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## FISCAL IMPACT REPORT

SPONSOR Papen DATE TYPED 2/17/05 HB \_\_\_\_\_

SHORT TITLE Medicine Prescriptions By Psychologists SB 591

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### APPROPRIATION

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

Duplicates HB 463

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Board of Medical Examiners  
 Health Policy Commission (HPC)  
 Regulation and Licensing Department (RLD)  
 Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

Senate Bill 591 adds language that would broaden the definition of “psychotropic medication” from the existing definition to expand the class of medication a psychologist may prescribe, and authorizes uses not FDA-approved, for the treatment of mental, emotional, behavioral or cognitive disorders or for the management of side effects. “Off-label” or for uses not FDA-approved, include prescribing medication in a different dose, for a longer duration of time, or for a different medical indication than recommended in the prescribing information.

#### Significant Issues

The proposed redefinition of “psychotropic medication” would greatly increase the number and array of medications that prescribing psychologists will be able to prescribe, as well as the conditions for which those medications could be prescribed.

Agencies report the issues are whether the psychologist's training is sufficient in scope, content and clinical expertise to insure comparability of care as that provided by other practitioners with prescribing authority; whether there are significant cost savings for health care delivery; and whether this provides more options to patients from rural areas where physician shortages exist.

The HPC reports children are particularly vulnerable when drugs are used without FDA-approval as they have significant pathophysiologic differences from adults. Drug trials involving children or adolescents are almost non-existent.

The Board of Medical Examiners has the following comment:

The Prescriptive Authority for Psychologists Act adopted by the NM Legislature in 2002 made New Mexico the first state in the nation to allow psychologists prescribing authority. The Medical Board and the Board of Psychologist Examiners convened a Joint Committee and worked for 2 years to research, develop and reach consensus on a set of proposed rules. The Medical Board approved those rules in August 2004 and after discussion with RLD, the Board of Psychologist Examiners adopted a final set of rules which went into effect in January 2005.

There was consensus among the participants that the definition of "psychotropic medication" that was included in the original law was the best and safest way to protect the public while at the same time allowing expanded access to mental health care. The entire set of proposed rules regarding the education and training of prescribing psychologists that was negotiated and agreed to by the Medical Board was based on the definition of psychotropic medication as presented in the original statute.

The proposed re-definition of psychotropic medication supplants a legitimate and respected measure of drug efficacy, FDA indication, with vague language about "customary use" by "qualified practitioners." It adds cognitive disorders to the scope of practice of prescribing psychologists. It ultimately allows psychologists who have received significantly less medical training in drug interactions, pharmacological complications in children and the elderly, and other important topics to prescribe controlled substances off-label, as well as a nearly unlimited array of other medications to treat side effects.

## **PERFORMANCE IMPLICATIONS**

The HPC reports the Administrative Rules that would need to be changed to implement the bill:

- The Formulary (16.22.27.8 NMAC) currently does not allow a psychologist to prescribe non-psychotropic medication.
- Education requirements (16.22.23.8 NMAC) for a conditional prescriptive certificate.

The New Mexico Board of Psychologist Examiners rules and regulations would need to be revised to come into compliance with this bill.

## **FISCAL IMPLICATIONS**

Proposed legislation may offer a savings in mental health care and delivery costs. Rural areas may have additional benefits regarding early intervention services and care that a psychologist

can provide when a physician is not available.

### **ADMINISTRATIVE IMPLICATIONS**

The RLD note additional training needs for staff to evaluate educational requirements and pharmacological training and for the drafting of rules and regulations for prescribing psychologists.

### **TECHNICAL ISSUES**

The Board of Medical Examiners note proposed definition includes the vague term “customarily used,” which could cause confusion and possibly lead to misuse.

HPC notes use of the phrase “psychotropic medication” in its customary use in the field of behavioral health has a more limited meaning, than drugs that have no active psychotropic ingredients.

The DOH proposes adding an additional definition for “drugs used to treat side effects” to more clearly define the circumstances under which a psychologist could prescribe.

### **OTHER SUBSTANTIVE ISSUES**

The DOH notes proposed change allows psychologists to manage the side effects of drugs they have prescribed. Side effects may be difficult to distinguish from other co-occurring medical conditions and may be difficult to diagnose without a medical degree. Side effects of psychotropic medications, especially metabolic and neurologic conditions, can be serious and medically complicated to treat, such as drug-caused diabetes, lipid abnormalities, liver disease and hypothyroidism. The proposed change allowing the use of any drug listed in drug references raises uncertainty about the distinction between the expanded role for psychologists and that of medical practice.

The HPC notes that the bill is silent on any specific limitations in this expanded prescriptive authority. The range of conditions that constitute “side effects” is very broad, from headache or weight gain to impotence, elevated blood pressure, seizures, rash and others.

For physicians working in consultation, concurrence, and collaboration with a psychologist who is prescribing medications for a patient, there is no barrier to medical malpractice liability simply because the physician is not the person who wrote the prescription.

### **ALTERNATIVES**

“Medical Psychologists” with a certificate of prescriptive authority will be able to prescribe psychotropic medications as described in the bill only in consultation, collaboration, and with the concurrence of the patient’s primary or attending physician. The prescriptive authority of psychologists to be limited as follows:

- Only those drugs related to the diagnosis and treatment of mental and emotional disorders may be prescribed.

- Prior to making changes in a medication regimen, including dosage adjustments or adding or discontinuing any medication, the psychologist is required to re-consult with the primary or attending physician.
- Both the psychologist and the physician are required to document the consultation in the patient's medical record.
- The psychologist cannot delegate the prescribing function and cannot prescribe for patients who have no primary or attending physician.
- Only those psychologists who have undergone specialized training in clinical psychopharmacology will be eligible to prescribe.

The Board of Medical Examiners suggests leaving the definition of psychotropic medications as is, and allow the collaborative relationship between primary health care practitioners and prescribing psychologists to ensure that patients receive appropriate medication.

This issue could be revisited next legislative session which will give psychologists time to adjust their practices to the final set rules agreed to and adopted January 2005.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The current language limiting prescriptions by psychologist to drugs intended and approved for the treatment of mental disorders would remain in the law. Prescribing psychologist will continue to be required to collaborate with primary healthcare practitioners with broader prescriptive authority as envisioned by the original Prescriptive Authority for Psychologists legislation.

Prescribing psychologists will not be allowed to administer and manage common medications for side effects that are considered appropriate in the treatment of mental health disorders.

AHO/yr