

NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Cordova DATE TYPED: 3/3/03 HB 723

SHORT TITLE: Redundancy in Health Facility Regulation SB _____

ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			Indeterminate See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 723 amends the Public Health Act § 24-1-5.2 NMSA 1978, deleting paragraph c. of section 24-1-5.2. The sole purpose of HB 723 is to eliminate the exemption from intermediate sanctions for violations of state law and regulations that currently is enjoyed by nursing homes that participate in the Medicare and Medicaid programs.

Significant Issues

The bill will afford the DOH a wider range of sanction imposition and the ability to act on state licensure requirements independently from Federal Center for Medicare and Medicaid Services (CMS). The current language limits the Health Facility, Licensing and Certification Bureau (HFL&C) from imposing expedient actions outside of CMS processes and approval.

The federal Medicare and Medicaid agency, the Centers for Medicare and Medicaid Services (CMS), and the Medical Assistance Division, New Mexico Human Services Department, have authority to impose intermediate sanctions against nursing homes for violations of federal certification standards. But if a nursing home violates a state regulation or law, neither the Department

of Health nor any other state or federal agency can impose an intermediate remedy due to the exception found at § 24-1-5.2(C) NMSA 1978.

CMS's primary function is to impose remedies for federal regulations that permit nursing homes to participate in the receipt of federal Medicaid and Medicare funding. The state has separate statutory and regulatory authority to issue licenses for health facilities such as nursing homes. The state needs an array of intermediate sanction options for its licensure requirements, separate from federal CMS regulations. Currently, the only remedy the state has is revocation of licensure and a slow protracted process of seeking sanctions through the federal regulatory scheme, with no guarantee of federal CMS approval. The amendment also allows the state to impose sanctions in addition to CMS sanctions, particularly in matters where the state does not agree with CMS enforcement actions.

With the exception of nursing homes that participate in the Medicaid program, all health care providers in New Mexico are subject to intermediate sanctions for violations of state law and regulations. This bill would allow the application of intermediate sanctions against Medicaid nursing homes.

FISCAL IMPLICATIONS

There may be possible small increases in revenue from civil monetary penalties. On the other hand, costs to the Department of Health would increase when Medicaid nursing homes become subject to intermediate sanctions and are able to request administrative appeals from the imposition of sanctions.

ADMINISTRATIVE IMPLICATIONS

This bill would provide a greater range of options against Medicaid nursing homes than currently exists.

OTHER SUBSTANTIVE ISSUES

The current law exempts the state from imposing intermediate sanctions on federally certified nursing homes other than those available through federal regulations. There is no other facility type that is licensed by HFL&C that receives this exemption, including other federally certified facilities. Unless approved by slow and unwieldy federal processes, HFL&C has no ability to impose intermediate sanctions—it only has the option of licensure revocation.

In one example, HFL&C state regulations require minimum staffing for nursing homes. Federal CMS does not have such requirements. To impose any sanctions on a nursing home for failure to meet these staffing minimums, such sanctions must be cited under a generic federal regulation, then receive approval by CMS. The State HFL&C needs the ability to act independently from CMS and have a range of sanctions for nursing home non-compliance with state regulations without having to rely on the federal scheme. Such sanctions include: directed plan of correction, facility monitor, and denial of payment for admissions, temporary management and restricted admissions