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FISCAL IMPACT REPORT

SPONSOR: Jennings DATE TYPED: 3/6/03 HB _____

SHORT TITLE: Means of Identification of Medical Conditions SB 712

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)
- Health Policy Commission (HPC)
- Attorney Generals Office (AGO)
- Human Services Department (HSD)

SUMMARY

Synopsis of Bill

This bill would create a new Section 14-6-4 of the NMSA 1978. The new section proposed by the bill would appear in the Health and Hospital Records Act and would prohibit any health care provider from identifying any medical condition, diagnosis or syndrome in a manner that either implicitly or explicitly states that a crime was committed. The bill requires health care providers to identify a medical condition, diagnosis or syndrome with an appropriate medically specific description. The restriction would apply to verbal, written or electronic communications.

Significant Issues

The AGO says that the bill prohibits such diagnoses as, for example: "Patient suffered a gunshot wound to the back". While no doubt such a description would be considered an appropriate medically specific description, this diagnosis nonetheless also implies that a crime was committed (i.e., someone shot the patient). Thus, the description would presumably be prohibited under the bill.

Moreover, the bill also would apparently prohibit a health care provider from offering an expert opinion, at a trial or elsewhere, that (using the same example as noted above) the gunshot wound to the patient's back was inconsistent with a suicide; such an opinion would necessarily imply that a crime had been committed (i.e., the gunshot wound was not self-inflicted and thus, someone shot the patient).

Additionally, AGO writes that the prohibition imposed under this bill conflicts with certain crime reporting requirements currently imposed on health care providers, especially in the area of suspected child abuse or neglect. See NMSA 1978, Section 32A-4-3. If a health care provider knows or has a reasonable suspicion that a child has suffered abuse or neglect and does not report the matter immediately to appropriate authorities, the health care provider is guilty of a misdemeanor.

According to DOH, if a medical condition (which is potentially vague) were to include psychiatric diagnoses, then direct criminal activity by the patient would be implied by standard diagnostic categories for certain sexual behaviors, substance abuse and addiction, arson, and potentially others. In addition, SB 712 would interfere with the use of nationally standardized coding, including new, mandated HIPAA coding, which includes some of the above-referenced diagnoses and crimes.

HPC addresses the issue of patient confidentiality and privacy, as it specifically relates to criminal activity. Guaranteeing patients that the source of their medical condition will be kept private and out of their medical records is an incentive for individuals to seek care. Individuals who have been the victim of a crime such as domestic abuse are often uncomfortable about seeking care for a variety of reasons – SB712 should help to allay some of their concerns. Other individuals may have injured themselves in the course of criminal activity – illegal drug use, for example – and may postpone seeking care because of their fear of exposure. Postponing necessary care often leads to negative health outcomes, and the eventual need for more complicated and costly medical attention. The intention of SB712 is to allow all patients to seek health care without concern that their privacy and confidentiality issues will be compromised or divulged by health care providers.

PERFORMANCE MEASURES

Performance by DOH health care providers would be impaired by having to develop and use diagnostic terms and codes at variance with national standards. Communication between DOH and New Mexico and other health care professionals would also be impaired. In addition, recruiting scarce health care professionals could be made more difficult, as this statute could discourage locating in New Mexico, due to the potential for ethical and practical conflicts.

FISCAL IMPLICATIONS

There could be added expenses, for DOH, to develop, rationalize and translate new diagnostic terms and codes.

ADMINISTRATIVE IMPLICATIONS

SB 712 would prohibit the use of the standard diagnostic and coding systems, according to DOH, as well as the recording of other medically essential information. This would require retraining of healthcare providers, would put New Mexico at odds with national programs that use health statistics, would probably conflict with professional standard for health care providers, and may possibly constitute medical malpractice. The administrative implications would be enormous, although impossible to quantify in advance.

TECHNICAL ISSUES

SB 712 does not define “health care provider” and places no limitation on the definition of “medical condition”, which could include the whole range of psychopathology and substance abuse diagnoses.

OTHER SUBSTANTIVE ISSUES

DOH says that health care providers frequently diagnose and treat medical conditions that, in themselves, imply that a crime was committed. Generally, they make their diagnosis using standard medical coding systems such as the International Classification of Diseases (ICD-9 or -10.) These standard medical coding systems contain a number of medical diagnoses that would fall in the scope of SB 712. Common examples of this type of diagnosis are drug abuse, alcohol use in the context of a motor vehicle crash, injuries resulting from rape, and gunshot wounds. A prohibition on identifying these injuries and conditions would conflict with the standard systems for recording and coding diagnoses, and would conflict with New Mexico’s requirement for reporting of certain particular conditions, such as gunshot wounds.

DOH reports that the legislation would also negatively impact:

- The functioning of the Office of Medical Investigator, which is authorized to review all accident, suicide, homicide and suspicious deaths. They also authorize and issue cremation permits (to ensure that circumstances relating to cause of death are thorough before cremation); and
- Tribal Authorities or Tribal family members who must provide the manner of death when completing a Certificate of Death. NM Vital Records has diligently strived to build relationships and training opportunities with the Tribes in order to ensure accurate reporting. Since a physician’s signature is not required on Certificates of Death submitted by Tribal authorities, this information may jeopardize the true reporting of the cause of death.
- Since 1999, causes of death on the death certificate have been coded according to the Tenth Revision of the World Health Organization’s International Classification of Diseases (ICD-10). As with ICD-9, ICD-10 contains codes for homicide, firearm deaths, and deaths due to drug overdose. In addition to serving as a classification system, ICD also includes coding rules that allow the person coding the cause of death to select the underlying cause of death – a condition on the death certificate that is considered most informative from a public health

analysis perspective. Failure to diagnose and record such conditions or causes may constitute medical malpractice. Presumably, even the recording of laboratory findings of the presence of alcohol or illicit drugs, which is often essential for medical care, would be prohibited. Similarly, if an injury is caused by rape, this fact would be essential for appropriately caring for the patient, so that a failure to record it would have serious consequences.

- In addition, SB 712 would make it impossible to collect certain health statistics that are essential for planning in public health and human services. For example, a health care provider would not be able to make diagnoses of alcohol intoxication in conjunction with motor vehicle accident since it might imply that the patient has committed a crime. Therefore, the current tracking system using the hospital diagnoses to collect DWI data would be affected. Another example is gunshot wound. Currently, gunshots or gunshot wounds are *notifiable conditions*. Hence, SB 712 would affect the notifiable conditions list.
- Finally, SB 712 could conflict with The Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA includes very specific privacy provisions that “covered entities” must adhere to. Covered entities include health care providers (those who actually provide health care services), health plans (entities that pay for the provision of health care) and health care clearinghouses (entities that collect health information, convert it from a non-standard format to a standard format and transmit it to a third party). The HIPAA Privacy Rule specifies what kinds of information may be disclosed and under what circumstances. A number of disclosures may be made “in accordance with law.” These include disclosures pursuant to a Court Order, subpoena or to protect the health of the public.

Conversely, HPC indicates that the privacy standards under HIPAA are in line with the intentions of SB 712. The standards under HIPAA read:

- Limit the use and release of private health information without patient authorization.
- Provide patients with new rights to access their medical records and to know who else has accessed them. The privacy regulation gives consumers significant new rights to monitor the release of their medical information.
- Restrict most disclosures of health information to the minimum needed for the intended purpose. With a few exceptions, a person’s health information should be used for health purposes only.
- Establish criminal and civil sanctions for improper use or disclosure of protected health information. For the first time, there will be specific federal penalties if a patient’s privacy rights are violated.
- Establish new requirements for access to records by researchers and others. The privacy standards recognize the need to balance privacy protections with the public responsibility to support priorities such as conducting medical research, improving the quality and efficiency of care and fighting health care fraud and abuse.