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FISCAL IMPACT REPORT

SPONSOR Sanchez, M DATE TYPED 2/12/04 HB _____

SHORT TITLE Patient Care Monitoring Act SB 401/aSJC

ANALYST Dunbar

APPROPRIATION

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

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Attorney General Office (AGO)
- Aging and Long Term Care Department (ALTCD)
- Human Services Department (HSD)
- Department of Health (DOH)
- Children Youth and Families Department (CYFD)
- New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amended the bill as follows:

- ❑ Exempts the intermediate care facility for the mentally retarded from the “Patient Care Monitoring Act”
- ❑ Provides for recorded activity of date and time in the monitoring device to be used as a record.
- ❑ Clarifies language on recording the patient’s option on installing a monitoring device and making the record accessible to the program.
- ❑ Inserts language that includes the patient’s responsibility for the operating and maintenance of the monitoring device.
- ❑ Clarifies language providing for the “release of liability” for the facility in reference to

the monitoring device.

- ❑ Clarifies language that compliance with the “Patient Care Monitoring Act” shall be a defense against civil action against the patient, surrogate or facility.
- ❑ Clarifies language on record keeping of the notice provided to patients informing them on the “Patient Care Monitoring Act”
- ❑ Inserts language that patients may not be discriminated or retaliated against for installation or use of a monitoring device.

Synopsis of Original Bill

Senate Bill 401 proposes to establish authorization and use of monitoring devices within skilled nursing facilities and intermediate care nursing facilities, including intermediate care nursing facilities for the mentally retarded. The bill further includes nursing facilities, adult residential shelter care homes, boarding homes, adult care homes or adult residential facilities, and swing beds in an acute care facility or extended care facility. The patient or surrogate may authorize installation and use of the monitoring device.

SB 401 gives the State Agency on Aging the responsibility for adopting the necessary rules for implementation.

Significant Issues

DOH states that SB 401 may possibly be viewed by these facilities as a means to allow for lower staffing ratios as a result of the installation of these monitoring devices.

Individual clients working in conjunction with a facility are required to obtain the appropriate authorization for the installation and equipment. Any monitoring equipment installed without the knowledge of a facility is automatically granted immunity from any civil action against the facility.

The cost of the monitoring device, installation and maintenance would be paid for by the patient. Any other resident or their surrogate sharing the room of the individual who opted for this monitoring must give written consent for the monitoring device. The resident could establish, and the facility would accommodate, limits on the use of the device including time of operation, direction, focus or volume of a monitoring device. Residents would be offered this option at the time of admission.

Long-term care facilities would be provided immunity from civil actions if the material obtained through the use of a monitoring device was installed or used without the knowledge of the facility or without the prescribed form. Denial of admission or a discharge because of a resident’s desire to use the monitoring device would be prohibited under Sections 28-17-19 NMSA 1978

FISCAL IMPLICATIONS

Monitoring devices in facilities, state nursing homes, private for-profit agencies and ICF/MR facilities will not have a direct cost to the agencies. However, litigation based on the use of these devices could be an issue. This legislation would include Medicaid, Medicare and private care.

ADMINISTRATIVE IMPLICATIONS

The ALTCD must adopt rules to implement the statute.

The bill has some administrative implications for Medicaid Institutional Care in the promulgation of regulations and other Medicaid fee for service benefits. Because the definition section refers to licensed facilities, it would definitely have implications for the Department of Health's Licensing and Certification Bureau, as well as the DOH Long Term Care Division.

TECHNICAL ISSUES

DOH raises the following concerns:

- SB 401 does not specify whether residential providers within the Medicaid Home and Community Based Services Waivers are included in this bill.
- SB 401 does not address issues relating to tracking the installation of monitoring devices; the intent of the device; the responsibility for the information provided by these units; how the information can be used (quality management, utilization review, complaints).
- SB 401 contains right-to-privacy issues for individuals that use a health-care decision maker who are not legally appointed. This is a gray area not addressed by the bill. Also, individuals who have Durable Power of Attorney or Power of Attorney that make decisions for them regarding medical or other issues, have the right to refuse other treatments (i.e., medicine, bathing, etc.). A question that needs to be addressed is: Does the individual resident (patient) rights/requests supercede the surrogates request? SB 401 requires other residents (patients) in the same room to sign off on the notice for the device. SB 401 does not address situations where the other residents (patients) deny such a request.

HSD expressed concerns in the definitions portions of the bill. In section 2. B. "facility", the bill includes such entities as an adult residential shelter care home, boarding home and any adult care home. Such locations are not normally considered facilities. It is not clear whether or not long-term care services provided under the various other Medicaid programs would also be subject to such monitoring devices. HSD did not see any significant legal issues with this bill as long as the notice, consent and privacy issues are adequately addressed.

OTHER SUBSTANTIVE ISSUES

ALTCD acknowledges a growing public concern about the quality of care in nursing homes and states the LTC Ombudsman program is aware of reports of at least 4 rapes in LTC facilities during the last year.

BD/njw:dm