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FISCAL IMPACT REPORT

SPONSOR Picraux DATE TYPED 03/03/05 HB 440/aHCPAC/aHJC

SHORT TITLE Medical Personnel to Document Domestic Abuse SB _____

ANALYST Ford

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Attorney General (AGO)
- Board of Nursing
- Department of Health (DOH)
- Health Policy Commission
- Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment strikes the House Consumer and Public Affairs Committee amendment that provided immunity from civil liability for medical personnel documenting abuse or providing information and referral services. The amendment also allows medical personnel to release confidential communications when necessary to provide treatment, payment and operation in accordance with the federal Health Insurance Portability and Accountability Act.

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment provides that medical personnel who document domestic abuse or provide information and referral services to a person pursuant to the bill are immune from civil liability to the extent allowed by law.

Synopsis of Original Bill

House Bill 440 would add a new section to the Family and Violence Protect Act requiring specified medical personnel to document reported or suspected domestic violence of a patient and include that documentation in the patient's file. The bill also requires medical personnel to provide information and referral to those patients.

House Bill 440 specifies that the information contained in the patient's file is confidential and shall be released only with the consent of the patient or pursuant to court order. For purposes of this section, medical personnel are defined as:

- licensed health care practitioners,
- licensed emergency medical technicians,
- health care practitioners who interview, examine, attend or treat a person and who are under the guidance or supervision of licensed health care practitioners,
- residents and interns.

Significant Issues

DOH notes that the provisions of the bill may violate the federal Health Insurance Portability and Accountability Act (HIPAA) because they would require that communications made by a patient to an emergency medical technician remain confidential. Federal law requires emergency medical technicians to pass along health care information to receiving institutions and physicians. (See "Technical Issues.")

The AGO notes that the bill could conflict with the professional rules relating to documentation of medical information. The AGO also notes that the bill could conflict or duplicate mandates in other professional licensing regulations, writing:

"The mandate in the proposed legislation could conflict with or duplicate mandates contained in other professional licensing regulation. The Medical Practice Act, for example, disciplines physicians for the improper management of medical records, including the failure to maintain timely, accurate, legible and complete medical records. §61-6-15 (33). Psychologists, who may be involved in interviewing a victim, are prohibited from disclosing any fact the knowledge of which he has acquired in the course of his professional work. §61-9-18.

"The confidentiality of patient records is contained in §14-6-1 A, Health and Hospital Records. All health information that relates to and identifies specific individuals as patients is strictly confidential and shall not be a matter of public record, however the information may be released if there is a request from a governmental agency. § 14-6-1 A, B. Proposed Section 1 B attempts to cloak the documented information related to domestic violence with confidentiality. This information is already confidential under §14-6-1 A, and may still be available to law enforcement under § 14-6-1 B. It is unclear what protection the proposed Section on confidentiality would actually provide.

"§ 30-3-12 through § 30-3-16 describe the criminal offenses of assault and battery against a household member. It is possible for the State to take action in a domestic violence case by requesting the medical records of a victim, even without the victim's con-

sent. This has the potential to discourage victims of domestic violence from seeking medical attention.”

The Board of Nursing notes that nurses often find themselves in a difficult position when the rules of their organization conflict with the law or the accepted standard of care/practice. For example, an agency may have a policy that directs nurses not to write in the record. This may conflict with the requirements of this bill.

TECHNICAL ISSUES

DOH suggests a possible amendment to ensure that this bill does not conflict with federal law regarding communications between emergency medical technicians and receiving physicians:

On page 2, line 13, after “order,” insert “, except as necessary to provide treatment, payment and operations in accordance with the federal Health Insurance Portability and Accountability Act”

OTHER SUBSTANTIVE ISSUES

Domestic violence is a serious public safety and public health problem for the state. DOH reports that there were 26,544 reports of domestic violence from 87 law enforcement agencies across the state in 2001. This rate of 15.5 domestic violence incidents for every 1,000 persons compares to a national rate of 8.9 domestic violence incidents for every 1,000 persons. The Health Policy Commission reports that New Mexico has the 3rd highest rate of reported cases of intimate partner violence in the United States.

Medical assessment, documentation, treatment and referral of victims of domestic violence vary with the training, experience and resources of the individual provider and the associated agency.

EF/lg:yr