

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 X **Amendment**
Correction **Substitute**

Date January 23, 2013
Bill No: HB 17--305

Sponsor: Rep. Debbie Rodella
Short Dental Therapists Licensure and
Title: Practice

Reviewing Attorney General's Office
fsdfs **Analysis:** Jennifer Salazar
Phone: 505-827-6990 **Email** jsalazar@nmag.gov

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: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

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 therapists. Adding dental therapists 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 importantly, HB 17 would create a new group of professionals under the DHCA. HB 17 defines dental therapists as an individual who has “graduated and received a degree from a dental therapy educational program.” This dental therapy program must be developed in partnership with an institution of higher education. Furthermore, the dental therapy program must provide for a minimum of three-thousand hours of dental therapy curriculum. HB 17 would amend Section 61-5A-4 of the DHCA to define the practice of dental therapy to include “the application of the science of the prevention and treatment of oral disease by providing education, prevention, assessment, diagnosis and clinical and other therapeutic services under the general supervision of a dentist.”

As it is currently written, the DHCA licenses several professionals within the dental healthcare field, including dentists, dental hygienists, and dental assistant through the Board of Dental Health Care and Hygienist Committee. HB 17 would amend the DHCA to create a third committee, called the “joint committee,” which would be composed of the Board of Dental Health Care, two dental therapists or dental therapist advocates, the dental Hygienist Committee, and two public members. Under this amendment, the Dental Health Care Board would be required to regulate, license, and discipline dental therapists, in collaboration with the joint committee.

HB17 would also create a new section to the DHCA to delineate the requirements for licensure as a dental therapist. An applicant for a license in dental therapy must complete a number of requirements, including, but is not limited to, passing a competency-based examination and completing four hundred clinical hours. Most significantly, 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 been vetted by the community as part of the application process for the dental therapy 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 therapists” group. Specifically, HB 17 would amend the Impaired Dentist and

Dental Hygienists Act to include dental therapists within the scope of the Act and would require impaired dental therapists to submit to an assessment by an examination committee. HB 17 would amend the Income Tax Act to include “dental therapists” 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 therapists eligible for participation. Finally, HB 17 would amend the NM Drug, Device, and Cosmetic Act to make dental therapists a “practitioner” subject to the Act.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL:

N/A

SIGNIFICANT LEGAL ISSUES

The licensure requirements for dental therapists, 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 pass constitutional muster. It may deny potential applicants who are not from similarly situated communities equal protection. 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 therapists.

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

None

TECHNICAL ISSUES OR DRAFTING ERROR

HB 17’s amendment to the DHCA would create a joint committee, 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/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 by the Hygienist Committee). Lastly, as defined in the proposed amendment, the joint committee would consist of over twenty members since it would consist of the entire Board, Hygienist Committee, two dental therapists, and two public members. It may be difficult to convene a meeting with this number of members.

Also, Section 61-5A-8 states that the Board shall be composed of nine-members; however, the amendment, as written, would require that the Board consists of five (5) dentists, two (2) dental therapists, (2) dental hygienists, and two (2) public members. The proposed amendments would make the nine-member Board an eleven member Board; consequently, the language must be amended to indicate the membership change. In a similar way, Section 61-5A-9, which creates the Hygienist Committee, states that it is a nine-member Board, however, the addition of the two dental therapists to the committee would make it an eleven-member committee.

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.

Finally, the requirement that dental therapist be vetted from the community needs more development. Who will vet a potential applicant? How will this be done?

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