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FISCAL IMPACT REPORT

SPONSOR: Beam DATE TYPED: 2/18/03 HB 456
 SHORT TITLE: Naturopathic Medicine Practice Act SB _____
 ANALYST: Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$40.0 See Narrative	Recurring	OSF

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	See Narrative		Recurring	OSF

SOURCES OF INFORMATION

Responses Received From
 The Regulation and Licensing Department
 The Board of Medical Examiners

SUMMARY

Synopsis of Bill

House Bill 456 creates a new state licensing board, the Naturopathic Medicine Board.

Significant Issues

- The creation of this board has not been reviewed through the Sunrise Review Process.
- “Naturopathic Medicine” is defined as in HB 456 as “a system of health care practiced by doctors of naturopathic medicine for the prevention, diagnosis and treatment of human health conditions, injuries and diseases that uses education, natural medicines, homeopathy and therapies to support and stimulate a person’s intrinsic self-healing processes, in-

cluding naturopathic physical medicine.” The definition goes on to state that naturopathic medicine does not include occupational therapy, physical therapy or oriental medicine.

- The bill expressly provides that doctors of naturopathic medicine may use for preventive and therapeutic purposes the following medicines and therapies:

Food, Food Extracts, Certain Medicines of Mineral, Animal and Botanical Origins, Vitamins, Minerals, Natural Hormones, Enzymes, Digestive Aids, Whole Gland thyroid, Plant substances, Homeopathic Preparations, Topical Medicines, Counseling, Biofeedback, Dietary Therapy, Hygiene and immunizations, Certain Injections, Naturopathic Physical Medicine, Therapeutic devices, and Barrier Devices for Contraception.

- HB 456 creates a 5 member board, 3 members of which are to be doctors of naturopathic medicine, and 2 members of which are to represent the public.
- This 5 member board is made responsible for adopting the rules and regulations necessary and appropriate to “regulate” this group of professional licensees, including an examination requirements, education and experience requirements, and a code of ethics. At a minimum, the bill provides that an applicant for licensure shall have graduated from a naturopathic college accredited by the council of naturopathic medical education or another accrediting agency recognized by the United States department of education.
- At Section 18, the bill sets forth a detailed fee schedule for licensure, renewal, late renewals, registration as a continuing education provider, and the like.
- Finally, the bill provides grounds for disciplinary action against a registrant and states that such matters will be addressed in accordance with the Uniform Licensing Act.

FISCAL IMPLICATIONS

- HB 456 does not include an appropriation for start-up costs.
- The bill does create the Board of Naturopathic Medicine Fund and provides that the state treasurer shall invest the fund as other state funds are invested, and income from investment of the fund shall be credited to the fund. All balances in the fund shall remain in the fund and shall not revert to the general fund.

ADMINISTRATIVE IMPLICATIONS

- The Board of Medical Examiners estimates that the number of potential licensees is likely relatively small. Several years ago, it was estimated that there were less than 20 naturopaths in the state. Today it is estimated that there may be 30.
- HB 456 clearly attaches the Naturopathic Medicine Board administratively to the Regulation and Licensing Department. This is consistent with other legislation that has been in-

roduced (SB 101) which clarifies the administrative connection between numerous licensing boards and the department.

Being attached to the department will mean that this board may share in the administrative “pool” of resources shared by the various boards. However, at a minimum, it is estimated that at least 1 FTE will be needed for this one board’s administration, and that this 1 FTE will cost a minimum of \$40.0.

Being administratively attached to the department will permit the board to rely on RLD staff to assist with the development of the program framework and the drafting and adopting of rules and regulations.

OTHER SUBSTANTIVE ISSUES

There may be legal issues associated with parents who choose to take minor children to a naturopathic doctor. Traditional medical procedures may be considered more acceptable and more effective. If a child is taken to a naturopathic doctor for a serious, life-threatening condition that is known to be treatable/controllable via traditional medicine, and the child dies, is there an abuse or neglect issue?

TECHNICAL ISSUES

The Regulation and Licensing Department has raised these technical concerns:

- HB456 makes several references to the naturopathic physician being able to administer immunizations and certain injections. The FDA considers any item injected into the body to be a “dangerous drug” and as such requires prescriptive authority. If naturopathic physicians are to be given authority for immunizations and injections the NM Drug, Device and Cosmetic Act and the Controlled Substance Act will conflict with this Act.
- Section 8, does not state that public members of the board need to be residents of New Mexico.
- Section 8, states that terms of board members expire on December 31. Traditionally, board member terms expire June 30th or July 1st.
- Section 8, allows for board members to serve as many as three consecutive full terms. Traditionally, board members may only serve two consecutive terms.
- *Section 9, allows for the board to employ professional and clerical assistance. This provision directly conflicts with SB101 that deletes any reference to boards independent authority to hire or fire personnel. SB 101 clarifies that full authority for personnel decisions resides with the Superintendent of the Regulation and Licensing Department.*
- Section 10 allows the board to issue a “limited license,” but the term is confusing and under-defined.
- Section 12E, what is intended by requiring applicants to pass an exam that covers areas

that are not included in other exams approved by the board?

- Section 13, Temporary Licensure, allows for a temporary license to be renewed. There may be a competency issue to be addressed when renewing a temporary license. Conceivably, an individual could be practicing naturopathic medicine for more than a year under a temporary license.
- *Section 13, temporary licensure, conflicts with SB 269, a bill proposing prohibition of temporary licensure.*
- Section 15, approval of continuing education programs, duplicates board duties under Section 10.
- Section 17, page 15, line 1, change “may” to “shall.” The renewal requirement is just that, a requirement. It should not appear to be optional by the use of the word “may.”
- Section 18, the fee for examinations probably will not cover the cost of exam development and administration.

AMENDMENTS

The Regulation and Licensing have offered the following as possible amendments:

- Section 9, board powers and Section 10, board duties could be combined and entitled “board powers and duties”.
- Section 10A, change to read, “establish and collect fees”.
- Section 10, add the following powers.
 - May establish ad hoc committees and pay per diem and mileage to the members
 - May enter into contracts
 - Shall report final disciplinary action taken against a naturopathic physician to the national disciplinary data base
- Section 11, requirements for licensure, add: “be of good moral character”.
- Section 12, examinations, add
 - Applicants who fail to pass the examinations shall be subject to requirements determined by board regulations prior to being approved by the board for subsequent testing.
- Section 13, temporary licensure, add
 - Supervision requirements for an applicant practicing on a temporary license.

- Revocation of the temporary license upon notification of failure of the required exams.
- Section 16, transitional provisions, extend the time frames: A. extend to July 1, 2004
- Section 17C, license renewal:
 - Delete C, 1,2 &3. Allowance of a grace period encourages licensees to practice without a license.
 - Delete the grace period because a grace period adds a burden to the administration of the renewal process by extending the amount of time during which the licensee may renew. A grace period creates confusion as to the clarity of the provisions of renewal.
 - Add, "A person who fails to renew his license by the date of expiration shall not practice naturopathic medicine in New Mexico."
- Section 17D, license renewal:
 - Change D to read "Reinstatement of a naturopathic physician license following a renewal deadline requires payment of a renewal fee and late fee. The board shall promulgate rules establishing the qualifications for reinstatement of a lapsed license."
- Section 19, disciplinary proceedings, add:
 - Engaging in or permitting the performance of negligent care by a naturopathic physician or by assistive personnel working under the naturopathic physician's supervision, regardless of whether actual injury to the patient is established.
 - Engaging in sexual misconduct, including: engaging in or soliciting sexual relationships, whether consensual or non-consensual, while a naturopathic physician patient relationship exists; making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients; and intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
 - Failing to adhere to the recognized standards of ethics as adopted by the board.
 - Making misleading, deceptive, untrue or fraudulent representations in the practice of naturopathic medicine.
 - Failing to maintain adequate patient records, including: maintaining legible records that contain minimum sufficient information to identify the patient, an evaluation of objective findings, a diagnosis, a plan of care, a treatment record and a discharge plan.

- Failing to maintain patient confidentiality without documented consent of the patient or unless otherwise required by law. All records used or resulting from a consultation by means of telecommunications as defined by rule are part of a patient's records and are subject to applicable confidentiality requirements.
- Providing treatment intervention unwarranted by the condition of the patient or continuing treatment beyond the point of reasonable benefit.
- Failure to report to the board the surrendering of a license or other authorization to practice naturopathic medicine in another state or jurisdiction.
- Abandonment of patients.

While the Regulation and Licensing Department has offered these numerous, specific possible amendments, the Legislature may want to consider making the statute itself less specific and allow the board to adopt rules and regulations appropriate for regulation of this profession. Adoption through rules and regulations allows the board the flexibility to be responsive to changes in the industry or regulatory provisions that do not function as intended.

SJM/njw