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FISCAL IMPACT REPORT

SPONSOR Trujillo **ORIGINAL DATE** 1/21/2008 177/aHHGAC/aSPAC/
LAST UPDATED 2/12/2008 **HB** aSJC
SHORT TITLE Medical License Suspensions & Reporting **SB** _____
ANALYST Moser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
0	0.1	0.1	Recurring	Medical Board Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
 NM Medical Board (NMMB)

SUMMARY

Synopsis of SJC amendment

The Senate Judiciary Committee Amendment to House Bill 177 as amended:

- removes Senate Public Affairs Committee amendments 2 through 6; and
- removes provisions amending Section 41-9-5 NMSA 1978 amending the provisions for Confidentiality of Record of Review and to Section 61-6-23 NMSA 1978 which sought to amend the Investigation and Subpoena powers.

The Amendment does not modify the Bill's language regarding the summary suspension or restriction of license

Synopsis of SPAC amendment

The Senate Public Affairs Committee Amendment to House Bill 177 clarifies that:

- Malpractice settlements reported to the NMMB will only be those “that are paid as a direct result of the licensee’s care.”
- The NMMB must inform the review organization of a third party subpoena within 15 days of receipt of the subpoena;
- The review organization has standing as a third party intervener to bring action to oppose release of peer review records that are in possession of the NMMB; and
- That the opinions expressed by individuals in the peer review documents may not be used as the basis for a NMMB decision without the written approval of the author of the opinion.

Synopsis of HHGAC amendment

The Health and Government Affairs Committee Amendment to House Bill 177 serves to clarify that the Board will only seek peer review records relevant to disciplinary actions "that are reportable to the Board." What is required to be reported to the Medical Board by healthcare entities is defined in our existing rules. The amendment clarifies language already in the bill stated on page 8, Subsection E.

Synopsis of Original Bill

House Bill 177 proposes to amend portions of the Medical Practice Act.

- Power to Subpoena Review Organizations:
 - Section 41-9-5 of the Review Organization Immunity Act, Confidentiality of Records of Review Organization is amended to allow the NM Medical Board access to peer review records via subpoena only, without the requirement for court review.
 - Section 61-6-23 of the Medical Practice Act authorizes the NM Medical Board to investigate a complaint against a licensee and issue investigative subpoenas prior to the issuance of a notice of contemplated action. HB177 adds a subsection B to Section 61-6-23 that details the investigative subpoena authority including notice and confidentiality.
- Emergency Suspension Powers
 - HB177 would add a new Section, 61-6-15-1, granting the NM Medical Board authority to issue emergency summary suspensions of licenses under certain conditions which are specified in the proposed language. Any licensee whose license is suspended under this Section is entitled to a hearing on the suspension within 15 days.
- Fees
 - HB177 would add to Section 61-6-19 an administrative reprocessing fee of no more than the current license application fee for those cases that require an applicant to resubmit a corrected application, or a licensee to resubmit a corrected renewal. The fee would be limited to those applications and renewals that include minor but significant errors, and would otherwise be subject to investigation and

- possible disciplinary action.
- HB 177 would also authorize the NM Medical Board to charge a fee for nationwide and statewide criminal history screening.

FISCAL IMPLICATIONS

The NM Medical Board indicates that HB177 should save the NM Medical Board and health care facilities around the state unnecessary legal and court costs related to disputed access to peer review records. Additionally, HB177 would allow the NM Medical Board to recoup at least some of the costs of reprocessing certain applications and renewals. The Medical Board reports that these cases often consume as much staff time as full investigations.

SIGNIFICANT ISSUES

- Emergency Summary Suspension. Presently the Medical Board reports that it may only utilize an emergency suspension when the physician is already under Board order or stipulation, i.e., if there is a violation of an existing Board agreement. No matter how egregious the perceived risk to public health, the Board is not allowed by statute to suspend a license without first issuing a notice of contemplated action, then holding a hearing, and then having a Board vote. Unless the Board can convince the licensee not to practice during this time, he or she may continue to put patient health and safety at risk.

The language proposed by HB177 requires that if the license is suspended that the licensee is entitled to a hearing on the suspension within 15 days of making such a request. This would ensure timely due process.

The board notes that this is a power which it does not anticipate utilizing very often. However, there are perhaps one or two cases a year which might merit this action to provide significant public protection. The board indicates that at least 25 other states have given their medical boards this authority.

- Peer Review Records. The Medical Board reports that board, the NM Medical Society and the NM Hospital Association have discussed this amendment extensively, and have agreed on language that would both serve the public interest by allowing the Medical Board the information necessary to perform its job while at the same time protecting the confidentiality of the peer review process.
 - When and why does the Board request records? The Board investigates all complaints; these can originate from a variety of sources, including receipt of a report of an action by a health care facility or plan. When there has been a peer review conducted, the review, the reports of the expert(s) and the decisions made by the organization are clearly pertinent information. The Board notes that it does not conduct “fishing expeditions.” Peer review records would be requested in the absence of an on-going investigation. Further, if the hospital takes an action against a physician, that action would be reported to the Board.
 - Confidentiality of records: All records obtained via subpoena would be covered by the same confidentiality provided all Board investigative materials – confidential and not public records for the purposes of the Inspection of Public Records Act, pursuant to NMSA 61-6-34. The board indicates that the only possible manner that the records could become public would be via subpoena from an attorney or other entity; the Board would demand court review and argue

for confidentiality in this situation, just as the original peer review organization would. To date, no confidential Board investigative records have been made public in this way.

- Confidentiality for reviewers: The Board may, as part of its investigation, communicate with the reviewers for additional information; however, unless those individuals independently agree to be expert witnesses for the Board, their identity remains confidential.
- Possible use in legal action: The actual expert peer review reports would only be used if the expert who prepared the report independently agreed to be an expert for the Board. If the expert reviewer does not want to be an expert for the Board, then his or her report would not be used by the Board in any legal action.
- Due Process: Medical Staff bylaws within each facility provide for due process at the facility; the Medical Practice Act and the Uniform Licensing Act provide for due process for all Board actions.
- Protection from legal action: The Medical Practice Act provides that no person or legal entity providing information to the Board, whether as a report, complaint or testimony, shall be subject to civil damages or criminal prosecutions. See NMSA 61-6-34.
- Cases involving substance abuse: The Board notes that it remains committed to encouraging licensees to seek voluntary treatment with MT and that this policy will not change. Licensees who are voluntary participants in MTP are not reported to the Board unless they violate their contract in a manner that poses a direct and immediate threat to patient safety.
- Cost savings: To date, the board indicates that while it has been successful in obtaining records in all but one of the cases that have been court reviewed that compliance at the subpoena level would save the Board and review organizations the cost and the delay involved in going to court.

The Board affirms that it understands that review organizations perform important functions to ensure patient safety, and the necessity to maintain confidentiality for all involved. Hospital and health review organizations are mandated to protect patients of the hospital or health system while the board's mandate is to protect the general public.

PERFORMANCE IMPLICATIONS

The NM Medical Board indicates that it would anticipate increased efficiency due to a reduced workload in conducting investigations that involve peer review records. The board also indicates that the emergency suspension authority would enable the NM Medical Board to perform its basic function of protecting the public more efficiently and more in-line with public expectations.

ADMINISTRATIVE IMPLICATIONS

The NM Medical Board may need to develop and hold rule hearings to implement portions of HB177.

GM/bb