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FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/09
 SPONSOR Chavez LAST UPDATED 3/15/09 HB 716
 SHORT TITLE Health Facility Language Interpretation SB _____
 ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1		Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (NMCD)
 Department of Finance and Administration (DFA)
 Health Policy Commission (HPC)
 Office of the Attorney General (AG)
 Department of Health (DOH)
 New Mexico Medical Board (NMMB)

SUMMARY

Synopsis of Bill

House Bill 716 would add a new section to the Public Health Act, NMSA Chapter 24, Article 1, to require health facilities to provide professional language interpretation for patients who may not speak or understand English.

The bill provides for the following:

- interpretation services will be provided at no cost to the patient;
- a health facility shall not require a patient to use a friend or family members as an interpreter;
- interpretation may be provided on-site or off-site and use telephonic or other medium;
- a health facility shall note a patient’s preferred language in the health record;
- a health facility must provide written materials in a language preferred by at least 3% of the population served by that facility;
- for any other language, a facility shall provide for interpretation of written documents in a patient’s preferred language; and
- provides for penalties for violations of the act.

FISCAL IMPLICATIONS

The bill does not include an appropriation for additional costs that would be required to hire “qualified” medical interpreters or train medical staff members for state facilities.

The AG may incur expenses for investigating reports alleging violations of the new section, and in bringing court actions against health facilities to ensure compliance.

NMCD reports that health care facilities are operated by a private vendor. The department does not charge any of its prisoners for interpretation services. Most of the department’s prisoners either speak English or Spanish.

SIGNIFICANT ISSUES

The bill supports an important issue that an inability to speak, understand or read English is a barrier in accessing health care services.

DFA notes that according to U.S. Census data for New Mexico, 59.7% of individuals five years of age or older speak only English in the home; 33.1% speak a language other than English and 26.2% speak Spanish in the home.

DOH reports that the Culturally and Linguistically Appropriate Services (CLAS) Standards for health care organizations, published by the U.S. Health and Human Services Department’s (DHHS) Office of Minority Health, require health care organizations to provide culturally competent care, accommodations for limited English proficient clients/patients and organizational support for health care staff to provide culturally competent care. DHHS has published guidance concerning effective communication with persons who have limited English proficiency that provides for flexibility on how to fulfill these requirements for programs that receive federal funding.

PERFORMANCE IMPLICATIONS

The bill requires the department to make reasonable efforts to secure voluntary compliance with the new section. If these efforts are not successful, the department may refer the matter to the AG. Upon receipt of that report, the AG shall promptly conduct an investigation to determine whether grounds exist for formally finding a violation of the new section. If the AG makes that finding, the AG shall file an appropriate action against the alleged violator in a court of competent jurisdiction. Upon finding violations of any provisions of the new section, a court may impose a civil penalty of five hundred dollars (\$500) or less, at the discretion of the court, for each day that the violation remains uncorrected after the compliance date stipulated in a notice of violation.

HPC reports that health care providers must comply with Title VI of the Civil Rights Act of 1964. Its purpose is to ensure that federal money does not support activities that discriminate on the basis of race, color, or national origin.

HPC further reports that four states require or have initiated state-based certification. This is due, in part, to recognition that self-identification as bilingual is insufficient to be a competent interpreter.

ADMINISTRATIVE IMPLICATIONS

State regulations for health facilities (NMAC 7.8.2.16) require providers to be able to communicate with the residents and other staff members in the language spoken by the majority of the residents and other employees. NMAC 7.8.2.22 requires that a resident's record state the language spoken and understood by the resident. NMAC 7.8.2.34 requires that prior to admission to a facility, a resident and/or legal representative shall be given a written description of the legal rights of the residents translated into another language, if necessary, to meet the residents understanding.

DOH's Division of Health Improvement has sanctioning authority if facilities fail to comply with certain regulations, and can impose civil monetary penalties based on onsite surveys. DOH's Division of Policy and Performance offers translation services for documents as needed.

TECHNICAL ISSUES

Facilities will be required to provide verbal translation of materials written in the English language into the language preferred by a client, regardless of whether they read or understand English.

The bill's definition of interpretation includes "providing a complete and accurate interpretation, without altering, omitting or adding anything to what is stated or written."

NMMB notes that the bill does not address the issue of using family members (by not *requiring* their use), and does not address the issue of the use of children translating medical issues incorrectly. Often, it is the bilingual children of the monolingual adult relative that is called upon in this situation.

The bill does not address the issue of patient confidentiality for health care information exchanged between a provider and a non-employee medical interpreter.

OTHER SUBSTANTIVE ISSUES

The NMMB notes that there are national services available for the purpose of translating as many as 170 languages, available on 30 minutes notice.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

State regulations will remain in effect (NMAC 7.8.2.16) that require providers to be able to communicate with residents in the language spoken by the majority of the residents. Health care facilities will continue to rely on friends and family members of residents for spoken language interpretation.

AHO/mt