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FISCAL IMPACT REPORT

SPONSOR: Komadina DATE TYPED: 02/26/01 HB _____
 SHORT TITLE: Amend Medical Practice Act SB 492
 ANALYST: Carrillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Board of Medical Examiners
 Office of the Attorney General (AG)

SUMMARY

Synopsis of Bill

Senate Bill 492 propose to enact a section of the Medical Practice Act to prohibit disciplinary actions against licensed doctors for providing nonprescription health-related treatments, nontraditional therapies, or alternative medical care that depart from the prevailing medical practice.

Significant Issues

The staff from the Office of the Attorney General (AG) states:

The bill, in effect, creates an absolute immunity from administrative disciplinary action if a doctor departs from the prevailing standard of care in providing patient care. A doctor cannot be charged by the Board of Medical Examiners with gross negligence, repeated negligent conduct, or incompetence would simply raise nontraditional therapy of alternative medical care as a defense to the allegation. Licensed doctors may be able to engage in unaccepted dangerous or experimental treatment or conduct procedures that are not recognized as effective without regard to the efficacy of the treatment, the patient's welfare, or accepted regimes or protocols because the licensee's licensure will be unaffected.

The Board of Medical Examiners may be unable to deny licensure to applicants disciplined in other jurisdictions for negligence, incompetence, or unprofessional conduct if the applicant asserts that the misconduct arose from providing nontraditional therapy or alternative medical care that departed from prevailing medical practice.

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The bill may be seen as conflicting with current state policy designed to protect the health and safety of the public. Under currently law, Section 61-6-1(B) NMSA 1978, the purpose of the New Mexico Board of Medical Examiners is to protect the public health, safety, and welfare from improper, unprofessional, and incompetent practice of medicine. Section 61-6-1(C) NMSA 1978 expressly provides that the Board has the duty and obligation to discipline incompetent or unprofessional doctors. Enactment of SB492 may diminish the Board's ability to protect the public from negligent, incompetent or unprofessional conduct by doctors.

SB492 may conflict with current state policy that allows the Board to deny licensure to applicants from other jurisdictions who have been disciplined for incompetence or unprofessional conduct if the applicant alleges that the disciplinary action arose out of providing nontraditional treatment or alternative medical care. SB 492 will allow physicians whose licenses have been revoked to obtain a license to practice medicine in New Mexico.

The bill may affect the availability or cost of health insurance to New Mexico residents if the Board of Medical Examiners is unable to discipline, monitor, or correct negligent, incompetent, or unprofessional behavior.

The bill may affect the ability of other professional licensing boards to enjoin the unlicensed practice of the respective profession if the practice is performed by a licensed physician. The question arises whether a medical doctor can, for example, engage in the practice of psychology by claiming he is providing "alternative medical care" under his or her medical license.

The Board of Medical Examiners staff notes:

SB 492 may prevent the Board from taking action in cases where the patient clearly has been or will be harmed by the provision of nontraditional or alternative medicine or other treatments. These amendments will significantly restrict the Board's ability to protect the public from quackery.

Although SB492 has no fiscal or administrative impact on the Board, it does have the potential to significantly impact patient care. This proposal limits the Board's ability to take any type of disciplinary action against a physician based on the physician's practice of providing nonprescription health-related treatments, nontraditional therapies, or alternative medical care. This means if Dr. "X" decides that "blue light therapy" is the appropriate treatment for cancer, the Board will have no means to discipline him for his "alternative" or "nontraditional" care in a situation where there is a high probability of harm to the patient. The prohibition of disciplinary action leaves the patient poorly protected from physicians who act in an unethical or unprofessional manner.

During the past 16 years, the Board has taken only one action, in 1997, against a physician for "nontraditional" practice. In this case the physician voluntarily agreed to refrain from administering hydrogen peroxide intravenously as long as he is licensed to practice in New Mexico. The Board believes it was fully appropriate to limit this "nontraditional" practice in the interest of patient health and safety. However, since there has only been this one case, there is no evidence that physicians are being restricted from providing care, nonprescription treatments, or therapy that might be in the patients best interest because of an overzealous board taking action for any deviation from an accepted norm.

FISCAL IMPLICATIONS

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None identified at this time.

LP/ar