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FISCAL IMPACT REPORT

SPONSOR <u>Jones/Brown/Chávez/Thomson</u>	LAST UPDATED _____
	ORIGINAL DATE <u>02/14/2024</u>
SHORT TITLE <u>Controlled Substance Custodial Facilities</u>	BILL NUMBER <u>House Bill 299</u>
	ANALYST <u>Chilton</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Nonrecurring	General Fund
Total						

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

Sources of Information

LFC Files

Agency Analysis Received From
 Regulation and Licensing Department (RLD)
 Health Care Authority (HCA)
 Department of Public Safety (DPS)

Agency Analysis was Solicited but Not Received From
 Department of Health (DOH)

SUMMARY

Synopsis of House Bill 299

House Bill 299 would add a new section to the Pharmacy Act (Section 61-11 NMSA 1978) that would permit licensed custodial care facilities (LCCFs) to acquire and maintain stocks of dangerous drugs, including those used for prevention of withdrawal from other dangerous drugs, e.g., opioids, including “controlled substances”.

To be eligible to use this privilege, a LCCF would be required to have nursing staff on-site 24 hour per day, 365 hours per day. Among the definitions in the bill, “licensed custodial care facilities” must be a facility or business or non-profit organization that cares for two or more non-relatives on a continuing basis, and that maintains custody of residents’ drugs. “Dangerous drugs” are defined as those labelled “prescription only,” “federal law prohibits dispensing without a prescription”, or “federal law restricts this to use by or on the order of a licensed

veterinarian.” “Controlled substances” are defined by being included in Schedules I to V of the federal Controlled Substance Act.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

There is no appropriation in House Bill 299. Although HCA and RLD indicate no fiscal impact to those agencies if this bill is enacted, the publication of regulations and assuring proper implementation would probably require some agency time and supplies.

SIGNIFICANT ISSUES

This bill would provide a safe location where persons using controlled substances can use their drug of choice, and/or in which they can obtain medications used to safely withdraw from those drugs. As noted by HCA, “There is a need for withdrawal management in custodial care facilities and this would increase access to services for substance use disorder in New Mexico. This is a gap in the continuum of services in New Mexico to ensure people can safely withdraw, with appropriate oversight by the New Mexico Board of Pharmacy, before receiving substance use services.”

RLD comments as follows regarding an available alternative to the provisions of this bill which it believes would be more likely to avoid abuse and diversion of potentially dangerous drugs:

The Board of Pharmacy, at 16.19.11.8 (A) (9) NMAC, allows a licensed custodial care facility with a 24/7/365 on-site nurse to have emergency drug supplies which may include controlled substances. Custodial facilities may also possess/stock controlled substances on-site in an automated drug distribution system (ADDS), which can be used for routine dosing if it has a DEA registration, as required by federal law (see 16.19.6.27 NMAC).

The emergency drug supply and ADDS is the property of a pharmacy. This creates an additional layer of accountability and protection against dangerous drug and controlled substance diversion.

For a custodial facility to obtain controlled substances, it would have to have a state and federal (DEA) controlled substance registration.

TECHNICAL ISSUES

“Nursing staff” as needing to be present on-site 24 hours/365 days are not defined. Would this only be registered nurses or could it include licensed practical nurses and/or certified nursing assistants? Would physicians or physician assistants be included in the definition of “nursing staff”?

It is not clear why an LCCF would need to stock and dispense medications that are available only by the order of a licensed veterinarian. In addition “prescription only” is not only pertinent to dangerous drugs; for example, antibiotics and insulin and blood pressure control medications

require a prescription but are not considered dangerous except in limited circumstances. If the census in an LCCF dropped below two, would it then lose the permission to hold dangerous drugs for its patient?

As noted by both HCA and RLD, schedule I drugs are those that have the following characteristics according to the United States Drug Enforcement Agency (DEA): 1) The drug or other substance has a high potential for abuse, 2) The drug or other substance has no currently accepted medical treatment use in the U.S., and 3) It has a lack of accepted safety for use under medical supervision. According to federal law, no prescriptions may be written for Schedule I substances, and they are not readily available for clinical use. Is it intended that such substances as heroin, LSD, MDMA and psilocybin be stocked in an LCCF? Schedule II through V substances do have uses in medicine.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

As noted by RLD, “Custodial facilities can continue to possess controlled substances in emergency drug supplies, and in ADDSs for routine dosing.”

LAC/al/cf