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FISCAL IMPACT REPORT

ORIGINAL DATE 2/27/09

SPONSOR Chavez, E LAST UPDATED _____ HB 789

SHORT TITLE Acupuncture and Oriental Medicine Procedures SB _____

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1		Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Office of the Attorney General (AG)

The New Mexico Medical Board may not have had an opportunity to respond to this legislation.

SUMMARY

Synopsis of Bill

House Bill 789 proposes to amend three sections of the Acupuncture and Oriental Medicine Practice Act. The bill amends NMSA 1978, Section 61-14A-3, to add “mode of administration” and expand on “techniques of oriental medicine” within the definitions; amends NMSA 1978, Section 61-14A-8.1, to provide for expanded practice and limited prescriptive authority certification; and amends NMSA 1978, Section 61-14A-16, to remove the term “nonrefundable” in reference to fees.

Section 61-14A-3: Definitions

- Defines “mode of administration” to include forms such as subcutaneous injection, intramuscular injection, intravenous infusion, transdermal cream or patch, oral and suppository. Expands on the definition of “techniques of oriental medicine” to include all traditional East Asian manual therapies and massage modalities. Further expands on the definition by including non-injectable herbs, all legal substances from the traditional East Asian pharmacopoeia, lipids, carbohydrates and proteins. This section specifically excludes chiropractic and osteopathy adjustments from the definition. This section removes from definitions the terms “natural substances, natural medicines, live cell products and gerovital.”

Section 61-14A-8.1: Expanded Practice and Restrictive Prescriptive Authority – Certifications

- Deletes the expanded practice certifications for: (1) basic injection therapy, (2) injection therapy, (3) intravenous therapy, and (4) bioidentical hormone therapy. This section reduces the substances approved for expanded prescriptive authority to: (1) sterile water, (2) sterile saline, (3) inhaled oxygen, (4) subcutaneous and intramuscular epinephrine for emergency use, (5) topical vaporcoolants, and (6) injectable vitamin B-12. The bill provides that the practice of oriental medicine and the use of substances for such practice will be regulated by the New Mexico Medical Board (NMMB) with the Board of Pharmacy consulting when appropriate.

Section 61-14A-16: Fees

- Removes the term “nonrefundable” from the description of fees. Currently, fees are nonrefundable.

FISCAL IMPLICATIONS

The bill requires the NMMB to adopt training and certification requirements, and promulgate rules. The bill does not provide an appropriation to the Board to support this effort. It is unlikely that the fees generated within Section 61-14A-16 would support these activities.

The bill removes the limitation by which the Board could not refund fees to an applicant or licensee if a refund was deemed appropriate or necessary.

SIGNIFICANT ISSUES

RLD reported that in 2008, the AG advised the Board of Acupuncture and Oriental Medicine that clarity is needed on the substance and procedures in their enabling legislation.

Scope of practice changes can pose risk to the public if not accompanied by appropriately expanded education and oversight.

The bill authorizes the NMMB, in consultation with the Pharmacy Board when appropriate, to

- establish training and certification criteria for doctors of oriental medicine (DOM’s) to prescribe, administer, compound and dispense non-prescription drugs as defined in the Pharmacy Act;
- promulgate rules to establish “limited prescribing authority” for DOM’s;
- develop a formulary of dangerous drugs and controlled substances and promulgate rules governing their use by DOM’s;
- establish criteria and procedures for certification to qualify DOM’s as practitioners pursuant to the New Mexico Drug, Device and Cosmetic Act;
- establish training for a certification process pursuant to that Act; and
- develop a formulary of approved modes of drug administration.

PERFORMANCE IMPLICATIONS

The AG notes the proposed amendments to Section 61-14A-8.1 appears to restrict the scope of practice of acupuncturists and DOM's. House Bill 789 also creates a comprehensive system by which the profession of oriental medicine is regulated, in part, by the NMMB, including certification of educational programs, certification for prescription authority, development of drug formularies, and approval of modes of drug administration.

ADMINISTRATIVE IMPLICATIONS

RLD reports that the Pharmacy Board, not the NMMB, reviews and approves all educational programs related to this expanded practice.

The New Mexico Board of Acupuncture and Oriental Medicine requires all approved applicants for licensure show proof of having completed an educational program comprised of 2400 hours. The 2400 total hours must have 1100 didactic hours with a minimum of 450 hours in herbology; and, 900 clinical supervised hours with a minimum of 400 actual patient treatment hours performed.

CONFLICT

HB 492 conflicts with HB 789. HB 492 provides for expanded prescriptive authority pursuant to four expanded therapy techniques. House Bill 789 provides for limited use of substances for techniques of oriental medicine, and provides that any further expanded prescriptive authority be pursuant to rules promulgated by NMMB.

TECHNICAL ISSUES

There is issue around the spelling of the term "vaporcoolants".

There appears to be extensive repetition in the new language inserted in Section C. This section of the bill should be re-drafted as it is confusing.

It is not known if these new sections have being promulgated with input from NMMB. It is also not clear if these new activities fall within the Board's statutory obligation and duties.

OTHER SUBSTANTIVE ISSUES

The bill will authorize students to participate in certain situations in which drugs are administered under direct supervision.

ALTERNATIVE

The formation of an ad hoc committee of experts and stake-holders to review proposed changes to a health care provider's scope of practice before implementation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

RLD believes there would be continued confusion in the profession regarding expanded practice.