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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/13

SPONSOR Herrell/Keller LAST UPDATED \_\_\_\_\_ HB 170

SHORT TITLE Volunteer Healthcare For The Underserved Act SB \_\_\_\_\_

ANALYST Trowbridge

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 13	FY 14	FY 15	3 Year Total Cost	Recurring or Non- recurring	Fund Affected
<b>Total</b>	\$	\$TBD*	\$TBD*	\$TBD*		

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See "Fiscal Implications" below

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 Board of Nursing (BN)  
 Department of Health (DOH)  
 UNM Health Sciences Center (UNMHSC)  
 Medical Board (MB)  
 Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

House Bill 170 (HB 170) proposes the Volunteer Health Care for the Underserved Act, to grant limited exemption from New Mexico licensure to health practitioners who provide voluntary health care services including veterinary services, without charge to the patients or to any third party, such as an insurance carrier of the patient in underserved areas.

The Department of Health (DOH) reports that HB 170 would exempt a health care practitioner engaged in the voluntary provision of health care services in New Mexico from the requirement of being licensed in New Mexico if:

- they are duly licensed in any state;

- their services and duties are restricted solely to the voluntary provision of health care services;
- they provide only the care or services that the health care practitioner is licensed or otherwise authorized to provide; and
- they provide a copy of their current out-of-state license or authorization to practice to the sponsoring organization, which shall retain such record for a period of two years.

DOH adds that HB 170 includes immunity from civil liability for acts and omissions for practitioners engaged in the voluntary provision of health care services, unless injuries were caused by gross negligence, wanton misconduct, or intentional wrongdoing on the part of the practitioner. A sponsoring organization may organize or arrange for the voluntary provision of health care services at a location in this state for a period not to exceed thirty calendar days in any one year. The Volunteer Health Care for the Underserved Act does not apply to emergency or disaster relief services provided pursuant to the Uniform Emergency Volunteer Practitioners Act.

### **FISCAL IMPLICATIONS**

The DOH indicates that HB 170 contains no appropriation for staff or other activities that will be required to carry out its provisions and requirements.

The Board of Nursing (BN) indicates that Section 5, Subsection C: Requires the New Mexico Board of Nursing staff to verify that a nurse has a valid New Mexico nursing license, or valid compact license, and is not the subject of an investigation or pending disciplinary action. This will result in increased workload demands on the currently available staff, and does not include a provision for increased full time equivalent (FTE) positions to accommodate requests by the Department of Health.

The BN also states that budgetary impact estimates and assumptions would be difficult to calculate, as this information is based strictly upon the unknown number of volunteer nurses (both licensed in New Mexico and in other compact states).

### **SIGNIFICANT ISSUES**

The New Mexico Medical Board (MB) states no mention is made of the role of it or other licensing Boards in their jurisdiction over the practice of and practitioners in medicine and other health care entities, and the issues that arise apply to all health care Boards, such as Dental, Nursing, Optometry, Veterinary, and other practitioners in health care disciplines.

The Medical Board raised the following significant issues:

1. The principal functions assigned to the New Mexico Medical Board by the Legislature are the licensing and discipline of certain health care practitioners, namely Physicians, Physician Assistants, Anesthesiologist Assistants, Genetic Councilors, Polysomnographers, and Napropaths. For physicians, there is a wide range of types of licensure available, including: licensure by examination or endorsement; telemedicine licensure for physicians practicing medicine from outside the State on patients in New Mexico; Temporary Teaching, Research, and Specialized Diagnostic and Treatment; Youth Camp or School; Post-Graduate Training and Public Service; and, Physician

Licensure during a Declared Disaster.

2. The New Mexico Medical Board, like other health care practitioner boards, has been assigned by the Legislature the task of determining in detail that the practitioners that it licenses meet the appropriate standards of education, training, experience, and professional conduct, irrespective of which type of practice they are in and which type of license they hold.
3. To create a new type of physician license to be assigned to the DOH, whose mission and function are not the management of licensure and discipline is not appropriate. Furthermore, several of the features of the proposed Volunteer license, raise some serious questions:
  - a. The process of evaluating a practitioner applying for any type of license involves many factors beyond those specified in HB-170's requirement that the applicant hold another State license (§3.A). Current licensing requirements include a thorough, specific review of past performance and licensure, previous disciplinary action, and standard criminal background investigation. These are not required for the proposed Volunteer Health Care Act;
  - b. The provision for absolute immunity from liability for "damages for injuries or death alleged to have occurred by reason of and act or omission" (§6.A) by the Volunteer Physician seems unachievable, since it exempts that individual from appropriate accountability for malfeasance, irrespective of what licensing board that individual is accountable to.
  - c. No mention is made of the requirement for some form of supervision by a New Mexico Licensed Physician, as is required for Temporary Licenses (16.10.2.14, NM Board Rules), or for being "qualified for licensure in New Mexico" (as for Camp & School licenses, 16.10.2.15 NM Board Rules).
  - d. This bill conflicts with two sections of the Medical Practice Act. First, Section 61-6-18.1(B) provides that:

"A physician with one year postdoctoral training may apply for a public service license to practice under the direct supervision of a licensed physician or with immediate access to a licensed physician by electronic means when the public service physician is employed in a medically underserved area."

The Medical Board reports that this section limits public service licenses to second-year graduate students. This bill conflicts with this limitation, and with the supervising requirements in this Section. Second, Section 61-6-14(B) already provides for the issuance of temporary licenses, without limiting such issuance to the provision of health care services to the "underserved," but again, requires supervision by a licensee. This bill would place health care practitioners not licensed in this state in a more advantageous position than similarly situated practitioners that are licensed in this state that would be providing the same services.

The Board of Nursing added the following:

- The purpose of the New Mexico Board of Nursing is to protect the public by ensuring that any person practicing as a nurse has the minimum education and qualifications to practice in that capacity.
- Section 3: According to Chapter 61, Article 3, Section 29 NMSA 1978 – Exemptions: The Nursing Practice Act does not exempt nurses from licensure in New Mexico, or a compact state, while practicing nursing in a voluntary capacity within New Mexico. The

New Mexico Nursing Practice Act would need to be revised to accommodate nursing performed in a voluntary capacity in New Mexico.

- If a compact state has issued a nursing license authorizing practice only in that state, and not authorizing practice in other compact party states (i.e., a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance (statutory basis: Article 3A, 3B, and 3E).
- Section 5, Subsection C: Requires the New Mexico Board of Nursing staff to verify that a nurse has a valid New Mexico nursing license, or valid compact license, and is not the subject of an investigation or pending disciplinary action. This will result in increased workload demands on the currently available staff, and does not include a provision for increased full time equivalent (FTE) positions to accommodate requests by the Department of Health. Additionally, there is no provision for the specific amount of time allotted for submitting the required licensure information.
- From a regulatory standpoint it would be irresponsible to allow any healthcare professional, specifically nurses, to practice without the minimal education and training required to provide safe patient care.

The Regulation and Licensing Department (RLD) indicates that the Boards impacted could receive a possible increase in complaints. Complaints received by the professional licensing boards would be difficult to process, because the board would not have jurisdiction over a healthcare practitioner exempt from licensure. In these matters, the public would not be protected from unethical or unprofessional

The Attorney General's Office reports that the term "underserved" is not defined. The title to the Act states that the bill applies to "underserved areas," but that is not stated in the text of the bill, which uses the term "underserved" to describe the patient. The AGO also states that presumably an organization could operate at multiple locations within the state but not for more than 30 days at any one location in any one year. If that is not intended, clarification should be made. The AGO adds that the matter of obtaining authorization to operate at a particular location is between the DOH and the sponsoring organization. The practitioner who works for the organization does not obtain this "location" authorization. Therefore, the immunity section might be clarified to state that the practitioner's immunity is lost if he or she provides services at locations not permitted by the sponsoring organization or otherwise are not permitted by that organization. And the AGO notes that veterinary services are expressly included, although not typically thought of as "health care services," which are rendered to persons.

DOH reports that the intent of HB 170 is to allow out of state licensed health professionals visiting New Mexico for less than 30 days in a given year, to practice in New Mexico with licensure exemptions and liability protection.

DOH adds that HB 170 is proposed at the request of a national organization named Remote Area Medical Volunteer Corps (RAM). RAM is a non-profit, volunteer, airborne relief corps dedicated to serving mankind by providing free health care, dental care, eye care, veterinary services, and technical and educational assistance to people in remote areas of the United States and the world. Founded in 1985, RAM is a publicly supported all-volunteer charitable organization. Volunteer doctors, nurses, pilots, veterinarians, and support workers participate in expeditions at their own expense. Medical supplies, medicines, facilities, and vehicles are donated. In 1995, Tennessee passed legislation to allow out-of-state, duly licensed practitioners to volunteer their services at free clinics operated by non-profit organizations, after which the

number of RAM expeditions (and the ability to staff them with volunteers) increased dramatically. This opened the door for practitioners from any US state to volunteer at any RAM clinic in TN, and they have responded by the hundreds, from states as far away as CA, WA, NY, and FL, and states as close as VA, GA, and KY. (<http://www.ramusa.org>)

This legislation may also address specific health events that occur in New Mexico, such as the New Mexico Mission of Mercy Event to Provide Free Dental Care. [http://www.aarp.org/giving-back/volunteering/info-08-2010/new\\_mexico\\_mission\\_of\\_mercy\\_event.html](http://www.aarp.org/giving-back/volunteering/info-08-2010/new_mexico_mission_of_mercy_event.html)

The sponsoring organization does not include health departments, nonprofit community health centers, or nonprofit community health referral services that operate year-round.

The required activities related to HB 170 may be more closely related to functions of the health related licensure boards of New Mexico. HB 170 does not specifically require either the sponsoring organization or licensure Boards to verify any volunteer's credentials. However unlikely fraudulent credentialing might be in a volunteer scenario, it does seem likely that licensing Boards will want to, and should, verify that the volunteers providing services are actually licensed and in good standing in their home state.

## **PERFORMANCE IMPLICATIONS**

The New Mexico Board of Nursing (BN) has regulatory authority over the education, licensure, and discipline of nurses licensed in this state. This authority allows the BN to protect the public from unsafe practitioners. No provision has been made within HB 170 for the specific amount of time allotted for submitting the required licensure information from the board to the Department of Health.

## **ADMINISTRATIVE IMPLICATIONS**

The MB states that the management of the qualification, licensure, accountability, and discipline of Physicians is not an appropriate function of the NM DOH. For the reasons given in this FIR, the NM Medical Board is opposed to HB 170, both as it applies to Physicians and Osteopaths and also to other health care practitioners licensed by other boards.

The BN raises the following concerns:

- The New Mexico Board of Nursing has regulatory authority over the education, licensure, and discipline of nurses licensed in this state. This authority allows the New Mexico Board of Nursing to protect the public from unsafe practitioners.
- Section 3: According to Chapter 61, Article 3, Section 29 NMSA 1978 – Exemptions: The Nursing Practice Act does not exempt nurses from licensure in New Mexico, or a compact state, while practicing nursing in a voluntary capacity within New Mexico. The New Mexico Nursing Practice Act would need to be revised to accommodate nursing performed in a voluntary capacity in New Mexico.
- New Mexico is one of 24 states in the Nurse Licensure Compact which reduces barriers to practice in underserved areas already, and allows nurses with a multi-state compact license to practice in any other compact state.
- If a compact state has issued a nursing license authorizing practice only in that state, and not authorizing practice in other compact party states (i.e., a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of

issuance (statutory basis: Article 3A, 3B, and 3E).

DOH reports that it would be responsible for developing the program, promulgating rules and working with organizations and licensing boards.

RLD indicates that the Dental Board, Optometry Board, Osteopathic Board, Respiratory Advisory Board, Acupuncture Board, Chiropractic Board, Physical Therapy, Occupational Therapy Board, Psychology Board, Social Work Examiners Board, Counseling and Therapy Practice Board and Podiatry Board will be impacted by this bill. The Department of Health will forward a list of health practitioners received from the sponsoring organization to the appropriate licensing Board within seven days after receipt. The appropriate licensing Board will notify the Department of Health if a health practitioner on the list submitted by the sponsoring organization is not licensed authorized or in good standing, or is the subject of an investigation or pending disciplinary action.

There would be added duties to the licensing board's administrative staff to research the list of practitioners. The Boards would not have access to all licenses the healthcare practitioner may hold making it impossible to know if the healthcare professional is the subject of disciplinary action.

## **LEGAL/REGULATORY ISSUES**

DOH states that HB 170 would give responsibility to the DOH for developing rules requiring the registration of sponsoring organizations for volunteers providing health care services in the state. However, DOH has licensing authority over only Certified Nurse Midwives and direct entry Licensed midwives and Emergency Medical personnel but not other volunteers covered by this act, so this arguably creates an additional and unnecessary step in the process. Instead it would be more practical for the licensing entities to be responsible for developing rules for the registration of sponsoring organizations and verification of the volunteers' credentials

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The MB observes that licensure for physicians and other health care practitioners has the goals of protecting the public against the malfeasance of practitioners, of assuring that education, training, and experience are adequate and appropriate, and of rehabilitating or prosecuting practitioners who do not meet professional standards of practice or behavior. These functions have been assigned to and carried out by the specific HealthCare Board that licenses the practitioner. HB 170 proposes that these functions as applied to Volunteer physicians be assigned to the Department of Health. That is a conflict not only with the mission of the Department of Health, but is in conflict with and proposes to duplicate the long-standing mission and tasks of the New Mexico Medical Board. It specifically conflicts with Section 61-6-18.1(B) and Section 61-6-14(B) of the Medical Practice Act, as discussed above.

Further, MB states that Section 6 of the bill is unconstitutional because it conflicts with the "anti-donation clause" of the NM constitution (N.M. Const. art. IX, § 14, as amended 2002): "Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation...." . The State cannot confer a direct benefit to private entities, even non-profit or not-for-profit entities that serve the public good.

Conferring immunity from professional liability is a huge financial benefit.

### **TECHNICAL ISSUES**

The MB notes that fifteen (15) States either have or have looked closely at creating a Volunteer Physician License placing them under the jurisdiction of their Medical and Osteopathic Boards, both for licensing and for discipline. None have placed the Volunteer Physician under the jurisdiction of a Department of Health (DOH), since the function of the DOH is quite different from that of the Medical and Osteopathic Boards.

### **OTHER SUBSTANTIVE ISSUES**

The MB states that the Mission Statement of the DOH (“Promoting health and sound health policy, preventing disease and disability, improving health services systems, and assuring that essential public health functions and safety net services are available to New Mexicans”) does not include the licensing and discipline of Physicians or Osteopaths, or health care practitioners under other licensing boards.

### **ALTERNATIVES**

Continue to require that there must be licensure of physicians practicing medicine in any form in the State of New Mexico and that it continue to be the function of the NM Medical Board.

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

A limited exemption from New Mexico Licensure to Health Practitioners would not exist and volunteer health care providers from other states working for a sponsoring agency will not be able to provide health care services for underserved populations in New Mexico. However, the MB states that there could be a cooperative effort between the DOH (which has jurisdictional responsibility over clinics of many types) to work cooperatively with the MB in developing an appropriate mechanism for Volunteer Physician participation in Health Care for the Underserved, as defined in HB 170 (§2.D).

### **AMENDMENTS**

In order to delegate regulatory authority to the appropriate licensure boards, the DOH proposes the following amendments:

At p. 3, paragraph A, line 22, delete “department of health”, and in its place insert “relevant licensure boards”;

At p. 3, paragraph A, line 24, delete “the department” and insert “those boards”.

At p. 4, paragraph B, line 2, delete “department of health” and insert “Each licensure board” in its place.

At p. 4, paragraph B, subparagraph (1), line 4, between the words “practitioners” and “associated” insert “over which the board has regulatory authority”.

At p. 4, paragraph B, subparagraph (1), line 6, delete “department” and insert “board”.

At p. 4, paragraph C, line 11-13, delete the entire first sentence ending with “receipt.”

At p. 4, paragraph C, line 15, delete “from a licensure board”.

At p. 4, paragraph C, line 18 delete “department” and insert “board”.