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FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/08
 LAST UPDATED 2/13/08

SPONSOR SFC HB _____

SHORT TITLE Polysomnography Practice Act SB CS/269/aSFL#1/aHJC

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|------|-------------------------|------------------|
| FY08 | FY09 | | |
| \$0 | \$0 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY08 | FY09 | FY10 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|-------|-------|----------------------|-------------------------|------------------|
| Total | | \$161 | \$161 | \$322 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Regulation and Licensing Department (RLD)
 Attorney General (AGO)
 Commission on Higher Education (CHE)
 Medical Board (MB)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment makes technical changes to the bill.

Synopsis of SFL Amendment

The Senate Floor Amendment removes the exemption for respiratory care practitioners licensed under the Respiratory Care Act.

Synopsis of SFC Substitute

The Senate Finance Committee substitute for Senate Bill 269 would enact the “Polysomnography Practice Act” which would generally regulate the administration of various tests used to help diagnose and evaluate a number of sleep disorders (e.g. sleep apnea, narcolepsy, etc.)

The bill would require a person engaged in the practice of polysomnography to have a license issued by the medical board.

The bill provides that on and after July 1, 2011, a person who is engaged in the practice of polysomnography must have a valid polysomnographic technologist license issued by the board. It shall be unlawful for a person to engage in the practice of polysomnography after that date unless the person has a valid polysomnographic technologist license issued by the board. The bill exempts certain persons from the licensing requirements (trainees, students, other licensees, federal employees, etc.)

The bill provides licensing requirements which include minimum age (18), education, and examination.

The bill creates a non-reverting “polysomnography fund” in the state treasury which would consist of revenue generated by licensing and administrative fees, and would be appropriated to the Medical Board to carry out the provisions of the act.

The bill also creates a seven member “Polysomnography Practice Board” which would be administratively attached to the Medical Board and would generally have powers regarding licensing of polysomnographic technologists, temporary permitting of polysomnographic technicians, approval of polysomnography curricula, approval of degree programs in polysomnography and any other matters that are necessary to ensure the training and licensing of competent polysomnographic technologists.

FISCAL IMPLICATIONS

SB 269 does not provide an appropriation to support the operations of the Board. The cost of staff and board expenses to create a new licensed profession is approximately \$161,000 per year for the first two years. This includes the following expenses:

- Administrative staff: 1 administrator = \$58,000; one licensing staff = \$42,000;
- Board travel expenses: 4 meetings x 7 members = \$16,000
- Rule making expenses: 1 Rule hearing and publishing = \$10,000
- Office supplies and IT equipment: \$10,000
- Overhead expenses: \$15,000
- Contractual expenses: \$10,000

Since professionals are not required to be licensed until 2011, there will be little or no revenue to augment the operations of the Board until 2011. Without an appropriation from the general fund to cover the expenses, the Medical Board will be required to support the operations of the Board without any viable source of revenue.

SIGNIFICANT ISSUES

Senate Bill 269 exempts persons qualified as members of a recognized profession, the practice of which requires a license or is regulated pursuant to the laws of New Mexico, who render services within the scope of their license or other regulatory authority provided that the person does not represent that the person is a polysomnographic technologist. This would appear to exempt physicians and other state licensed health care practitioners from the licensing requirements of the new act. However, the bill also appears to exempt respiratory care practitioners licensed under the Respiratory Care Act (NMSA 61-12B-1 et seq.) only if they are also “credentialed” by the Polysomnography Board; and provides that respiratory care practitioners are subject to disciplinary action pursuant to the Respiratory Care Act if they fail to adhere to the standards established in the Polysomnography Practice Act and rules adopted pursuant to that act. See Section 3C (5). This presumably will require “dual-licensure” for respiratory care practitioners providing services which may involve the practice of Polysomnography, and will subject them to discipline under the Respiratory Care Act for violations of the new Polysomnography Practice Act.

OTHER SUBSTANTIVE ISSUES

Currently, individuals obtaining polysomnographic assessments have two choices: (1) they may receive help from a respiratory care therapist who has specialized training; or (2) obtain assistance from anyone who claims they maintain an unregulated specialty in the area.

The Respiratory Care Board believes this area of health care should be licensed, but the licensure should be managed by the Respiratory Care Board thereby allowing that Board to implement procedures and safeguards already recognized by the Board.

ALTERNATIVES

There are two alternatives:

(1) Work with the Respiratory Care Advisory Board to incorporate concerns addressed by this Act into the Respiratory Act

(2) Collaborate efforts to protect the public in connection with matters pertaining to polysomnographic assessment, monitoring, interpretation and treatment.

Create a specialty license under the Respiratory Care Advisory Board Act to oversee the regulation of polysomnographic assessments.

The protections proposed by this Act would be best administered by the Respiratory Care Advisory Board.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The practice and profession of Polysomnography will continue without minimum standards and continue to be unregulated, which may pose a risk for those with sleep disorders. Education, training, and licensing of this profession will continue without measurable competence.