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FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/09

SPONSOR Ulibarri LAST UPDATED _____ HB _____

SHORT TITLE Direct Health Care Provider Drug Testing SB 636

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		\$50.0 at a minimum	\$50.0 at a minimum		Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)
 New Mexico Medical Board (NMMB)
 Health Policy Commission (HPC)
 Regulation and Licensing Department (RLD)
 State Personnel Office (SPO)
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 636 requires drug and alcohol testing for direct health care providers. The bill proposes that DOH promulgate rules that require: (1) any health care provider hired to provide direct care to patients in a health facility be tested for illegal drug use prior to employment; (2) direct care providers be tested for drug and alcohol abuse at least once every calendar year after hire; and, (3) direct care providers be drug tested upon reasonable suspicion of use.

SB 636 directs DOH to promulgate rules to establish: (1) when a health care provider is reasonably suspected of abusing drugs or alcohol when working; (2) the protocol governing testing for drugs and alcohol; (3) what persons shall be considered reliable reporting parties; and, (4) any disciplinary action, addiction interventions or fines. SB 636 further directs the department to consult with: (1) New Mexico Medical Board; (2) Board of Nursing; (3) New Mexico Medical Review Commission; (4) National Union of Hospital and Health Care Employees; and, (5) the American Medical Association.

Senate Bill 636

SB 636 stipulates that results of drug tests will be treated as confidential medical information and only aggregate test data shall be subject to review by the department. The bill provides civil immunity to persons who make good faith reports of drug and alcohol abuse on the job. The bill also provides for the rights for persons to sue for damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of information to an unauthorized person.

FISCAL IMPLICATIONS

DOH reports the bill would impose significant cost on healthcare facilities that will have to test all direct care employees every year, whether reasonably suspected or not. The estimated cost per drug test is between \$30 and \$50. The bill is not clear whether the practitioner or the facility will be responsible for the cost of testing. There are approximately 1,818 employees providing direct care services in state-run health-care facilities. The bill does not provide an appropriation to the department. Any fiscal impact would need to be balanced with the State's need to protect public health and safety.

The SPO reports that there are 26,791 licensed health care providers in New Mexico.

NMCD believes the department will have to pay for the tests, unless its inmate medical services contractor pays for the tests and then includes the estimated costs into its contract.

SIGNIFICANT ISSUES

The bill addresses a public safety concern regarding health care providers who may be abusing drugs or alcohol, posing a potential threat to patients.

The State Personnel Board reports that it has delineated alcohol and drug testing policies in 1.7.8 NMAC. Those positions requiring tests are limited to safety sensitive positions, or those positions including a supervisory or managerial position, in which impairment by drug or alcohol use would constitute an immediate and direct threat to public health or safety. They include, but are not limited to, peace officers, correctional officers, employees who are required to regularly carry a firearm and employees who regularly transport other people as their principal job.

PERFORMANCE IMPLICATIONS

The State Personnel Office reports that it would need to amend its drug testing rule 1.7.8 NMAC.

It is unknown if the reasonable suspicion procedures in the bill will differ from the reasonable suspicion procedures mandated for use under the State Personnel Board rules and regulations.

ADMINISTRATIVE IMPLICATIONS

DOH would need to promulgate applicable rules in coordination with representatives from five organizations (Medical and Nursing Boards, the American Medical Association). DOH would also need to ensure compliance with the new requirements.

Senate Bill 636

TECHNICAL ISSUES

Upon hire, the bill requires a health care provider to be tested for *illegal drug use*; however, every year be tested *for drug and alcohol abuse*. It is unclear what amounts in the blood and/or urine would be required to prove abuse if there is evidence of legal drugs and/or alcohol.

The list of consulting parties for DOH does not include RLD, Boards and Commissions.

There is no provision for the health care practitioner licensing boards to be notified in the event of confirmed illegal drug use.

There may be constitutional challenges from employees required to undergo annual screenings with or without reasonable suspicion of drug or alcohol abuse at work.

On Page 1, Lines 20-23, Section B, the bill does not use the language “random” or “unannounced” with regard to the annual testing.

DOH reports that “health facility” could be further defined to exclude clinics and correctional facilities.

ALTERNATIVES

DOH suggests replacing the requirement for mandatory annual screening (Page 1, Lines 20-23) with random screening of direct care staff.

NMMB believes that the NM Monitored Treatment Program and health facilities internal health committees are already dealing with this issue.

AMENDMENTS

NMCD suggests an amendment requiring that any reasonable drug tests performed on state employee health care providers covered by the State Personnel Act be conducted in accordance with State Personnel Board rules.

DOH suggests that on Page 2, lines 1 and 6 and Page 3, line 12, delete the words “while working” and replace with the words “on duty” to cover not just employees on site but also employees who are “on call”.

AHO/svb