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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/10
LAST UPDATED 02/12/10 **HB** 188/aHBIC

SPONSOR Trujillo

SHORT TITLE Regulation of Certain Medical Entities **SB** _____

ANALYST Fleischmann

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
\$160.0			Recurring	Medical Board Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$5.0 - \$25.0				Recurring	Medical Board Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 213

Relates to HB 60

SOURCES OF INFORMATION

Responses Received From

Administrative Office of the Courts (AOC)

General Services Department (GSD)

Public Regulation Commission (PRC)

Medical Board (MB)

Human Services Department (HSD)

Department of Vocational Rehabilitation (DVR)

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee amendment inserts the phrase “as a doctor of” in Section 2, Subsection C. The definition of business entity is changed to read “business entity means a corporation, limited liability company or partnership that is licensed or seeking a license to practice as a doctor of medicine pursuant to the Medical Practice Act;”. A similar change is

made in Section 6, (New Material) Business Entity License, Subsection A, which now reads, “The board may grant a license to practice as a doctor of medicine to a business entity that meets the following requirements:”. Two wording changes are also included in Section 3, FEES, Subsection A (5), which now reads as follows: “a late fee not to exceed one hundred dollars (\$100) for licensed physicians ~~who~~ or business entities ~~that~~ who renew their license within forth-five days after the required renewal dates;”.

Synopsis of Original Bill

House Bill 188 amends the Medical Practice Act to provide for the licensing and regulation of certain “business entities”, imposing licensing fees and other restrictions.

The bill provides for the following:

Sections 1 and 2 amend Sections 61-6-1 and 61-6-6 NMSA 1978, to include coverage of a "business entity," defined as a corporation, limited liability company or partnership that is licensed to practice medicine pursuant to the Act.

Section 3 amends Section 61-6-19 to include business entities in the fee requirements, including an application and renewal fee for a business entity license not to exceed \$400.

Sections 4 and 5 amend Sections 61-6-26 and -27 to include business entities in the triennial renewal fee requirements; including requirements for certificates of renewal and display, and penalties for failure to renew.

Section 6 adds a new section to the Act, providing that the MB may grant a license to practice medicine in NM to a business entity that is organized under the laws of NM and is “controlled” by persons licensed to practice medicine in NM. “Controlled” is defined as “ownership...that: (1) represents more than fifty percent of the total voting power; and (2) has a value of more than fifty percent of the total value of all equity...”. A business entity applying for a license or a renewal must pay a fee, provide equity ownership information and provide the identity of directors and officers, managing members, or general partners, as well as “such other information as may be required by the board.” The board's responsibility and authority over business entities is limited to processing and either granting or denying license applications; and assessing and collecting fees.

This bill contains an emergency clause.

FISCAL IMPLICATIONS

The bill imposes a licensing application and renewal fee not to exceed \$400; requires license renewal every three years; establishes late fees of \$100 and \$200 for renewals filed within 45 day after the required renewal date and renewals filed between 46 and 90 days after the required renewal date, respectively.

Expanding the licensing authority of the MB would increase the number of new licensees. The revenue table above suggests 400 new licensees at \$400 each; these numbers were provided by the MB. The bill provides for fees not to exceed \$400 so it appears the MB anticipates charging the cap.

The MB reports that the additional revenue should offset the expenses incurred with implementation.

AOC reports a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

A “health care provider” that wants to participate in the patient compensation fund (PCF) must pay a surcharge to the PRC Insurance Division. These surcharges are deposited into the PCF, which is used to pay claims for medical malpractice above \$200 thousand.

This bill provides for continuing appropriations into the MB fund. The LFC has concerns with including continuing appropriation language, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

The bill is an attempt to bring the business entities of doctors within the definition of “health care provider” under the Medical Malpractice Act, specifically NMSA 1978, § 41-5-3(A).

The Medical Malpractice Act defines a health care provider as a person, corporation, organization, facility or institution licensed or certified by the state to provide health care or professional services as a doctor of medicine, hospital, outpatient health care facility, doctor of osteopathy, chiropractor, podiatrist, nurse anesthetist or physician-assistant.

It is suggested that the definition of health care provider as used in the Medical Malpractice Act does not include the corporations, limited liability companies, and partnerships formed by doctors of medicine. Therefore, these business entities may not be eligible for the protections provided by the Medical Malpractice Act and for participation in the PCF.

The MB believes that given the number of physicians who are either incorporated, have a limited liability company or a partnership, it may adversely affect the recruitment and retention of practitioners if the malpractice insurance “cap” does not apply.

PERFORMANCE IMPLICATIONS

The MB notes that the Superintendent of Insurance has raised concerns that “medical corporations” are not licensed or certified by the State to provide health care.

PRC notes that while these business entities will be licensed by the MB, it is still uncertain whether these business entities are “doctors of medicine” for the purpose of PCF coverage.

ADMINISTRATIVE IMPLICATIONS

Currently the MB licenses physicians, physician assistants, and anesthesiology assistants, but does not license the business entities that they own or that employ them.

The MB reports it has the capacity to implement the amendments in the bill.

HSD notes that the Centers for Medicare and Medicaid Services are requiring state Medicaid

Programs to screen owners of provider groups against federal lists of persons disciplined in other states.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 213; regulation of certain medical entities, which was a duplicate bill prior to amendment by the Senate Corporations and transportation Committee. The amendment inserted the phrase “as a doctor of” in Section 6, (New Material) Business Entity License, Subsection A, which now reads, “The board may grant a license to practice as a doctor of medicine to a business entity that meets the following requirements:”. The House Business and Industry Committee amendment made a similar change. However, the amendment made three additional changes as described above.

Relates to HB 60; amending the definition of “health care provider” to expand the scope of the Medical Malpractice Act to corporations, organizations, facilities and institutions “owned by a person” licensed or certified by the state to provide health care services.

TECHNICAL ISSUES

A business entity applying for a license or a renewal must provide “...such other information as may be required by the board.” The bill is vague on how the MB would use this information.

The bill amends the Medical Practice Act only for doctors of medicine. Other classes of health care providers, such as doctors of osteopathy, chiropractors, podiatrists, nurse anesthetists or physician’s assistants, are not provided for in the bill.

OTHER SUBSTANTIVE ISSUES

PRC notes that the definition of health care provider is the subject of on-going litigation between the Superintendent of Insurance and several individual doctors and a medical malpractice insurer in District Court in Curry County. Based on the mutual agreement of the parties, the Insurance Division is presently accepting surcharges from corporations owned by licensed doctors, doctors of osteopathy, chiropractors, podiatrists, nurse anesthetists, and physician’s assistants until the resolution of the lawsuit.

WHAT WILL THE CONSEQUENCES BE OF NOT ENACTING THIS BILL

Certain business entities owned by “health care providers” may not be eligible for participation in the PCF.

PROPOSED AMENDMENTS

PRC suggests amending the following articles of Chapter 61 NMSA 1978 to include all business entities of health care providers eligible for coverage under the Medical Malpractice Act.

PRC-recommended Amendments

Health Care Provider	Licensing Entity	Licensing Requirement	Only Individuals Licensed
Doctor of Medicine	New Mexico Medical Board (NMSA 1978, § 61-6-2)	NMSA 1978, § 61-6-20	NMSA 1978, § 61-6-11
Doctor of Osteopathy	Board of Osteopathic Medical Examiners (NMSA 1978, § 61-10-5(A))	NMSA 1978, § 61-10-3	NMSA 1978, § 61-10-6(B)
Chiropractor	Chiropractic Board (NMSA 1978, § 61-4-3(A))	NMSA 1978, § 61-4-6(D)*	NMSA 1978, § 61-4-4(A)(2) NMSA 1978, § 61-4-8
Podiatrist	Board of Podiatry (NMSA 1978, § 61-8-5(A))	NMSA 1978, § 61-8-3	NMSA 1978, § 61-8-8(A)
Nurse Anesthetist	Board of Nursing (NMSA 1978, § 61-3-8(A))	NMSA 1978, § 61-3-5(E)	NMSA 1978, § 61-3-23.3(A)
Physician’s Assistant	New Mexico Medical Board (NMSA 1978, § 61-6-2)	NMSA 1978, § 61-6-7(B)	NMSA 1978, § 61-6-7(B)
	Board of Osteopathic Medical Examiners (NMSA 1978, § 61-10-5(A))	NMSA 1978, § 61-10A-4	NMSA 1978, § 61-10A-4
* License not required, but if licensed the individual may seek coverage by the patient’s compensation fund.			

The MB also suggests certain amendments to House Bill 188.

Medical Board-suggested Amendments

House Bill 188	Suggested Amendment
Page 2, Subsection C, lines 4 – 11	C. The primary duties and obligations of the medical board are to issue licenses to qualified physicians, physician assistants, [and] anesthesiologist assistants, <u>genetic counselors, polysomnographic technologists and their business entities</u> , to discipline incompetent or unprofessional physicians, physician assistants, [or] anesthesiologist assistants, <u>genetic counselors or polysomnographic technologists</u> and to aid in the rehabilitation of impaired physicians, physician assistants [and] anesthesiologist assistants, <u>genetic counselors and polysomnographic technologists</u> for the purpose of protecting the public.
Page 3, Subsection E, lines 2 - 5	E. “licensee” means a medical doctor, physician assistant, polysomnographic technologist, [or] anesthesiologist assistant <u>or - genetic counselor</u> licensed by the board to practice in New Mexico;
Page 7, Paragraph (8),	Strike the entire paragraph [(8) a reasonable administrative fee for

Medical Board-suggested Amendments

House Bill 188	Suggested Amendment
lines 7 – 9	verification and duplication of license or registration and copying of records;] and renumber subsequent paragraphs accordingly.
Page 8, Paragraph (23), lines 23 - 25, and page 9, lines 1 - 3	(23) [a] reasonable administrative fees to cover necessary expenses.
Page 9, Paragraph (24), lines 4 – 6	(24) a reasonable fee for costs involved in processing the nationwide and statewide criminal history screening of applicants and licensees through the department of public safety.
Page 9, Subsection A, lines 13 - 22	A. [On or before July 1 of every third year,] <u>On a date to be established by board rule,</u> every licensed physician and licensed business entity in this state shall apply for a certificate of triennial renewal of license for the ensuing three years. The fact that a licensed physician or business entity has not received a renewal form from the board shall not relieve the physician or business entity of the duty to renew the license, and the omission by the board shall not operate to exempt the physician or business entity from the penalties provided by Chapter 61, Article 6 NMSA 1978 for failure to renew a license.
Page 9, Subsection B, lines 23 - 25, and Page 10	B. All licensed physicians and business entities shall pay a triennial renewal fee and, <u>in the case of licensed physicians,</u> an impaired physicians fee as provided in section 61-6-19 NMSA 1978 and shall return the completed renewal form together with the renewal fee and other required documentation.
Page 10, Subsection C, lines 5 – 6	C. Each application for triennial renewal of license shall state the licensed physician’s and business entity’s full name, business address, license number and, <u>current</u> date and all other information requested by the board.
Page 10, Subsection D, lines 7 – 11	D. A licensed physician who or business entity that fails to submit the application for triennial renewal on or before July 1 <u>but a date to be established by board rule,</u> and who submits the application for triennial renewal by August 15 <u>a date to be established by board rule</u> shall be assessed a late fee as provided in Section 61-6-19 NMSA 1978.
Page 10, Subsection E, lines 12 – 16	E. A licensed physician who or business entity that submits the application for triennial renewal between August 16 and September 30 <u>forty-six and ninety days after the required renewal date</u> shall be assessed a cumulative late fee as provided in Paragraph (6) of Subsection A of Section 61-6-19 NMSA 1978.
Page 10, Subsection F, lines 17 – 20	F. After September 30, <u>Ninety days after the required renewal date,</u> the board may, in its discretion, summarily suspend for nonpayment of fees the license of a physician who or business entity that has failed to renew the physician’s or business entity’s license.