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FISCAL IMPACT REPORT

SPONSOR Beam **DATE TYPED** 3/01/05 **HB** 890/HBICS/aHBIC

SHORT TITLE Naturopathic Medicine Practice Act **SB** _____

ANALYST McSherry

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	\$13-\$50	\$13-\$50	Recurring	Naturopathic Medicine Practice Fund

(Parenthesis () Indicate Revenue Decreases)

House Bill 890 relates to and conflicts with House Bill 921.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulations and Licensing Department (RLD)
 New Mexico Health Policy Commission (NMHPC)
 Corrections Department (CD)

SUMMARY

Synopsis of Amendment

The House Business and Industry Committee amendment to HBBICS for House Bill 396 removes the “making an appropriation” portion of the bill’s title and removes the “legislative purpose” section from the proposed substitute bill.

Synopsis of Substitute Bill

House Bill 890 proposes to create a new state professional licensing board, the “Naturopathic Medicine Practice Board which would regulate naturopathic medicine and traditional naturopathic medicine.

“Naturopathic medicine” is defined in HB 890 as: “a system of health care practiced by doctors of naturopathic medicine for the prevention, diagnosis and treatment of human health conditions, injuries and diseases that uses education, natural medicine, homeopathy and therapies to support and stimulate a person’s intrinsic self-healing process including for diagnostic purposes, physical

and orifical examinations, phlebotomy, diagnostic imaging, electrocardiograms, ultrasound, clinical laboratory tests, examinations and physiological function tests.”

Traditional naturopathic medicine is defined as “a system of health care practiced by doctors of traditional naturopathy for the prevention, assessment and evaluation and treatment of human health conditions, injuries, and diseases that uses education, natural medicines, homeopathy and therapies to support and stimulate a person’s intrinsic self-healing processes, including naturopathic physical medicine.”

The bill also defines: doctor of naturopathic medicine; doctor of traditional naturopathy, homeopathy; hygiene and immunizations; medicines of mineral, animal and botanical origin; naturopathic medicine, traditional naturopathy school, naturopathic medicine school and naturopathic physical medicine.

The bill provides that doctors of traditional naturopathy medicine may use for preventive and therapeutic purposes the following medicine and therapies: food, food extracts, certain medicine of mineral, animal and botanical origins, vitamins, minerals, enzymes, digestive aids, whole gland thyroid, plant homeopathic preparations, , topical natural medicines, counseling, biofeedback, dietary therapy, hygiene and physical medicine, nutritional and lifestyle counseling, and traditional naturopathic physical examinations.

Doctors of naturopathy would have the same capabilities as doctors of traditional naturopathy and the additional permitted activities: prescribing and dispensing of hormones, therapeutic devices (except those assigned exclusively to other professionals), and barriers for contraception, using physical and orifical examinations, imaging, electrocardiograms, ultrasound, clinical laboratory test, phlebotomy, examinations, and physiological function tests for diagnostic tests. The bill also proposes to require unlicensed providers of healthcare services to provide a disclosure statement and to collect a signed statement from any clients with acknowledgement of the providers lack of licensure.

HB 890 creates a 5 member board, 2 of whom are to be doctors of naturopathic medicine 2 of whom would be doctors of traditional naturopathic medicine, and 1 member of which would represent the public. The 5 member board would be made responsible for adopting the rules and regulations necessary and appropriate to “regulate” this group of professional licensees, including examination requirements, education and experience requirements, and a code of ethics. At a minimum, the bill provides that an applicant for licensure would have to have graduated from a naturopathic college accrediting agency recognized by the United States Department of Education.

The bill proposes the requirement of holding a license in order to practice naturopathy and traditional naturopathy; exemptions to the required licensure are specified as follows: natural health care providers as long as the provider does not perform surgery or puncture the skin, use or prescribe x-rays, prescribe or recommend discontinuance of legend drugs or controlled substances, claim certification, or cause harm while willfully treating.

This bill sets forth a fee schedule for licensure, renewal, late renewals, and registration as a continuing education provider. Requirements are proposed for licensure, examination, temporary licensure and reciprocal licensure as are grounds for grandfathering within in the first year of the act’s effective date, and disciplinary action against a licensee. Disciplinary proceedings are

specified to be held, in accordance with the Uniform Licensing Act.

The Board of Naturopathic Medicine fund would be created in the State Treasury with all funds credited to the Board.

Penalties for violations of the proposed act are provided and the provisions of the Criminal Offender Employment act shall apply to the Naturopathic Medicine Practice Act.

The bill proposes Board termination on July 1, 2009 pursuant to the Sunset Act.

Significant Issues

The creation of this board has not been reviewed through the Sunrise Review Process for creation of new boards and commissions as is provided for in the Sunrise Act. The Sunrise Act provides a process for all new professional regulatory boards to follow prior to creation.

The Board of Medical Examiners estimates that the number of potential licensees is likely relatively small. Currently it is estimated that there are as few as 80 Naturopaths eligible for licensure (as per the original bill's drafting, w/o the provisions currently provided for "traditional naturopathy").

According to the NMHPC, the U.S. Department of Education has had difficulty during the last five years deciding which colleges to recognize and which accrediting agency to use and the commission should leave either leave the issue of credentialing to the Board or wait until the profession agrees on clear standards and criteria.

FISCAL IMPLICATIONS

HB 890 does not include an appropriation for start-up costs although the bill does create the Board of Naturopathic Medicine Fund and provides that the state treasurer shall invest the fund as other state funds are invested, and income from the investment of the fund shall be credited to the fund. All balances in the fund shall remain in the fund and shall not revert to the general fund.

RLD predicts that the Act's proposal of a naturopathy fees would be unlikely to cover the cost of establishing and operating a regulatory board for naturopathy; since the time of the RLD estimate the fees proposed in the bill (in the substitute) have decreased by approximately 50 percent.

It is estimated by RLD that the cost of setting up a naturopathy board, drafting regulations, conducting hearings, and attending to the various tasks necessary to set up a viable regulation program would cost \$100.0 in the first year and possibly less on a recurring basis. The prediction includes funding for a half-time Office Clerk and Administrative support, travel expenses for four board meetings, travel for rule hearings statewide, and any overhead costs associated with setting up a new program.

There are boards and commissions under the auspice of RLD with budgets in the range of \$27 thousand to \$50 thousand

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

Substitute HB 890/HB921 proposes to attach the Naturopathic Medicine Board administratively to the Regulation & Licensing Department; being administratively attached to the department will permit the board to rely on RLD staff to assist with the development of the program framework and the drafting and adopting of rules and regulations and would also increase the administrative workload for the Department.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 890 and 921 have been combined as they each related to creating a naturopathy board.

TECHNICAL ISSUES

The bill makes references to “a reasonable amount of time” or “in a timely manner” in several instances, particularly in the grandfathering section. It is not clear what a reasonable amount of time would be.

The Regulation & Licensing Department cites the following concern:

- 1. The bill makes references to the naturopathic physician being able to administer immunizations. RLD asserts that if naturopathic physicians are given authority for immunizations the NM Drug, Device and Cosmetic Act and the Controlled Substances Act will conflict with this Act.

On Page 8, lines 23-25 it is specified that: “two members of the board shall be doctors of naturopathic medicine and two members shall be doctors of traditional naturopathy, all of whom have been residents of and practiced naturopathic medicine in New Mexico for at least three years immediately preceding the date of their appointment.” Currently, there is no valid licensure available for naturopathic physicians in New Mexico so it is not clear who would be eligible to be appointed as a practicing naturopathic professional.

Because the proposed statute would become effective in July 2005 and the board would come into existence (statutorily) at the same point, it is unclear how the board will be able to regulate the industry upon creation as is provided. The board will need time to promulgate rules before it can regulate the industry and the industry will be subject to board rules and fees before these rules are promulgated.

OTHER SUBSTANTIVE ISSUES

NMHPC cites that:

“Naturopathic Medicine” is defined by the American Association of Naturopathic Physicians as: a distinct system of primary health care - an art, science, philosophy and prac-

tice of diagnosis, treatment and prevention of illness.” The commission asserts that naturopathic medicine is distinguished by the principles which underlie and determine its practice and that these principles are based upon the objective observation of the nature of health and disease, and are continually reexamined in the light of scientific advances. Methods used are consistent with these principles and are chosen upon the basis of patient individuality. Naturopathic physicians are primary health care practitioners, whose diverse techniques include modern and traditional, scientific and empirical methods.

A “Naturopathic Doctor” diagnoses, treats, and cares for patients, using (a) system of practice that bases treatment of physiological functions and abnormal conditions on natural laws governing human body: Utilizes physiological, psychological, and mechanical methods, such as air, water, light, heat, earth, phytotherapy, food and herb therapy, psychotherapy, electrotherapy, physiotherapy, minor and orificial surgery, mechanotherapy, naturopathic corrections and manipulation, and natural methods or modalities, together with natural medicines natural processed foods, and herbs and nature's remedies. Excludes major surgery, therapeutic use of x-ray and radium, and use of drugs, except those assimilable substances containing elements or compounds of body tissues and are physiologically compatible to body processes for maintenance of life.

NMHPC further points out that currently, 13 states, the District of Columbia, and the US territories of Puerto Rico and Virgin Islands have licensing laws for Naturopathic Doctors. These licensure laws specify that Naturopathic Doctors are required to graduate from a 4 year residential naturopathic medical school and pass an extensive postdoctoral board examination. Per the American Association of Naturopathic Physicians website, there are only 7 accredited programs in the United States.

The New Mexico Medical Board supports licensure of Naturopathic Physicians, assuming education guidelines are established, and that the Board of Naturopathic Medicine maintains over-site of educational requirements.

ALTERNATIVES

The proposed board could follow the statutorily-prescribed process for creation established in the Sunrise Act.

Provisions to allow a period of rule promulgation and board creation should be considered so that the board members themselves can become licensed and organization established.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Professional licensure will not be enacted in New Mexico for the Naturopathic profession RLD asserts that New Mexicans will continue to be able to access alternative health care

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