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FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/11

SPONSOR Trujillo LAST UPDATED _____ HB 282

SHORT TITLE Medical Licensing & Regulation Of Entities SB _____

ANALYST Kleats

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$160.0	\$60.0	Recurring	Other State Funds

(Parenthesis () Indicate Revenue Decreases)

Duplicates SB 332

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal		Minimal	Recurring	Other State Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Department of Health (DOH)
 New Mexico Medical Board (NMMB)

Responses Not Received From

Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

House Bill 282 amends the Medical Practice Act to provide for the licensing and regulation of business entities.

HB 282 adds a definition for a business entity and a person. The bill lists the requirements for a

business entity license, including that the business entity be controlled by a person(s) licensed to practice medicine in New Mexico.

HB 282 includes an application fee, renewal fee, and late fee for business entities that fail to renew a license by the expiration date, while establishing a triennial renewal date for licensed business entities. HB 282 requires a business entity license to contain the licensed physician's or business entity's name, business address, license date, and license number. It also dictates Medical Board's responsibility and authority to processing, granting or denying an application; assessing and collecting fees; and suspending a license for nonpayment of fees.

HB 282 carries an emergency clause such that the amendments will take effect immediately.

FISCAL IMPLICATIONS

The New Mexico Medical Board estimates 400 applications for business entities should the bill pass with projected revenue of \$160,000 based on an application fee of \$400. Assuming those same 400 applicants apply for triennial license renewal, the average yearly revenue for subsequent years will be \$60,000 based on a triennial renewal fee of \$450 as set by statute. All revenue will enter the same account used for other NMMB revenue administered by the State Treasurer.

No fiscal impact is projected for the Patient's Compensation Fund. Business entities have been paying and can continue to pay into the fund based on the dictates of a restraining order. HB 282 would ensure this status quo even if the restraining order were to expire.

SIGNIFICANT ISSUES

In 2009, the Superintendent of Insurance of the Public Regulation Commission raised concerns about the definition of a "medical corporation" as provided in the Medical Malpractice Act, expressing concern that although regulated and certified as a "corporation" by the State of New Mexico, that "medical corporations" are not "licensed" or "certified" by the State of New Mexico "to provide health care."

Based upon this concern, the Division of Insurance deemed that contributions from business entities would no longer be accepted by the Patient's Compensation Fund at the end of 2009. Several legal actions were filed on behalf of physicians and their corporations against the Division of Insurance, including a temporary restraining order. The temporary restraining order currently allows business entities to continue making those payments and receiving those protections.

ADMINISTRATIVE IMPLICATIONS

NMMB notes it will have additional licensing responsibilities but also currently has the administrative ability and resources to implement the amendments. NMMB expects the additional revenue to offset any additional administrative costs.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 282 duplicates SB 332.

HB 282 relates to parts of HB 267 and its duplicate, SB 333. The relevant sections of HB 267 and SB 333 would amend the Medical Malpractice Act to expand the definition of "health care

provider” to include business entities. Both sets of bills seek to ensure business entities can pay into the Patient’s Compensation Fund and are therefore covered by the malpractice punitive damage and medical care recovery caps. HB 267 and SB 333 are much broader pieces of legislation, however, addressing and amending several other issues within the Medical Malpractice Act.

TECHNICAL ISSUES

Section 41-5-25 creates the Patient’s Compensation Fund collected from a surcharge paid by health care providers. It dictates that “[t]he surcharge shall be determined by the superintendent based upon sound actuarial principles, using data obtained from New Mexico experience if available. The surcharge shall be collected on the same basis as premiums by each insurer from the health care provider.”

Business entities will face varying actuarial realities concerning their malpractice exposure. Exposure can be affected by the number of licensed practitioners working under the entity and if outpatient surgery is provided by the entity. The Superintendent of Insurance will have to take care to account for these realities when setting the surcharge in order to not dilute the Patient’s Compensation Fund.

ALTERNATIVES

If HB 267 or SB 333 pass, business entities would qualify as medical care providers under the Medical Malpractice Act whether licensed to practice medicine or not. It is unclear whether HB 282 would be necessary in those circumstances.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The NMMB raises concerns that the current shortage of physicians could be aggravated if this bill is not enacted. The NMMB experienced 271 non-renewal of medical doctor licenses in FY09 and 350 non-renewals in FY10 resulting in revenue losses of \$162,600 and \$210,000 respectively. It attributes some of these losses to the malpractice environment address by this bill.

A temporary restraining order currently allows business entities to pay into the Patient’s Compensation Fund and to receive the protections from punitive damage and medical care recovery caps enumerated by the Medical Malpractice Act. Should this bill not be enacted and the restraining order expire, business entities could no longer pay into the fund. This would decrease revenue but also associated liabilities to the fund.

POSSIBLE QUESTIONS

Patients can currently name both a licensed physician and the business entity employing the physician in a malpractice suit. Would HB 282 affect or limit the umbrella protections a business entity provides in those situations?

RECOMMENDED AMENDMENTS

The NMMB proposes the recommendations listed below. The proposed amendments do not support the apparent goals of this legislation, and NMMB provided no justification or rationale for the proposed amendments within their analysis.

The first amendment adds a substantive change to the bill by expanding the board’s jurisdiction to genetic counselors and polysomnographic technicians. The remaining amendments expand the powers of the board by allowing fees and licensing deadlines to be set by board rule rather than statute.

Page 2, Lines 4 - 11, Amend to read:

C. The primary duties and obligations of the medical board are to issue licenses to qualified physicians, physician assistants ~~[and]~~, anesthesiologist assistants, genetic counselors and polysomnographic technologists, to discipline incompetent or unprofessional physicians, physician assistants ~~[or]~~, anesthesiologist assistants, genetic counselors or polysomnographic technologists, and to aid in the rehabilitation of impaired physicians, physician assistants ~~[and]~~, anesthesiologist assistants, genetic counselors and polysomnographic technologists for the purpose of protecting the public.

Page 6, Line 9, Amend to read:

A. ~~[The board shall impose the following fees:]~~The board shall establish a schedule of reasonable fees for licensure and administration.

Page 6, Lines 10 – 25, Strike all.

Page 7, Lines 1 – 25, Strike all.

Page 8, Lines 1-25, Strike all.

Page 9, Lines 1 – 6, Strike all.

Page 9, Line 13 - 16, Amend to read:

A. ~~[On or before July 1 of every third year,]~~Every third year, on a date to be established by board rule, 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.

Page 10, Lines 7 – 11, Amend to read:

D. A licensed physician who, or business entity that, fails to submit ~~[his]~~ the application for triennial renewal on or before ~~[July 1]~~the established renewal date but who submits his application for triennial renewal ~~[by August 15]~~within forty-five (45) days after the renewal date shall be assessed a late fee as provided in Section 61-6-19 NMSA 1978.

Page 10, Lines 12 – 16, Amend to read:

E. A licensed physician who, or business entity that, submits the application for triennial renewal between ~~[August 16 and September 30]~~forty-five (45) days and ninety (90) days after the renewal date shall be assessed a cumulative late fee as ~~[provided in Paragraph (6) of Subsection A of Section 61-6-19 NMSA 1978]~~established by board rule.

Page 10, Lines 17 – 20, Amend to read:

F. ~~[After September 30]~~Ninety (90) days after the renewal date, 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.]~~place the license on inactive status for failure to renew and nonpayment of fees.

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