

LFC Requester:	Tom Trowbridge
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**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date February 15, 2013

Bill No: HB 17 (CS)--305

Sponsor: Rep. Roch & Sen. Cisneros

Reviewing Attorney General's Office

Short Dental Therapist-Hygienist

Person Writing Jennifer Salazar

Title: Licensure and Practice

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SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHAGED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

HB 17 proposes to amend the Dental Health Care Act (“DHCA”) to create a new group of professionals, dental therapist-hygienists. Adding dental therapist- hygienists to the DHCA would impact several other statutes, including the Impaired Dentist and Dental Hygienists Act, the NM Drug, Device and Cosmetic Act, the Income Tax Act, the Allied Health Student Loan for Service Act, and the Health Service Corps Act, which HB 17 addresses through amendment.

Most significantly, HB 17 would create a new group of professionals under the DHCA. As a requirement for licensure, dental therapist-hygienists would be required to obtain a degree from a dental therapist-hygienist educational program that provides a curriculum with a minimum of three years of dental hygiene and dental therapy. This dental therapist-hygienist program will need to be developed in partnership with an institution of higher education. Among the other requirements for licensure, a dental therapist-hygienist would be required to meet the requirements for licensure as a dental hygienist and would also be required to complete a minimum of 400 clinical hours under the indirect supervision of a dentist. HB 17 would amend Section 61-5A-4 of the DHCA to define the scope of practice for dental therapist-hygienists, which would not only encompass the scope of practice of a dental hygienist, but would also include other areas of practice, including prescription authority.

As it is currently written, there are several professionals within the dental healthcare field licensed by the Board of Dental Health Care (“Board”) and Hygienist Committee under the DHCA, including but not limited to, dentists, dental hygienists, and dental assistant through. HB 17 would amend the DHCA to create a third committee, called the “joint committee,” which would be composed of the Board (10 members), one dental therapist-hygienist or dental therapist-hygienist advocate, the Dental Hygienist Committee (10 members), and two public members. The joint committee would be responsible for licensing dental therapist-hygienists.

HB17 would also create a new section to the DHCA, Section 32, which would delineate the requirements to obtain licensure as a dental therapist-hygienist. An applicant for a license in dental therapy must complete a number of requirements. Among these requirements, an applicant would be required to submit proof to the joint committee that he/she is (1) from the community, or a similarly situated community, where the applicant plans to practice; (2) has received a letter of recommendation from a person in the community, or from a sponsoring

entity, as part of the application process for the dental therapy-hygiene education program; and (3) maintains an ongoing relationship with the sponsoring entity.

HB 17 would also amend several other New Mexico statutes to account for the creation of the “dental therapist-hygienists” group. Specifically, HB 17 would amend the Impaired Dentist and Dental Hygienists Act to include dental therapist-hygienist within the scope of the Act and would require impaired dental therapist-hygienist to submit to an assessment by an examination committee. HB 17 would amend the Income Tax Act to include “dental therapist-hygienist” in the definition of “eligible health care practitioner” eligible for rural health care practitioner tax credit. HB17 would also amend the Allied Health Student Loan for Service Act and the Health Services Corps Act to make dental therapist-hygienist eligible for participation. Finally, HB 17 would amend the NM Drug, Device, and Cosmetic Act to make dental therapist-hygienist a “practitioner” subject to the Act.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL:

N/A

SIGNIFICANT LEGAL ISSUES

The AGO notes the same constitutional concern that it raised in its previous analysis. The licensure requirements for dental therapist-hygienist, as proposed under HB 17, requiring that an applicant submit proof that he/she is from the community, or a similarly situated community, where the applicant plans to practice, may not be constitutional. It may deny potential applicants who are not from similarly situated communities equal protection and unfairly discriminate against them. The concern is that this requirement would eliminate many potential applicants, not because of their competency or skills, but because of the particular community they come from.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

N/A

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

As drafted, HB 17 would require the Attorney General’s Office to investigate and prosecute alleged violations of the Dental Health Care Act committed by dental therapist-hygienists.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

Companionship with SB 567 “Dental Therapist-Hygienist Licensure”
Related to HB 367 “Dental Therapist Act”

TECHNICAL ISSUES OR DRAFTING ERROR

HB 17 would create a joint committee under the DHCA, however, there is no statutory section creating the joint committee. For example, Section 61-5A-8 creates the Board and Section 61-5A-9 creates the Hygienist Committee, but there is no section within the DHCA specifically creating the “joint committee.” Also, it is not clear how or when the joint committee will meet, or if the joint committee’s actions must be ratified by the Board (e.g. this is what is required for the Hygienist Committee’s actions). Lastly, as defined in the proposed amendment, the joint committee would be very large since it would consist of the entire Board, Hygienist Committee, one dental therapist-hygienists, and two public members. It may be difficult to convene a meeting with this number of members.

Finally, HB 17 would amend Section 61-5A-3 of the DHCA to include a definition for “licensing authority.” The definition is too limiting because it only accounts for the licensure of three groups – dentists, dental hygienists and dental assistants. The definition does not address licensure of other professionals covered under the DHCA such as, dental assistants, non-dentist owners, expanded function dental auxiliaries, and community dental health coordinators. Similarly, under the proposed amendment to Section 61-5A-10, the Board, Hygienist Committee, and joint committee would have the authority to discipline dentists, dental assistants, dental hygienists, and dental therapist-hygienists; however, this section does not explicitly provide the authority to discipline other groups licensed under the DHCA, including non-dentist owners and expanded function dental auxiliaries.

OTHER SUBSTANTIVE LEGAL ISSUES

N/A

ALTERNATIVES TO ENACTING THIS BILL

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS NEEDED TO IMPROVE THIS BILL

N/A