F I S C A L I M P A C T R E P O R T

SPONSOR Fidel **DATE TYPED** 2/25/05 **HB**

SHORT TITLE Amend Drug, Device & Cosmetic & Pharmacy Acts **SB** 413/aSPAC

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
New Mexico Medical Board
New Mexico Pharmacy Board
Office of the Attorney General (AGO)
Department of Health (DOH)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment clarifies that a "valid practitioner-patient relationship" is to be defined by each practitioner's licensing Board requirements. This new definition addresses AGO concerns that a "valid practitioner-patient relationship" is described in similar terms as the Drug, Device and Cosmetic Act.

Synopsis of Original Bill

Senate Bill 413 amends the New Mexico Drug, Device and Cosmetic Act, expands Board powers under the Pharmacy Act, changes definitions in the Controlled Substances Act, and amends and repeals certain sections of the NMSA 1978.

Significant Issues

SB 413:

- Changes definition of prescription to include a practitioner's agent as one of the persons

from whom a prescription may be received, and permits electronic data transfers and management of prescription-related data.

- Includes a new definition that defines a valid practitioner-patient relationship as including patient history, physical examination and informed consent. The AGO note this definition is too narrow as, for instance, prescribing pharmacists are not practitioners who do "physical examination" therefore, they may not have a valid practitioner-patient relationship. The language would allow each prescriber's board the ability to determine the practitioner-patient relationship. Thus, acupuncturist, physicians, nurses, prescribing pharmacists, etc would need the licensing board to determine on what constitutes such a relationship.

- AGO report SB 413 deletes language requiring the respondent be notified and afforded an opportunity to present his views before the board before any criminal violation. An administrative board is not involved in the criminal actions brought by the DA or AGO. The deleted language required the board to give an administrative hearing before a criminal referral could be made. The AGO reports deletion would make enormous strides toward the criminal prosecution of individuals.

- Additional language allows companies to utilize computer storage for pharmaceutical information.

- The AGO report deleted language on page 17, (which required notification to physician if the pharmacist changed the drug dispensed) was unenforceable as a practical matter. This deletion brings the statute in conformity with standard practices.

- The Pharmacy Act is changed to allow for emergency dispensing of prescriptions. In the event of an emergency a pharmacist would be allowed to dispense drugs when the original pharmacy is not open or when the physician cannot be reached. This is limited to civil or public health emergencies. The AGO state this is in conformance with current law.

- Allows the pharmacist to delegate duties to the pharmacy technician that do not require the pharmacist professional judgment. The AGO report this is an expansion of current pharmacy law and allows the pharmacy technician to be more fully utilized.

- Contact lens sellers are added to the list of businesses that must be licensed by the Pharmacy boards. The AGO reports previous change to the Optometry Act allow contact lens sellers to dispense contact lens thus this change would make the Pharmacy Act in conformity with the Optometry Act and allow inspections and disciplinary action to be taken against sellers of contact lenses. This section would also require licensure of "oxygen bars" which sell oxygen.

- Allows Board to charge fees on a per year basis. Licensees can pay for two years of licensure instead of one and allows Board to set the expiration date of licenses.

- Changes the definition of prescription to include a practitioner's agent as one of the persons relaying a prescription. Current law only allows the practitioner to relay prescriptions. Also allows the electronic transmission of prescriptions.

- Allows for the deletion of pharmacist and dispensing date from the face of the prescription. The AGO report this change is in conformance with federal law, which no longer require such information on the face of the prescription.

PERFORMANCE IMPLICATIONS

The DOH reports SB 413 supports the strategic direction of improving DOH pharmacy services.

FISCAL IMPLICATIONS

A more accurate and efficient prescription delivery system may save Medicaid and HMOs the expenses associated with prescription misuse and abuse.

TECHNICAL ISSUES

The AGO states the definition of "valid practitioner-patient relationship" under the Drug Device and Cosmetic Act, Pharmacy Act and Controlled Substances Act should agree. The definition in the Drug, Device and Cosmetic Act is more specific.

Adding the word "refill" between "emergency" and "prescription", on page 21 lines 8 and 17, and page 22 line 22, to more accurately define the Board's intent.

A definition of "emergency refill prescription" should be added.

A definition of "civil or public health emergency" should be added.

Page 21, line 11, "New Mexico Board of Medical Examiners" should be replaced with "New Mexico Medical Board."

OTHER SUBSTANTIVE ISSUES

DOH reports a 62% increase in prescription drug overdose deaths from 66 (2002) to 107 (2003). SB 413 supports the electronic data transfers necessary for the management of controlled substances under the Prescription Monitoring Program; and the monitoring of prescribing patterns and other prescription drug use through the collection of more detailed data from practitioners.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Situations will continue where a patient may need chronic medications and cannot access their health care provider.

The Board of Pharmacy will not have tools to monitor prescription drug use, misuse and possible abuse.

AHO/lg:yr