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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Hochman-Vigil</u>	<b>LAST UPDATED</b> <u>3/6/23</u> <b>ORIGINAL DATE</b> <u>3/2/23</u>
<b>SHORT TITLE</b> <u>Medical Malpractice Premium Assistance</u>	<b>BILL NUMBER</b> <u>House Bill 500/aHHHC</u>
<b>ANALYST</b> <u>Esquibel</u>	

### APPROPRIATION\* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	\$70,000.0	Nonrecurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### REVENUE\* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
	*See Fiscal Implications			Medical Malpractice Premium Assistance Fund

Parentheses ( ) indicate revenue decreases.  
 \*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 465, House Bill 63, and House Bill 500 and Senate Bill 296, Senate Bill 446, and Senate Bill 447  
 Relates to an appropriation in the General Appropriation Act

### Sources of Information

LFC Files

Responses Received From  
 Human Services Department (HSD)  
 Office of Superintendent of Insurance (OSI)

## SUMMARY

### Synopsis of HHC Amendments

The House Health and Human Services Committee amendments to House Bill 500 clarify that the medical malpractice premium assistance fund shall reimburse entities *subject to available funding*, and adds a new Section 1D(1) stating the Office of Superintendent of Insurance shall

administer the medical malpractice premium assistance fund to *develop priority criteria to disburse the fund to independent health care providers or independent health care provider groups.*

### **Synopsis of Original House Bill 500**

House Bill 500 (HB500) would appropriate \$70 million from the general fund to the Office of Superintendent of Insurance for expenditures in FY24 and subsequent fiscal years to reimburse certain health care providers for medical malpractice premiums.

HB500 would create the medical malpractice premium assistance fund, a non-reverting fund, to be administered by the Office of the Superintendent of Insurance (OSI) to establish a program to provide medical malpractice premium reimbursement to certain health care providers.

The medical malpractice premium assistance fund would pay 25 percent of malpractice insurance for providers who have worked 0-3 years in the state, 50 percent for providers who have worked 4-7 years in the state, 75 percent for providers who have worked 8-11 years in the state, and 100 percent for provider who have worked 12 years or more in the state.

Provider types who would qualify for assistance include certified registered nurse anesthetists, certified nurse midwives, certified nurse practitioners, chiropractors, physicians, physician assistants, and podiatrists. To be eligible for the premium reimbursement program, providers must provide proof of licensure, proof of years of practice in New Mexico, proof of participation in the patient's compensation fund, proof of insurance premium payment for coverage of \$250 thousand per occurrence for no more than three occurrences per year, and completion of one full year of practice corresponding to the period of which malpractice coverage is sought.

### **FISCAL IMPLICATIONS**

The appropriation of \$70 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall not revert to the general fund.

This bill creates the new medical malpractice premium assistance fund and provides for continuing appropriations. LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds because earmarking reduces the ability of the Legislature to establish spending priorities.

The bill appropriates \$70 million to the Office of Superintendent of Insurance, not to the medical malpractice premium assistance fund. OSI is a general fund reverting agency.

### **SIGNIFICANT ISSUES**

The bill appropriates \$70 million to the Office of Superintendent of Insurance, not to the medical malpractice premium assistance fund. OSI would need to revert any unexpended funds to the general fund. The newly created medical malpractice premium assistance fund would support continuing appropriations and is nonreverting, but the appropriation as currently drafted is not directed to seed the fund.

## **ADMINISTRATIVE IMPLICATIONS**

OSI reports it would need adequate staff allocated in FY24 and subsequent years and may need to contract with temporary employees or a Third-Party Administrator (TPA) to fulfill the requirements of the program. None of the appropriation or revenue from the medical malpractice premium assistance fund is designated for administrative costs.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB500 relates to SB296, Medical Malpractice Changes; HB88, Medical Malpractice Damages Cap, which similar to SB296 limits the cap on non-hospital owned facilities to \$750 thousand; HB63, Medical Malpractice Changes, which proposes a cap of \$600 thousand on malpractice claims; HB465, Medical Malpractice Changes; HB500, Medical Malpractice Premium Assistance; SB446, Medical Malpractice Definition of Occurrence; and SB447, Medical Malpractice Recovery Amounts.

## **TECHNICAL ISSUES**

OSI notes the list of eligible specialties in the bill, when compared to the definition of “health care provider” in the Medical Malpractice Act, is missing “clinical nurse specialist.”

OSI reports the bill does not make it clear if the fund is meant to reimburse a healthcare provider’s full medical malpractice premium, which includes the required underlying layer policy of \$250 thousand per occurrence up to three times annually, and the patient’s compensation fund surcharge, or only the underlying layer premium.

OSI suggests the following clarifying language be added to the bill:

”The program will only reimburse the premium paid, by the participant, for the underlying coverage, but not reimburse the surcharge for the required PCF participation payment.”

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