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

SPONSOR Coll **DATE TYPED** 02/02/04 **HB** 301

SHORT TITLE Hospital Oversight by Secretary of Health **SB**

ANALYST Gilbert

APPROPRIATION

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

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 322, SB 315, HB 93, SB 34, and to the Charitable Solicitations Act

SOURCES OF INFORMATION

LFC Files

Responses Received From
New Mexico Health Policy Commission (NMHPC)
Department of Health (DOH)
New Mexico Medical Society (NMMS)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 301 creates a new section in the Public Health Act, Chapter 24, Article 1 NMSA 1978, to require hospitals and long-term care facilities (*defined in the bill*), as condition of licensure, to provide the Department of Health (DOH) secretary with information needed to enable a reasonable assessment of the financial viability and sustainability of such organizations.

In addition, hospitals and long-term care facilities must provide certain information at least ninety days prior to the following anticipated events:

- a change in control of ownership;
- a change in organizational control; and

- a proposed licensure, closure, disposition or acquisition.

Under this bill, all information provided will be confidential and exempt from the Inspection of Public Records Act.

The DOH secretary is granted authority to:

- deny the proposed action only if it is not consistent with the DOH or the statewide health strategic plan, is contrary to the best interests of the state as a whole, or will substantially impair access to or the quality of care delivered to patients in the service area;

- prevent closed long-term care facilities from being reopened and direct funds toward community service. The DOH secretary may convene necessary parties to try to resolve financial solvency or sustainability issues by developing a remedial plan; and,

- impose a fine or penalty specified by DOH rule for failure to comply with these provisions.

Hospitals or long-term care facilities may request an appeal hearing in accordance with DOH rules and the Administrative Procedures Act. The parties would include representatives from the hospital or the long-term care facility and the DOH secretary and attorney general (representing the interests of patients).

Significant Issues

The New Mexico Medical Society (NMMS) took the following action:

- Senator Steve Komadina made a presentation to the New Mexico Medical Society (NMMS) Council on January 17, 2004, where he outlined Governor Richardson's health care agenda for 2004. After his presentation, the NMMS Council voted unanimously to oppose any legislation that would unnecessary mandate oversight of hospital, outpatient, diagnostic services and long-term care facilities since it would limit competition and decrease the quality of patient care in New Mexico.

The New Mexico Attorney General's Office (AGO) outlined the following concerns:

- Establishes no objective standards to determine financial viability or sustainability and does not define those terms.

- Does not require local community involvement.

- Does not require the involvement of patients or their representatives.

- Does not require the involvement of practicing health care professionals or their representatives.

According to the New Mexico Health Policy Commission (NMHPC), this bill has the following implications to hospitals and long-term care facilities:

- Remedial plans developed by the DOH secretary could help these facilities overcome financial deficiencies.

- The DOH secretary would have the power to influence the markets for these facilities, with the possibly of disrupting free market competition. The requirement to provide 90 days written notice to the DOH may be a hindrance to the opening or transferring health care facilities.

- The 90-day written notice requirement for facilities headed toward closure or change of ownership may be burdensome and prolong the event, thus resulting in additional financial losses.

FISCAL IMPLICATIONS

The AGO stated that implementation of this bill may increase litigation costs.

According to DOH, this bill will likely require additional resources within DOH to employ outside consultants to evaluate business plans for new facilities, receivership resources, and auditors. Many parts of DOH such as the Division of Health Improvement, the Health Systems Bureau and the Office of Epidemiology may be impacted with requests for information on health status, local health resources, and needs of individual communities impacted by proposed closures or ownership changes of hospitals and long-term care facilities.

ADMINISTRATIVE IMPLICATIONS

In addition to the resources and staff necessary to administer the oversight and appeal provisions specified in this bill, DOH will also be required to develop, publish and hold public hearings on implementing relevant rules and procedures.

RELATIONSHIP

HB 301 closely relates to SB 315 and HB 322 with the following differences:

Under SB 315 and HB 322, primary care clinics are included, whereas they are not under HB 301.

HB 301 specifies that *a change of ownership or organizational control of a facility* shall trigger the enforcement of requirements described in the bill, whereas SB 315 and HB 322 specify that *a material and substantial change* is necessary.

Section 2, subsection B of HB 301 states that the DOH secretary shall not to oppose a hospital's or long-term care facility's request pursuant to subsection A, when such organizations meet criteria as outlined in the bill; SB 315 HB 322 do not these provisions.

In section 2, subsection D, all three bills describe remedial plans to be developed by the DOH secretary, but HB 301 indicates that state agencies or independent consultants may assist the DOH secretary in developing such plans, whereas SB 315 and HB 322 do not.

HB 301 relates to HB 93 and SB 34 which require development of a comprehensive strategic health plan, regarding access issues.

TECHNICAL ISSUES

The AGO outlined the following concerns:

- It is not clear how this bill relates to the Charitable Solicitations Act.

According to the New Mexico Health Policy Commission (NMHPC):

- The term "Access" is not clearly defined.
- It is not clear if the DOH secretary must implement procedures or an administrative rule to prevent the reopening of long-term facility beds.
- The bill does not specify the context for redirecting funds to community-based services : see section 2 subsection C.
- In section 2 subsection D, the DOH secretary shall develop a remedial plan, but the bill does not specify if the facility is required to implement the plan.
- Page 2, Line 20 introduces the term "notice". This could be specifically defined in Section 2 Subsection A.
- HB 301 does not require the submission of standard financial information from facilities.
- In section 2 subsection B (2), the DOH secretary is given broad authority to determine whether the facility's notice is contrary to the "best interests" of the state without reference to the scope of that authority.
- This bill could be amended to direct the DOH secretary to establish rules or standards for assessing hospitals and long-term care facilities to ensure that the determination of financial stability and solvency is reasonable and fair.

OTHER SUBSTANTIVE ISSUES

The governor convened a Governor's Coverage and Access Taskforce during the summer of 2003, charged with making recommendations regarding the Governor's agenda for assuring health insurance coverage and health care access for New Mexico:

- FINDING: The DOH has licensure authority but its authority is limited to staffing, functioning and facility safety issues.

- FINDING: The level of state oversight for the sale and purchase of health facilities is inadequate to perform its safety net provider and consumer protection roles.

- FINDING: The DOH currently has receivership authority for nursing homes, but no ability to intervene when hospitals close all or portions of their services.

- RECOMMENDATION: The steering committee report recommended establishing state oversight of nursing home and hospital facilities, providing:

  - That plans for new health facilities are reviewed by the state for financial stability and impact on access to services.

  - A process redirecting funds to community-based services over reopening nursing home beds be developed.

  - The DOH with discretionary authority to assume temporary, emergency receivership of hospitals.

(REFERENCE: A Report to Governor Bill Richardson Addressing Health Care Coverage and Access in New Mexico, by Governor's Taskforce on Health Care Coverage and Access, Steering Committee Final Report, October 15, 2003.)

It appears this bill would reinstitute control and oversight powers similar to those associated with the certificate of need program, previously administered by the Health Planning and Development Division of the NM Health and Environment Department.

However, the DOH states that HB 301 is not a certificate of need law, as was in place in New Mexico in the late 1970s and early 1980s. New Mexico at that time had a regulatory process involving approval or disapproval of new capital projects or services. The process was tied to Medicare reimbursement of hospital capital costs and did not involve contemplated facility decisions to close a service or the entire operation, nor did it consider facility transactions such as sales.

The current licensure authority of the DOH is limited to staffing, functioning and facility safety issues. According to the DOH, this bill would help ensure access to quality care for New Mexicans, particularly the most vulnerable, the elderly and persons with disabilities who reside in long-term care facilities and/or receive services from hospitals. Hospitals and long-term care facilities play a crucial role in the health care system of a community. Whether public or private, closures and ownership changes of health care facilities and primary care clinics can create devastating situations where New Mexicans are harmed by inadequate access to health care and/or reduced quality of care. In addition, the ability of a community hospital to continue to provide emergency services to New Mexico's insured and uninsured patients may be threatened by so-called "boutique hospitals" that offer only services that are profitable and do not offer services that operate at a loss.

The DOH also does not have the authority to intervene in situations such as what occurred last year with Memorial Medical Center in Las Cruces when the hospital provided a three-day notice of its intent to close its obstetrical service leaving many Las Cruces women without knowledge of their options for obstetrical services. Also, the closure and receivership of the Los Amigos

Nursing facility in Santa Rosa and the purchase of the Sierra Vista Hospital in Truth or Consequences resulted in the State being brought into the transactions. In Santa Rosa, the state operated the facility while it was placed in receivership, and in T or C the new hospital operator requested financial assistance to meet payroll. The passage of the legislation would give the DOH secretary the authority to intervene in circumstances in which access to services or quality of care would be adversely impacted.

POSSIBLE QUESTIONS

Would the DOH secretary be required to monitor and establish remedial plans for their own health care facilities, thus representing a potential conflict of interest?

Does this bill conflict or duplicate provisions of the Medicare Reform Act, Title V, Part A as outlined in the Ways and Means Committee Medicare Conference Agreement? For example, there is an 18 month moratorium of the self-referral whole hospital exemption for new specialty hospitals. During the moratorium period, MedPAC would conduct an analysis of the costs of the specialty hospitals and determine whether the payment system should be refined and the Secretary would examine referral patterns and quality of care issues.

RLG/prr:lg