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## FISCAL IMPACT REPORT

SPONSOR HBIC DATE TYPED 03/07/05 HB 199/HBICS

SHORT TITLE Amend Optometry Act SB \_\_\_\_\_

ANALYST McSherry

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Minimal	Recurring	Optometry Board Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

- LFC Files
- Regulations and Licensing Department (RLD)
- Health Policy Commission (HPC)
- Human Services Department (HSD)

### SUMMARY

#### Synopsis of House Business and Industry Substitute Bill

House Business and Industry Committee Substitute for HB199 proposes to amend the Optometry Act to increase the scope of optometry by removing restrictions on oral pharmaceuticals, expands the use of surgical procedures and injections for treatment of the human eye. The effective date of the bill is July 1, 2005.

House Bill 199 amends the Optometry Act by adding language to increase the scope of optometry, and removing restrictions on oral pharmaceuticals such as the use of surgical procedures and injections for treatment of the human eye.

Specifically, the bill proposes the replacement of specific language restricting surgery or injections for treatment with specific language describing the surgical and injection procedures which would included in the practice of optometry. The proposed changes would allow laser posterior capsulotomy (cataract implants); laser trabeculoplasty (drainage of fluids); laser iridotomy; laser iridoplasty; photorefractive keratectomy; and phototherapeutic keratectomy; and minor surgical procedures and injections for the correction, relief, treatment or referral of visual defects or abnormal conditions of the human eye and its adnexa, including removal of superficial lesions on the eyelid and conjunctiva, subcutaneous and sub-conjunctival anesthetic injections and intraleisional steroid injections of chalazions and injection to treat anaphylactic reaction.” The substi-

tute bill would not include the use of lasik procedures.

.The proposed bill includes new language defining “contact lens,” including “plano lenses” in the definition.

The bill proposes that the Act is amended to allow prescription and administration of oral pharmaceutical agents, except those classified as Schedule I or II controlled substances in the Controlled Substances Act.

If House Bill 199 were enacted, the proposed changes would be effective July 1, 2005.

### Significant Issues

According to RLD, the proposed language will ensure that optometrists performing injections and laser surgery are trained and competent to perform those procedures and that the Board certifies them to do so.

The Human Services Department (HSD) reports that New Mexico, despite having shortages in other areas of medical subspecialties, has an abundance of highly skilled and trained Ophthalmologists who are well dispersed throughout the state. The Department predicts that this bill would not promote access to services because, if Optometrists began performing surgery, a more lucrative endeavor, they would cut back on their availability to perform routine eye exams thus could hurt access for Medicaid patients.

HSD’s Medical Assistance Division estimates that the number of surgical procedures performed in NM would increase because the learning curve for developing advanced surgical skills would necessitate that numerous “re-dos” be performed by Ophthalmologists to fix problems caused by less experienced practitioners. The division estimates an annual added cost for the surgical “re-dos” would be over \$200.0 thousand in the Medicaid budget.

The proposed bill includes new language defining “contact lens” which would now include a “plano” (cosmetic tinted) contact lens.

The bill proposes to allow expanded prescription and administration of oral pharmaceutical agents including analgesic medications, including Schedule II through V controlled substances in the Controlled Substances Act.

HBIC Substitute for HB199 proposes a new certification process for the use of surgical procedures and injections including the submission of proof to the Board of Optometrists of having successfully completed education from a school or College of Optometry approved by the Board.

HB199/cs were enacted, the proposed changes would be effective July 1, 2005.

### **PERFORMANCE IMPLICATIONS**

The proposed changes may have an impact on the Board of Optometry’s performance as the board transitions to new regulations and potentially greater amounts of work due to the expansion of the definition of optometry.

## **FISCAL IMPLICATIONS**

The Optometry Board may need to increase the operational budget, and therefore increase licensing fees, in order to function under the increased scope of practice.

## **ADMINISTRATIVE IMPLICATIONS**

The Optometry Board may be required to increase administrative capacity in order to incorporate the new scope of practice proposed.

## **OTHER SUBSTANTIVE ISSUES**

According to the New Mexico Health Policy Commission (HPC), if House Business and Industry Committee Substitute for HB199 were enacted, New Mexico would become the second state in the US, after Oklahoma, to allow non-physicians to perform surgical eye procedures otherwise performed by a medically trained ophthalmologist. The commission further asserts that the critical issue is a safety consideration of whether optometrists lack the training provided in medical school and the experience to properly identify and administer surgical treatments.

HPC further reports that, on December 17, 2004, the Veterans Health Administration (VA) rescinded a directive that allowed optometrists to perform therapeutic laser procedures in VA medical facilities under the supervision of an ophthalmologist. The VA's new directive stated that, "only ophthalmologists will be privileged to perform therapeutic laser procedure in VA medical facilities." The new directive also prohibits licensed optometrists in Oklahoma from performing laser eye surgeries at VA facilities (Source: VHA Directive 2004-070).

The HPC also submitted the following information:

### Optometry Training

In New Mexico, candidates for licensure to practice optometry in New Mexico must also meet the following educational criteria:

Completion of a bachelor's degree program; Completion of a Doctor of Optometry (O.D.) degreed program at a College of Optometry approved by the American Optometric Association's Council of Optometric Education (AOACOE). If the applicant's O.D. degree was received before January 1985, proof is required of completion of a minimum 100 hour post-graduate clock hour course in ocular therapeutics pharmacology presented by an AOACOE accredited school. If the applicant's O.D. degree was received before January 1995, proof is required of completion of a minimum 20 hour post-graduate clock hour course in clinical pharmacology with particular emphasis on the administration of oral pharmaceutical agents in the treatment and management of visual defects or abnormal conditions of the human eye and its associated organs. The course must be presented by an AOACOE accredited school.

The applicant must also have proof of having successfully passed the following Parts of the National Board of Examiners in Optometry (NBEO) standards exam: Part I - Basic Science Exam; Part II - Clinical Science Exam; Part III - Patient Care Exam (consisting of Patient Management, Visual Recognition and Interpretation of Clinical Signs, and Clinical Skills); and Treatment and Management of Ocular Disease Exam. In addition, the Board requires that candidates for licensure pass a New Mexico Board Exam.

(Source: Board of Optometry, RLD)

In Oklahoma, the applicant must also have “passed the Laser Therapy for the Anterior Segment Course offered by Northeastern State University as a pre-requisite for taking the Oklahoma Boards.”

(Source: Oklahoma Optometric Board)

Oklahoma statute (Section 581, Practice of Optometry-Definition) also defines the practice of optometry to include “laser surgery procedures, excluding retina, laser in-situ keratomileusis (LASIK), and cosmetic lid surgery.” HB199/cs appears to be silent with respect to retina and cosmetic lid surgery.

### Ophthalmologist Training

In addition to four years of medical school and one year of internship, every ophthalmologist spends a minimum of three years of residency (hospital-based training) in ophthalmology. During residency, ophthalmologists receive special training in all aspects of eye care, including prevention, diagnosis and medical and surgical treatment of eye conditions and diseases.

Often, an ophthalmologist spends an additional one to two years training in a subspecialty, that is, a specific area of eye care (for example, glaucoma or pediatric ophthalmology). (Source: American Academy of Ophthalmology).

### Supply of Eye Professionals in New Mexico

According to the Health Policy Commission’s *2003 Selected Health Professionals in New Mexico* Report-in 2002, 155 ophthalmology professionals were licensed to practice in New Mexico, 8.22 per 100k population. However, only an estimated 89 ophthalmologists were actively practicing according to a 2001 estimate, or 4.86 per 100k population. 2000 estimates for practicing ophthalmology professionals nationally were 6.57 per 100k population.

It is possible that the enactment of HB199/cs will enable optometrists to capture more of the laser surgery market and that consumers may benefit through a lower cost by increased competition in the marketplace for laser surgery. However, consumers may need to be educated regarding the different education and qualification levels of various eye care professionals.

HPC cites the American Society of Cataract and Refractive Surgery as maintaining that patient safety is the top priority and should be guarded by insuring that properly trained and licensed health professionals perform surgical procedures.

## **ALTERNATIVES**

HPC recommends:

1. deferring passage of this bill until SB381, Patient Health Safety Act, is passed and a process for determining scope of practice has been accomplished.
2. Ensuring that a member or some Board of Optometry members have undergone the train-

ing or developed the expertise to credential any Doctor of Optometry who wishes to obtain an expanded practice license

3. Clarifying whether retina and cosmetic lid surgery is covered in the expansion of the scope of practice, as is the case in Oklahoma.

HPC reports that , according to Dr. Jennifer Planitz-Clatanoff, immediate past president of the New Mexico Optometric Association in an editorial in the Feb. 21, 2005 Albuquerque Journal,

“ At Northeastern State University College of Optometry in Oklahoma, for example, students complete more than 40,000 patient contacts each year. Each student is educated in the risks and benefits of surgical procedures. The state law of Oklahoma allows optometric physicians, who have been certified, to perform certain surgical and laser procedures, as authorized by the Oklahoma State Board of Examiners in Optometry. The extensive certification process for laser and surgical procedures used in Oklahoma comes as part of the four-year professional curriculum and continuing post-graduate training for any optometric physicians that graduate from that program.”

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

According to RLD, procedures added by this bill are currently only offered in large New Mexico cities by ophthalmologists. However, optometrists have been receiving training and education in optometry schools to perform these procedures for quite some time. RLD states that because optometrists practice in both urban and rural areas of New Mexico, granting them these privileges would greatly improve access to quality health care by New Mexico's citizens.

If House Bill 199 is not enacted, Optometrist's scope of practice will not be expanded to include surgery on the human eye.

**EM/Ig**