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FISCAL IMPACT REPORT

SPONSOR <u>Jones/Thomson/Brown</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/7/2023</u>
	BILL
SHORT TITLE <u>Pharmacy Custodial Care Facilities</u>	NUMBER <u>House Bill 171</u>
	ANALYST <u>Esquibel</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
BOP	No fiscal impact	\$70.0	No fiscal impact	\$70.0	Nonrecurring	Board of Pharmacy Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Corrections Department (CD)
 Department of Health (DOH)
 Department of Public Safety (DPS)
 Health Care Authority (HCA)
 Office of Superintendent of Insurance (OSI)
 Regulation and Licensing Department (RLD)

Agency Analysis was Solicited but Not Received From

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of House Bill 171

House Bill 171 (HB171) would amend the Pharmacy Act to provide that certain licensed custodial care facilities may acquire and possess dangerous drugs, including controlled substances, for addiction withdrawal management purposes.

The proposal would apply to licensed custodial care facilities that are authorized to provide medically monitored withdrawal management that is under supervision of consulting pharmacists and has nursing staff on-site 24 hours per day, 365 days per year.

“Controlled substance” means a drug, substance or immediate precursor enumerated in Schedules III and IV of the Controlled Substances Act.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

Under the provisions of the bill, the Board of Pharmacy (BOP) projects \$70 thousand in nonrecurring costs from the board of pharmacy fund associated with rulemaking and modifying and maintaining the online licensing IT system for controlled substance registration for the newly proposed custodial facilities.

BOP notes insurers do not pay custodial facilities for drugs and patients may be charged for drugs their insurance would otherwise cover, or the custodial facility may go unreimbursed.

SIGNIFICANT ISSUES

BOP notes for a custodial facility to obtain controlled substances, it must have a state and federal Drug Enforcement Administration (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. BOP requests a delayed implementation date of June 30, 2026.

The current definition of a “licensed custodial care facility” under New Mexico Administrative Control 16.19.11.7(B) describes it as any facility or business, including nonprofit entities, that provides retirement care, mental health care, or extended healthcare to patients. However, this definition does not explicitly mention prisons or jails, making it unclear whether it applies to New Mexico Corrections Department (NMCD) facilities.

Under the Pharmacy Act, a “custodial care facility” is defined as a nursing home, retirement care facility, mental health care facility, or any other facility offering extended healthcare. To clarify whether this definition should apply to NMCD facilities, the Legislature may need to amend the definition. Notably, the New Mexico Court of Appeals held that the New Mexico Boys and Girls Ranch and El Ranchito de Los Ninos do not meet the definition. [See *New Mexico Boys & Girls Ranch v. New Mexico Bd. of Pharmacy*, 2022-NMCA-047, ¶ 34, 517 P.3d 248.]

The Health Care Authority notes adult accredited residential treatment centers (AARTC) are not clearly defined in the Pharmacy Act. AARTCs are facilities that provide residential treatment for individuals with substance use and mental health disorders. Therefore, AARTCs may not be included under the provisions of the bill. "Custodial care facility" means a nursing home, retirement care, mental care or other facility that provides extended health care.

ADMINISTRATIVE IMPLICATIONS

If NMCD is required to comply with the provisions of the bill, there would be costs for licensing, pharmacy regulation compliance, and maintaining storage equipment.

TECHNICAL ISSUES

BOP suggests amendments specifying the custodial facility may obtain dangerous drugs and controlled substances in accordance with BOP rules and specifying an implementation date of June 30, 2026, to allow the BOP time to promulgate rules and implement required licensing IT database upgrades for enforcement of the proposed changes.

The bill does not specify if “nursing staff” refers to a registered nurse (RN) or a licensed practical nurse (LPN).

OTHER SUBSTANTIVE ISSUES

The Department of Public Safety notes the bill would facilitate the safe management of individuals undergoing withdrawal by allowing custodial care facilities to possess controlled substances under proper supervision. This would help prevent withdrawal symptoms from escalating into more severe medical emergencies, which could require law enforcement or emergency medical intervention. If individuals in withdrawal can receive appropriate medical care in a custodial care facility rather than in emergency rooms or correctional facilities, it would alleviate some of the strain on public safety resources. Law enforcement agencies may be able to redirect their resources away from managing medical crises related to withdrawal toward other public safety concerns.

RAE/hj/SL2