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FISCAL IMPACT REPORT

SPONSOR Komadina DATE TYPED 2/27/05 HB _____

SHORT TITLE Health Provider DWI Collision Drug Testing SB 1024

ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	None				

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Public Defender Department (PDD)

New Mexico Department of Health (DOH)

New Mexico State Highway and Transportation Department (SHTD)

SUMMARY

Synopsis of Bill

SB 1024 requires health care providers to test persons receiving medical care and involved in motor vehicle crashes to be tested for alcohol or other drugs and report the results to law enforcement. SB 1024 provides exemptions from civil liability or professional discipline for health care professionals.

Significant Issues

The PDD reports that SB 1024 has constitutional implications for drivers and passengers in motor vehicles. First, testing to determine whether a person is impaired, be it by drugs, alcohol, or both, is only performed when law enforcement has a reasonable suspicion that the driver of a motor vehicle is impaired. This legislation requires testing by health care providers on drivers regardless of reasonable suspicion of impairment and reporting by those providers to law enforcement. Second, testing under this proposed legislation is not limited to drivers, but appears to apply to passengers in vehicles involved in collisions, when law enforcement would not otherwise have the authority to compel passengers to submit to blood or breath tests.

PERFORMANCE IMPLICATIONS

The PDD notes there is nothing in the language of the bill to indicate whether this legislation is being introduced as part of the Implied Consent Act under the Motor Vehicle Code.

The DOH notes that drug and alcohol testing may not be admissible in court as it may not meet evidentiary standards regarding “implied consent.”

Health Care Practitioner’s licensing Boards will need to be consulted to ensure these new law enforcement duties are appropriate for their licensees. In addition, it is unclear if this bill overrides the duties of practitioner’s licensing Boards regarding standards for professional discipline (see paragraph D).

SHTD states the bill may help in meeting agency performance goals related to the reduction of crashes, injuries and deaths related to alcohol.

FISCAL IMPLICATIONS

The bill raises the question of whether the additional costs for alcohol and drug testing will be paid for by a patient, a third party or the health care facility.

The National Highway Traffic Safety Administration (NHTSA) provides an incentive grant under Section 410 of the Transportation Equity Act for the 21st Century (TEA-21) if the State meets the criteria for Basic Grant A, Basic Grant B, or both. Funding through the grant is approximately \$300 thousand and could be directed to the NMDOT-Traffic Safety Bureau for DWI or other alcohol countermeasure programs.

ADMINISTRATIVE IMPLICATIONS

According to the SHTD, the criteria to be eligible for a grant through NHTSA is as follows:

Basic Grant A: A State demonstrates that it has implemented at least 5 of the following 7 criteria:

- 1. Administrative license revocation.
- 2. A program to prevent drivers under age 21 from obtaining alcoholic beverages.
- 3. A program for intensive impaired driving law enforcement.
- 4. A graduated licensing law with nighttime driving restrictions and zero tolerance.
- 5. A program to target drivers with high BAC.
- 6. Young adult drinking programs to reduce impaired driving in the ages 21 through 34.
- 7. An effective system for increasing the rate of testing for BAC of drivers in fatal crashes that is above the national average.

Basic Grant B: A State demonstrates:

- A reduction in its percentage of fatally injured drivers with .10 BAC or greater, in each of last 3 years and

- Its percentage of drivers with .10 BAC or greater is lower than the national average for each of last 3 years.

Currently, NM meets criteria 2, 3, 5, and 6 under Basic Grant A. NM does not meet 1, 4, or 7. This bill may (not guaranteed) assist the State in meeting criteria 7. The national average is 44% and NM's average is 40%. NM's test rate was above the national average in some previous years and did receive funding accordingly. The last two years NM's rate has fallen below the national average.

NM does not qualify under Basic Grant B.

TECHNICAL ISSUES

It is suggested to replace "person" with the term "driver" in the bill.

It is also unclear as to how these individuals will be supervised in the health care facility once law enforcement officials are notified that a driver may have been impaired by alcohol or drugs.

OTHER SUBSTANTIVE ISSUES

The DOH has the following comment:

The requirement that a health care provider report to law enforcement if drugs are present and capable of impairing a person's ability to operate a vehicle in a careful and prudent manner makes several assumptions: (1) that the health care provider is qualified to make this determination, (2) that there is a uniform definition of "careful and prudent manner", and (3) that there is an established level of impairment for everyone. Unlike alcohol, for which levels have been established in statute, the determination of impairment from other drugs cannot be assumed by the level in blood or urine over a wide range of levels. It is for this reason that toxicologists are extensively used in court cases to establish the conclusion of impairment by linking the observed behavior of a driver, as described in the police report, with the expected behavior resulting from impairment by the specific types of drugs present in the blood or urine. The rate of metabolism and excretion of drugs (other than alcohol) in the body varies greatly among individuals and, unless levels are extremely high, the effect on human performance (impairment) cannot be deduced solely from the level of the drug. It would be very difficult for a health care provider to make this assessment, based solely upon the blood or urine level of the drug.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The decision to test drivers involved in motor vehicle accidents for alcohol and other drugs will continue to be at the discretion of the attending law enforcement officer.

ANA/rs