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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/07  
 LAST UPDATED 02/26/07    HB 964/aHHGAC

SPONSOR Gutierrez

SHORT TITLE Physician Supervision in Medical Spas    SB \_\_\_\_\_

ANALYST Geisler

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

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		.01, minimal, see narrative			Non- Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)  
 Attorney General (AG)  
 Medical Board (NMMB)  
 Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of HHGAC Amendments

The House Health and Government Affairs Committee amendments to House Bill 964:

1. Strikes the requirement that medical spas shall have on-site during all business hours and available for consultation a physician who is board-certified in either dermatology or plastic surgery and replaces it with the requirement that they have a supervising physician.
2. Replace the Department of Health with the Medical Board as the agency which shall promulgate rules necessary to implement the provisions of this section, including specific provisions setting forth those facilities that fall within the definition of medical spa.

#### Synopsis of Original Bill

House Bill 964 requires facilities offering medical procedures for aesthetic or cosmetic purposes including skin treatments using applications of lasers, intense pulsed light or radio frequencies; deep skin peels; and subcutaneous injections of substances, including botox and tissue fillers to

have a physician who is board-certified in either dermatology or plastic surgery on-site during all business hours and available for consultation.

The bill requires the Department of Health to promulgate rules necessary to implement the provisions of this section, including specific provisions setting forth those facilities that fall within the definition of medical spa.

The bill authorizes the Attorney General to bring actions under the new law, and allows the court to impose a civil penalty of up to \$1000/day for every day the facility operates in violation of the law, not to exceed \$25,000.

### **FISCAL IMPLICATIONS**

DOH notes that funding to implement the provisions of this legislation is not including in the bill, or in the executive budget request for DOH. However, the department did not provide an operating budget impact.

### **SIGNIFICANT ISSUES**

The NM Medical Board provides:

Medical spas are an area of major growth in the personal health care arena, and they have been a concern for the Medical Board for some time now. Many states have very detailed rules regarding training, certification, licensure and allowable procedures; until recently, New Mexico had next to no regulation in this area.

There are medical spas run by Certified Nurse Practitioners and dentists – and both of these license types have a regulatory board responsible for oversight of their training and quality of care. The Medical Board would defer analysis of the impact HB 964 would have on these other providers types to their respective boards.

The focus of the Medical Board’s concern has been the large number of unlicensed individuals who are setting themselves up in the medical spa business, with no licensed MD, PA, CNP or DDS involved, and therefore practicing medicine without a license and without appropriate supervision or oversight. The public is very confused about the difference between licensure and certification, as are many providers – the Medical Board receives virtually daily calls from individuals who have completed a course of training and received some sort of certification, and who think that they are now “licensed” to perform the types of treatment specified in HB 964.

As a result of these concerns, the Medical Board adopted a strengthened rule 16.10.13, Delegated Use of Devices and Procedures by Medical Assistants; Cosmetic Injections. This rule establishes specific training requirements for medical assistants who are unlicensed, and specific responsibilities for the physicians who supervise them. The rule also clearly draws the line between those procedures that can be delegated and those that cannot: the injection of cosmetic or aesthetic substances is considered the practice of medicine and cannot be delegated to medical assistants.

HB 964 is a much broader response to the problem, requiring on-site supervision of a physician board-certified in either dermatology or plastic surgery for all medical spas. The bill does define

the types of procedures offered at medical spas much the same way that the Medical Board’s rule does, but then tasks the Department of Health with promulgating relevant rules for licensees governed by the Medical Board, the Board of Nursing, and RLD.

In short, HB 964 seeks to address a serious matter – there are many unregulated “medical spas” opening up around the state, and the current regulatory environment is almost purely “buyer beware,” in a context where consumers and providers both lack basic information. The Medical Board agrees that the issue needs careful – and timely – consideration, but it also needs a more carefully-crafted and comprehensive approach. One option might be to amend HB 964 so that it requires that all individuals who provide services within medical spas are appropriately trained, licensed, and supervised, and then task the Medical Board, the Board of Nursing, and the Regulation and Licensing Department to work together to promulgate appropriate rules. The boards could then develop a coordinated plan to address which specific functions and procedures require what specific training and licensure.

### **ADMINISTRATIVE IMPLICATIONS**

If enacted, Section 1C in HB964 would require DOH to employ personnel to promulgate rules necessary to implement HB964. In addition, DOH would be required to distinguish through rule those facilities that fall either within or out of the definition of medical spa which would ultimately include additional program development for surveying and monitoring. The AG notes that the bill appears to require the Attorney General to bring actions to enforce its provisions. This will require additional staff time for that litigation.

### **CONFLICT**

DOH provides that if enacted, HB 964 would be in conflict with the Medical Practice Act, §§61-6-1 through 61-6-35 NMSA 1978, and implementing rule 16.10.13 NMAC, Delegated Use of Devices and Procedures by Medical Assistants; Cosmetic Injections. These existing rules of practice and procedure under 16.10.13 NMAC govern the use of medical devices and procedures by unlicensed medical assistants under the supervision of a physician in New Mexico. While not entirely encompassing, the New Mexico Medical Board has regulatory authority, through statute and rule, to address physician supervision and the cosmetic medical procedures permitted. Additionally, if enacted Section 1C authorizes DOH to promulgate rules necessary to implement HB964, however agency jurisdiction is with the New Mexico Medical Board.

### **OTHER SUBSTANTIVE ISSUES**

The Medical Board provides:

Regarding the role of the Office of Attorney General and the fines established by HB 964, the Medical Board defers to the OAG. The board notes, however, that the Medical Practice Act categorizes the practice of medicine without a license as a fourth degree felony, and the Medical Board currently handles these cases by requesting that the court issue a cease and desist order, and then referring the case to the District Attorney’s office for possible prosecution.

### **ALTERNATIVES**

Amend the bill to involve appropriate agencies, and task them with developing a coordinated approach to regulation and licensing of medical spas and the providers who work at them.

**AMENDMENTS**

The Medical Board suggests:

Page 1, line 25: strike “a physician who” and insert “an appropriately trained and licensed health care provider.” On Page 2, line 2: strike “department of health shall promulgate” and insert “medical board, board of nursing and the regulation and licensing department shall collaborate on the development and promulgation of”

GG/mt