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FISCAL IMPACT REPORT

ORIGINAL DATE 01/20/11
 LAST UPDATED 02/18/11 **HB** _____

SPONSOR Rue _____

SHORT TITLE Require Responses to Medical Board Subpoenas **SB** 101/aSPAC

ANALYST Hanika-Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Department of Health (DOH)
 NM Medical Board (Board)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment clarifies that the Board may issue investigative subpoenas for certain records from a review organization's proceedings if investigating a complaint against a licensee.

Significant Issues

The amendment states that the review organization must provide information, documents or records "...that were not generated exclusively for, but were presented during, a review organizations' proceedings". The amendment further clarifies that the information, documents or records obtained from a review organization for this purpose are not public records pursuant to the Inspection of Public Records Act.

Synopsis of Original Bill

Senate Bill 101 amends the Review Organization Immunity Act to require health care review organizations to respond to New Mexico Medical Board subpoenas to obtain its peer review records.

FISCAL IMPLICATIONS

Peer review processes – if they follow best practice - may positively impact healthcare costs and quality scales over time. Appropriate peer reviews of untoward events require hospital decision-makers to assess not only an individual doctor's performance but a number of clinical and procedural processes that influence a hospital's effectiveness and efficiency.

SIGNIFICANT ISSUES

Peer review is seen by some as a critical and essential part of a hospital's ongoing quality improvement process. Confidentiality is also seen as critical to the participation of physicians because they believe that their frank assessments of performance are kept confidential and that they are protected from liability based upon their participation in the process. DOH believes that access to peer review data and/or information, especially by a party that has the authority to take adverse action against a person, could serve to stifle the work of the review organization.

The Board believes its ability to protect the public is compromised because some review organizations refuse to comply with a subpoena from the Board claiming the data and information generated by its peer review process is protected under the Review Organization Immunity Act. When health care review organizations refuse to share data and information, the Board believes it is prevented from properly investigating the matter in order to make its own determination about whether or not a physician could be a danger to the public.

PERFORMANCE IMPLICATIONS

The Medical Practice Act grants the Board investigative subpoena power to obtain the documents and information necessary to determine if the public could be endangered by a licensee's practice. The Medical Practice Act provides that no person or legal entity providing information to the Board, be subject to civil damages or criminal prosecutions.

The Board notes that records obtained via subpoena for the purpose of its investigation are covered by the same confidentiality provision relating to all Board investigative materials, meaning confidential, and are not public records for the purposes of the Inspection of Public Records Act.

ADMINISTRATIVE IMPLICATIONS

The Board notes that once the physician leaves the hospital or HMO, she/he is the Board's responsibility – and the Board, to carry out its mandate to protect the safety of the public, must have all the information necessary to ensure continued patient safety.

TECHNICAL ISSUES

Peer review materials that contain patient records are not available for public inspection pursuant to both state and federal laws on disclosure of protected health information.

OTHER SUBSTANTIVE ISSUES

Peer review of health services consists of an evaluation in which practicing physicians or other health professionals assess the quality of health care delivered by another health professional. Typically, the subject and the reviewer have comparable levels of training, credentials, and

experience. Care is evaluated on a case-by-case basis, and quality determination usually involves a degree of professional judgment. The process of peer review purports to measure quality, although lately, some organizations are moving towards more objective performance indicators to measure practitioners' performance in comparison with evidence-based practice guidelines.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

When a hospital takes an adverse action against a physician's privileges, based on incompetency or unprofessional conduct, that action will still be required to be reported to the Board pursuant to Section 61-6-16 of the Medical Practice Act and Title 42, Chapter 117, Section 11133 of the United States Code Annotated [42 USCA Section 11133].

AHO/mew:bym