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

SPONSOR Maestas **ORIGINAL DATE** 03/03/11 **LAST UPDATED** **HB** 580

SHORT TITLE Maron Chronic Pain Management Act **SB**

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	**FY12**		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$850.0	$850.0	$1,700.0	Recurring	Medical Board Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Health Policy Commission (HPC)
Medical Board (NMMB)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 580 would enact the "Maron Chronic Pain Management Act" that requires standardization of procedures for the treatment of chronic pain management, including the creation of a "point system" for determining patient eligibility for access to and treatment with controlled substances (Drug Enforcement Agency Schedules II through V).

Section 3, Subsection B calls for drug testing to be done for controlled substances, Schedules I

through V. Subsection C of HB 580 requires the New Mexico Medical Board (NMMB) to adopt rules for the creation of a "point system" to determine a patient's suitability for treatment with controlled substances.

According to the New Mexico Medical Board (NMMB), if a health care provider denies a patient access to controlled substances because of failure to qualify under the point system, Section 3, Subsection D of HB 580 requires the NMMB to hear these cases and make a final determination of the patient's eligibility for access.

Section 3, Subsection E specifies that the patient will be responsible for the costs of providing information for the drug tests, and any appeal concerning eligibility.

Section 3, Subsection F of HB 580 requires the NMMB to establish a web-based clearinghouse of patient information and the point system developed. The Board of Pharmacy would be responsible for requiring any health care provider to consult the web-base at the NMMB prior to prescribing controlled substances (Schedules II through V).

HB 580 does not include an appropriation which would then require the New Mexico Medical Board (NMMB) to absorb the costs associated with implementation and enforcement of the act. According to NMMB this is not feasible since the board is already at its statutory cap of all fees and the revenues collected can only support the agency's current budget needs.

FISCAL IMPLICATIONS

HB580 does not contain an appropriation for the New Mexico Medical Board to establish and maintain a web-based clearinghouse of patient information.

According to NMMB, enactment of HB 580 will increase cost to the NMMB as follows:

1. HB 580 requires the NMMB to make a "final determination of the patient's eligibility for access to controlled substances listed in Schedule II through V of the controlled Substances Act for pain management" when a health care provider denies a patient access to controlled substances outlined in HB 580, therefore at least one (1) ***physician*** FTE will be needed to implement and manage HB 580 at a projected cost of $169,000 in salaries and benefits, additional one (1) administrative assistant FTE at a projected cost of $66,000 in salaries and benefits;
2. The NMMB would expect complaints to increase when health care providers deny patient's with access to controlled substances as outlined in HB 580, therefore six (6) investigative FTE's are projected at a cost of $267,000 in salaries and benefits;
3. $ 27,400 – additional office space;
4. $ 12,000 – computer equipment;
5. $ 40,000 – office furniture;
6. $ 4,000 – office supplies;
7. $ 10,000 – rule hearing notices and publishing costs for initial implementation; and
8. $250,000 – web-based clearinghouse including maintenance.

SIGNIFICANT ISSUES

HB580 outlines a protocol for a provider who intends to treat a patient with controlled substances. A patient or representative of the patient must provide prior medical records related to surgery, injury and prior pain management, medical caregivers and dates of treatment, felonies related to drug trafficking and drug abuse and records of inpatient and outpatient treatment for opioid addiction. The patient will also submit to a drug test prior to receiving any controlled substances for pain management and as part of the treatment regimen, as determined by the provider. According to the Department of Health (DOH), some of these criteria have been noted by experts in the field as important tools in clinical practice for treatment of pain (i.e., urine test, screening for history of substance abuse). However, it seems that the provider protocol specified in HB580 may undermine the rapport that must be fostered by a provider with their patient in initiating treatment for chronic pain. This may result in patient reluctance to disclose information and sentiment of distrust and violation of rights.

HB580 would also create a point system that gauges patient suitability for chronic pain treatment using controlled substances. This system would be based on intensity of medical care (positive points), pain level (positive points) and felony convictions (point subtraction). A patient is allowed or denied access based on points assigned for these inputs. This system would be maintained by the NMMB and they would have final determination on whether a patient is eligible to receive controlled substances. If a patient is denied access, HB580 outlines a process by which a patient can appeal. The BOP would require providers to consult this NMMB clearinghouse prior to prescribing controlled substances for the treatment of chronic pain. The Prescription Drug Monitoring Program (PMP), operational or enacted in 43 states, is a federally-funded BOP registry of controlled substances II-IV dispensed in New Mexico. Currently, providers can access PMP to check the controlled substances prescription history of a patient.

According to the Department of Health (DOH), HB580 is intended to equip a provider with important patient information prior to initiating pain management using controlled substances. However, HB580 outlines a clinical protocol that might undermine effective pain treatment and inadvertently result in the under treatment of patients who are in need. Pain patients who are undertreated may develop high-risk behaviors, as they may potentially self-medicate without medical supervision. Also, this provider protocol may be interpreted as punitive for persons with chronic pain and past felonies related to drugs, as the protocol would subtract points because of past drug felonies. Lastly, a point system might become a hindrance to providers committed to individualizing the treatment regimen that includes controlled substances.

According to NMMB, the rules HB 580 proposes would put a freeze on the legitimate and appropriate treatment of the vast majority of patients who are not drug addicts and who truly need treatment for severe, especially chronic pain. Further, the issue of drug overdose among patients and addicts is under review by an ad-hoc Drug Overdose Task Force comprised of the NMMB, the Office of the Medical Investigator, the Department of Health, the University of New Mexico, the Board of Nursing, and the Board of Pharmacy. The Drug Enforcement Administration has also been asked to participate on this Task Force.

According to NMMB, the proposal that the NMMB create a point system for treating patients is inappropriate and beyond the scope of the board. The NMMB does not insert itself into the day-to-day care of patients, nor interfere with the doctor-patient relationship unless the physician is impaired or showing a pattern of negligent, inappropriate or injudicious behavior. To place the

NMMB in the position of determining which patients get certain kinds of treatment is beyond any possible role or jurisdiction for a medical board.

According to the NM Health Policy Commission (HPC), the provisions of HB580 may be cumbersome for health care providers as the bill would require additional duties for health care providers who may already be inundated with administrative work and operating at capacity due to health care professional shortages.

The HPC believes monitoring of the use of controlled substances (Drug Enforcement Agency Schedules II through V) by patients and the prescription of them by practitioners is not within the jurisdiction of the NMMB.

According to HPC, a physician cannot deny care to a patient on the basis of a history of criminal offenses- this would be a violation of the Hippocratic Oath.

ADMINISTRATIVE IMPLICATIONS

HB580 would require the New Mexico Medical Board to adopt rules that provide for the creation of a "point system" whereby a health care provider shall quantify a patient's suitability for access to controlled substances listed in Schedules II through V of the Controlled Substances Act for pain management. In assigning points, the Board shall consider certain criteria as specified in the bill.

The bill would further require the Board to establish a web-based clearinghouse of the patient information provided by patients seeking access to controlled substances for pain management and the point system developed by the Board. The Board would be required to ensure that the storage and sharing of clearinghouse information is in compliance with state and federal privacy laws.

HB580 would require that the Board of Pharmacy require a health care provider to consult the information on the New Mexico Medical Board's web-based clearinghouse, including a patient's status in the point system, before prescribing to the patient any controlled substance listed in Schedules II through V of the Controlled Substances Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB580 may relate to the following bills:

- HB606 (Synthetic Drugs as Controlled Substances), and
- SB569 (Prescription Drug Monitoring Program).

TECHNICAL ISSUES

According to the Health policy Commission, HB 580 makes no differentiation between acute and chronic pain. For example, if a patient ~~were~~ to be hospitalized after a motor vehicle accident, would the physicians be unable to treat the patient's pain until he provided records and demonstrated he was not a felon? How about a teenager with a broken leg from a soccer injury? Mother delivering a baby?

According to DOH, the provider protocol in HB580 might be an obstacle for the effective treatment of chronic pain among persons with past felonies related to drugs.

OTHER SUBSTANTIVE ISSUES

In 1996, the NMMB adopted one of the first comprehensive policies on pain management in the United States. In 2002, in response to Senate Memorial 22, sponsored by Senator Mary Jane Garcia, the NMMB worked diligently on a Special Task Force created by Senate Memorial 22. One of the outcomes of that effort was the conversion of the previous New Mexico Medical Board Guidelines into Title 16, Part 14 of the NMMB Rules, Management of Chronic Pain with Controlled Substances. This Rule became effective January 20, 2003. Later that year, the under-treatment of pain was added to the Medical Practice Act as a potential cause for discipline. The NMMB has been nationally recognized for these policies.

In 2008, New Mexico, through the NMMB, was the first State to issue to every licensed Allopathic physician and Physician Assistant a copy of the book, Responsible Opioid Prescribing written by Scott M. Fishman, and published by Waterford Life Sciences, Washington D.C., and distributed by the Federation of State Medical Boards, Dallas Texas. The Federation of State Medical Boards has also been a leading advocate in pain management. In 1998, the Federation developed its first national, model guidelines on the treatment of pain, designed for adoption by United States Medical and Osteopathic Boards.

According the National Institute on Drug Abuse, selected indicators of the prescription drug and over the counter medication abuse in the United States include the following:

- Treatment admissions for opiates other than heroin rose from 19,870 in 1998 to 111,251 in 2008, over a 450-percent increase.

- The number of fatal poisonings involving prescription opioid analgesics more than tripled from 1999 through 2006, outnumbering total deaths involving heroin and cocaine.

- The Drug Abuse Warning Network (DAWN), which monitors emergency department (ED) visits in selected areas across the Nation, estimates that in 2008, roughly 305,000 ED visits involved nonmedical use of prescription pain relievers. These numbers have more than doubled since 2004.

ALTERNATIVES

According to DOH, the formal adoption of clinical opioid prescribing guidelines, as done in Washington and Utah, may be an important, more practical alternative that provides guiding principles for a provider to develop his or her own procedure for treating patients for pain.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Providers who propose to prescribe controlled substances II-V for pain treatment will not be required to obtain patient information on prior medical records related to surgery, injury and prior pain management, medical caregivers and dates of treatment, felony records related to drug trafficking, drug abuse and records of inpatient and outpatient treatment for opioid addiction, and conduct drug tests. A point system based on intensity of care, pain level and past drug-related felonies will not be created and maintained in a clearinghouse at the NMMB. Providers will not be required by the BOP to access this clearinghouse prior to prescribing controlled substances for a patient.

CS/bym