

LFC Requester:	Marty Daly
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**AGENCY BILL ANALYSIS
2014 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 15, 2014
Bill No: HB76-305 Jan 15

Sponsor: Rep. Donald Bratton
Short Health Care Contract No
Title: Compete Limits

Reviewing Attorney General's Office
Person Writing Joseph Dworak, AAG
Phone: 827-6986 **Email** jdworak@nmag.gov

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

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Unknown

Duplicates/Relates to Appropriation in the General Appropriation Act: Unknown

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to: Unknown

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	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 76 proposes to restrict covenant not to compete provisions in employment related contracts with health care practitioners. The legislation is new material. The legislation proposes four sections: (1) definitions; (2) restriction on contractual agreements with health care practitioners that include non-compete clauses and are not ancillary to the sale of the business; (3) limitations on contractual agreements with health care practitioners that include non-compete clauses and are ancillary to the sale of the business, allowing certain, limited restrictions; and (4) exclusions to the legislation, including the allowance of contractual provisions requiring repayment of certain remunerations, as well as nondisclosure and non-solicitation covenants.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

SIGNIFICANT LEGAL ISSUES

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

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

The text of HB 76 is identical to that of SB 46, which was introduced by Senator Carrol Leavell.

TECHNICAL ISSUES OR DRAFTING ERROR

OTHER SUBSTANTIVE LEGAL ISSUES

There are already inconsistencies in New Mexico law with the definition of "health care practitioner," and in that the term is defined differently in different statutes. SB 46 provides a definition for "health care provider" that mirrors the definition text of "eligible health care practitioner" under the state's income tax laws, NMSA 1978, Section 7-2-

18.22(F)(1), except for HB 76's inclusion of licensed Doctors of Oriental Medicine. The definition is much broader under the Gross Receipts and Compensating Tax Act, Section 7-9-93. Other statutes, such as the Unlicensed Health Care Practice Act, Section 61-35-2, provide very broad definitions of "health care practitioners." This point is raised to allow the reviewer to know that not all of the definitions are the same and to allow for consideration when deciding whether to choose a definition consistent with certain related statutes or create a new definition that does not fall in-line with any current application of the term "health care practitioner."

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The state will continue to allow covenants not to compete for contracts involving health care practitioners

AMENDMENTS NEEDED TO IMPROVE THIS BILL