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FISCAL IMPACT REPORT

SPONSOR Gallegos, DY **ORIGINAL DATE** 1/19/19
LAST UPDATED 1/29/19 **HB** 242/aSJC

SHORT TITLE Contact Lens & Glasses Prescriptions **SB** _____

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
 New Mexico Attorney General (NMAG)
 Medical Board
 LFC Files

SUMMARY

Synopsis of SJC Amendments

The Senate Judiciary Committee amendments to House Bill 242 clarify that a person who violates the provisions included in the bill would be guilty of a misdemeanor. The amendments remove the fourth degree felony offense for repeat violations and associated convictions associated with the provisions in the bill.

Synopsis of Original Bill

House Bill 242 would limit prescribing power for contact lenses and spectacles to those licensed pursuant to the Optometry Act, Medical Practice Act, or Osteopathic Medicine Act. The bill also seeks to provide criminal penalties and civil remedies for the improper prescription of contact lenses and spectacles. The bill seeks to require those who can lawfully prescribe contact lenses or spectacles to conduct their own in-person eye examinations prior to writing a prescription.

The bill would eliminate the sole reliance on results of automated testing devices like an autorefractor or kiosk as a basis for writing a prescription.

The bill allows for first and second violations of this section to be punishable as misdemeanors, and third or subsequent violations as 4th degree felonies. The bill also allows for the Optometry,

Medical, and Osteopathic Medicine Boards to bring civil actions to enjoin those in violation of the section from continuing actions in violation of the section.

The bill does not prohibit vision screenings or prescriptions otherwise in accordance with state laws, the Optometry Act, or Osteopathic Medicine Act.

FISCAL IMPLICATIONS

The bill's requirements could result in the New Mexico Attorney General bringing enforcement actions under the Act; however, the bill does not provide an appropriation to cover the potential costs of such enforcement actions. Additionally, the Attorney General's Open Government Division provides legal counsel to the Optometry Board and the Osteopathic Medicine Board (the Medical Board currently has in-house counsel), and may require additional resources to enforce the provisions of HB242.

SIGNIFICANT ISSUES

The Medical Board notes the bill would strengthen the requirement that a complete eye examination is conducted before the prescription is written for glasses or contacts. Requiring a New Mexico license allows the state to discipline those licensees who do not perform the required eye exam and/or who fail to issue a prescription that is accurate, as the licensee issuing the prescription is fully accountable for the quality and accuracy. Changes to prescriptions are not allowed unless ordered by the prescriber, except for lens tinting.

TECHNICAL ISSUES

The New Mexico Attorney General indicates the bill is unclear which agencies would criminally and civilly enforce the provisions of HB242.

The bill does not address the length of term of a prescription.

OTHER SUBSTANTIVE ISSUES

The bill addresses a growing global industry that provides prescriptions for eyeglasses and contacts for consumers by using an "app" or some other on-line method of "examination" during which the healthcare provider may be in another state, or perhaps another country. While this industry can increase access to care for some, there are legitimate concerns that online prescribing does not detect or screen for conditions such as diabetes, glaucoma, cataracts, macular degeneration, and tumors.

This bill would prohibit the prescribing or renewal of spectacles or contact lenses without an in-person physical examination by a provider licensed in the state of New Mexico. It would prohibit the use of automated technologies such as smartphone apps, automated kiosks, computer terminals, virtual reality devices, or other remote imaging/measuring devices to generate or renew a prescription for eyeglasses, contact lenses, or other prescriptive optical devices without an in-person physical examination by a licensed provider.

ALTERNATIVES

The New Mexico Attorney General suggests the same provisions proposed in HB242 could be placed in the practice acts of the three healthcare boards, which would help mitigate the chance for any confusion of having the restrictions on practice outside of the respective practice act of each healthcare profession.

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