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FISCAL IMPACT REPORT

SPONSOR: Garcia DATE TYPED: 03/04/01 HB _____
 SHORT TITLE: Patient Rights for Pain Relief Treatment SB 2
 ANALYST: Rael

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Board of Medical Examiners
 State Agency on Aging
 New Mexico Health Policy Commission
 Attorney General

SUMMARY

Synopsis of Bill

This bill establishes patient rights including a patient’s right to request or reject pain relief treatment and the right to be advised of available pain management therapies. A patient who suffers pain as a result of a physician’s failure to follow accepted guidelines is grounds to recover damages. The bill also amends the current Pain Relief Act to exclude the requirement that an “accepted guideline” must be accepted by the New Mexico board of medical examiners.

Health care providers who do not follow accepted guidelines regarding pain management are subject to mandatory disciplinary action or pain management education. Finally, a health care provider who prevails in an action brought by an agency in court or before a board, for an inappropriate prescription of medication to relieve pain, is entitled to an award of costs and reasonable attorney’s fees.

Significant Issues

This bill introduces a different standard for determining acceptable guidelines. Additionally, the potential liability for the Board of Medical Examiners for cases in which the health care provider prevails is uncertain.

FISCAL IMPLICATIONS

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The Board of Medical Examiners is concerned that the board would be forced to pay \$100. for each case that the board prosecutes when the health care provider prevails. This will in turn have a significant impact on the board's budget and licensing fees.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

Related to recent federal bills introduced:
Pain Relief and Promotion Act of 2000 HR 5544

OTHER SUBSTANTIVE ISSUES

The Health Policy Commission is concerned that this bill may not adequately address issues of patient compliance, chemical dependency or addiction and/or the diagnosis of conditions resulting in chronic intractable pain.

The HPC also notes that this bill is related to recently proposed federal legislation. The NM law is focused on the rights of the patient with regard to pain relief creating liability for the practitioner that fails provide pain medication, and the proposed federal legislation creates a liability for the provider using controlled substances to control pain if a patient happens to die during treatment.

The Board of Medical examiners is also concerned that deleting the requirement that accepted guidelines must be accepted by the board would effectively make the notion of "accepted guidelines" a moving target and difficult to determine and enforce. The board notes that in the past 16 years, the board has not had a single complaint regarding the failure to treat pain. Additionally, no case in which the board has brought for overprescribing has been overturned by the courts.

POSSIBLE AMENDMENTS

1. Amend to include marijuana use under recognized clinical guidelines since it may not carry the same risk of death associated with opiate use.
2. Amend to include standards concerning the use of pain relief medication and chemically dependent patients to relieve the liability risk to health care providers.

POSSIBLE QUESTIONS

Does the Board of Medical Examiners have complete authority to determine whether sanctions or education are imposed for mandatory discipline?

FAR/ar