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

SPONSOR Campos **DATE TYPED** 3-9-05 **HB** 801/aHBIC/aHTRC

SHORT TITLE Health Facility Licensing Requirements **SB**

ANALYST Collard

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	See Narrative			General Fund
	Over $79.0	Over $79.0	Recurring	DOH Receivership Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates SB 445

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Health (DOH)
Aging and Long-Term Services Department (ALTSD)
Human Services Department (HSD)
Public Education Department (PED)

SUMMARY

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment to House Bill 801 adds the language "or similar" to Section 2C of the bill, which describes the provisions for sanctions and civil monetary penalties in relation to federal penalties. The section now reads:

"The provisions of this section for intermediate sanctions and civil monetary penalties shall apply to certified nursing facilities except when a federal agency has imposed the same remedies, sanctions or penalties for the same or similar violations."

DOH indicates the addition of the words "or similar" allows for a broader interpretation as to what actions could be imposed by the state. For instance, if the state cited under its federal regulations a particular deficiency and there was a similar but not exactly the same state regulation, Health Facility Licensing & Certification (HFL&C) could not impose an additional sanction for that deficiency under its state sanctioning scheme.

Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to House Bill 801 removes the provision allowing DOH to collect a fee of up to $12 per inpatient bed or $300 for any other health facility. It appears to completely remove the dollar cap on fees charged by DOH. However, the amendment reduces the total civil monetary penalty fees charged per day from $10 thousand to $5 thousand. The amendment still allows DOH to retain the fees, using them for funding the cost of facility monitors, temporary management and health facility receiverships.

Synopsis of Original Bill

House Bill 801 amends the Public Health Act to permit the Health Facility Licensing and Certification (HFL&C) Bureau of DOH to impose state sanctions on certified nursing homes. Currently nursing homes are the only federally certified facility type exempted from state sanctions.

The bill also increases per day civil monetary penalty fees from $5 thousand to the current federal maximum of $10 thousand. The bill sets a new maximum for licensure fees from $3 per bed to $12 per bed to determine the annual licensure fee for an inpatient health facility and increases the set fee for other facilities from $100 to $300 per facility per year. The bill allows licensure fees to be used for HFL&C operations. The bill allows civil monetary penalties (CMP) to be used for receiverships, temporary management and monitoring of health care facilities when there are no other sources to pay for such actions. Current statute requires that any excess revenue from these fees revert; however, DOH historically has not reverted these funds. The financial audit for FY04 indicates there is $6.5 thousand in CMP at DOH for use in the Division of Health Improvement.

Significant Issues

DOH indicates the bill strengthens enforcement actions improving protections for residents and resources from licensure fees will improve HFL&C operations. The bill affords DOH a wider range of sanctions and the ability to act on state licensure requirements independently from Federal Center for Medicare and Medicaid Services (CMS). The current language limits the HFL&C Bureau from imposing expedient actions outside of CMS processes and approval. The HFL&C Bureau, through its contract with CMS, has authority to impose intermediate sanctions against nursing homes for violations of federal certification standards. The amended language would allow the use of state sanctions for state regulations that have not been cited under the federal scheme. DOH cannot currently impose an intermediate remedy due to the exception found at § 24-1-5.2(C), NMSA 1978. With the exception of nursing homes that participate in the Medicaid/Medicare programs, all other federally certified health care providers in New Mexico are subject to intermediate sanctions for violations of state law and regulations.

ALTSD indicates the bill will improve protection for residents of health facilities by increasing the funding for DOH's licensing and certification operations and its receivership and facility monitoring operations.

FISCAL IMPLICATIONS

DOH indicates it supports this bill. It addresses the governor's zero tolerance policy for elder abuse. The department indicates no appropriation is required.

DOH indicates this bill may increase revenues from licensure fees HFL&C operations. Current revenues are $79 thousand per year. Potential revenue increases from current or increased CMP would be deposited into an account for facility receiverships, temporary management or monitors for failing health care facilities, and would be used when other sources of funds are not available. Currently only a nominal amount of funds are collected from CMP and are not reverted to the general fund.

Licensure fees have not been increased since 1983. DOH indicates the increased maximums seem appropriate when compared with other states' fees. Any fee increases contemplated by DOH would be done in collaboration with health facilities and conducted through an open, fair hearing process under its rule making authority. DOH does not intend to increase fees to the maximum proposed in the bill. Fees currently collected go to the general fund. This bill allows the HFL&C Bureau to use these fees to support its operations to include adding additional staff. Additional staff resources are needed because state-licensed-only facilities such as residential care homes are not receiving their statutorily required annual surveys. Approximately 70 percent of the 200 state-licensed residential care homes do not receive annual onsite reviews because of lack of HFL&C resources.

HSD notes, if this bill is enacted, the CMP that are currently wired transferred by CMS to the State Treasurer for HSD would go to the State Treasurer for DOH to be used for the receivership fund.

The general fund impact of this bill is unknown at this time as it depends on how much fees would be increased and how they would be used. The fiscal impact should be minimal in any case and is limited to potential reversions. Although the department should revert CMP to the State Treasurer to be deposited in the general fund, per current statute, the CMP have historically been treated as "restricted funds" by the financial auditors for DOH and have not reverted. There should be a decrease to the general fund, but the general fund has not seen these revenues, so the impact is unknown.

ADMINISTRATIVE IMPLICATIONS

DOH indicates increased revenues would help the department add resources, including FTE, to its HFL&C operations necessary to meet statutory annual survey requirements. Potential revenues from state CMP would go into an account for the payment of receiverships, temporary management and monitors when other sources of funds are not available.

HSD notes the transfer of CMP from HSD to DOH to support the cost of facility monitors, temporary management and health facility receiverships would require an amendment to the existing joint powers agreement (JPA) between the two departments and, possibly, CMS approval of the State Plan Amendment incorporating the terms of the amended JPA. Specifically, the JPA would require revision and amendment to reflect current state and federal practices and provide for the transfer of civil monetary penalties from HSD to DOH for the purposes described.

DUPLICATION

With the exception of a slight stylistic difference on page 4, lines 6-10, House Bill 801 seems to be identical to Senate Bill 445.

OTHER SUBSTANTIVE ISSUES

The Public Health Act, with regard to HFL&C operations has not been updated since 1983. This bill would improve protections for health facility residents, will update outdated licensure fee maximums allowing collected licensure revenues to be used for HFL&C operations. The bill would give DOH authority to impose state sanctions on certified nursing facilities, and would allow DOH to use state CMP to pay for receiverships, temporary management and monitors when no other funds are available. These updates to the act are reasonable and necessary to improve the quality of care to residents of health facilities.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

PED notes, if the bill is not passed, nursing homes will continue to be the only federally certified health facility exempt from state intermediate sanctions and statutory requirements for annual state-licensed facility surveys will continue to go unmet.

KBC/lg:njw