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FISCAL IMPACT REPORT

SPONSOR: Foley DATE TYPED: 02/14/04 HB 662

SHORT TITLE: Health-Based Business Referrals SB _____

ANALYST: Geisler

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
		NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Board of Medical Examiners (BOME)
Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

HB 662 adds a provision to the medical practice act prohibiting physicians and physician assistants from referring a patient to any health-related business in which the license holder has a financial interest. It further provides that the board may suspend the license for violation of this provision.

Significant Issues

The potential for a conflict of interest must be carefully weighted against the potential benefits in patient care. In a rural state like New Mexico, restrictions contained in HB 662 can create serious barriers to access of important health services. According to the HPC, 32.5% of New Mexicans live in "Health Professional Shortage Areas" (HPSA's). The national average for persons living in HPSA's is 17.3%. (*US Department of Health and Human Services, The Health Care Workforce in Eight States: Education, Practice and Policy, 2002*). This bill may force patients to seek ancillary services, such as laboratory, x-ray, or even nursing home care, in a distant community from their home.

TECHNICAL ISSUES

It might be more appropriate to add this language to Section 61-6-15, which covers all the reasons a license may be refused, revoked, suspended, or otherwise sanctioned.

This bill only refers to physicians and physician assistants licensed under the Medical Practice Act. It does not address similar conflicts of interest that might pertain to osteopathic physicians, chiropractic physicians, podiatrists, and a multitude of other health providers.

OTHER SUBSTANTIVE ISSUES

The BOME, by rule, adopts the ethical standards in the “Code of Medical Ethics” of the AMA, which contains very clear guidelines regarding “Conflicts of Interest: Health Facility Ownership by a Physician.” The Code of Medical Ethics provides that “physicians are free to enter lawful contractual relationships, including the acquisition of ownership interests in health facilities, products, or equipment.” It further spells out the potential for a conflict of interest. It states “in general, physicians should not refer patients to a health care facility which is outside their office practice and at which they do not directly provide care of services when they have an investment interest in that facility.” It further clarifies the direct involvement of the physician with the provision of care or services.

However, the Code of Ethics continues with examples including situations where a needed facility would not be built if referring physicians were prohibited from investing in the facility. It goes on to state “physicians may invest in and refer to an outside facility, whether or not they provide direct care or services at the facility, if there is a demonstrated need in the community for the facility and alternative financing is not available.” The requirement that alternative financing not be available includes a burden of proof.

The AMA Code of Ethics then goes on to list 10 requirements for referral to a facility where the physician has a financial interest. First and most important is that the physician should disclose their interest to the patient when making a referral, provide a list of alternative facilities, inform the patient that they have free choice to obtain the medical services elsewhere, and that they will not be treated differently if they decide not to go to the facility.

This issue is already addressed by board rule, which refers to the AMA Code of Ethics. Section 8.032 (copy available on request) directly and in great detail addresses this potential conflict of interest. Licensed physicians and physician assistants can be disciplined for violating this section now with no change to the law.

GG/njw:sb