

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Picaux DATE TYPED 03/16/05 HB 727/aHCPAC

SHORT TITLE Pain Management and Treatment of Conditions SB _____

ANALYST McSherry

APPROPRIATION

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

House Bill 727 is not known to relate to, or conflict with, any other proposed bill, but relates to multiple professional healthcare boards' enabling statutes.

SOURCES OF INFORMATION

LFC Files
 New Mexico Medical Board
 New Mexico Health Policy Commission
 New Mexico Board of Nursing
 Department of Health

SUMMARY

Synopsis of Amendment

House Consumer and Public Affairs Committee amendment to HB 727 is a technical change that removes the word "required" from the title of the newly proposed section "Pain Management Continuing Education." The change is consistent with the sections language which speak to the board encouraging, not requiring, continuing education.

Synopsis of Original Bill

House Bill 727 is introduced on behalf of the Legislative Health and Human Services Committee would amend the Pain Relief Act and Medical Practice Act.

Proposed amendments would provide that:

1. all licensing boards of health care providers with prescriptive authority adopt rules establishing standards and procedures for the application of the Pain Relief Act
2. the definition of disciplinary action include conduct that violates respective board's prac-

- tice act,
3. the definition for “intractable pain” would be removed and replaced with a more general definition for “pain”
 4. the Pain Management Advisory Council (PMAC) would be created, administratively attached to the Department of Health (DOH) and comprised of governor appointments,
 5. the PMAC would be composed of members to be appointed by the Governor, consisting of representatives from the Boards of Medicine, Nursing, Pharmacy, Osteopathic Medicine, Acupuncture and Oriental Medicine; the University of New Mexico Health Sciences center; statewide associations representing physicians (Osteopathic and Medical), pharmacists, nurse practitioners, and certified nurse anesthetists; a consumer health care advocate and three persons with no direct ties in the health care field.
 6. board members who are not public employees would receive per diem and mileage as provided in the Per Diem and Mileage Act.
 7. pain management continuing education would be encouraged for all health care providers who have prescriptive authority and who treat patients for pain and would direct the Medical Board to establish and maintain pain management guidelines.
 8. the Medical Board would be required to establish and maintain pain management rules based on a review of national standards for pain management.
 9. all affected boards would have to consider all circumstances when reviewing any action brought against a health care provider for treatment of a patient’s pain.
 10. the PMAC would meet at least quarterly to review current NM pain management practices and national management standards and educational efforts for both healthcare professionals and consumers.

Significant Issues

The bill proposes that the Medical Board gain responsibilities and abilities relating to other professional boards and commissions which do not exist currently.

According to the Nursing Board (NB), HB 727 incorporates recommendations developed by the Task Force created in response to Senate Memorial 22 in 2001. NB continues that HB 727 is similar to, but not a duplicate of HB163 introduced in the 2004 legislative session and HB848 introduced in the 2003 legislative session.

According to the New Mexico Medical Board, the language in House Bill 727 has been agreed to by the Medical Board and other involved parties, and previous points of contention have been worked out.

The Medical Board developed and adopted a pain management rule on 1/20/03 (16.10.14 NMAC), and passage of this bill would ensure that all licensing boards of health care providers who treat pain do the same, so that patients of all types of prescribing providers can be assured of reasonably equivalent standards of care. HB 727 would also ensure that all prescribing practitioners have access to rules and guidelines to help them provide effective and safe pain management in a clear and comprehensible regulatory environment.

By clarifying and strengthening the evidentiary requirements for initiating a disciplinary action against a health care provider for treatment of pain, HB 727 could decrease a potential perception amongst healthcare practitioners that they would be investigated by state regulatory agencies if they were liberal in prescribing controlled substances for relief of pain. Fear of disciplinary ac-

tions has been cited as a legal obstacle to effective pain management for patients with cancer (“Cancer Pain: Treatment Guidelines for Patients”, National Comprehensive Cancer Network/American Cancer Society, 2001) and other sources of chronic pain.

By requiring the New Mexico Medical Board and other health professional licensing boards to establish and maintain pain management guidelines and to require pain management continuing education for all practitioners with prescriptive authority, HB 727 would establish a new precedent of mandating professional licensing boards to establish guidelines and continuing education requirements related to a specific legislatively identified health care issue.

PERFORMANCE IMPLICATIONS

According to the Department of Health, this would support two of the four major goals of the New Mexico Cancer Plan 2002-2006 to “increase access to appropriate and effective cancer treatment and care” and “to address quality of life issues for health care consumers affected by cancer.”

FISCAL IMPLICATIONS

There is not an appropriation included in this bill and there would be minimal to no general fund fiscal impact related to its enactment.

Members of the Pain Management Advisory Council who are not employed by the state would receive per diem and mileage as provided by the Per Diem and Mileage Act. Should members of the commission receive not receive per diem through their respective professional boards or commissions, the Department of Health asserts the costs would be covered by the Department’s budget.

ADMINISTRATIVE IMPLICATIONS

Department of Health staff may have increased administrative duties due to the proposed administrative attachment of the proposed council.

According to the bill, pain management continuing education is to be encouraged for all health care providers who have prescriptive authority and who treat patients with pain. Taking and offering these suggested classes would create additional administrative tasks, or would increase the tasks that professionals in the healthcare industry would be encouraged to be involved.

TECHNICAL ISSUES

The New Mexico Health Policy Commission (NMHPC) suggests that on Page 6, Lines 17-19: syntax should be considered to be amended to: “A board shall encourage pain management continuing education for all health care providers who have prescriptive authority and who provide pain management or pain treatment to their patients.” As written, NMHPC suggests that the bill reads as if health care providers will treat patients with (or by giving them) pain.

It is implicitly, but not explicitly, established that the Department of Health would pay the per diem for the proposed council members not employed by the state.

According to the bill, pain management continuing education is to be encouraged for all health care providers who have prescriptive authority and who treat patients with pain. This language does not permit an agency to write rules that will require a certain amount of continuing education.

OTHER SUBSTANTIVE ISSUES

There is not an appropriation to help the Department of Health (DOH) create and administer the activities of the pain management advisory council, particularly to pay per diem and mileage to its members.

According to the NMHPC, a pain management task force studied pain policy issues and made recommendations to the Legislative Health and Human Services Committee in 2003. NMHPC reports that among the recommendations were the suggestions to create an advisory council under the administrative umbrella of the Department of Health, to oversee pain management issues and policy, and to implement more pain management training in healthcare practitioners' curriculum.

NMHPC further cites that the said task force commissioned a site survey of 26 hospitals, long term care facilities (LTC), rehabilitation centers, hospice care, nursing homes, pain clinics or ambulatory surgery centers, and chemical dependency treatment units (CDU).

NMHPC asserts that Health care professionals surveyed included nurses, physicians, psychologists, pharmacists, and institutional administrators, and that greater than 90 percent of those surveyed believed that pain is under treated attributable to the following reasons:

- Lack of education and knowledge regarding pain management including being able to differentiate between addiction, dependence, and tolerance in the use of opioids.
- Fear of regulatory scrutiny in the treatment of chronic pain patients;
- Fear of litigation in the treatment of chronic pain patients; and
- Fear of loss of licensure.

On the National Front, according to NMHPC:

A report card published in February 2004 by the Pain & Policy Studies Group assigned state grades dependent on changes in policies and overall, NM was one of five states that received a B+ rating for 2003 and that no state received an A.

NM was one of six states to adopt healthcare regulatory policies based on the Federation of State Medical Board's Model Guidelines for the Use of Controlled Substances for the Treatment of Pain.

Massachusetts and Maryland instituted pain management advisory councils in 2003.

The Department of Health asserts that national standards for treating pain continually evolve and that HB 727 would provide a mechanism to help ensure that patients receive the best possible care and address practitioner concerns about how drug enforcement laws impact clinical pain management.

ALTERNATIVES

The NMHPC suggests an appropriation would support the DOH's administrative functions and would enable the per diem and mileage for non-public employees who would otherwise need to pay out of pocket expenses. NMHPC continues that consumers and nonprofit entities, in particular, often cannot attend meetings due to financial constraints.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The Pain Management Advisory Council would not be created, and licensing boards would not be mandated to develop pain management rules.

NMHPC asserts that in the absence of clear and intelligible rules and guidelines, some providers will continue to be wary of providing sufficient treatment for pain, fearing disciplinary action.

Boards would not be required to encourage their licensees who treat patients with pain to pursue continuing education in pain management.

The Nursing Board asserts that patients in New Mexico who need pain management may not have a health provider who will alleviate their discomfort

POSSIBLE QUESTIONS

1. DOH asks whether the bill should specify that mileage and per diem would be paid by the Medical Board?

EM/lg:rs