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## FISCAL IMPACT REPORT

**SPONSOR** Padilla **ORIGINAL DATE** 1/26/21  
**LAST UPDATED** 1/29/21 **HB** \_\_\_\_\_  
**SHORT TITLE** Take-Home Opioid Dispensing by Nurses **SB** 46  
**ANALYST** Chilton

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Uncertain, probably small	Uncertain, probably small	Uncertain, probably small	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Nursing Board (NB)

Medical Board (MB)

Human Services Department (HSD)

Regulation and Licensing Department (RLD)

#### No Response Received

Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

Senate Bill 46 would permit licensed practical nurses and registered nurses employed by opioid treatment programs to dispense as much as a 27-day supply of methadone to an agency client. The Nursing Practice Act (Chapter [61](#), Article [3](#) NMSA 1978), to which the new language in SB46 would be appended, is currently silent on the issue.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

### FISCAL IMPLICATIONS

There is no appropriation in this bill. HSD notes that it may bear expenses to oversee a program of nurses dispensing take-home methadone, but cannot estimate the cost.

## SIGNIFICANT ISSUES

From job offerings on [www.simplyhired.com](http://www.simplyhired.com) and [www.glassdoor.com](http://www.glassdoor.com), it appears that nurses are empowered to dispense methadone (and often buprenorphine as well) in several other states, including Colorado, Maryland, Washington, and California. There are many methadone treatment programs in New Mexico; [opiateaddictionresource.com](http://opiateaddictionresource.com) lists seven in Albuquerque and one each in Espanola, Las Cruces and Santa Fe, but is incomplete. One provider, for example, Recovery Services of New Mexico, with five sites, including Belen and Roswell, in New Mexico, states on its webpage, [www.recoverynewmexico.com](http://www.recoverynewmexico.com), that it offers take-home methadone to those who, “over time as they comply with the treatment program, may earn take-home medication and visit the program less frequently.”

The Board of Nursing has two major concerns with this bill: that dispensing methadone in this way is incongruent with the usual role of nurses in working from physician orders as detailed in the Nursing Practice Act, and that dispensing of a 27-day supply of methadone at one time increases the risk of overdose, both for the person to whom the medication is dispensed and to those who might take it from that person and ingest it themselves or sell it to another person. With regard to the first of these concerns, BN states “Related to the issue of LPN scope of practice, as LPNs are required to work at the direction of an RN, physician, or dentist (61-3-3.J. NMSA 1978), and the shorter length of the educational programs for LPNs, authorizing LPNs to dispense methadone for home use may not be consistent with the public safety role of the New Mexico Board of Nursing.”

RLD comments extensively on the apparent conflict between this proposed legislation and the Pharmacy Act (Section 61-11 NMSA 1978):

The direct nurse dispensing proposed in SB46 would bypass the role and oversight of the pharmacist in dispensing processes of methadone clinics. Pharmacists are required, in the course of dispensing, to fulfill duties and responsibilities which require the pharmacist’s professional judgement and include (but are not limited to) evaluation of available clinical data; professional consultation with the prescriber as indicated; and completion of a prospective drug regimen review (including a review for drug-disease and drug-drug interactions). Pharmacists are also required to perform a final verification, including appropriateness of dose.

Pharmacists are also required by statute and board rule to oversee dispensing in facilities required to be licensed by the board, *including opioid treatment programs*. This oversight requires professional judgment and is critical in the protection of the health and safety of the public, accountability, and preventing diversion as in the case of controlled substances such as methadone. To allow dispensing by a nurse bypasses the statutory and regulatory safeguards applicable to dispensing processes and is inconsistent with the board’s charge of administering the Pharmacy Act, and protecting the health and safety of the public.

Please note that nurse dispensing of methadone exceeds the statutory and regulatory allowances of nurse practitioners (whose training and scope of practice is more advanced and broader than registered or licensed practical nurses). Nurse practitioners are able to distribute, but are prohibited from dispensing.

The Pharmacy Act is not addressed in the bill.

### **ADMINISTRATIVE IMPLICATIONS**

HSD notes that “If the new dispensing authority would require the addition of paid dispensing fees to RNs and LPNs, then HSD would have to promulgate regulations and gain federal approval from the Centers for Medicare and Medicaid Services (CMS).”

### **TECHNICAL ISSUES**

It may be appropriate to include buprenorphine among drugs that could be dispensed by an RN or LPN and to include the general category of drugs used to treat opiate abuse as a class, in case other treatment drugs are developed.

HSD notes that it “recommends that the term ‘dispense’ be defined in SB46 so it is clear what the role is intended for RNs and LPNs in OTP [outpatient treatment program] settings when dispensing methadone.

The bill does not specify that dispensing of take-home doses of methadone would be done under the order of a prescribing health care practitioner.

LAC/al/rl