

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/11  
 SPONSOR SPAC LAST UPDATED 03/07/11 HB \_\_\_\_\_  
 SHORT TITLE Health Care Provider Dependency Task Force SB CS/295/aSJC  
 ANALYST Esquibel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY 11	FY 12	FY 13	3 Year Total Cost	Recurring or Non- recurring	Fund Affected
<b>Total</b>		Up to \$172.0	Up to \$172.0	Up to \$344.0	Recurring	General Fund/Department of Health Facilities

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)

Medical Board (MB)

Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to the Senate Public Affairs Committee Substitute for Senate Bill 295 provide for the following:

- A health care provider hired to provide direct care to patients in a state health care facility shall be tested for illicit and prescription drug and alcohol abuse prior to employment and subject to random drug testing thereafter;

- Strike that requirement for annual drug testing of health care workers providing direct care at state health care facilities;
- Stipulates that the Department of Health shall promulgate rules to establish the definition of “direct care”.

#### Synopsis of SPAC Substitute

The Senate Public Affairs Committee Substitute for Senate Bill 295 would require drug and alcohol testing for direct health care providers in state health care facilities. A health care provider hired to provide direct care to patients in a state health care facility would be tested for illicit and prescription drug and alcohol abuse 1) prior to employment, 2) annually during time of employment, and 3) when drug or alcohol abuse is suspected.

SB295/SPACS would have the Department of Health (DOH) promulgate rules to establish:

1. When a health care provider is reasonably suspected of abusing illicit or prescription drugs or alcohol while working;
2. The protocol governing testing for illicit and prescription drugs and alcohol;
3. What persons shall be considered reliable reporting parties for the purposes of this section; and
4. Any disciplinary action, addiction interventions or fines.

SB295/SPACS proposes that the Department of Health consult with the New Mexico Medical Board, New Mexico Board of Nursing, and the New Mexico Medical Review Commission in promulgating this rule. SB295/SPACS defines a “state health care facility” as a hospital, an entity providing services for the developmentally disabled, a shelter care home, a free-standing hospice or a home health agency that the Department of Health operates.

Drug test results under SB295/SPACS would be treated as confidential medical information, and only aggregate test data would be reviewable by DOH. SB295/SPACS also proposes to protect a person who made a good faith report of drug or alcohol abuse on the job from civil liability, but would preserve the right to sue for negligent or intentional reporting of inaccurate information or disclosure of information to an “unauthorized person.”

#### **FISCAL IMPLICATIONS**

**The Senate Judiciary Committee amendments to SB295/SPACS would require drug testing upon initial employment and randomly thereafter. So the fiscal impact of SB295/SPACS/aSJC would be up to \$172,000 annually in recurring costs to the Department of Health.**

The Department of Health (DOH) indicates the drug and alcohol testing program proposed by SB295/SPACS would require approximately \$172,000 annually in recurring costs to the Department of Health. This estimate is based upon the estimate that the DOH employs approximately 1,500 workers who are subject to annual testing under the terms of SB295/SPACS, plus about 850 new hires requiring pre-employment screening annually as a result of the high turnover of positions.

## **SIGNIFICANT ISSUES**

**The NM Medical Board does not have rules establishing protocol for substance abuse testing of individual licensees since they already collaborate, through a contract, with the New Mexico Monitored Treatment Program in identifying, investigating, treating, and monitoring impaired and recovering health care providers licensed by the Board. This program administers a statewide program that also provides detection, evaluation, intervention, long term support, education, treatment, and monitoring of impaired, relapsing, and recovering health care providers in the areas of mental illness or physical illness, including but not limited to deterioration through the aging process or loss of motor skills, as well as habitual or excessive use of or abuse of drugs or alcohol.**

The Department of Health (DOH) indicates alcohol and substance abuse or dependence impairs the competency of health care providers. Currently, each professional healthcare licensing board has a complaint process for consumers, employers and co-workers to report concerns and identified problems, including alcohol and substance use and dependence. Each board has their own process for review, discipline and license control. Data collection and problem documentation vary between boards.

Although pre-employment drug testing is the industry standard in health care, the facilities run by the Department of Health (DOH) do not currently do this. DOH operates six facilities: NM Behavioral Health Institute, NM Veterans Home Fort Bayard Medical Center, NM Rehabilitation Center, Sequoyah Adolescent Treatment Center and Turquoise Lodge Hospital and one Community Program, Los Lunas Community Program, which would be subject to the requirements of SB295s as stated in the intent of the Act.

State Personnel Board Rules allow for this type of drug or alcohol testing for safety sensitive positions, defined as a position approved as such by the board in which impairment by drug or alcohol use would constitute an immediate and direct threat to public health or safety. Examples of safety sensitive positions include peace officers, pilots, correctional officers, employees who are regularly required to carry a firearm, employees who regularly transport people as their principal job, and positions involving use of equipment that could pose a risk to public health or safety.

## **ADMINISTRATIVE IMPLICATIONS**

DOH staff would be involved in the Task Force creation, meetings and developing the required report.

DOH indicates there are likely to be legal challenges to the requirement of random testing of all direct care staff on constitutional or other grounds absent probable cause, and lawsuits regarding enforcement (both for enforcing or failing to enforce), against DOH, and its facilities.

## **TECHNICAL ISSUES**

The Regulation and Licensing Department indicates prior to a person being hired as a health care provider the terms of drug testing will need to be made clear. Failure to clearly articulate these conditions of employment could result in legal challenges to the testing and any disciplinary action as a result of a positive test result.

It is unclear what exactly is meant by “health care provider” and “health care professional”. It would be helpful to clearly define what these terms encompass and whether the terms encompass licensed professionals only or also include other staff that provide direct care to patients.

## **OTHER SUBSTANTIVE ISSUES**

Alcohol and substance abuse or dependence impairs the competency of health care providers. Currently, each professional healthcare licensing board has a complaint process for consumers, employers and co-workers to report concerns and identified problems, including alcohol and substance use and dependence. Each board has their own process for review, discipline and license control. Data collection and problem documentation vary between boards.

2009 Senate Memorial 62 (SM62) requested that the DOH study illicit and prescription drug and alcohol abuse and addiction among health care providers and provide recommendations to address patient safety concerns and provider illicit and prescription drug and alcohol abuse to the interim Legislative Health and Services Committee.

Based on the research conducted as part of SJM62, 20 states regulate drug testing procedures. Six states have enacted legislation requiring organizations receiving state grants to have a drug-free work environment. New Mexico has no statutes regulating the testing of employees for drugs or alcohol. The New Mexico Medical Board and the Board of Nursing do have the authority to restrict, revoke, or suspend a license if a health care provider (doctor or nurse) is found to have a drug or alcohol problem. Both Boards also have treatment programs for providers that either self-report or are required to attend.

DOH research also showed that both the American Medical Association and American Nursing Association oppose random drug/alcohol screening and that this type of screening is not widely done. Instead, the trend for most hospitals and corporate provider agencies is to require a pre-employment drug screening and to do screening on suspicion with reasonable cause and/or post accident and incident. However, many small providers do not conduct screening as the costs are often prohibitive and may compromise their viability.

Drug testing works best when implemented based on a clear, written policy that is shared with all employees, along with employee education about the dangers of alcohol and drug abuse, supervisor training on the signs and symptoms of alcohol and drug abuse, and an Employee Assistance Program to provide help for employees who may have an alcohol or drug problem.

RAE/mew:bym