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FISCAL IMPACT REPORT

SPONSOR:	SPAC	DATE TYPED:	02/04/00	HB	
SHORT TITLE:	Home Health Care & Hospice Services			SB	77/SPACS
				ANALYST:	Carrillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY00	FY01	FY00	FY01		
See Narrative					

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to

SOURCES OF INFORMATION

Health Policy Commission

Board of Medical Examiners

Board of Nursing

Department of Health

SUMMARY

Synopsis of Bill

Senate Bill 77 as substituted by the Senate Public Affairs Committee proposes to amend Section 61-6-17 NMSA 1978 (Medical Practice Act) to exempt physicians licensed in another state to treat and order home health or hospice services for a resident of New Mexico delivered by a New Mexico licensed home and community support services agency. Any change in the patients condition is to be physically re-evaluated by that treating physician in their jurisdiction or by a licensed new Mexico physician.

Significant Issues

The Board of Nursing staff indicates nurses working in home care and hospice setting have been unable to carry out the orders of physicians licensed in states other than New Mexico because it was not permitted by the Medical Practice Act. This bill would allow home health agency nurses and nurses providing hospice care services to follow the orders of a physician licensed in another state.

Staff from the Department of Health comment the bill would allow New Mexicans who are patients of physicians licensed in adjacent states to have home health agency prescriptions written by the patient's treating out-of-state physician which can then be carried out by New Mexico home health or hospice agencies.

OTHER SUBSTANTIVE ISSUES

The Board of Nursing staff comments the Nursing Practice Act was amended several years ago to deal with a concern raised by nurses that patients were traveling to other state to obtain medical services. The reason for this phenomena varied and included mechanisms for payment of services, availability of services and availability of physicians to name a few. Section 71-3-3(J) NMSA 1978 (Nursing Practice Act) allows nurses licensed in New Mexico to administer medications and perform treatments prescribed by a person authorized in this state or in any other state in the United States to prescribe those medications and treatments. The change proposed by SB77/SPAC is consistent with the Nursing Practice Act and would solve the most pressing problem, as reported to the Board of Nursing, with is the current dilemma faced by home health agency nurses and nurses providing hospice care services. Nurses working in these settings have been unable to carry out the orders of physicians licensed in a state other than New Mexico because it was not permitted by the Medical Practice Act. This bill will resolve in part the conflict between the Medical Practice Act and Nursing Practice Act. However, the language in the Nursing Practice Act remains broader, allowing nurses to accept orders from a person authorized in any state for any type of service and in any type of setting.

According to staff from the Department of Health, there are many border areas of new Mexico where New Mexicans routinely obtain medical services in; an adjacent state. The treating physician may lawfully write medication prescriptions for their New Mexico patients and the patient can have the prescription filled at their local New Mexico pharmacy. For many years, treating physicians could also write a prescription for home health or hospice services for their New Mexico patients and such prescriptions would be honored.

Additionally the Department of Health staff writes that recently the Board of Medical Examiners interpreted the Medical Practice Act to proscribe such orders as the "unlicensed practice of medicine." Thus nurses licensed in New Mexico could not honor the orders for home health care or hospice care for their New Mexico patients if the order was written by the patient's treating physician practicing in an adjacent state, even though the physician's order was lawful in the state where it was written. This results in harm and expense to the New Mexico patients.

Lastly, the Department of Health notes hospice and home health agencies are experiencing difficulty securing Medicare reimbursement for service when they are ordered by an out-of-state physician based on the scope of practice in the Medical Practice Act. This legislation would remove barriers to accessing necessary services by individuals who elect to have a physician in a border area. In-home services are the most cost effective way to meet the needs of individuals who would otherwise be hospitalized or institutionalized.

The following comments are from the Health Policy Commission staff:

- Because of proximity to health care, especially specialty services, in neighboring states, New Mexicans not uncommonly obtain care out-of-state. In such cases, home health or hospice care may be ordered by the out-of-state physician, making it difficult for the patient to obtain these services

when returning home to New Mexico. New Mexicans may also be required to obtain out-of-state services when the service is highly specialized and not available in-state or in the case of emergency.

- •Physicians due to professional ethics and potential liability are reluctant to sign another physician's orders as is currently technically required for a patient with an order for home health or hospice from an out-of-state physician. In general, physicians will require an office visit and assessment which imposes an additional burden on an already ill individual and additional costs to the health care system.
- •This substitute should improve access to services, reduce unnecessary costs to the health care system and minimize burden on patients and potentially prevent adverse events, if a patient is unable to obtain ordered care when they return to New Mexico.
- •Licensing standards are comparable in New Mexico as in other states. Because of telemedicine, regional referral centers and traditional patterns of care, such as New Mexicans from the southeastern part of the state going to Texas for care there has been recent increased discussion of national or regional licensure of physicians.
- •Texas has recently enacted similar legislation without known problems and the practice has gone on informally in parts of New Mexico previously without known problems.
- •Since this is an exemption from the Medical Practice Act, the Board of Medical Examiners, will not have authority over the out-of-state physicians and their practice of medicine delivered indirectly through home health/hospice personnel to people in New Mexico. Since these patients are already seeking care out-of-state, this will not change the current level of oversight, or the fact that individuals with complaints must file them with the board in the state in which the physician is licensed.
- •Changes in conditions must be *physically* assessed where the physician is licensed or by a New Mexico licensed physician. While this eliminates the "practice of medicine" in New Mexico by an out-of-state physician, it may impose additional hardship on the patient. Not uncommonly, the treating physician of record will discuss patient's conditions over the phone with a home health/hospice nurse and order changes in treatment, lab work, etc. over the phone. Patients with home health/hospice orders from out-of-state physicians will be required to *physically* go to see the out-of-state physician for re-evaluation or to seek care from another physician licensed in New Mexico for changes in condition necessitating a change in orders.

WJC/njw