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FISCAL IMPACT REPORT

ORIGINAL DATE 2/3/06

SPONSOR Komadina LAST UPDATED _____ HB _____

SHORT TITLE Study Protection of Alternative Health Care SB SM 20

ANALYST Lewis

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI*		

(Parenthesis () Indicate Expenditure Decreases)

*See narrative.

Relates to SM 21 (Health Tourism Task Force)

Relates to SB 426 (Albuquerque Alternative Medicine)

Relates to SC 1295 (Purchasing the Lovelace Medical Center for Use as an Alternative Health Care Facility)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Office of the Attorney General (AGO)

New Mexico Environment Department (NMED)

New Mexico Medical Board (NMMB)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Memorial 20 requests that that the Regulation and Licensing Department, Office of the Attorney General and Department of Environment collaborate on a study that will assess whether the public's right to freely access traditional, cultural, complementary and alternative health care therapies and remedies is adequately protected by law and whether any changes to state law are necessary to protect this right.

The memorial further requests that:

- any legislative recommendations be reported to the appropriate interim legislative committee,

determined by the New Mexico Legislative Council, by December 2007; and that

- copies of this memorial be transmitted to the Secretary of Environment, Attorney General and Superintendent of Regulation and Licensing.

FISCAL IMPLICATIONS

The New Mexico Environment Department (NMED) notes that no funding been identified to hire necessary consultants or resources to participate in the study.

SIGNIFICANT ISSUES

The clear intent of Senate Memorial 20 is to protect the public's "right" to freely access traditional, cultural, complementary and alternative health care therapies and remedies and to protect such therapies and remedies and their providers from unnecessary regulation. However, most of the responding agencies assume that the real value of the study called for in the memorial is that it offers an opportunity to determine the degree to which complementary and alternative health care therapies and remedies can and should be subjected to licensing and regulation.

According to the Regulation and Licensing Department (RLD), the Legislature in 2003 amended the Uniform Licensing Act (ULA) to give licensing boards jurisdiction over unlicensed persons and activity. Previously licensing boards had jurisdiction only over their own licensees. This has created a legal issue with regard to whether health care practitioners who are not required to be licensed, but who engage in activities and therapies similar to a licensed practitioner's scope of practice, are at risk of being disciplined or prosecuted by various licensing boards. Newly proposed federal regulations may also limit a person's right to access raw herbs and herbal preparations that have historically and traditionally been available to citizens of New Mexico.

Analysis by the New Mexico Environment Department (NMED) focuses on the Food Service Sanitation Act and the Food Act, and the question of NMED's authority to regulate food and food supplements, herbs and herbal remedies. NMED suggests that such authority may be limited, but notes that:

- food protection requirements for the wholesomeness of food and drink require that all food be from an approved source; and that
- a food shall be deemed to be misbranded if it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as necessary to fully inform purchasers as to its value for such uses.

NMED suggests that it may be interpreted that if food and food supplements are marketed, sold, or administered in the curative or healing traditions, a food service or food processing permit may be required.

The New Mexico Medical Board (NMMB) states that the issue of unlicensed individuals practicing various forms of health care is of great concern to the board because of the wide variety of individual training, methods utilized, efficacy or lack thereof, and the potential for public harm. There are many, many traditional healers and practitioners of complementary and alternative health care who are competent, safe, honest and ethical, and who have nothing but the best interest of their clients at heart. However, there are also many individuals who are not well-trained, who use experimental and often harmful techniques, and who make false promises of efficacy to vulnerable patients.

NMMB argues further that, as the Legislature considers whether some form of regulation is necessary for traditional and alternative practitioners, it will be important to involve and hear from a wide array of voices. SM 20 as proposed would create a study group that excludes the Medical Board as well as existing statewide professional associations such as the New Mexico Association of Naturopathic Physicians, significantly limiting the range of discussion and possible recommendations of the group.

According to the NMMB, SM 20 artificially puts two very distinct groups into one category. Indigenous, traditional and cultural healers in general utilize techniques that are non-invasive and that have been used for generations; but the umbrella of “complementary and alternative health care” is broad enough to include both:

- trained practitioners who utilize non-invasive and well-tested therapies; and also
- poorly-trained practitioners who use techniques and therapies that are not only not well-tested but for which there is sometimes significant evidence that they can actually be harmful.

The Department of Health (DOH) agrees that the study requested by SM 20 would help determine whether there are any public health implications or risks to the public’s health of traditional, cultural, complementary or alternative health care that would require the intervention of state government through licensing and regulation.

ADMINISTRATIVE IMPLICATIONS

NMED states that at least one FTE would have to be assigned to the study group and asserts that current workload of existing staff would suffer from this increased burden. NMED further asserts that its Food Program is understaffed and unable to dedicate an FTE for the purposes of the study. However, none of the other agencies express concern about the study’s requirements.

OTHER SUBSTANTIVE ISSUES

According to the Office of the Attorney General (AGO), the Memorial would require three state agencies (AGO, NMED, RLD) to accept the premise that traditional, cultural, complementary and alternative health care therapies and remedies pose no clear risk of harm. However, no such assertion is made in the memorial. The relevant passage in the memorial states that (with emphasis added), “It is in the best interests of the state and its citizens ... that New Mexico avoid unnecessary regulation when there is no clear risk of harm or endangerment to the public”

More directly on target is the AGO’s concern with the memorial’s premise that traditional, cultural, complementary and alternative health care therapies and remedies should be unregulated as a matter of law. In one passage, the memorial asserts that it is in the best interest of the state that the public “enjoy the freedom” to access such therapies and remedies “without restraint.” And in its formal resolution, the memorial states as a given, “the public’s right to freely access traditional, cultural, complementary and alternative health care therapies and remedies.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Regulation and Licensing Department states that, without this study, it will continue to be unclear whether alternative practitioners who are not required to be licensed can be prosecuted by licensing boards. This will continue to pose compliance problems in the administration of the

28 licensing acts overseen by the RLD. Further, licensed practitioners who wish to offer alternative therapies to their patients may be at risk of prosecution by their licensing boards for practicing outside their scope of practice, even though the therapies that they wish to offer do not require licensure.

According to the New Mexico Environment Department, the study might conclude that certain practitioners of traditional or alternative healing methods that include food and food supplements, herbs and herbal remedies in their practices may be regulated under the Food Service Sanitation Act and the Food Act. NMED suggests that the consequence of not enacting SM 20 would be that such practitioners may continue to be unregulated.

The New Mexico Medical Board adds that, without the SM 20 study, the issue of unlicensed, unsupervised and unscrupulous individuals providing poor health care will continue to be a problem for the state; and the regulatory boards will continue to have difficulty enforcing the boundaries between their licensed providers and unlicensed providers.

AMENDMENTS

The New Mexico Medical Board (NMMB) proposes that SM 20 be amended to include NMMB, the New Mexico Association of Naturopathic Physicians, and possibly other professional organizations in the study group.

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