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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/08/11

SPONSOR HHGAC LAST UPDATED \_\_\_\_\_ HB 266/HHGACS

SHORT TITLE Scope of Practice Act SB \_\_\_\_\_

ANALYST Sanchez, C.

### APPROPRIATION (dollars in thousands)

| Appropriation |      | Recurring<br>or Non-Rec | Fund<br>Affected |
|---------------|------|-------------------------|------------------|
| FY11          | FY12 |                         |                  |
|               | NFI  |                         |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

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

|              | FY11  | FY12    | FY13    | 3 Year<br>Total Cost | Recurring<br>or Non-Rec | Fund<br>Affected |
|--------------|-------|---------|---------|----------------------|-------------------------|------------------|
| <b>Total</b> | \$0.0 | \$200.0 | \$200.0 | \$400.0              | Recurring               | Board<br>Funds   |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)

Health Policy Commission (HPC)

Medical Board (MB)

Department of Health (DOH)

### SUMMARY

#### Synopsis of HHGAC Bill

The House Health and Government Affairs Committee Substitute for House Bill 266 creates the Scope of Practice Act. The purpose of the Act is to provide a procedure for objective review of proposed changes in the scope of practice of health professionals licensed by the state and to submit findings to the governor and the legislature. The Act establishes a new process for health professions proposing a change in the professional scope of practice for health professionals licensed under Chapter 61, Article 2, 3, 4, 5A, 6, 7A, 8, 9, 9A, 10, 10A, 11, 12, 12A, 12B, 12C,

12D, 12E, 14A, 14B, 14C, 14D or 14E NMSA 1978. The Scope of Practice Act would apply to proposed amendments to statute and rules.

The review process for a change to a scope of practice can be initiated by a member of a licensing board, a licensee of the licensing board or any other person seeking a change in the scope of practice of a health profession. The requestor simply notifies the respective licensing board, submits the proposed change and requests a hearing.

The House Health and Government Affairs Committee Substitute for HB266 replaces the New Mexico Health Policy Commission (HPC) with the Superintendent of Regulation and Licensing to coordinate the review of scope of practice changes for health professions licensed by the state

The Regulation and Licensing Department would be required to appoint an ad hoc review panel to review and make recommendations on proposed change. Membership on the panel includes:

- one board member of the licensing board for the health profession from which the proposed change in scope of practice originates;
- the dean of the university of New Mexico school of medicine; and
- at least one-fourth of its membership must be composed of individuals who have no economic interest in the profession originating the request for a change in scope of practice.

In the event a request is submitted, the licensing board would be required to:

- a) collect data, including information from the applicant and all other appropriate persons, necessary to review the proposed change;
- b) conduct a technical assessment of the proposed change, if necessary with the assistance of a technical advisory group established for that specific purpose, to determine whether the change is in the profession's current scope of practice or skills that can be learned;
- c) hold a public hearing with appropriate notice of its proceedings;
- d) invite testimony from persons with special knowledge in the field of the proposed change;
- e) assess the proposed change using the following criteria:
- f) whether the proposed change offers
  - i) potential harm to the health, safety or welfare of health care consumers;
  - ii) whether the proposed change offers benefit to the health, safety and welfare of health care consumers;
  - iii) the likely economic impact on overall health care delivery of the proposed change;
  - iv) whether the potential benefits of the proposed change outweigh the potential harm; and
  - v) the extent to which the proposed change will affect the availability, accessibility, delivery and quality of health care in New Mexico.

Once the report is completed the respective Board must provide its analysis, conclusions and any recommendations, together with all materials gathered for the review to the legislature and the governor.

In addition, the Superintendent must provide a full report, include legislative recommendations, on each proposed change in scope of practice brought before the board between September of the previous year and August of the current year to the governor, the legislative council, the legislative finance committee and the legislative health and human services committee.

The Superintendent must also provide an oral presentation of the report to the legislative finance committee and the interim legislative health and human services committee.

### **FISCAL IMPLICATIONS**

The substitute bill does not provide an appropriation to support the provisions in the Scope of Practice Act. The bill would require the Superintendent of Regulation and Licensing to coordinate the review of scope of practice changes through ad hoc review panels to be conducted as public hearings. The Superintendent would be required to provide staff services to all ad hoc review panels created pursuant to Section 5 of the Scope of Practice Act. The Regulation and Licensing Department may require additional resources to fulfill these duties.

According to the Regulation and Licensing Department (RLD), the financial impact on each board that proposes a change in rules or statute or receives a request for change from the public could be significant.

To implement this bill, the Regulation and Licensing Department would request Legislative authorization of a least two FTE's, a Senior Policy Analyst and an administrative assistant. These positions would manage requests, compile analysis, and submit necessary reports.

Additionally, there would be a need for a budget to cover the cost of conducting public hearings and disseminating information.

### **SIGNIFICANT ISSUES**

Generally scope of practice changes are not the result of a single individual - they come to a board from the profession as a group, or often go directly to the Legislature without ever obtaining the support either of the primary licensing board or of any other licensing board affected by the proposed change. Once at the Legislature, changes are considered in isolation from one another - one profession's scope of practice change may directly affect another profession, but the proposed changes are rarely worked out cooperatively. A process objectively to review proposed changes in health professional's scope of practice would assist both the legislative and executive branches of state government, and would provide noteworthy benefit to the public. Coordination between affected boards should be mandatory.

According to DOH, establishing a coordinated process to review licensure requirement changes may assist the Legislature in making informed decisions about changes to licensing statutes.

The NM Medical Board supports the formation of an ad hoc committee of experts and stakeholders to review proposed changes to any healthcare profession's scope of practice prior to implementation. Such a Committee would review the extent of existing scientific knowledge related to the changes to scope of practice and determine if the proposed changes are really needed, as well as what specific additional training would be necessary to achieve the appropriate levels of knowledge, skill, and safety for the application of the changes proposed.

Policy makers should assure that scope of practice changes are justified by appropriate and relevant education, training, examination, and experience. This review of proposed changes must also include a review of the rules and the governing act for the profession to be sure that the authority for any new rules proposed or already in existence, are authorized under that professional practice act. The general composition and specific duties of such a Scope of Practice Committee are detailed in the *Report of the Special Committee on Scope of Practice* of the Federation of State Medical Boards (FSMB) at:  
[http://www.fsmb.org/pdf/2005\\_grpol\\_scope\\_of\\_practice.pdf](http://www.fsmb.org/pdf/2005_grpol_scope_of_practice.pdf).

According to NMMB, HB 266, as written, does not adequately address the issues that are critical to a comprehensive review of proposed changes in a profession’s scope of practice. Involvement of public meetings, a “technical assessment *if necessary*”, and “testimony from persons with special knowledge” may be appropriate adjuncts to the process, but the sort of ad hoc committee process proposed by the Federation of State Medical Boards (see above) focuses more specifically on the stakeholders and the experts needed for the committee on a steadier basis. The FSMB Report also specifies a variety of important questions that should be answered during the process of evaluation of the request for scope of practice change.

According to RLD, HB 266 requires an extensive research and reporting requirement would be added to the current rulemaking process and legislative oversight of statutory change and adoption. Also, there is no limitation on the requests a board must respond to and no process for the board to deny an irrational, meaningless or illogical request prior to the analysis process.

## **PERFORMANCE IMPLICATIONS**

The scope of practice of a licensed healthcare profession is statutorily defined in state law in the form of a practice act. The state legislature has the authority to adopt or modify practice acts and therefore adopt or modify a particular scope of practice of a healthcare profession.

## **ADMINISTRATIVE IMPLICATIONS**

RLD believes HB 266 does not clarify whether the Board must wait to adopt new rules until after the Governor and Legislature review the required reports. Waiting for a review would significantly delay necessary changes to scope of practice that may be based on national professional standard changes and federal regulatory changes. Such a delay could ultimately decrease public safety and the board’s ability to maintain professional standards.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 69 creates the Legislative Review Act. The Act requires for all rules adopted by any state agency, board or commission to be reviewed, amended or repealed by the Legislature.

Senate Bill 161 creates the Professional Licensing Board Review Act. The Act establishes three new process requirements for health professions:

- (1) for the review and reporting of proposed change in the scope of practice for health care professions licensed by the state;
- (2) to review and report, in addition to Sunrise Act requirements, proposed new licensing for health care professionals; and

(3) to provide such report to the Governor and the legislature.

According to the Medical Board, the substitute for HB 266 conflicts with SB 161 (Professional Licensure Board Review Act) that provides for a process to review proposed changes in the scope of practice for all licensed health professionals.

### **TECHNICAL ISSUES**

The Health Policy Commission suggests the following changes:

On page 3, line 23, after the word “medicine”, insert “or the Dean of the University of New Mexico School of Medicine’s designee” such that each review panel would include the Dean of the University of New Mexico School of Medicine or the Dean’s designee.

On page 3, line 24, strike “one-fourth” and replace with “one-half” such that each review panel would have at least 1/2 of its membership as individuals who have no economic interest in the profession originating the request for a change in scope of practice. This will help to ensure that review panels are unbiased. If only 1/4 of panel members have no economic interest in the profession originating a request for a change in scope of practice, the remainder of the membership could easily be made up of individuals that do have an economic interest in the profession and could therefore be biased in their reviews.

### **ALTERNATIVES**

According to RLD, HB 266 should limit the scope of practice process to statutory changes only, not through rulemaking.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

CS/mew