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F I S C A L I M P A C T R E P O R T

SPONSOR Ivey-Soto **ORIGINAL DATE** 02/22/13 **LAST UPDATED** **HB**

SHORT TITLE Overdose Prevention & Pain Management Council **SB** 641

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	Other State Funds, General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 624, Overdose Prevention & Pain Management

SOURCES OF INFORMATION
LFC Files

Responses Received From
Regulation and Licensing Department (RLD)
Board of Nursing (BN)
Medical Board (MB)
Human Services Department (HSD)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 641 (SB641) would amend sections of the Pain Relief Act as follows:

- Renaming the Prescription Drug Misuse and Overdose Prevention and Pain Management Advisory Council as the “Overdose Prevention and Pain Management Advisory Council” (Council);
- Providing a definition for "prescription drug monitoring program;"
- Requiring the Council to collaborate with the various health care provider boards to establish by rule, before July 1, 2014, a minimum set of standards and procedures for the application of and exceptions to, the Pain Relief Act, including:

  - standards for prescribing, dispensing or administering controlled substances to which a health care provider shall adhere unless the health care provider has first consulted with a health care provider specializing in pain management;
  - standards for the frequency and circumstances in which a health care provider shall access the state prescription drug monitoring program;
  - guidance on tracking the use of controlled substances, particularly in emergency departments;
  - specific criteria and circumstances that warrant board review of a health care provider's pain management prescribing, dispensing or administration practices;
  - rules that set forth procedures for regular review of health care provider pain management prescribing, dispensing and administration; and
  - guidelines for boards to report annually to the overdose prevention and pain management advisory council on each board's activities to track, provide education relating to and recommend changes in pain management prescribing, dispensing and administration practices; changes in pain management prescribing, dispensing and administration practices resulting from those activities.
- Requiring each healthcare provider board to, in consultation with the Council, adopt and promulgate a uniform set of rules to establish requirements specific to providing pain management to patients who are controlled-substance dependent and who experience acute pain that is caused by an injury or surgical procedure.
- Adding to the Council membership representation from the Boards of Podiatry and Optometry and from a statewide association of nurse-midwives, and removing representation from the Board of Acupuncture and Oriental Medicine as its membership does not have the authority to prescribe controlled substances.

FISCAL IMPLICATIONS

The bill contains no appropriation. Affected agencies would need to participate in the council activities as well as promulgate rules and regulations and adhere to and enforce the compliance requirements.

SIGNIFICANT ISSUES

SB 641 seeks to address the serious issue of prescription drug overdose in New Mexico through the development of uniform health care provider standards with regard to the prescribing, dispensing, and administration of controlled substances.

Health care boards will need to adopt rules by July 1, 2014 defining pain management practice for their licensees. The boards will need to adopt standards for review of licensee pain management practice including the appropriate process for the review. The advisory council will have to establish the minimum standards for the boards to adopt. The boards will have to report annually to the advisory council.

The Board of Nursing supports the renaming of the of the previous council to the "overdose prevention and pain management advisory council, but does not support this council in having any regulatory authority to recommend or enact rules relating to other regulatory agencies or to require reports be submitted to the council. The Board of Nursing does not support the implementation in rules of the requirements of sections (5) a and b, (6) and (7) a and b to any regulatory agency or committee. The Board of Pharmacy currently has the capability of tracking

prescribing practices and reporting to the appropriate agencies, and has the resources and systems in place to accomplish these tasks with each regulatory agency then able to follow up on these reports as indicated.

PERFORMANCE IMPLICATIONS

The Board of Pharmacy has the capability of tracking the use of controlled substances by practitioners. The Board of Pharmacy also has investigation and enforcement capabilities already in place, and this Board could be the designated agency develop the recommendations listed in this bill under (5) a and b, (6) and (7) a and b, and then for each regulatory agency to follow up on these reports as indicated. It would be logistically difficult for other agencies to do what the Board of Pharmacy already does efficiently.

The Board of Nursing has already implemented most of the recommendations in this act by revising 16.12.9 Management of Chronic Pain with Controlled Substances effective October 2012.

ADMINISTRATIVE IMPLICATIONS

Boards will have to monitor compliance with pain management standards, intervene in non-compliant practices, and report compliance to the council.

The Board of Nursing does not have the resources and would need additional staff to comply with the recommendations to identify and report non-compliant pain management prescribing, regular review of these practices, and tracking or recommending changes in practice to providers. The Board of Nursing does review the Board of Pharmacy reports to identify, review and respond appropriately to prescribing outliers. The New Mexico Board of Nursing does not support the pain council as recommending any uniform set of rules for all regulatory agencies because each regulatory agency's practices and prescribing patterns will vary and not be subject to uniform standards. The Board of Nursing does not support the guidelines to report annually to the overdose prevention and pain management advisory council as suggested in (7)a and (7)b as this reporting would be redundant, repetitive and a misuse of resources of current agencies.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 641 is virtually identical to HB 624 with two exceptions:

1. On page 4, lines 21-25, HB 624 puts the phrase. "before July 1, 2014" on line 24 where SB 641 puts it on lines 21-22. This in no way affects the meaning of what is being said.
2. On line 1, page 8 of HB 624 the phrase "board of chiropractic examiners" is struck, while on line 25, page 7 of SB 641 it is not, and should be, since chiropractors do not have authority to prescribe controlled substances. The medical board recommends that the two bills be consolidated as one.

TECHNICAL ISSUES

The Medical Board indicates on page 6, Section 2D (2), lines 17-18, the bill's language should not specify "the management of acute pain caused by an injury or a surgical procedure". Instead, it should simply read, "(2) the management of acute pain". The specification of injury or surgery is not necessary, or compatible with the definition of acute pain in Section B. In fact, it could

prevent treatment of two of the most acutely painful conditions that a human can experience: passage of a renal stone and tubal pregnancy.

Section 3 creates the membership of the new "overdose prevention and pain management council". That membership consists of practitioners with controlled substance prescribing authority, a pain expert, a consumer advocate, and a public member with no pecuniary interest in the health-care field. The Medical Board recommends the addition of a member of the "chronic pain patient group" to the council (as a knowledgeable expert). Additionally, the Medical Board recommends that the majority of the voting representatives be practitioners with active licenses in New Mexico and are required to be in active practice.

Additionally, the Medical Board recommends that as many practitioners as possible be actively licensed.

The Medical Board is concerned that the size of the "overdose prevention and pain management council" may prove to be unwieldy, and may need thoughtful revision.

The Human Services Department Medical Assistance Division (HSD/MAD) does not have a representative listed as a member in this council (Section 3.A.). Authors may wish to consider adding representation from HSD/MAD given the role HSD plays in healthcare financing and delivery in the state.

OTHER SUBSTANTIVE ISSUES

The Medical Board indicates Section 2C, 2D, 2E, and 2F (pages 4-7) outline, respectively: the standards to be considered and applied; the separate nature of palliative and acute pain care; the rule for pain management in controlled-substance-dependent patients; and, the requirement that action against a practitioner be based on a totality of circumstances and not any one factor in isolation. The medical board agrees with these approaches, and has implemented most if not all in their revised and updated rules.

The DOH indicates the Centers for Disease Control (CDC) recommends states enact evidence-based guidelines to ensure safe and effective use of prescription painkillers and to ensure health care provider accountability in an effort to reduce drug overdose deaths (CDC, 2011). Many of these efforts deal with preventing the over-prescribing of opioids and other controlled substances, preventing prescription fraud, and providing pain management oversight.

The CDC reports 35 states have already enacted prescription drug limit laws (17 states have limited the number of days supply of prescription drugs for specific schedules, 6 states have limiting laws for prescribing certain classes of drugs or specific drugs, 16 states have enacted laws limiting the days supply of emergency prescriptions, 18 states have enacted laws limiting the days supply of prescription drugs for members of certain benefit plans, and 7 states have enacted laws limiting the days supply of multiple prescriptions; CDC, 2012).

Additionally, the CDC recommends states use state prescription monitoring programs to identify improper prescribing of painkillers. Also included in the recommendations is states pass, enforce and evaluate pill mill, doctor shopping and other laws to reduce prescription painkiller abuse. In addition, CDC recommends health care providers screen and monitor patients for substance abuse problems. (CDC, 2011)

Lastly, the CDC reports numerous states have already enacted laws regarding the dispensing of prescription drugs including the use of tamper resistant prescriptions (10 states have enacted laws requiring the use of tamper resistant prescriptions to be used for all controlled substances, 15 states require the use of tamper resistant prescriptions to be used if the patient is to be reimbursed by Medicare or Medicaid, and 17 states have already set deadlines before the use of tamper resistant prescriptions are required). (CDC, 2012)

If New Mexico's health care provider boards were to enact rules consistent with CDC recommendations relating to controlled substance prescribing, dispensing, and administration, New Mexico would join the list of states that have attempted to tackle the problem of prescription drug overdose through enacting specific legislation or regulation aimed at curbing the over-prescribing of controlled substances and prescription fraud as well as providing pain management oversight.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If the bill is not passed, lack of uniformity and consistency will continue among the boards that are creating rules for the treatment of patients with chronic pain.

RAE/blm