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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/12
 LAST UPDATED 02/10/12

SPONSOR Sanchez, B. HB _____

SHORT TITLE Prescription Drug Monitoring Program SB 158/aSJC/aSFC

ANALYST Chabot/Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 159

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General Office (AGO)
 Department of Health (DOH)

SUMMARY

Synopsis of SFC Amendment

Senate Finance Committee amendment to Senate Bill 158 strikes the appropriation of \$225 thousand and addresses the requirements for internet pharmacies as this bill would apply to such dispensers. A definition of internet pharmacy is added to the bill.

Internet pharmacies would be required to report to the controlled substance prescription dispensing database on a weekly schedule, provided they are accredited pursuant to the verified internet pharmacy practice site program. Other dispensers are still required to report every twenty-four hours.

Synopsis of SJC Amendment

Senate Judiciary Committee amendment to Senate Bill 158 changes investigation and possible disciplinary action to the board licensing the practitioner, requires collaboration between the Pharmacy Board and other licensing boards, adds it is unlawful to “knowingly or negligently” disclose patient-specific information not allowed under Section 6 of the bill and an individual doing so will be referred to the appropriate licensing board for possible disciplinary action instead of prosecution as a fourth degree felony.

Synopsis of Original Bill

Senate Bill 158 appropriates \$225.0 thousand from the general fund to the Board of Pharmacy (BP) for the purpose of establishing and administering a prescription drug monitoring program. The bill amends and enacts new sections of the controlled substances act to provide for a prescription drug monitoring program to prevent prescription drug abuse, provides criminal penalties, provides for information exchange with other states, requires controlled substances training for practitioners and provides for fees. Dispensers of controlled substances would be required to report with 24 hours each time a controlled substance is dispensed. The program will be on the BP website and provide immediate online access. The bill has an emergency clause.

FISCAL IMPLICATIONS

The appropriation of \$225.0 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. BP states it will need at least 2 FTE and office space, furniture, equipment, computers, telephones and other operating costs. Using fund balance, BP estimates it can fund the increased expenses through FY15. Currently, BP collects \$60 annually for controlled substance registration fees. SB 158 would increase this to up to \$80 annually.

SIGNIFICANT ISSUES

DOH reports most drug-induced deaths are the result of drug overdose. In 2008, New Mexico had the highest drug overdose death rate in the United States; New Mexico's rate (27.0 per 100,000 population) was 2.3 times the U.S. rate. Prescription of opioid medications for pain relief has substantially increased over the past two decades, driving recent increases in drug overdose deaths caused by prescription drugs. In 2008, New Mexico's drug overdose death rate from all prescription drugs (16.0 per 100,000) was 2.5 times the U.S. rate; and its rate for opioid pain relievers (12.6 per 100,000) was 2.6 times the U.S. rate.

AOC states the existing controlled substance monitoring program aids the drug court program because staff can request reports on prescription drug use by drug court program participants.

AGO reports there are federal Health Insurance Portability and Accountability Act (HIPAA) concerns regarding whether disclosure of patient information is allowable. Generally HIPAA preempts any contrary state law. The U.S. Health and Human Services (HHS) Department may provide an exemption but would require its determination prior to state law implementation. AGO continues SB 158 goes far in meeting HIPAA strictures by clearly defining information submitted to the prescription monitoring program as protected health information and requiring due diligence in protecting such information. It also makes it a fourth-degree felony to knowingly violate the protections afforded the information or to negligently use or disclose such information.

BP states that the bill assumes interchange of information between states but is not certain and will depend on other state laws and rules.

ADMINISTRATIVE IMPLICATIONS

The BP will have to establish a daily audit process for dispenser reporting to the program to assure compliance. It states this will be time consuming. The BP should ensure the database for tracking inputs will automatically flag multiple prescriptions dispenses to a single individual.

TECHNICAL ISSUES

AGO states “although under HIPAA it is generally advisable to implement criminal penalties for disclosure of information contrary to a state drug monitoring program, as to the fourth degree penalties for violations of the confidentiality of such information (found on pages 11, line 22 to page 12, line 8) there is generally a penalty distinction between ‘knowingly’ violating an act, and those that are simply ‘negligent.’ Interestingly, in SB 158 both are penalized as fourth degree felonies. It is unclear whether this is intentional.”

BP assesses, on Page 6, lines 5-6, Section 1, subsection J, describes enforcement only by BP; however, there are dispensaries not licensed by the BP and required referral to the appropriate licensing board for proceedings allowed in the Uniform Licensing Act.

BP suggests rewording Section 3 as follows. PENALTIES.—A practitioner, or a dispenser, or a practitioner-dispenser who knowingly fails to submit prescription drug monitoring information to the board pursuant to the Controlled Substances Act, or who knowingly submits incorrect prescription drug information, shall be subject to disciplinary proceedings by the board and the practitioner’s licensing board pursuant to the Uniform Licensing Act.

BP states on Page 9, Lines 8 through 22, Section 4, Subsection E contains three separate issues and should have three separate sub sections:

“E. As a condition of registration, the board shall require a practitioner who applies for registration under this subsection to complete training in controlled substance prescribing and dispensing developed pursuant to Paragraph (1) of Subsection H of Section 1 of this 2012 act.

F. The board need not require separate registration under [~~this~~] the Controlled Substances Act for practitioners engaging in research with non-narcotic controlled substances in Schedules II through V where the registrant is already registered under [~~the Controlled Substances~~] that act in another capacity.

G. Practitioners or scientific investigators registered under the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the board evidence of that federal registration.”

Page 12, line 8, BP suggests item 2 should be a misdemeanor.

OTHER SUBSTANTIVE ISSUES

The BP has a funding source from fees from pharmacies currently limited to \$80 per year. At the time of the 2013 appropriation request, the board had an unobligated fund balance of approximately \$780 thousand. The request wanted to use \$90 thousand of that balance. There is available fund balance to support the appropriation in this request and should be used in lieu of general fund. When the BP determines the costs for the monitoring system required in this bill, fees should be raised to meet the program costs.

BP reports “Training of practitioners in safe controlled substance prescribing, public education, and outreach to opioid treatment programs, Indian Health Service and Veterans Administration practitioners will be expensive and time consuming.

New section 30-31-24 C (2) makes negligent use or disclosure of patient specific information a fourth degree felony. This may be too serious a penalty for an accidental disclosure of information. Changing this to a misdemeanor may be more appropriate.

GAC/svb:lj