F I S C A L I M P A C T R E P O R T

SPONSOR Beffort **ORIGINAL DATE** 2/25/15 **LAST UPDATED** **HB**

SHORT TITLE Pain Relief Act Changes **SB** 422

ANALYST Elkins

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	**FY16**		
	$200.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Text	See Text		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Regulation and Licensing Department (RLD)
Department of Health (DOH)
Board of Nursing (BON)
Medical Board (MB)

SUMMARY

Synopsis of Bill

Senate Bill 422 amends the Pain Relief Act to require health practitioners with prescriptive authority to consent to peer review of their opioid prescribing practices. Practitioners who are authorized to prescribe controlled substances would be required to register with the Board of Pharmacy and regularly participate in the Prescription Monitoring Program (PMP), check the PMP before prescribing Schedule II-IV drugs for a period exceeding 10 days for new patients, and check the PMP at least every 6 months during continuous use by an established patient.

SB 422 requires the licensing boards of health practitioners to adopt rules by July 1, 2015 to determine whether the prescribing practices of all of its licensees who can prescribe controlled substances are consistent with the appropriate treatment of pain and address pain management for patients with substance abuse issues. The bill requires the licensing boards to evaluate a health care practitioner's quality of care based on diagnosis, evaluation, medical indication, documented change or persistence of condition, and follow-up evaluation. The board shall judge the validity of pain management based on treatment, not quantity or frequency of prescribing.

The bill amends Section 24-2D-3 NMSA 1978 by removing the requirement that boards make rules regarding controlled substances prescribing. The bill sets clinical care guidelines for health care practitioners who are prescribing controlled substances, including conducting physical examinations, medical history, screening tools, a written treatment plan, discussion of risks and benefits, and keeping records. For chronic pain patients, practitioners would be required to use a written agreement with the patient that would require the patient to use one prescriber and one pharmacy whenever possible and practitioners shall consult, when indicated, with a clinical expert who need not specialize in pain control.

SB 422 sets requirements for pain management for patients with substance abuse disorders, including a contractual agreement, consultation, drug screening, and reevaluation every six months.

SB 422 provides that a health care practitioner who follows the health care practitioner requirements shall not be subject to discipline by the health care practitioner's board for violation of the Pain Relief Act.

SB 422 renames the "Prescription Drug Misuse and Overdose Prevention and Pain Management Advisory Council" to the "Overdose Prevention and Pain Management Council" (OPPMC); administratively attach the OPPMC to the RLD, which would provide budget and staff assistance to the council; add representatives from the boards of podiatry, optometry, and the association of nurse-midwives to its membership; and require the OPPMC to meet at least quarterly. The bill grants the OPPMC the power to adopt rules to carry out its duties and powers, and contract for goods and services.

The OPPMC would also be tasked with making recommendations and contracting for peer review of the licensing boards. SB422 sets guidelines for peer review and grants immunity to the review organization from dangers for furnishing information.

Senate Bill 422 appropriates $200 thousand from the general fund to the Regulation and Licensing Department to pay for independent peer review services of health care practitioners who are authorized to prescribe opioids and for expenses of the Overdose and Pain Management Council. The appropriation is nonrecurring and any unexpended or unencumbered balance remaining at the end of FY16 shall revert to the general fund.

FISCAL IMPLICATIONS

The appropriation of $200 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY16 shall revert to the general fund. However, the bill requires RLD to provide budgeting, recordkeeping, and related administrative and staff assistance to the Overdose and Pain Management Council.

RLD estimates an additional operating budget impact of $75.8 thousand in FY16 and $267.6 thousand in FY17, from the general fund, but did not provide detailed information on the cost associated with budgeting, recordkeeping, and related administrative and staff assistance for the council.

SIGNIFICANT ISSUES

The Department of Health offers the following commentary:

> There are concerns that placing clinical practice guidelines in statute will inhibit the update of licensing board rules to keep current with best practices and the most recent clinical care guidelines regarding opioid prescribing.
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> Drug overdose death rates have risen sharply since the late 1990s to the point where drug overdose has become the leading cause of unintentional injury death. The drug overdose death rate exceeds the death rates from falls and from motor vehicle traffic crashes both nationally and in New Mexico. (www.nmhealth.org/publication/view/data/474/)
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> The peer review concept in SB422 is modeled on the peer review program used in Medicare (Medicare Utilization and Quality Control Peer Review Program), established in 1982 by Congress. During the Program's first phase, case review by physician peers was the primary method of accomplishing its purpose. Peer Review Organizations (PROs) reviewed cases referred by beneficiaries and providers. Although case review may have resulted in improvement by individual providers, the improvement was not systematic or measurable, and the reliability of case review determinations was questionable.(www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityImprovementOrgs/downloads/QIO_improvement_RTC_fnl.pdf)

The Medical Board has the following concerns:

> Of concern is the fact that most opiate prescribing is through MD's and Nurse practitioners, yet they represent a minority of council representation, so an array of non-physicians could promulgate rules regulating physician and NP practice. Section 8(A) would allow the council to adopt rules to carry out the Pain Relief Act. Under existing law, the council serves in an advisory capacity only. To allow rulemaking authority to the council would directly conflict with the existing regulatory authority of current licensing boards over their licensees.
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> There is also concern about the peer review organization and how it would function. This may create a non-governmental entity that could intrude on practice, when providers are already subject to review within hospital settings, large groups, by insurance companies, pharmacy benefit managers, pharmacists and of course respective boards. Contrary to this bill, consent to peer review is not voluntary and is not a relevant issue. Review organizations, as defined pursuant to the Review Organization Immunity Act (ROIA) Section 41-9-2(E) NMSA 1978, typically hospitals, may conduct peer review pursuant to ROIA at their discretion, and the practitioner can choose to participate or not at his or her own peril.

ADMINISTRATIVE IMPLICATIONS

RLD has the following concerns:

> A new board will be created within RLD however there are no FTE's attached to the bill. Without staff or funding it would be impossible to carry out the mandates of the Act.
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> Senate Bill 422 will require all health care boards to implement rule changes by July 1, 2015. This will be difficult as each board will need to draft rule changes to comply with the act, schedule and notice a public rule hearing and have the hearing.

TECHNICAL ISSUES

According to the Board of Nursing, the recommended additions to the nursing practice act do not specify Advanced Practice Registered Nurses (APRNs) with prescriptive authority of controlled substances; some prescribing APRNs do not prescribe opioids or other controlled substances. Also, the prescribing practice peer oversight should include the prescribing of all controlled substances and not just opioids.

According to the Medical Board, this bill would establish a statutory scheme for peer review of health care practitioners separate from, duplicative to, and potentially conflicting with ROIA, Section 41-9-1 et seq NMSA 1978. This bill would authorize the council to contract with "review organizations" as defined at Section 3(M) of the Pain Relief Act. ROIA provides for peer review, but does not limit the issues to treatment of pain and more accurately and precisely defines "review organizations" at Section 41-9-2(E) NMSA 1978 to those organizations with a vested interest in the quality of health care.

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