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FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/11

SPONSOR Powdrell-Culbert LAST UPDATED _____ HB 305

SHORT TITLE Penalties for Crimes Against Health Workers SB _____

ANALYST Hanika-Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	*See Fiscal Impact		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)
 Aging and Long-Term Services Department (ALTSD)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)
 Administrative Office of the District Attorneys (AODA)
 Administrative Office of the Courts (AOC)
 New Mexico Medical Board (NMMB)

SUMMARY

Synopsis of Bill

House Bill 305 proposes to extend the enhanced criminal penalties for assault or battery on a health care worker set forth in § 30-3-9-2 NMSA 1978 to assaults and batteries on health care workers that occur in skilled nursing facilities, nursing facilities and other long-term residential care facilities. Depending upon the circumstances of such offenses, they may be classified as misdemeanor offenses, or fourth, third, or second degree felonies.

FISCAL IMPLICATIONS

*The bill expands the number of places where crimes can occur which may result in more cases being investigated and prosecuted.

SIGNIFICANT ISSUES

ALTDS reports that while persons in skilled nursing facilities, nursing facilities and other long-term residential care facilities can be charged under current law with assault, aggravated assault, battery, or aggravated battery, this bill will subject them to enhanced penalties for committing those acts on health care workers (for assault, a misdemeanor rather than a petty misdemeanor; for aggravated assault, a third degree rather than a fourth degree felony; for battery, a fourth degree felony rather than a petty misdemeanor; and for aggravated battery inflicting an injury that is not likely to cause death or great bodily harm but that does cause painful temporary disfigurement or temporary loss or impairment, a fourth degree felony rather than a misdemeanor; aggravated battery inflicting great bodily harm or with a deadly weapon on a health care worker, a third degree felony, as it is when committed against any person pursuant to NMSA 30-5-5(C)).

PERFORMANCE IMPLICATIONS

Issues of whether such persons had acted willfully and intentionally will be addressed by existing law and jury instructions defining these terms. Issues of competence to stand trial would arise, as they do under current law. Although by extending NMSA 30-3-9.2 to cover workers in skilled nursing facilities, nursing facilities, and other long-term care facilities which often house people with dementias, these issues might arise more frequently when charges are brought.

ADMINISTRATIVE IMPLICATIONS

DOH maintains three long-term care facilities that are often the provider of last resort for medically and psychiatrically complex and sometimes violent patients. DOH asserts that its long-term care facility staff should have the same protections as health care workers in public and private hospitals.

OTHER SUBSTANTIVE ISSUES

ALTSD notes that behaviors may arise as a self-defense mechanism to negative interactions with untrained staff (e.g. misinterpreting bathing assistance as a physical assault). Trainings could teach employees how to prevent or defuse potentially harmful situations.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Residents of skilled nursing facilities, nursing facilities, or other long-term residential care facilities will remain subject to charges of assault, aggravated assault, battery, and aggravated battery where applicable.

AHO/bym