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FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/13
LAST UPDATED 02/04/13 **HB** 222/aHHGIC

SPONSOR McMillan

SHORT TITLE Scope of Practice Act **SB** _____

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY13 | FY14 | FY15 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|---------|---------|----------------------|------------------------------|---|
| Total | | \$250.0 | \$250.0 | \$500.0 | Recurring | Other State Fund or General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Medical Board (MB)

Board of Nursing (BN)

Department of Health (DOH)

SUMMARY

Synopsis of HHGIC Amendment

1. On page 2, line 20, strike "or any other person". This limits the persons seeking change in scope of practice to board members or licensees.
2. On page 3, lines 15 and 16, strike "notification of a proposed change in a health profession scope of practice" and insert in lieu thereof "receipt of the materials referred to in Paragraph (3) of Subsection A of Section 4 of the Scope of Practice Act". This makes a request more stringent in its preparation.
3. On page 5, between lines 18 and 19, insert the following:
 "F. A licensing board shall not make changes in its rules based on the superintendent's report referred to in Subsection E of this section before the legislative and executive branches take action.". This prevents rules from being adopted in advance of the legislature acting on the superintendent's recommendations.

4. On page 6, between lines 13 and 14, insert the following:
"SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2014.".,

Synopsis of Original Bill

House Bill 222 proposes to add a new Scope of Practice Act for health professionals.

Section 2 states the purpose is to provide a procedure for objective review of proposed changes in the scope of practice of health professionals licensed by the state and to submit findings to the governor and the legislature.

Section 3 provides definitions. A health professional includes those licensed under Chapter 61, Article 2, 3, 4, 5A, 6, 7A, 8, 9, 9A, 10, 10A, 11, 12, 12A, 12B, 12C, 12D, 12E, 14A, 14B, 14C, 14D or 14E NMSA 1978. The Scope of Practice Act would apply to proposed amendments to statute and rules. It notes superintendent as the RLD Superintendent.

Section 4 provides that a scope of practice change can be initiated by a member of a licensing board, a licensee of the licensing board or any other person seeking a change in the scope of practice of a health profession and notes necessary information that should be presented. The requestor simply notifies the respective licensing board, submits the proposed change and requests a hearing.

Section 5 requires the Superintendent of Regulation and Licensing Department to appoint an ad hoc review panel to review and make recommendations on proposed change. Membership on the panel includes:

- one board member of the licensing board for the health profession from which the proposed change in scope of practice originates;
- have a minimum of five voting members; and
- each panel shall be chaired by the superintendent or the superintendents designee, who shall not be a voting member;

In the event a request is submitted, the licensing board would be required to:

- 1) hold a public hearing with appropriate notice of its proceedings;
- 2) invite testimony from persons with special knowledge in the field of the proposed change;
- 3) assess the proposed change using the following criteria;
- 4) whether the proposed change offers
 - a. potential harm to the health, safety or welfare of health care consumers;
 - b. whether the proposed change offers benefit to the health, safety and welfare of health care consumers;
 - c. the likely economic impact on overall health care delivery of the proposed change;
 - d. whether the potential benefits of the proposed change outweigh the potential harm; and
 - e. the extent to which the proposed change will affect the availability, accessibility, delivery and quality of health care in New Mexico.

In addition, the Superintendent must provide a full report, include legislative recommendations, on each proposed change in scope of practice brought before the board no later than September 15th of each year to the governor, the Legislative Council, the Legislative Finance Committee and the Legislative Health and Human Services Committee.

The Superintendent must also provide an oral presentation of the report to the Legislative Finance Committee and the interim Legislative Health and Human Services Committee.

Section 6 outlines required responsibilities of the Superintendent regarding notification to the licensing boards, ensuring the panels are conducted as public hearings and providing staff for the hearings.

FISCAL IMPLICATIONS

The RLD reports the department budget does not include the funding to fulfill these requirements. 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.

To implement this bill, the Regulation and Licensing Department would request Legislative authorization for a least two FTE's, a Senior Policy Analyst and an administrative assistant. These positions would manage requests, compile analysis, and submit necessary reports.

A none-specific estimate is an average total salary plus benefits of \$75,000 for each of the two employees for a total of \$150,000.

Additionally, there would be a need for a budget to cover the cost of conducting public hearings and disseminating information.

Again, a non-specific estimate for these additional services is \$100,000.

The resultant total estimate is \$250,000 annually. A thorough analysis of available "other state funds" of revenues generated at the boards and commissions could be a source of funding. If the entire \$250,000 is not available, the difference could be made up from the general fund.

SIGNIFICANT ISSUES

RLD notes the following concerns:

The bill requires an extensive research and reporting requirement be added to the current rulemaking 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. The appointed committee would only have authority to make recommendations to the Superintendent and the Superintendent makes a report to the legislature.

Further, the bill 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 board's ability to maintain professional standards.

The Medical Board offers the following support:

The NM Medical Board **supports** HB 0222 in its recommendation for an ad hoc committee of experts and stake-holders 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. The national recommendations for the composition of the ad hoc Scope of Practice Committee and its specific duties are detailed in the *Report of the Special Committee on Scope of Practice* of the Federation of State Medical Boards (FSMB) at: http://www.fsmb.org/pdf/2005_grpol_scope_of_practice.pdf. This document also specifies a variety of important questions that should be answered during the process of evaluation of the request for scope of practice change.

The New Mexico Board of Nursing offers a contrary view of the bill:

The NM Board of Nursing is **opposed** to HB 222, both as it applies to nurses, advanced practice nurses, medication aides, and hemodialysis technicians and also to other health care practitioners licensed by other boards in New Mexico. The board notes the following:

- 1) The New Mexico Board of Nursing has regulatory authority over the education, licensure, and discipline of nurses licensed in this state. This authority allows the New Mexico Board of Nursing to protect the public from unsafe practitioners.
- 2) The NM Board of Nursing has an evidenced based and established means of regulating and evaluating the scope of practice of all their licensees and certificate holders through the Nurse Practice Act and current and updated rules and regulations.
- 3) In total, the legislation is primarily targeted to agencies already under the regulatory authority of RLD, and as such, does not apply to independent licensing boards such as the NM Board of Nursing.
- 4) The New Mexico Board of Nursing has sole regulatory authority over the education, licensure, and discipline of nurses licensed in this state. This authority allows the New Mexico Board of Nursing to protect the public from unsafe practitioners.
- 5) Section 3: According to Chapter 61, Article 3, Section 29 NMSA 1978 – Exemptions: The Nursing Practice Act does not exempt nurses from licensure in New Mexico, or a compact state, while practicing nursing in any capacity within New Mexico.

The Board is concerned that this bill would duplicate the responsibilities of existing regulatory and licensing boards, and it would create more cumbersome bureaucracy. The experts in the training and education and discipline of nurses, medication aides and hemodialysis technicians are the licensing board that regulates these practitioners, and not a super board that has no expertise in the specific areas of expertise of nursing.

The Board of Veterinary Medicine agrees with issues set out by the New Mexico Board of Nursing as they relate to veterinarians, veterinary technicians, bovine artificial insemination technicians, bovine pregnancy diagnosis technicians, and veterinary facilities.

TECHNICAL ISSUES

The Medical Board offers the following possible changes:

In Section 3.D, Definitions, the responsibility for the process later proposed is in the hands of the “superintendent of regulation and licensing”. The issue that arises from this is that not all Boards are under Regulation Licensing (RLD); two notable examples are the Medical and Nursing Boards. The Medical Board suggests that several changes be made in wording of HB-0222, as follows, so as to avoid conflict of interest between RLD and independent licensing boards:

1. §4.A (Page 2, lines 23-24): “...The licensing board shall notify the superintendent, or the superintendent’s designee, and shall.”
2. §4.A (3) (page 3, lines 8-10): “provide its analysis, conclusions and any recommendations, together with all materials gathered for the review, to the superintendent, or to the superintendent’s designee.”
3. §5.A (page 3, Lines 15-16): “The superintendent, or the superintendent’s designee, shall, upon notification of a proposed change...”
4. §5.D (page 4, Lines 2): No change in the wording of “superintendent or superintendent’s designee”.
5. §5.E (page 5, Lines 9-10, 14, and 16): “No later than September 15 of each year, the superintendent, in conjunction with the superintendent’s designee, shall provide to the governor,” ...; (line 14), “...brought before the superintendent, or the superintendent’s designee...”; (line 16), “...superintendent, or the superintendent’s designee,...”
6. §6 (page 5, Lines 19-20): “~~SUPERINTENDANT~~ SCOPE OF PRACTICE REVIEWS AND CRITERIA--POWERS AND DUTIES.--The superintendent, or the superintendent’s designee shall:”
7. §7 (page 6, Line 11): “RULES:--The superintendent, or the superintendent’s designee, and each licensing ...”

MW/svb:blm