committee on a steadier basis.

### **PERFORMANCE IMPLICATIONS**

According to the Boards and Commissions, this new process would create another layer of rulemaking review that does not add any additional information or safety measures than already exist under the current rulemaking process.

## **OTHER SUBSTANTIVE ISSUES**

Scope of practice is a hot issue because it impacts the “bottom line” of the professional. These changes can also pose significant risks to the public, especially when expanded scope of practice is not accompanied by appropriately expanded education and oversight.

The NM Medical Board supports the formation of an ad hoc Committee of experts and stakeholders to review proposed changes to any healthcare profession’s scope of practice prior to implementation. Such a Committee would review the extent of existing scientific knowledge related to the changes to scope of practice and determine if the proposed changes are really needed, as well as, what specific additional training would be necessary to achieve the appropriate levels of knowledge, skill, and safety for the application of the changes proposed. Policy makers should assure that scope of practice changes are justified by appropriate and relevant education, training, examination, and experience. This review of proposed changes must also include a review of the rules and the governing act for the profession to be sure that the authority for any new rules proposed or already in existence, are authorized under that professional practice act.

## **ADMINISTRATIVE IMPLICATIONS**

According to the Boards and Commissions, the requirement for each Board to complete the requirements under the Act will require significant staff time and Board member participation.

## **ALTERNATIVES**

According to the Medical Board, the NM Health Policy Commission might be a more appropriate state agency to oversee enforcement of the Professional Licensing Board Review Act because not all licensed health professionals are under the umbrella of the Regulation and Licensing Department (i.e., the NM Medical Board and the NM Nursing Board), and thus the appearance of a neutral agency.

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

Scope of practice changes to rules would continue to be adopted under the current rule making process as defined in the State Rules Act, the Uniform Licensing Act and each Board’s enabling statute.

Statutory changes to scope of practice would continue to be reviewed under the legislative process and during Sunset Review.

Individual interested in creating a new licensing Act would continue to apply to the Regulation and Licensing Department for Sunrise review.

CS/svb