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F I S C A L   I M P A C T   R E P O R T

SPONSOR Picraux **DATE TYPED** 2/10/04 **HB** 163/aHBIC/aHAFC

SHORT TITLE Pain Management Advisory Council **SB**

ANALYST Geisler

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Medical Board
Health Policy Commission
LFC Files

SUMMARY

Synopsis of HAFC Amendments

The House Appropriations and Finance Committee amendments to HB 163:

1. Strike the $25 thousand appropriation;
2. Clarifies that the definition for “accepted guideline” includes a standard or guideline for pain management approved by the joint commission on accreditation of healthcare organizations.

Synopsis of HBIC Amendments

The House Business and Industry Committee amendments to HB 163 incorporate suggestions made by the Medical Board and are consistent with recommendations of the Task Force created in response to Senate Memorial 22 in 2001. Major features of the amendments include:

- The requirement for the board to have two experts to rebut testimony of the licensee’s experts “prior to the initiation of an action” was removed. This eliminated a fiscal impact to the medical board of up to $10 thousand per year for expert witness cost.
- The requirement for continuing education in pain management was also expanded to apply to all health care practitioners who treat patients with pain.

- The redundant material specifically requiring continuing education for physicians was removed.
- Language was clarified to require each board that licenses health care practitioners to adopt rules establishing standards and procedures for the application of the Pain Relief Act, including the care and treatment of chemically dependent individuals.

Synopsis of Original Bill

HB 163 addresses pain management and incorporates recommendations developed by the Task Force created in response to Senate Memorial 22 in 2001. Major features of the bill include:

- Amends the Pain Relief Act (24-2D-2) to broaden the definition of "pain," clarifies disciplinary action by the health care provider's respective board for the provider's treatment of pain, and mandates that each board shall adopt rules establishing pain management standards and procedures.
- Creates the Pain Management Advisory Council, administratively attached to the Department of Health. Members of the council, appointed by the Governor, shall review national and New Mexico pain management standards and educational efforts and recommend pain management guidelines for each health care profession in New Mexico.
- Mandates that continuing education on pain management be required by boards for their health care providers who have prescriptive authority and who treat patients for pain.
- Requires that pain management guidelines be established and maintained by each board, and amends the Medical Practice Act to require pain management continuing education for all licensed physicians.

Significant Issues

- The Health Policy Commission pulled together a diverse group of stakeholders into the SM 22 Pain Management Task Force. The members of the Task Force considered all the evidence gathered, and developed recommendations. The recommendations can be found in the SM22 Report and the major findings are as follows:

1. There is a dire need for more education about pain and pain management, for both patients and health professionals.

    - Patients often lack clear language for expressing the extent and nature of their pain in such a manner that their health care provider can understand and respond to appropriately, and health professionals in NM have significant limitations to their knowledge about the etiology of pain, the actual risks and benefits of opioids in the treatment of pain, and effective pain management.

    - Pain management receives little or no attention in the curricula of the professional schools in the state, there are no competency requirements for pain management that are necessary for licensure, and although there are guidelines available for health care professionals to refer to, few practitioners actually do.

    - The major recommendation the Task Force made in response to this finding is a call for the creation of a State Advisory Council on Pain Management which would be re-

sponsible for instituting statewide education efforts for both providers and patients. HB 163 directly addresses this recommendation by requiring continuing education in pain management for all health care providers that have prescriptive authority and treat patients for pain, and by creating the Pain Management Advisory Council.

2. Providers continue to be fearful that they make themselves vulnerable to discipline and/or legal action when they prescribe opioids/narcotics for pain.

   - Whether it is an unfounded perception or a valid concern, many providers respond by under-prescribing for pain.

   - To address this finding, the Task Force made recommendations for changes in the Medical Board disciplinary process, and for the review and updating of guidelines on prescribing for pain. HB 163 also directly addresses these recommendations by broadening the definition of pain, by specifying that health care providers cannot be disciplined for solely the quantity of medication prescribed and by requiring the Medical Board to establish pain management guidelines and review national standards for pain management.

FISCAL IMPLICATIONS

The bill appropriates $25 thousand in general fund to support the work of the advisory committee. There will be costs associated with establishing standards and procedures for the application of the Pain Relief Act for the care and treatment of chemically dependent individuals. These costs will not only impact the Medical Board, but each board licensing health care providers. The requirement for the Medical Board to have two experts instead of one will increase the cost of initiating actions against licensees by up to $10 thousand per year.

AMENDMENTS

The Medical Board supports the bill but has a number of technical concerns with bill language. Suggested amendments are provided for each item below:

1) Requirement for two experts. The proposed amendment to Section 24-2D-3 that health provider boards need to have two experts to rebut the testimony of a licensee's experts "prior to the initiation of an action" should be deleted. There is not any testimony "prior to the initiation of an action." This portion of the Pain Relief Act relates to burdens of proof that are on the parties during the hearing after an action is initiated. The bill also require that health provider boards have at least two expert witnesses for any action they bring for violations of the act. This requirement should be deleted--the number of witnesses a party needs to present at a hearing should be left up to the parties. The issue at hearings is the credibility of expert witnesses, not which side has more experts. See amendments #1.

2) Continuing education requirement. There are many licensed physicians who do not address pain management issues in their practice, such as pathologists and radiologists. It would be a waste of time and money to require that they take continuing education courses in pain management. The new Advisory Council could be given the responsibility of tracking continuing education requirements related to pain management from all of the health care boards. If

each board is not addressing this issue appropriately then education could be mandated. It may be that the general requirement for "other" practitioners is too broad because it specifies they must treat patients **for** pain. We recommend this be changed to impact those practitioners who treat patients "with pain" and that it be broadly applied to all practitioners who have prescriptive authority and treat patients with pain. <u>See amendment #2</u>.

Medical Board amendment language as discussed above:

1. Page 3, lines 23 through 25, delete the new language beginning with "by the licensee", and the word "clinical". Restore the language that reads: "expert testimony." And restore "If no currently accepted guidelines are available, then." Delete the word "experts" at the end of line 25. On page 4, line 1, delete the new language that reads "prior to initiation of the action."

   The section starting on page 3, line 23 should then read: "an accepted guideline is rebutted by expert testimony. If no currently accepted guidelines are available, then rules issues by the board may serve the function of such guidelines for purposes of the Pain Relief Act.

2. Page 6, line 17, delete the word "for" and replace with the word "with."

Medical Board suggested technical corrections:

3. Page 8, lines 22 and 23, delete the new material since it is covered by Section 4 on page 6.

4. Page 4, line 21, delete the word "to" and replace it with "including" to assure each board adopts rules for all individuals in pain, including those who are chemically dependent.

GGG/lg:njw