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FISCAL IMPACT REPORT

SPONSOR Powdrell-Culbert DATE TYPED 1/31/05 HB 317

SHORT TITLE Limit Fees For Copying Medical Records SB _____

ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

SOURCES OF INFORMATION

LFC Files

Responses Received From

The Department of Corrections

Human Services Department

The Department of Health (DOH)

SUMMARY

Synopsis of Bill

HB 317 proposes to amend Section 14-6-3 NMSA 1978 ACCESS TO MEDICAL RECORDS to include all patients or former patients and establishes a maximum fee structure which hospitals and other providers can charge for copying medical records. They are proposed as follows:

- (1) for the first fifteen copies, one dollar per page
- (2) for sixteen to forty copies, forty cents per page
- (3) for forty-one copies or more, thirty cents per page
- (4) for copies from microfilm, one dollar fifty cents per page
- (5) for mail delivery of the copy or copies, actual postage cost

HB 317 deletes under Section 1, paragraph A, "...who is applying for benefits based on social security disability..." in so doing including all patients or former patients.

HB 317, section 1, paragraph A adds the word "written" to "...written request" clarifying requests to be written to fall under the provision of this Act.

HB 317, section 1, paragraph C clarifies that the intent of the bill is simply to establish maximum fees for copying medical records and does not grant access to such medical records (...that are otherwise protected by law).

HB 317 includes an emergency clause and the provisions of this Bill would become effective on April 1, 2005.

Significant Issues

The DOH report current regulations establish \$2.00 per page up to ten copies and an additional 20 cents per copy in excess of 10 copies. The DOH further report the fee schedule is flexible in that it is based upon the ability to pay. HB 317 establishes fees for microfilm copies, which current DOH regulations do not address.

The HIPAA Privacy Rule, which became effective in April 2003, preempts state law to the extent that it conflicts with the federal rule. Under the Privacy Rule, if an individual requests a copy of his protected health information, the covered entity must charge a "reasonable, cost-based fee," which shall include only the cost of copying (including supplies and labor), postage (if any), and preparation of summary or explanation (if applicable). The privacy rule prohibits covered entities from charging any type of fee unrelated to the actual cost of copying, labor, supplies and postage. Therefore, the medical records copying fee provisions of HB 317 are permitted only to the extent that they do not conflict with the Privacy Rule.

PERFORMANCE IMPLICATIONS

In HB 317 the DOH will enforce the conditions with an imposed civil penalty amount not to exceed \$100 dollars per violation. It is unclear how that will occur.

The DOH states expanding the definition of who is a patient covered under the act may expand the number of potential complaints and investigations needing action by the Health Facility Licensing and Certification Bureau.

FISCAL IMPLICATIONS

None indicated.

ADMINISTRATIVE IMPLICATIONS

The DOH would have to promulgate rules for the enforcement of the provisions under HB 317.

TECHNICAL ISSUES

None indicated.

OTHER SUBSTANTIVE ISSUES

The Department of Corrections report HB 317 would have a minimal impact on the Department's contracted medical provider, Wexford, who currently charge a five-dollar retrieval fee and fifty cents per page fee for all copy requests.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Patient's request for copying of medical records would continue to fall under the provisions of the HIPAA Privacy Rule of 2003.

The DOH current fee schedule will continue as before.

AHO/lg