F I S C A L I M P A C T R E P O R T

SPONSOR SPAC **DATE TYPED** 02/17/04 **HB**

SHORT TITLE Secretary of Health Hospital Oversight **SB** CS/315/aSPAC/aSFC/a SFL#1

ANALYST Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to: HB 301, HB 93, SB 34, HB 322/HCPACS

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Health Policy Commission (NMHPC)
Department of Health (DOH)
Attorney General's Office (AGO)
New Mexico Medical Society (NMMS)

SUMMARY

Synopsis of SFL#1 Amendment

The Senate Floor amendment to Senate Public Affairs Committee substitute for Senate Bill 315 deletes the SPAC amendment in it entirety. However, the intent of the SPAC amendment was retained by SFL#1. The technical correction made by this bill merely inserts the phrase "*unless disclosure or use is mandated by the state or federal law*" in a different location in the sentence.

Synopsis of SFC Amendment

The Senate Finance Committee amendment to Senate Public Affairs Committee substitute for Senate Bill 315 makes a substantive change as outlined below:

The original bill requires hospitals, long-term care facilities and primary care clinics to provide sufficient information for the Department of Health (DOH) secretary to make reasonable assessments, based on clear and convincing evidence, of their financial viability, sustainability and potential impacts on health care access in New Mexico, as a condition of licensure.

The bill is amended by changing submission of such information from a *condition of licensure*

to merely a *reporting requirement*.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Public Affairs Committee substitute for Senate Bill 315 changes the confidentiality and exemption from the Public Records Act provisions of the original bill. Information disclosed by health care providers to the DOH secretary is amended to allow disclosure, if mandated by state or federal law.

Synopsis of Original Bill

Senate Public Affairs Committee substitute for Senate Bill 315 creates a new section in the Public Health Act, Chapter 24, Article 1 NMSA 1978.

This bill requires hospitals, long-term care facilities and primary care clinics, as a condition of licensure, to provide sufficient information for the Department of Health (DOH) secretary to make reasonable assessments, based on clear and convincing evidence, of their financial viability, sustainability and potential impacts on health care access in New Mexico.

Hospitals, long-term care facilities and primary care clinics shall provide this information to the DOH secretary at least sixty days before the anticipated effective dates of proposed licensures, closures, disposition or acquisition of hospitals, long-term care facilities or primary care clinics or their essential services required as a condition of licensure.

Information provided to the secretary pursuant to this section shall remain confidential and is exempt from the Inspection of Public Records Act and shall not be used as a basis for suspension, revocation or issuance of a license.

The DOH secretary shall issue a notice of finding to the facility within sixty days of receiving information from the hospital, long-term care facility or primary care clinic.

The DOH secretary shall evaluate the need to apply the provisions of this act to all other health facilities as defined in Section 24-1-2 NMSA 1978. The DOH secretary shall report findings and recommendations to the legislative health and human services committee by October 1, 2004.

The original SB 315 included a restricted definition of primary care clinics: limited to rural/underserved areas of the state, to those with assets less than $10 million, and not for profit clinics. The new definition is shown below:

> *(3) "primary care clinic" means a community-based clinic that provides the first level of basic or general health care for an individual's health needs, including diagnostic and treatment services and, if integrated into the clinic's service array, mental health services.*

Significant Issues

The New Mexico Attorney General's Office (AGO) outlined the following concerns with this bill:

- It does not specifically authorize the DOH secretary to stop proposed transactions and is

therefore largely ineffective in accomplishing the bill's stated purpose (*providing oversight*).

- Proposes a 'Behind Closed Doors' process without public input or scrutiny, even when public tax dollars are the principal support for the institution and new additional tax dollars will be required to support the proposed transaction.

- Establishes no objective standards for the Department of Health (DOH) secretary to determine sufficient information to make reasonable assessments of financial viability, sustainability or potential impact on health care access and does not define those terms.

- Relies on financial information to determine health policy, adequacy and quality of patient care and access, and the public policy of New Mexico.

- Does not require local community involvement and makes no provision to permit local community involvement.

- Does not require the involvement of patients or their representatives and makes no provision to permit the involvement of patients or their representatives.

- Does not require the involvement of practicing health care professionals or their representatives and makes no provision to permit the involvement of practicing health care professionals or their representatives.

The New Mexico Medical Society (NMMS) took the following action:

- Senator Steve Komadina made a presentation to the New Mexico Medical Society (NMMS) Council on January 17, 2004, where he outlined Governor Richardson's health care agenda for 2004. After his presentation, the NMMS Council voted unanimously to oppose any legislation that would unnecessary mandate oversight of hospital, outpatient, diagnostic services and long-term care facilities since it would limit competition and decrease the quality of patient care in New Mexico.

The New Mexico Health Policy Commission (NMHPC), stated that this bill has the following implications:

- The DOH secretary could influence the markets for these facilities, with the possibly of disrupting free market competition. The requirement to provide 60 days written notice to the DOH may be a hindrance to opening or transferring health care facilities.

- The 60 days written notice requirement for facilities headed toward closure or change of ownership may be burdensome and prolong the event, thus resulting in additional financial losses.

FISCAL IMPLICATIONS

According to DOH, this bill will require additional resources within DOH to employ outside consultants to evaluate business plans for new facilities, receivership resources, and auditors. Many parts of DOH such as the Division of Health Improvement, the Health Systems Bureau and the Office of Epidemiology may be impacted with requests for information on health status,

local health resources, and needs of individual communities impacted by proposed closures or ownership changes of hospitals and long-term care facilities.

ADMINISTRATIVE IMPLICATIONS

In addition to the resources and staff necessary to administer the oversight and evaluation provisions specified in this bill, the DOH will also be required to develop, publish and hold public hearings on implementing relevant rules and procedures.

TECHNICAL ISSUES

According to the New Mexico Health Policy Commission (NMHPC):

- The "essential services" referenced on page 2, lines 14 are not defined in the bill or by reference.
- This bill does not require the submission of standardized financial information from facilities.
- The term "health care access" on page 2, line5 is not clearly defined.

OTHER SUBSTANTIVE ISSUES

The governor convened a Governor's Coverage and Access Taskforce during the summer of 2003, charged with making recommendations regarding the Governor's agenda for assuring health insurance coverage and health care access for New Mexico:

- FINDING: The DOH has licensure authority but its authority is limited to staffing, functioning and facility safety issues.
- FINDING: The level of state oversight for the sale and purchase of health facilities is inadequate to perform its safety net provider and consumer protection roles.
- FINDING: The DOH currently has receivership authority for nursing homes, but no ability to intervene when hospitals close all or portions of their services.
- RECOMMENDATION: The steering committee report recommended establishing state oversight of nursing home and hospital facilities, providing:
  - That plans for new health facilities are reviewed by the state for financial stability and impact on access to services.
  - A process redirecting funds to community-based services over reopening nursing home beds be developed.
  - The DOH with discretionary authority to assume temporary, emergency receivership of hospitals.

(REFERENCE: A Report to Governor Bill Richardson Addressing Health Care Coverage and Access in New Mexico, by Governor's Taskforce on Health Care Coverage and Access, Steering Committee Final Report, October 15, 2003.)

The DOH provided the following comments pertaining to this bill:

DOH states that this bill is not a certificate of need law, as was in place in New Mexico in the late 1970s and early 1980s. New Mexico at that time had a regulatory process involving approval or disapproval of new capital projects or services. The process was tied to Medicare reimbursement of hospital capital costs and did not involve contemplated facility decisions to close a service or the entire operation, nor did it consider facility transactions such as sales.

The DOH does not have the authority to intervene in situations such as what occurred last year with Memorial Medical Center in Las Cruces when the hospital provided a three-day notice of its intent to close its obstetrical service leaving many Las Cruces women without knowledge of their options for obstetrical services. Also, the closure and receivership of the Los Amigos Nursing facility in Santa Rosa and the purchase of the Sierra Vista Hospital in Truth or Consequences resulted in the State being brought into the transactions. In Santa Rosa, the state operated the facility while it was placed in receivership, and in T or C the new hospital operator requested financial assistance to meet payroll.

Albuquerque and Las Cruces are the only two New Mexico cities that have more than one general hospital. Similarly, many rural communities have only one nursing home or primary care clinic. With service disruption, there is often nowhere else to go that is readily accessible for many residents.

As was noted this past summer in the hearings about tax policy, "Hospital care and services are pure public and meritorious in economic terms and effect the public health and welfare. As such, hospital services would have to be provided by the government if not by the private sector. This is an economic and public policy rationale for tax exemption and deduction."-Quote from New Mexico Hospitals and Health Systems Association paper provided to the Legislature's Blue Ribbon Tax Committee on July 29, 2003.

The current licensure authority of the DOH as practiced is limited to staffing, functioning and facility safety issues.

As is noted in the "Guiding Principles from the Governor's Proposed Health Care Agenda for New Mexico " from the Governor's Task Force on Health Care Coverage and Access, "a combination of public and private approaches will be necessary, with the state and federal government providing strong leadership and oversight roles. "

POSSIBLE QUESTIONS

Does this bill conflict or duplicate provisions of the Medicare Reform Act, Title V, Part A as outlined in the Ways and Means Committee Medicare Conference Agreement? For example, there is an 18 month moratorium of the self-referral whole hospital exemption for new specialty hospitals. During the moratorium period, MedPAC would conduct an analysis of the costs of the specialty hospitals and determine whether the payment system should be refined and the Secretary would examine referral patterns and quality of care issues.

RLG/dm:yr:lg