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FISCAL IMPACT REPORT

ORIGINAL DATE 03/15/11

SPONSOR Park LAST UPDATED _____ HB 493

SHORT TITLE Katie Faith Martinez Patients' Bill of Rights SB _____

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$336.4	\$336.4	\$1,009.2	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Medical Board (MB)

Human Services Department (HSD)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 493 (HB493) proposes to enact the Katie Faith Martinez Patients' Bill of Rights Act. The bill of rights for all patients receiving professional health care in New Mexico would include:

- considerate and respectful care;
- knowledge of names of care providers;
- obtaining complete and current information concerning diagnosis, treatment, and prognosis;
- receiving necessary information to give informed consent;
- refusal of treatment and information of medical consequences;
- receiving every consideration of privacy concerning patient's own medical care;
- confidentiality of medical communications and records;
- knowledge of the identity and professional status of those providing care;
- receiving a reasonable continuity of care;
- receiving understandable explanation of health care charges; and,
- access to an interpreter to understand the health care being provided.

Health care facilities shall distribute a summary of these obligations to patients seeking medical treatment. HB493 requires notice of the Act and information about how to file a complaint be provided to patients. Failure to comply may constitute a basis for disciplinary action pursuant to the Medical Practice Act.

FISCAL IMPLICATIONS

The Medical Board indicates In order to carry out the disciplinary requirements in HB 493, the NMMB projects the need to add six (6) FTEs to its staff, as well as additional office space and equipment, as follows:

\$267,000 – salaries and benefits (6 FTE's @ \$16.00/hr plus single health insurance coverage)
\$ 27,400 – additional office space
\$ 9,000 – computer equipment
\$ 30,000 – office furniture
\$ 3,000 – office supplies

Salaries, benefits, office space and office supplies would be recurring costs. Computer equipment and office furniture would be replaced in accordance with the agency's fixed assets depreciation schedule.

SIGNIFICANT ISSUES

The Human Services Department indicates Medicaid managed care policy and contracts currently contain more extensive member bill of rights requirements for Medicaid members than does HB493.

The Federal HIPAA privacy and security laws already protect patient privacy to a far greater extent and with more serious consequences for breaches than HB493.

The Department of Health indicates HB493 would require additional information be shared with a patient before providing care. Disclosure of this information could allow patients to make better informed decisions and exercise options that may be available in obtaining health care. Every facility is required to have a patient bill of rights or resident rights wherein most of the issues in HB493 are outlined.

On page 3, line 21; HB493 requires that the identity and professional status of individuals providing health care to the patient, including the professional title and role of each health care provider and whether that individual is providing health care as a locum tenens or on a temporary basis through a staffing agency. Employment status should not make any difference in the care being rendered or observing other rights. Licensed facilities, if in compliance with Medicare, Medicaid, The Joint Commission, and state licensing requirements, already have in place systems and processes which assure that locum tenens and contractors (staffing agencies) adhere to the same standard of care as employees.

The bill also implies that the NM Medical Board has oversight of all providers. Certified Nurse Practitioners, Certified Nursing Aides, Certified Medication Aides and Doctors of Osteopathy are all monitored by different agencies.

HB493 would be improved by including language that would provide for health care decision makers for patients or residents who are not capable of making their own decisions to receive the same information as patients deemed competent. Specifically, legal guardians should have the right to know by name and status of health care providers, be able to obtain info concerning diagnoses, treatment and prognosis, be able to provide informed consent prior to procedure, or to refuse treatment, be able to file complaints on the patient's behalf and receive a summary of patient rights.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB493 relates to:

- HB124, which would require a supervising health care provider to make certain disclosures to patients before providing health care; and,
- SB323, which would require that health care providers wear a name tag during all patient encounters.

TECHNICAL ISSUES

The Regulation and Licensing Department indicates currently the way the act is written it requires a patient to file a complaint with the Medical Board. However, not all health care providers are licensed by the Medical Board. RLD suggests an amendment to include the following practice acts under disciplinary action:

- Acupuncture and Oriental Medicine
- Chiropractic Examiners
- Counseling and Therapy Practice
- Dental Health Care
- Massage Therapy
- Naprapathy
- Nutrition and Dietetics
- Occupational Therapy
- Optometry
- Osteopathy
- Pharmacy
- Physical Therapy
- Podiatry
- Psychologist Examiners

- Respiratory Care
- Social Work
- Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices

DOH suggests the following amendments:

- Page 1; line 16 insert after the word “Patients” the words “or legal guardians”
- Page 2; insert after line 20 and before line 21 section F. “competency” means the ability to understand and make decisions on health care including the right to refuse treatment;
- Page 2; line 21, insert after the word “patient” the words “regardless of their competence to make clinical decisions”
- Page 3; move H lines 21-25 after line 4 and renumber as C and renumber C-G as D-H.

OTHER SUBSTANTIVE ISSUES

The Medical Board indicates the Medical Practice Act (MPA) does not authorize the NMMB to take disciplinary action against all categories of health care providers. The MPA only authorizes the NMMB to take disciplinary action against its licensees: physicians, physician assistants, anesthesiologist assistants, genetic counselors and polysomnographic technologists. Therefore, if the NMMB were to receive a complaint pursuant to HB 493 against any provider of health care not under our jurisdiction, we could not take action and would have to refer the complaint to the licensee’s regulatory board. This would greatly add to the complaint process. HB 493 implies that the NMMB has jurisdiction and can take action against all health care providers which is misleading to the public.

Another Bill, SB 101 has been introduced in this legislative session that would amend the Review Organization Immunity Act to allow the NMMB to obtain peer review records from hospitals or other health care review organizations. Currently the NMMB has the authority to issue investigative subpoenas, but some peer review and quality assurance organizations refuse to comply with the subpoena. This non-compliance by health care facilities would preclude the NMMB from the ability to carry out the requirements in HB 493.

HB 493 does not include an appropriation which would then require the NMMB to absorb the costs associated with implementation and enforcement of the act—this is not feasible since the NMMB is already at its statutory cap of all fees and the revenues collected can only support the agency’s current budget needs.

ALTERNATIVES

The Medical Board indicates complaints regarding violations of the Bill of Rights should be filed with the relevant regulatory agency for the offending licensed health care provider or with the Health Facility and Licensing Bureau. Complaints filed against unlicensed health care providers may need to be filed with the Attorney General’s Office.