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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/09

SPONSOR O'Neill LAST UPDATED \_\_\_\_\_ HB 492

SHORT TITLE Acupuncture and Oriental Medicine Act SB \_\_\_\_\_

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 174 and HB 14

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 Regulation and Licensing Department (RLD)  
 Health Policy Commission (HPC)

### SUMMARY

#### Synopsis of Bill

House Bill 492 proposes to amend three sections of the Acupuncture and Oriental Medicine Practice Act, NMSA 1978, §§ 61-14A-1 to 61-14A-22. House Bill 492 pertains to the following statutory provisions: Section 1 – NMSA 1978, § 61-14A-3: Definitions; Section 2 – NMSA 1978, § 61-14A-8.1: Expanded Practice and Restrictive Prescriptive Authority – Certifications; and Section 3 – NMSA 1978, § 61-14A-16: Fees.

#### **NMSA 1978, § 61-14A-3: Definitions**

House Bill 492 proposes to amend Section 3 of the Act to add a new definition and to amend another. Otherwise, the changes proposed consist of re-lettering the definitions to account for the addition.

The substantive changes include adding a definition for the term “bioidentical hormones,” and altering the definition of “techniques of oriental medicine.”

Under House Bill 492, “bioidentical hormones” are defined as “compounds, or salt forms of those compounds, that have exactly the same chemical and molecular structure as hormones that are produced in the human body.”

Part 2 of Subsection H in the proposed Section 3, amends the definition of “techniques of oriental medicine” by stating that prescription and administration of herbal medicines shall be by “non-injectable” methods, by removing the word “gerovital” from the definition of amino acids, and adding to the substances approved for use to include “lipids,” “carbohydrates,” and “proteins.”

**NMSA 1978, § 61-14A-8.1: Expanded Practice and Restrictive Prescriptive Authority – Certifications**

House Bill 492 proposes to amend Section 8.1 of the Act to provide a more comprehensive list of products, medicines, and substances authorized for use by doctors of oriental medicine (“DOM”). Additionally, the proposed amendments organize the listed substances according to the authorized method of use under the four approved modalities of therapy: basic injection therapy, injection therapy, intravenous therapy, and bioidentical hormone therapy. House Bill 492 also proposes to create an exception whereby a DOM or a DOM student enrolled in a board-approved educational program in one of the expanded practice categories may exercise the privileges of an expanded practice DOM, under direct supervision, for the duration of the course or program. Other proposed changes to Section 8.1 are related to organization and terminology for purposes of providing greater clarity and understanding of the statutory provision.

**NMSA 1978, § 61-14A-16: Fees**

House Bill 492 proposes to amend Section 16 of the Act to remove the term “nonrefundable” from the description of fees. Currently, fees are nonrefundable.

**FISCAL IMPLICATIONS**

No fiscal impact.

**SIGNIFICANT ISSUES**

According to the AGO, The only apparent significant issue in the proposed revisions to Section 3 of the Act is the addition of the modifying term “non-injectable” in the description of “techniques of oriental medicine” under amended Subsection H. The addition of the term seems contrary to the expanded practice authority granted under Section 8.1, both presently and as amended. Although the Act creates a bifurcated licensing scheme with standard and advance practice, the injection of substances would be contrary to the techniques of oriental medicine by definition if House Bill 492 is enacted as written.

**NMSA 1978, § 61-14A-8.1: Expanded Practice and Restrictive Prescriptive Authority – Certifications**

Any significant issues that may be related to the substances proposed for use under the various modalities of administration require medical expertise and are beyond the understanding of this agency.

**NMSA 1978, § 61-14A-16: Fees**

The proposed amendment does not necessarily create refundable fees, but rather removes the limitation by which the Board could not refund fees to an applicant or licensee if a refund was deemed appropriate or necessary.

**ADMINISTRATIVE IMPLICATIONS**

The clarification of these issues will assist the board's staff in administering the Act by eliminating vagueness in the statute.

**RELATIONSHIP**

SB 174 has a relationship to House Bill 492 in that it proposes to create a requirement and process by which regulated health professionals must assess proposed changes to the scope of practice in their respective fields and practice acts. SB 174 imposes evaluation and hearing requirements, which are thereafter synthesized into a report that is delivered to the Governor and Legislature for review.

HB 14, and the House Health and Government Affairs Committee substitute for HB 14, is related to House Bill 492 in that it addresses a similar bifurcated licensing scheme used under the Acupuncture and Oriental Medicine Act, as well as provides for the use of similar substances. HB 14 may be useful in further developing the provisions by which a licensed Doctor of Oriental Medicine may use certain substances in the practice of acupuncture and oriental medicine.

**TECHNICAL ISSUES**

Page 7, Line 17 Dimethylsuccinic should be spelled: Dimercapto

**OTHER SUBSTANTIVE ISSUES**

In 2008, the New Mexico Attorney General's Office advised the Board of Acupuncture and Oriental Medicine (BAOM) that clarity is needed on the substance and procedures in their enabling legislation. This bill is the corrective legislation that reflects the Attorney General recommendations.

The criteria used for the selection of substances were as follows:

1. The substance must be consistent with statutory intent.
2. The use of a substance must be consistent with the scope of practice of a Doctor of Oriental Medicine.
3. There must be adequate education and training available.
4. The substance and route of administration must comply with federal regulation and not conflict with federal and state guidance or warnings.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

According to the AGO, the consequences of not enacting this bill, or some alternative thereof, will be a continued confusion about what methods of practice are acceptable and what substances

are authorized under the Acupuncture and Oriental Medicine Practice Act, NMSA 1978, §§ 61-14A-1 to 61-14A-22, and the Board's administrative rules, particularly relating to expanded practice DOMs. It is unclear whether the present confusion is related to the substances authorized for use or the methods by which substances may be used. House Bill 492 attempts to clarify any confusion in the proposed amendments to Section 8.1 where substances are approved by category: basic injection therapy, injection therapy, intravenous therapy, and bioidentical hormone therapy.

CS/svb