

LFC Requester:

Eric Chenier

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date February 14, 2025

Bill No: HB 171

Sponsor: Jenifer Jones
Elizabeth "Liz" Thomson
Cathrynn N. Brown
Short Title: Pharmacy Custodial Care
Facilities

**Agency Name
and Code
Number:**

Regulation and Licensing
Department - 420

Person Writing

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		70.0		70.0	Nonrecurring	Pharmacy Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 171 as amended by House Health and Human Services Committee (HB171/a)

HB17/a adds a new section to the Pharmacy Act, §§61-11-1 to -30 NMSA 1978, to permit a licensed custodial care facility that is authorized to provide medically monitored withdrawal management that is under the supervision of a consulting pharmacist and has onsite nursing staff 24 hours per day, 365 days per year, to acquire, stock, maintain and have in the facility's possession dangerous drugs, including controlled substances to be used for withdrawal management purposes.

Amendments made by the House Health and Human Services Committee (HHHC) were: (1) to specify at Section 1, paragraph A that activities conducted pursuant to that paragraph must be accordance with [Board of Pharmacy] rules; and (2) to set the effective date of the legislation as January 1, 2026.

FISCAL IMPLICATIONS

The NM Board of Pharmacy (BOP) is administratively attached to the Regulation and Licensing Department (RLD). In preparing this Fiscal Impact Report the RLD contacted the BOP for its feedback. The BOP expects a direct fiscal impact related to the rulemaking process (meetings to develop and draft proposed rule language, filing notices, conducting hearings, etc.) of approximately Five Thousand Dollars (\$5,000.00), and additional expenditures of approximately Sixty Thousand Dollars (\$60,000.00) to modify the online licensing system for controlled substance registration capabilities for the new custodial facility subtype. Additionally, Five Thousand Dollars (\$5,000.00) is anticipated for staff efforts related to licensing database modification, testing, and implementation.

SIGNIFICANT ISSUES:

The BOP, at 16.19.11.8 (A) (9) NMAC, allows a licensed custodial care facility with a 24/7/365 on-site nurse to have emergency drug supplies which may include controlled substances. Custodial facilities may also stock controlled substances on-site in an automated drug distribution system (ADDS), which can be used for routine dosing if it has a Drug Enforcement Administration (DEA) registration, as required by federal law. *See* 16.19.6.27 NMAC.

The emergency drug supply and ADDS is the property of a pharmacy. This creates an additional layer of accountability and protection against dangerous drug and controlled substance diversion. Additional protections include pharmacist drug utilization review and ensuring that the drug is administered only pursuant to prescription.

For a custodial facility to obtain controlled substances, it must have a state and federal (DEA) controlled substance registration.

There is not an applicable federal exception that allows a DEA registrant to take possession of a controlled substance from a non-registrant in a custodial facility setting. This will create issues with a custodial facility that has patient-specific controlled substances in its control.

Modification of the online licensing system and rules will take many months. The BOP has requested a delayed implementation date of June 30, 2026. The amendment made by the HHHC provides six (6) months for modification of the system and rules development, which is an improvement over the original bill.

Insurers do not pay custodial facilities for drugs. Until such time as this is changed, patients may be charged for drugs their insurance would otherwise cover, or the custodial facility may go unreimbursed.

As defined, “controlled substance” means a drug, substance or immediate precursor enumerated in Schedules III and V of the Controlled Substances Act. The definition would be more clear and effective if amended. Please see below.

PERFORMANCE IMPLICATIONS:

ADMINISTRATIVE IMPLICATIONS:

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES:

OTHER SUBSTANTIVE ISSUES:

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Custodial facilities may continue to carry these same medications in an automated drug distribution system, with integrated pharmacy oversight for improved patient safety, diversion prevention and detection, and state and federal law compliance. In total, access to medications is unchanged while risks are mitigated.

AMENDMENTS

The Board of Pharmacy requests a definition amendment: “controlled substance” means a drug or substance listed in Schedules III and V of the Controlled Substances Act or rules adopted thereto.