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FISCAL IMPACT REPORT

SPONSOR: Picraux DATE TYPED: 03/16/03 HB 848/aHAFC/aSPAC

SHORT TITLE: Amend Pain Relief Act 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)

Relates to: SB 171, SB 93, HB 662, and HB 145

SOURCES OF INFORMATION

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

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment to HB 848 makes a technical correction by underscoring lines 21 through 24 (Section D, page 4) to show that it is new material.

Synopsis of HAFC Amendments

The House Appropriations and Finance Committee Amendments to HB 848 ensure that all health care provider boards assume responsibility for pain management oversight and continuing education. Additional amendments make technical adjustments relating to disciplinary actions and responsibility for updating guidelines and improving educational efforts. The appropriation is deleted.

- 1) Clarifies that disciplinary action can be taken against health care providers that engage in conduct that violates board practice acts (not just the Medical Practice Act).
- 2) Added language that each board shall require pain management continuing education for all licensees who treat patients for pain.
- 3) Removes the requirement for testimony by at least two experts for disciplinary actions.

- 4) Clarifies that pain management guidelines shall be reviewed and updated annually, as necessary.
- 5) Added language requiring the Pain Management Advisory Council review and recommend educational efforts in pain management for both consumers and health care providers to each board of health care providers that treat pain.

Synopsis of Original Bill

HB 848 incorporates recommendations developed by the Task Force created in response to Senate Memorial 22 in 2001. It amends the Pain Relief Act, adds certain requirements to the Medical Practice Act, and creates the Pain Management Advisory Council in the Office of the Governor. The bill appropriates \$25,000 from the general fund to support the advisory council.

Significant Issues

- The Health Policy Commission pulled together a diverse group of stakeholders into the SM 22 Pain Management Task Force. The members of the Task Force considered all the evidence gathered, and developed recommendations. The recommendations can be found in the SM22 Report and the major findings are as follows:
 1. There is a dire need for more education about pain and pain management, for both patients and health professionals.
 - Patients often lack clear language for expressing the extent and nature of their pain in such a manner that their health care provider can understand and respond to appropriately, and health professionals in NM have significant limitations to their knowledge about the etiology of pain, the actual risks and benefits of opioids in the treatment of pain, and effective pain management.
 - Pain management receives little or no attention in the curricula of the professional schools in the state, there are no competency requirements for pain management that are necessary for licensure, and although there are guidelines available for health care professionals to refer to, few practitioners actually do.
 - The major recommendation the Task Force made in response to this finding is a call for the creation of a State Advisory Council on Pain Management which would be responsible for instituting statewide education efforts for both providers and patients. HB 848 directly addresses this recommendation by requiring continuing education in pain management for all practitioners, and by creating the Pain Management Advisory Council.
 2. Providers continue to be fearful that they make themselves vulnerable to discipline and/or legal action when they prescribe opioids/narcotics for pain.
 - Whether it is an unfounded perception or a valid concern, many providers respond by under-prescribing for pain.
 - To address this finding, the Task Force made recommendations for changes in the BME disciplinary process, and for the review and updating of BME guidelines on

prescribing for pain. HB 848 also directly addresses these recommendations, by broadening the definition of pain, by specifying that health care providers cannot be disciplined for solely the quantity of medication prescribed and by requiring the Board of Medical Examiners to review its pain management guidelines annually, after a review of national standards.

FISCAL IMPLICATIONS

House Bill 848 appropriates \$25.0 in general fund to support the work of the advisory committee. There will be costs associated with establishing standards and procedures for the application of the Pain Relief Act for the care and treatment of chemically dependent individuals. These costs will not only impact the Medical Board, but each board licensing health care providers. The requirement for the BME to have two experts instead of one will increase the cost of initiating actions against licensees by up to \$10.0 per year.

RELATIONSHIP

The following bills also amend portions of the Medical Practice Act: SB 171, SB 93, HB 662, HB 145.

AMENDMENTS

The Board of Medical Examiners supports the bill but has a number of technical concerns with bill language. Suggested amendments are provided for each item below:

- 1) In Section 1, the definitions apply to all licensing boards of health care providers. However, “disciplinary action” is defined as conduct that violates the Medical Practice Act. This needs to be updated to refer to the individual practice acts of each board. See amendment #1.
- 2) The proposed amendment to Section 24-2D-3 that health provider boards need to have two experts to rebut the testimony of a licensee’s experts “prior to the initiation of an action” should be deleted. There is not any testimony “prior to the initiation of an action.” This portion of the Pain Relief Act relates to burdens of proof that are on the parties during the hearing after an action is initiated. See amendments #2 to #6.
- 3) The bill appears to also require that health provider boards have at least two expert witnesses for any action they bring for violations of the act. This requirement should be deleted--the number of witnesses a party needs to present at a hearing should be left up to the parties. The issue at hearings is the credibility of expert witnesses, not which side has more experts. Also the use of 2 experts on the same issue may violate Section 61-1-11A which exclude unduly repetitious evidence. See amendments #2 to #6.
- 4) Language being added to the Medical Practice Act requires the BME to establish (and annually update) pain management guidelines. The BME believes that the requirement should be to review annually and replace if necessary. See amendment #7.
- 5) The bill also and require pain management continuing medical education for all practitioners. The BME believes each health care board should require pain management continuing education for all licensees who treat patients with pain. See amendment #8.

BME Amendment Language as discussed above:

1. Page 2, line 16, strike "Medical" and replace with "board's"
2. Page 3, line 19, strike "subject" and replace with "disciplined pursuant"
3. Page 3, line 20, strike "or criminal prosecution,"
4. Page 3, line 21, add the words "by the licensee" after the word "guideline"
5. Page 3, line 22, strike "testimony of at least two unaffiliated" and add back "expert"
6. Page 3, line 23, reinsert "testimony" and strike the underlined language
7. Page 7, line 13, after annually add "review," after update add " and replace if necessary"
8. Page 7, lines 15 & 16, delete and replace with a new Section that states:
"Each board shall require pain management continuing education for all licensees who treat patients with pain."

The HPC suggests the following technical changes relating to education:

1. On page 8, lines 8 and 9, strike "and educational efforts for both consumers and professionals." On line 12, add: "The council shall review and recommend educational efforts for both consumers and health care professionals."

GGG/lr:yr