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FISCAL IMPACT REPORT

ORIGINAL DATE 02/27/13

SPONSOR Cisneros LAST UPDATED _____ HB _____

SHORT TITLE Dental Therapist-Hygienist Licensure SB 567

ANALYST Trowbridge

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
\$104.0	\$104.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	\$264.0*	\$264.0*	Recurring	Dental Board Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	12.0	12.0	24.0	Recurring	Dental Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

Duplicates HB 17/HHGICS; Relates to HB 367

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Human Services Department (HSD)

Department of Health (DOH)

New Mexico Higher Education Department (NMHED)

UNM Health Sciences Center (UNM-HSC)
Attorney General’s Office (AGO)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 567 (SB 567) proposes to amend the Dental Health Care Act (“DHCA”) to create a new group of professionals, dental therapist-hygienists. Adding dental therapist- hygienists to the DHCA would impact several other statutes, including the Impaired Dentist and Dental Hygienists Act, the NM Drug, Device and Cosmetic Act, the Income Tax Act, the Allied Health Student Loan for Service Act, and the Health Service Corps Act.

Most significantly, SB 567 would create a new group of professionals under the DHCA. As a requirement for licensure, dental therapist-hygienists would be required to obtain a degree from a dental therapist-hygienist educational program that provides a curriculum with a minimum of three years of dental hygiene and dental therapy. This dental therapist-hygienist program will need to be developed in partnership with an institution of higher education. Among the other requirements for licensure, a dental therapist-hygienist would be required to meet the requirements for licensure as a dental hygienist and would also be required to complete a minimum of 400 clinical hours under the indirect supervision of a dentist. Senate Bill 567 would amend Section 61-5A-4 of the DHCA to define the scope of practice for dental therapist-hygienists, which would not only encompass the scope of practice of a dental hygienist, but would also include other areas of practice, including prescription authority.

As it is currently written, there are several professionals within the dental healthcare field licensed by the Board of Dental Health Care (“Board”) and Hygienist Committee under the DHCA, including but not limited to, dentists, dental hygienists, and dental assistants. Senate Bill 567 would amend the DHCA to create a third committee, called the “joint committee,” which would be composed of the Board (10 members), one dental therapist-hygienist or dental therapist-hygienist advocate, the Dental Hygienist Committee (10 members), and two public members. The joint committee would be responsible for licensing dental therapist-hygienists.

SB 567 would also create a new section to the DHCA, Section 32, which would delineate the requirements to obtain licensure as a dental therapist-hygienist. An applicant for a license in dental therapy must complete a number of requirements. Among these requirements, an applicant would be required to submit proof to the joint committee that he/she is (1) from the community, or a similarly situated community, where the applicant plans to practice; (2) has received a letter of recommendation from a person in the community, or from a sponsoring entity, as part of the application process for the dental therapy-hygiene education program; and (3) maintains an ongoing relationship with the sponsoring entity.

SB 567 would also amend several other New Mexico statutes to account for the creation of the “dental therapist-hygienists” group. Specifically, the bill would amend the Impaired Dentist and Dental Hygienists Act to include dental therapist-hygienist within the scope of the Act and would require impaired dental therapist-hygienist to submit to an assessment by an examination committee. SB 567 would amend the Income Tax Act to include “dental therapist-hygienist” in the definition of “eligible health care practitioner” eligible for rural health care practitioner tax

credit. SB 567 would also amend the Allied Health Student Loan for Service Act and the Health Services Corps Act to make dental therapist-hygienist eligible for participation. SB 567 would amend the New Mexico Drug, Device, and Cosmetic Act to make dental therapist-hygienist a “practitioner” subject to the Act. The bill would also allow the dental therapist to be eligible to participate in the program Rural Health Care Practitioner Tax Credit program.

FISCAL IMPLICATIONS

The New Mexico Higher Education Department (HED) receives an annual appropriation of \$104,800 for this loan-for-service program. NMHED received 18 applications in FY12. Of those 18 applicants, 9 awards were made based upon the appropriation. Adding Dental Therapist-Hygienists would add more potential applicants to the program.

The RLD reports that with the addition of the Joint Committee meeting costs will rise. Current reimbursement per member is approximately \$300.00 per member each meeting. Adding 10 members for four meetings per year would increase meeting costs of approximate \$12 thousand per year.

The HSD reports that many of the services that a dental therapist-hygienist would be able to perform are services for which the Medicaid program would pay a dentist. Therefore, if the Medicaid program went through the process to included coverage of services performed by a dental therapist-hygienist, Medicaid program costs would be impacted insignificantly. Rather, it would just be that a dental therapist-hygienist within the dental provider’s office performed the service rather than the dentist or the hygienist.

Presumably, payment would be made to dentist, clinic, or dental group under which the dental therapist-hygienist was providing the service because the dental therapist-hygienist would not really be licensed to practice independently.

The University of New Mexico Health Sciences Center (UNM-HSC) states that although there may be no fiscal impact to it, this bill is a new workforce model that would include a significant clinical education. Many of the skills taught to general dentists are included in the scope of practice, so the fiscal impact, would be closely aligned to a dental school education, without the basic science didactic curriculum. The dental therapist training sites would need additional infrastructure and educational support for providing the didactic science courses and the clinical training. Most modern day training begins on simulators as would be found in dental schools for teaching skills prior to actual patient care.

The UNM-HSC states that this bill would also impact the New Mexico Board of Dental Health Care, since a dental therapist committee would be added to the Board.

SIGNIFICANT ISSUES

The AGO raises a constitutional concern in its analysis. The licensure requirements for dental therapist-hygienist, as proposed under SB 567, requiring that an applicant submit proof that he/she is from the community, or a similarly situated community, where the applicant plans to practice, may not be constitutional. It may deny potential applicants who are not from similarly situated communities equal protection and unfairly discriminate against them. The concern is that this requirement would eliminate many potential applicants, not because of their competency

or skills, but because of the particular community they come from.

The DOH notes that SB 567 establishes a new dental provider type, dental therapist and creates a demonstration project within the State. The purpose of the dental therapist is to provide additional dental providers statewide, thereby increasing access to dental care for New Mexicans. The scope of practice will allow the dental therapist to perform some functions normally conducted by a dentist. The dental therapist model will allow the dentist to provide services of complicated care. The dental therapist model of care was established in rural Alaska, where the dental therapists are providing dental care to Alaska natives. The State of Minnesota has implemented a dental therapist provider, and other states are studying various models. The American Dental Hygienist Association supports the midlevel provider concept and has established its own model entitled the “advanced hygiene practitioner.”

DOH states that access to care is largely affected by an overall shortage of dental providers in New Mexico, as well as a shortage of dental providers practicing in rural/frontier and underserved areas. The federal government has designated all or part of 32 of New Mexico’s 33 counties as Dental Health Professional Shortage Areas.

(<http://hpsafind.hrsa.gov/HPSASearch.aspx>)

The HSD reports that the Medicaid program would have the option, through regulation, to add services provided by a dental therapist-hygienist to the list of covered services for Medicaid recipients, as long as the services were treatment-oriented and fall within the scope of services of the Medicaid dental program.

The Taxation and Revenue Department (TRD) indicates that data from the Minnesota experience with dental therapists was used in this analysis. In 2009, Minnesota became the first state to license dental therapists. A few schools in Minnesota began offering dental therapy programs in 2009 and the first graduates were produced in 2011. According to the Minnesota Board of Dentistry, as of January 2013, there were 16 licensed dental therapists.

TRD states that due to the education and training requirements for becoming a dental therapist-hygienist, it is expected to take about 4 years to complete a licensure requirement in New Mexico, which implies that even if a student starts the program in FY14, it would be at least FY17 before that person would meet the requirements and is able to qualify for the certification. Therefore, it is assumed that the fiscal impact will occur starting in FY18. It is assumed that five taxpayers will qualify for the rural health care practitioner tax credit as dental therapist-hygienists. Each of them is assumed to have a New Mexico taxable income of about \$30,000 with a tax liability of approximately \$1,200. The number of dental therapist-hygienists in New Mexico is expected to increase significantly over time if this legislation is passed. (On average, about 52 dental hygienists’ graduate from New Mexico universities each year).

The RLD indicates that there are many major concerns with the Scope of practice of the newly recommended Hygienist-Therapist:

- The education program is just one year more than an associate’s degree in hygiene. That is NOT enough time to learn the science and skills needed to perform the scope of practice suggested. The Minnesota (which is the only one comparable) program requires at least a Master’s degree in hygiene.
- The competency exam to certify this hygienist-therapist would have to be the regular regional board exam taken by dentists since that is what their scope suggests.

- The definition and scope of practice includes DIAGNOSIS. One cannot perform diagnosis without the expanded scientific and clinical background that a dentist receives. One additional year and a 400 hour internship cannot prepare one to diagnose with all the myriad of considerations that must be considered.

Additionally, the RLD states that there are several areas in the scope of practice that are major red flags;

- The education of a dental hygienist which is aimed at prevention and scaling and prophylaxis and an additional year can NOT be sufficient to prepare on for this scope of practice as proposed. Many of these areas require exhaustive diagnosis considerations and judgments to be made in mid-treatment that the hygienist/therapist education will not prepare the hygienist/therapist for. Specifically:

1. Tooth re implantation and stabilization this requires management of trauma situations outside their abilities

2. Administration of Nitrous Oxide, this requires a DENTIST to have an additional certificate due to systemic considerations.

3. Extractions sound simple to extract primary teeth but a dentist will tell you these can be some of the most difficult. Extraction of permanent teeth that "do not require surgical or sectioning" is a real problem because most of the time a dentist doesn't know if the tooth will have to be sectioned or surgically removed until AFTER the procedure has been started. Allowing a hygienist/ therapist to do extraction is opening the door for patients to have to be shipped to a dentist after the procedure has started and gone south.

4. Emergency palliative treatment of pain requires advanced diagnosis.

5. Space maintenance and orthodontic referral requires extensive knowledge of orthodontics, requires a specialty license.

6. Prescribing antibiotics and anti-inflammatory requires advanced pharmacology which these practitioners will not be prepared to know.

7. Diagnose and interpret radiographs- again this requires an extensive knowledge of dental pathology and radiology which this hygienist/therapist would not have. Requiring an "advocate" on the Board is opposed to the Boards function to protect the public.

The RLD states overall this bill has several problems and would be a disaster for the public as far as safety and being able to access quality dental care. RLD maintains that this bill was drafted without the proper vetting and thoughtful discussion to make this dental therapist-hygienist a viable and safe option for the citizens of New Mexico.

PERFORMANCE IMPLICATIONS

SB 567 relates to the Department of Health's Fiscal Year 2014 Strategic Plan Goal 1: Improve Health Outcomes for the People of New Mexico. Oral health is one of the nine priority health indicators identified by DOH.

ADMINISTRATIVE IMPLICATIONS

The HED states that the primary administrative impact of this legislation to add Dental Therapist-Hygienists into the Allied Health Student Loan-for-Service program would be to expand the pool of applicants. HED will need to verify student eligibility upon each application submission.

As drafted, SB 567 would require the AGO to investigate and prosecute alleged violations of the Dental Health Care Act committed by dental therapist-hygienists.

The RLD indicates that administrative implications are hard to predict at this time. The State of Minnesota is the only state in the U.S. who license dental therapist, which consists of less than 20 licensees.

TECHNICAL ISSUES OR DRAFTING ERROR

The AGO states that SB 567 would create a joint committee under the DHCA, however, there is no statutory section creating the joint committee. For example, Section 61-5A-8 creates the Board and Section 61-5A-9 creates the Hygienist Committee, but there is no section within the DHCA specifically creating the “joint committee.” Also, it is not clear how or when the joint committee will meet, or if the joint committee’s actions must be ratified by the Board (e.g. this is what is required for the Hygienist Committee’s actions). The AGO reports that as defined in the bill, the joint committee would be very large since it would consist of the entire Board, Hygienist Committee, one dental therapist-hygienist, and two public members. It may be difficult to convene a meeting with this number of members.

Finally, the AGO observes that SB 567 would amend Section 61-5A-3 of the DHCA to include a definition for “licensing authority.” The definition is too limiting because it only accounts for the licensure of three groups – dentists, dental hygienists and dental assistants. The definition does not address licensure of other professionals covered under the DHCA such as, dental assistants, non-dentist owners, expanded function dental auxiliaries, and community dental health coordinators. Similarly, under the proposed amendment to Section 61-5A-10, the Board, Hygienist Committee, and joint committee would have the authority to discipline dentists, dental assistants, dental hygienists, and dental therapist-hygienists; however, this section does not explicitly provide the authority to discipline other groups licensed under the DHCA, including non-dentist owners and expanded function dental auxiliaries.

DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

SB 567 relates to HB 367, which proposes a Dental Therapist Act, and is duplicated by HB 17/HHGICS, Dental Therapist Hygienist Licensure

OTHER SUBSTANTIVE ISSUES

The DOH reports that dental disease is found more often and to a more advanced degree in low income, uninsured, and minority children. Minority children and adolescents are twice as likely, compared to non-minority children and adolescents, to not have seen an oral health provider in the last two years. Childhood tooth decay disproportionately affects low-income families and racial or ethnic minorities. The rate of untreated tooth decay in children with incomes below the poverty level is twice as high compared to the rates of children from higher income families.

<http://www.nvdl.org./issues-reserach/health/childrens/-oral-health-policy-issues-overview.aspx>).

Compared to the general population, American Indians and Alaska Natives (AI/AN) experience more oral disease including both tooth decay and periodontal diseases. A 1999 survey conducted by the Indian Health Service found that 87 percent of AI/AN children aged 6 to 14 years had experienced dental decay. (<http://www.ihs.gov/MedicalPrgrams/Dental/docs/survey.pdf>)

The New Mexico Oral Health Surveillance System (NMOHSS) Special Report on Children 2006 reports that of the 2,136 3rd graders that were surveyed, 37 percent of these children had untreated tooth decay and that 65 percent of them had caries experience. The report also states that 43 percent of these students had dental sealants on their molars to protect them from further tooth decay. (<http://nmhealth.org/PHD/OOH/data.shtml>).

The TRD notes that according to Health Action New Mexico, New Mexico ranks 49th in the U.S. regarding the number of dentists per 1000 people. Also it indicates that 69 percent of the dentists are from the metro areas and that a number of rural communities lack access to dental care. They also suggest that there are a number of New Mexico children that do not have proper dental care. This legislation would help bridge some of that gap while helping many New Mexican children.

UNM-HSC and UNM Dental Medicine Department will offer its expertise to form a New Mexican solution for any proposed educational programs authorized by the legislature to formulate educational programs for any initiatives that may improve access to oral healthcare for New Mexicans. The UNM-HSC position is neutral in the political process but supports the educational system increasing providers for quality oral health care.

UNM-HSC reports that as written, the dental therapist bill includes a three thousand hour dental therapy curriculum that would graduate providers delivering dental care under general supervision (meaning outside the presence of a dentist). As dental and dental hygiene providers and educators, there are concerns about training providers to such a wide scope of services within the limits of a three thousand hour curriculum. The educational curriculum and testing has yet to be determined for the scope of services listed and how these providers will be licensed in New Mexico. Additionally, UNM-HSC states that it is unclear how dental therapists will have their practice focused in the rural areas of New Mexico to match the intent of the legislation. Prior legislative initiatives for collaborative hygiene practice have seen little use in the rural areas of New Mexico. It is not clear if this history has been addressed in the new legislation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If SB 567 is not enacted, the Dental Health Care Act will not be amended to establish a new dental provider entitled “dental therapist.”

TT/blm