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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/23/14

**SPONSOR** Padilla **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Professional Direct Home Care Certification **SB** 14

**ANALYST** Weber

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

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Significant but Indeterminate	Significant but Indeterminate		Recurring	

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, House Bill 88

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)  
 Department of Health (DOH)  
 Aging and Long-Term Services Department (ALTSD)  
 Board of Nursing (BN)

### SUMMARY

#### Synopsis of Bill

Senate Bill 14 creates a certification, course of study and discipline for individuals providing professional direct home care services in a residential setting for pay. An individual providing such services must have current certification issued by the Regulation and Licensing Department. RLD would create a program requiring individuals to pass an examination after completing an approved course of study.

RLD would establish by rule the standards for approval of a course of study in professional direct home care services. Those standards shall include:

1. training in key competencies that the department shall establish by rule; and
2. accreditation by a national professional direct home care services accrediting body.

A person who violates a provision of the section would be subject to disciplinary procedures under the Uniform Licensing Act.

The bill defines professional direct home care services as services provided by an individual who performs those services in a residential setting for pay, including: (a) personal care, such as dressing, bathing, eating, ambulating, toileting and hygiene; (b) administration of medication; and, (c) meal preparation.

### **FISCAL IMPLICATIONS**

No appropriation is included in the bill. In addition there is no language allowing for an application fee to create revenue to offset some or all costs leaving the implication any appropriation would need to be from the General Fund. RLD describes the requirement as an “unfunded mandate”.

It is difficult to determine the potential costs in the absence of data related to the number of such workers; however, this is a common service and apparently growing with the aging population. In addition, there would be substantial upfront costs related to the rules promulgation.

### **SIGNIFICANT ISSUES**

RLD notes that the bill directs professional home care certification of providers to the Regulation and Licensing Department. It may be, however, that the authority is more appropriately referred to the “Aging and Long-Term Services Department,” in accord with NMSA 1978 Section 9-23-9(D), which has existing statutory authority as follows:

The long-term care division shall administer home-and community-based long term care programs.

DOH adds that agency currently has comprehensive competency-based training and compliance monitoring systems for direct support providers in various long term care sectors. Such training programs include: 1) an in-depth core curriculum, individual-specific training and ancillary training for people serving Individuals with Intellectual and Developmental Disabilities (DD), 2) federally mandated training requirements for Certified Nursing Assistants (CNAs) who provide direct care in nursing homes and hospice facilities, 3) home health agencies' use of Certified Nursing Assistants to provide home health aide services, and 4) the Certified Medication Aide I & II (CMA) programs administered by the New Mexico Board of Nursing which is the ONLY avenue through which individuals who are not licensed nurses may administer medication to an individual for whom they are not related by affinity or consanguinity.

Nursing homes, home health agencies, hospice agencies, ICFs-MR and assisted living facilities in New Mexico are licensed by the DOH and are required to have appropriate and necessary training programs for direct care staff. The requirements are monitored by the DOH, Division of Health Improvement (DHI) through initial licensure and certification surveys. Most nursing homes, home health agencies, hospice agencies and ICFs-MR are also regulated by either New Mexico Medicaid or by the United States Health and Human Services Department, Centers for Medicare and Medicaid Services (CMS). Medicaid, CMS Medicare and the DOH have established requirements for training of direct care providers regarding the provision of their duties. Nursing homes also have an extremely rigorous and structured training program for

Certified Nurse Aides (CNAs) that is carefully regulated by CMS Medicare. The DHI oversees that process on behalf of CMS.

There are approximately 8,350 CNAs and 193 CMAs certified in New Mexico. The existing Developmental Disabilities Supports Division (DDSD) competency-based training program for direct support personnel in Developmental Disabilities Waiver (DDW) residential services was established in response to a requirement of the Jackson lawsuit. Any significant change could impact Jackson disengagement activities.

The DOH DDW and the training requirements outlined within have previously been approved by the Federal Centers for Medicare and Medicaid Services (CMS). Provider agencies may object to or resist additional training requirements to an already rigorous program, especially if it is an unfunded mandate. The provider sector already incurs the cost of training for direct caregivers, which must come out of the service rates paid by various state agencies and associated federal matching funds. Per the Final Report of House Memorial 37 (2009), “Credentialing of Direct Caregivers for People with Disabilities and Elderly New Mexicans”, there were several areas determined to need further study before a Credentialing Procedure could be pursued. Such further study has not been undertaken to date.

The Board of Nursing reiterates that the bill includes language regarding the “administration of medications” by direct home care personnel. The Board of Nursing NPA and rules and regulations restrict the administration of medication to a person licensed or certified by the Board of Nursing. Only a licensed nurse or Certified Medication Aide would be authorized to administer these medications legally.

DOH continues that the bill would create a duplication of efforts. It is unlikely that the infrastructure exists to support the creation of a new training system. If this bill was applicable to DHI, licensed entities and contract providers, then DHI would have to determine if the facilities’ or contractors’ direct care workers were properly certified for all licensed and certified facilities and for all DD Waiver and other Home and Community Based Services Waiver providers. The DHI would also have to revise approximately seven sets of rules and contracts to reflect the new requirement in order to be able to enforce it.

### **POSSIBLE QUESTIONS**

Is the program more properly attached to DOH which already has direct related experience and existing programs?

MW/ds