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FISCAL IMPACT REPORT

SPONSOR Morales ORIGINAL DATE 02/13/13
 LAST UPDATED 03/11/13 HM _____

SHORT TITLE Nurse-Midwife Ultrasound Procedures SB 342/aSJC/aHHGIC

ANALYST McCoy

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Environment (NMED)

New Mexico Board of Nursing (BN)

SUMMARY

Synopsis of HHGIC Amendment

The House Health, Government and Indian Affairs Committee amendment to Senate Bill 342 (SB342) strikes the Senate Judiciary Committee amendment 5 limiting registered nurses and certified nurse-midwives from performing a diagnostic ultrasound that has been ordered by a licensed practitioner, that is performed pursuant to a national accrediting and credentialing body for the practice of ultrasound, that is performed to allow diagnosis by a radiologist or similarly qualified practitioner, or pursuant to which a report is delivered to a referring practitioner. The HHGIC amendment also strikes “ultrasound for any other purpose” and inserts in lieu thereof “diagnostic ultrasound.”

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 342 (SB342) amends the Medical Imaging and Radiation Therapy Health and Safety Act to include limited authorization for health care practitioners licensed by an independent board to perform certain ultrasound procedures provided that any medical imaging certification and examination program for health care practitioners established by an independent board shall approved by the Environmental Improvement Board. The amendment also limits registered nurses and certified nurse-midwives

from performing a diagnostic ultrasound that has been ordered by a licensed practitioner, that is performed pursuant to a national accrediting and credentialing body for the practice of ultrasound, that is performed to allow diagnosis by a radiologist or similarly qualified practitioner, or pursuant to which a report is delivered to a referring practitioner. Finally, the amendment deletes language specifying the limited authorization for registered nurses and certified nurse-midwives to perform certain ultrasound procedures is for the purpose of clinical decision-making.

Synopsis of Original Bill

Senate Bill 342 (SB342) amends the Medical Imaging and Radiation Therapy Health and Safety Act (MIRTHSA) to provide limited authorization for registered nurses and certified nurse-midwives to perform certain ultrasound procedures.

FISCAL IMPLICATIONS

No Fiscal Impact.

SIGNIFICANT ISSUES

According to the NMED, the amendments provide limited authorization for registered nurses and certified nurse midwives to perform certain ultrasound procedures and exempt registered nurses and certified nurse midwives from requirement for licensure as required by the Medical Imaging and Radiation Therapy Health and Safety Act.

The BN has regulatory authority over the education, licensure, and discipline of nurses licensed in this state which allows the BN to protect the public from unsafe practitioners. According to the BN, the agency has an evidenced based and established means of regulating and evaluating the scope of practice of all their licensees and certificate holders through the Nurse Practice Act and current and updated rules and regulations through the established requirements of continuing education. According to the BN, nurses regulated through the BN Nursing Practice Act and rules have been safely, competently and routinely performing non-ionizing ultrasound procedures for greater than twenty years with no patient harm. The BN reports, no complaints have been received by the BN on any nurse performing these routine ultrasound procedures. According to the BN, SB342 will allow all nurses to continue to safely and routinely perform non ionizing ultrasound procedures. The BN notes, the experts in the training and education and discipline of nurses are the licensing board that regulates these practitioners, and that have expertise in the specific areas of expertise of nursing. According to the BN, there is no negative impact to the health and safety of the public by nurses performing these ultrasound procedures. Therefore, the BN is supportive of SB342, allowing all nurses to perform non-ionizing ultrasound procedures, both as it applies to nurses, advanced practice nurses also to other health care practitioners licensed by other boards in New Mexico.

The Medical Imaging and Radiation Therapy Advisory Council (MIRTAC) is the statutorily created advisory council to the NMED, for the purpose of advising on appropriate rules for licensing requirements. According to the NMED, the Medical Imaging and Radiation Therapy Advisory Council drafted regulations which the NMED anticipates submitting to the Environmental Improvement Board for its consideration in 2013. If SB342 passes, the

MIRTAC's draft will have to be revised.

The New Mexico Department of Environment (NMED) reported the following concerns with SB342:

First, Section 2(B)(1) deletes the flexibility previously provided to independent boards to have their own imaging licensing schemes provided they are reviewed by the Medical Imaging and Radiation Therapy Advisory Council and approved by the Environmental Improvement Board. This authority has been previously used by the New Mexico Dental Board. NMED has found that this existing provision that would be deleted in SB342 has been an effective regulatory approach to offering flexibility to specialized independent board while maintaining sufficient protection for patients. Second, SB342 does not require alternative training or education requirements for registered nurses and certified nurse-midwives who will no longer be subject to MIRTHSA's training and education requirements. Although Section 2(B)(2), contains language requiring "documented demonstration of competency...within the scope of practice in compliance with certain rules", the identified requirements do not contain any training or education requirements relating to imaging or ultrasound. Third, the language of the exemption is so broad that it would allow registered nurses and certified nurse mid-wives to perform ultrasound imaging for diagnostic purposes without any training or education for that purpose. This creates a serious risk to patient because a diagnostic image that is flawed due to insufficient training or education by the imager, can lead to a flawed diagnosis and inappropriate medical treatment. Fourth, the language in SB342 is vague and undefined. For example, SB342 uses the terms "focused imaging target" and "clinical decision making" in Section 2(B)(2) without defining these terms. This language is ambiguous enough that it may allow registered nurses and certified nurse-midwives to do all of the imaging that a trained licensed person would do without comparable training or education. NMED suggests amendments below which could resolve this issue. Section 61-14E NMSA 1978, the Medical Imaging and Radiation Therapy Health and Safety Act is to maximize the protection practicable for the citizens of New Mexico from ionizing and non-ionizing radiation in the practice of medical imaging by requiring proper education, training and licensure in all medical imaging modalities including ultrasound.

TECHNICAL ISSUES

The NMED notes, the definition of "division" in Section 1(I) is out of date. The correct definition of the "division" that presently enforces the MIRTHSA is the environmental protection division of the department.

AMENDMENTS

The NMED suggests the following amendments:

1. In Section 1(I), "division" should be defined as the environmental protection division of the department.
2. The department suggests that an additional new definition be added to SB342 for "point of care" which means the limited use of ultrasound to create real-time images for direct patient care which are not transmitted or referred for interpretation by a licensed

practitioner or a non-physician practitioner.

3. In Section 2(B)(1) the department suggests that SB342 be amended to retain the deleted language.
4. In Section 2(B)(2), the department suggests that SB342 be amended to replace the existing proposed language with the following: “a registered nurse or certified nurse-midwife performing only point of care ultrasound procedures. An unlicensed registered nurse or certified nurse midwife shall not perform ultrasound for any other purpose.”

MTM/blm