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

SPONSOR Robinson **DATE TYPED** 3/6/05 **HB**

SHORT TITLE Health Facility Licensure Fees **SB** 445/aSCORC

ANALYST Collard

APPROPRIATION

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

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Department of Health (DOH)
Human Services Department (HSD)
Children, Youth and Families Department (CYFD)
Aging and Long-Term Services Department (ALTSD)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment to Senate Bill 445 changes the proposed civil monetary penalty of ten thousand dollars ($10,000) per day back to the original language of five thousand dollars ($5,000) per day. The penalties and interest will be deposited in a special DOH recurring account for the sole purpose of funding the nonreimbursed cost of facility monitors, temporary management and health facility receiverships. Section 2 of the bill, as amended by SCORC, also amends Subsection C of Section 24-1-5.2 NMSA 1978 to state that the provision of the section shall apply to certified nursing facilities except when a federal agency has imposed the same remedies, sanctions or penalties for the same or similar violations.

Synopsis of Original Bill

Senate Bill 445 amends the Public Health Act to permit the Health Facility Licensing and Certification (HFL&C) Bureau of DOH to impose state sanctions on certified nursing homes. Currently nursing homes are the only federally certified facility type exempted from state sanctions.

The bill also increases civil monetary penalty fees from $5 thousand to the current federal maximum of $10 thousand per day. The bill sets a new maximum for licensure fees from $3 per bed to $12 per bed to determine the annual licensure fee for an inpatient health facility and increases the set fee for other facilities from $100 to $300 per facility per year. The bill allows licensure fees to be used for HFL&C operations. Additionally, the bill allows civil monetary penalties (CMP) to be used for receiverships and temporary management and monitoring of health care facilities when there are no other sources to pay for such actions. Current statute returns both revenues to the state treasury and are not available for department use.

Significant Issues

DOH indicates this bill strengthens enforcement actions improving protection for residents. Additionally, resources from licensure fees will improve HFL&C operations. The bill affords DOH a wider range of sanctions and the ability to act on state licensure requirements independently from Federal Center for Medicare and Medicaid Services (CMS). The current language limits the HFL&C Bureau from imposing expedient actions outside of CMS processes and approval. The HFL&C Bureau, through its contract with CMS, has authority to impose intermediate sanctions against nursing homes for violations of federal certification standards. The amended language would allow the use of state sanctions for state regulations that have not been cited under the federal scheme. DOH cannot currently impose an intermediate remedy due to the exception found at § 24-1-5.2(C), NMSA 1978. With the exception of nursing homes that participate in the Medicaid/Medicare programs, all other federally certified health care providers in New Mexico are subject to intermediate sanctions for violations of state law and regulations.

HSD notes the dollar amount change for the licensure fees would not have an immediate effect on the department nor would the dollar amount for CMP. However, if licensure fees for nursing facilities increase, these additional costs would be reflected in their cost reports and would likely lead to higher Medicaid rates when rebasing is next completed.

The CMP that are currently imposed by CMS for Medicaid certified nursing facilities are wire transferred to the State Treasurer for deposit in the HSD budget. As of this time, the use for this money is undefined. The language proposed under Section 2, subsection A (2) in this bill would take out the language regarding Medicaid certified nursing facilities.

FISCAL IMPLICATIONS

While there is no appropriation attached to this bill, DOH indicates it may increase revenues from licensure fees HFL&C operations. Current revenues are $79 thousand per year. Potential revenue increases from current or increased CMP would be deposited into an account for facility receiverships, temporary management or monitors for failing health care facilities, and would be used when other sources of funds are not available. Currently only a nominal amount of funds are collected from CMP.

ADMINISTRATIVE IMPLICATIONS

DOH indicates licensure fees have not been increased since 1883. DOH estimates that HFL&C currently collects approximately $79 thousand in fees per year under the current fee structure. The increased maximums seem appropriate when compared with other states' fees. Any fee increases contemplated by DOH would be done in collaboration with health facilities and conducted through an open, fair hearing process under its rule making authority. DOH does not intend to increase fees to the maximum proposed in the bill. Fees currently collected go to the general fund. The bill allows the HFL&C Bureau to use these fees to support its operations to include adding additional staff. Additional staff resources are needed because state-licensed-only facilities such as residential care homes are not receiving their statutorily required annual surveys. Approximately 70 percent of the 200 state-licensed residential care homes do not receive annual onsite reviews because of lack of HFL&C resources.

The bill would also increase the maximum CMP. Currently HFL&C collects very few CMP under state sanctions. Ninety-eight percent of current fees collected are through the federal sanctioning process. Any fees collected from state CMP and designated for department use would assist the funding of receiverships, temporary management and facility monitors, where there are no other sources of funds to do so.

HSD indicates the transfer of CMP from HSD to DOH to support the cost of facility monitors, temporary management and health facility receiverships would require an amendment to the existing joint powers agreement (JPA) between the two departments and, possibly, CMS approval of the State Plan Amendment incorporating the terms of the amended JPA.

KBC/lg:yr