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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Ferrary/Thomson/Stefanics</u>	<b>LAST UPDATED</b> <u>02/17/2023</u> <b>ORIGINAL DATE</b> <u>01/23/2023</u>
<b>SHORT TITLE</b> <u>Pharmacy Act and Board of Pharmacy Changes</u>	<b>BILL NUMBER</b> <u>House Bill 93/a/HCEDC/aHFI #1</u>
<b>ANALYST</b> <u>Chilton</u>	

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund

Parenttheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 92

### Sources of Information

LFC Files

Responses Received From

Registration and Licensing Department (RLD)

## SUMMARY

### Synopsis of HFI#1 Amendment to House Bill 93

The House floor amendment removes the Board of Nursing from the position of having to consult on protocols for “prescribing dangerous drug therapy, including vaccines and immunizations,” leaving the New Mexico Medical Board as the only required consultant regarding rules and protocols.

### Synopsis of HCEDC Amendment to House Bill 93

The HCEDC amendment in two places within the bill requires that the Board of Pharmacy seek approval of (rather than consult with) the Board of Nursing and the New Mexico Medical Board in establishing “rules and protocols for prescribing dangerous drugs, including vaccines and immunizations.”

### Synopsis of Original House Bill 93

House Bill 93, Pharmacy Act and Board of Pharmacy Changes, makes a number of changes to the Pharmacy Act (Section 61-11 NMSA 1978), as summarized below.

In Section 1 of the bill, which amends the definitions portion of the Pharmacy Act, the definition of “custodial care facility” is redefined to exclude homes caring for fewer than 16 children, those funded by the Children, Youth and Families Department (CYFD), homes certified and supervised by a state or national organization, and homes with children not placed for adoption.

Section 2 of the bill amends the section of the Pharmacy Act that deals with pharmacy board meetings. It changes the requirement for notification from certified mail to electronic or regular mail.

Section 3 of the bill amends the powers and duties of the board section of the Pharmacy Act, adding two duties:

- 1) To enforce provisions of the Impaired Health Care Provider Act as they apply to pharmacists, their assistants, interns, and applicants for license or registration, and
- 2) To make rules regarding reporting of dangerous drugs that are not controlled but may still be hazardous to patients.

Section 4 of HB93 modifies the section of the Pharmacy Act regarding limitations on drug dispensation. Pharmacists would be authorized to refill a prescription without a new prescription if the prescribing practitioner cannot be reached, the medication is essential to the patient’s well-being, and the quantity dispensed is no more than required for 30 days (at present, the limit is 72 hours).

Section 5 of the bill regards the Surety Bonds section of the Pharmacy Act, changing the word “shall” to “may” regarding the duty of the board to set rules for surety bonds required to pay for penalties or costs required by board rule or disciplinary action.

Section 6 amends the section dealing with non-resident pharmacy licensure, regarding toll-free telephone service. It removes the requirement that such pharmacies report the names and titles of pharmacists working for those pharmacies, and removes the requirement that changes in the addresses and corporate officers of those firms be communicated annually or within 30 days after a change.

Section 7 of the bill is new material regarding protected actions of Pharmacy Board members. Subsection A absolved board members and others working with the board of liability for acts or omissions of the board. Subsection B exempts information transmitted to the board from Inspection of Public Records Act disclosures, with limited exceptions where necessary. Subsection C ensures that information within the prescription monitoring program is confidential, unless disclosure is compelled by a court. Subsection D absolves the provider of information to the board of civil liability for that information, if provided in good faith.

Section 8 repeals the section of the Pharmacy Act (Section 61-11A) regarding impaired pharmacists. The section would be replaced by application of the Impaired Health Care Provider Act to pharmacists and others working in pharmacies.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## **FISCAL IMPLICATIONS**

There would be no fiscal implications to any agency other than the Regulation and Licensing Department, home to the Pharmacy Board, which notes the possibility of small savings from simplification of its procedures.

## **SIGNIFICANT ISSUES**

According to RLD, “Provisions of the Pharmacy Act ... are ambiguous, outdated, administratively burdensome, [and] otherwise in need of update ...

“Without the protection afforded by the new section “Protected Actions-Communications, complainants may experience significant irreparable personal and professional harm associated with the release of information regarding a complaint and investigation that did not warrant board action. The non-disclosure of prescription monitoring program data other than for specified allowances is important to protect patient health information as it relates to dispensed controlled substance prescriptions, which may include treatment for mental health conditions and substance use disorder.”

## **RELATIONSHIP**

Relates to Senate Bill 92 expands the definition of “practice of pharmacy”.

LAC/rl/ne/al