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FISCAL IMPACT REPORT

SPONSOR Campos ORIGINAL DATE 02/02/17
LAST UPDATED _____ HB _____
SHORT TITLE Healthcare Provider Malpractice Disclosure SB 295
ANALYST Boerner

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of Superintendent of Insurance (OSI)
Attorney General's Office (NMAG)

SUMMARY

Synopsis of Bill

Senate Bill 295 (SB295) proposes to require healthcare providers to disclose any medical malpractice claims against them. Disclosure must be given to any person requesting the information.

FISCAL IMPLICATIONS

None noted.

SIGNIFICANT ISSUES

Pursuant to Title 16, Chapter 10 Part 10.9 REPORTING OF ADVERSE ACTIONS ON CLINICAL PRIVILEGES: All health care entities and licensees shall report [to the New Mexico Medical Board] any actions adversely affecting the licensure of a licensee within thirty days of the date of such action by the health care entity. Such actions shall be reported by the health care entity include, but are not limited to:

- (1) any professional review action that adversely affects the clinical privileges of a physician or physician assistant except as provided in Subsection C of this section;
- (2) acceptance of the surrender of clinical privileges or any restriction of such privileges while the physician or physician assistant is under investigation by the entity relating to possible incompetency or improper professional conduct; or, in return for not conducting an

investigation or proceeding;

(3) in the case of any professional review action taken by a professional society which adversely affects the membership of a physician or physician assistant in the society;

(4) failure to complete medical records if the failure is related to the physician's professional competence or conduct and adversely affects or could adversely affect a patient's health or welfare;

(5) a positive drug test for illegal substances, alcohol or unprescribed medication and prescription medication not supported by appropriate diagnosis (if physician has voluntarily self reported to the New Mexico monitored treatment program (MTP), the board will not require name of physician, as it will be in a blind report from MTP).

C. The following actions do not require reporting to the board by a health care entity:

(1) actions based on the physician or physician assistant's association, or lack of association, with a professional society or association;

(2) actions based on fees, advertising, or other competitive acts intended to solicit or retain business;

(3) actions based on the physician or physician assistant's participation in prepaid group health plans;

(4) actions based on the physician or physician assistant's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice; or

(5) any other matter that does not relate to the competence or professional conduct of a physician or physician assistant;

(6) failure to complete charts (except to the extent reportable under Paragraph (4) of Subsection A of this part), maintain insurance or perform other administrative obligations that results in a suspension of clinical privileges.

D. Any subsequent disposition of the initial action adversely affecting the licensee, regardless of whether such disposition is favorable, does not alter the requirement to report within thirty days.

Further, although the Board maintains a record of all complaints filed, complaint records are confidential. NMSA 1978, § 61-6-34(B) states: *All written and oral communications made by any person to the board relating to actual and potential disciplinary action shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act. All data, communications and information acquired by the Board relating to actual or potential disciplinary action shall not be disclosed except to the extent necessary to carry out the board's purposes or in a judicial appeal from the board's actions.*

However, according to the Board's website, any licensure action the Board has taken against a Physician is public information and may be found on the Board's website.

OTHER SUBSTANTIVE ISSUES

The NMAG notes that Medical malpractice insurance contracts generally include a cooperation provision that prevents the insured from admitting liability. SB 295 may conflict with these provisions and leave a medical provider unsure how to comply with both the insurance contract and the law simultaneously. If a medical provider does disclose, it may result in denial of coverage.