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FISCAL IMPACT REPORT

SPONSOR Park DATE TYPED 3/06/05 HB HJM 67/aHJC

SHORT TITLE Study Malpractice Insurance Crisis SB _____

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Relates to
HM 13, SM 7, HB 636, SB 6, SB 292

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)
Health Policy Commission (HPC)
Public Regulation Commission (PRC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment replaces references to the “malpractice crisis” with “malpractice issue” and replaces a reference to “skyrocketing” costs with “increasing” costs. The amendment corrects a misstatement in the findings by indicating that medical malpractice liability is capped at \$600 thousand for physicians who participate in the patient’s compensation fund, rather than \$200 thousand.

Synopsis of Original Bill

House Joint Memorial 67 makes a number of findings relating to the increasing costs of malpractice insurance premiums and the detrimental effect on health access.

The Memorial requests the HPC to appoint a task force to address the malpractice insurance cri-

sis. The task force would be composed of representatives of the insurance industry, the insurance division of the PRC, the Governor's office, statewide associations with members affected by rising insurance costs representing midwives, dentists, hospitals, nursing homes and trial attorneys, and other affected parties. The Memorial requests that the task force review all relevant statutes and conduct a review of other states' laws, programs and approaches and make recommendations to appropriate interim legislative committees and the Governor's office by November, 2005.

FISCAL IMPLICATIONS

The Memorial will result in costs to the HPC to convene the task force, as well as to departments asked to serve on the task force.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Joint Memorial 67 relates to:

- House Memorial 13, which would request that the Congressional delegation of the State of New Mexico support the President's medical malpractice reform proposal;
- Senate Memorial 7, which would request the HPC and the insurance division of the PRC to convene a task force on health care practitioner liability insurance to examine the malpractice insurance dilemma and its impact on providers and patients;
- House Bill 636 and Senate Bill 292 (duplicates), which would amend the Risk Management Act.
- Senate Bill 6, which proposes to amend the Medical Malpractice Act.

TECHNICAL ISSUES

DOH suggests include a representative from Risk Management on the task force.

OTHER SUBSTANTIVE ISSUES

The HPC writes:

“In 1975, Travelers Insurance Company, New Mexico's liability carrier, announced that it would no longer provide medical malpractice insurance to the state's physicians, citing the lack of tort reform and the small amount of business available in the state.

“In 1976, the New Mexico Medical Malpractice Act was signed into law. The Act provides a CAP on liability of \$600,000 plus past and future medical care, provides a statute of limitations on claims, establishes a patient compensation fund, and sets up the New Mexico Medical Review Commission, a medical-legal panel consisting of attorneys and physicians, which must screen all potential legal actions before they can be filed in court.

“While physician liability rates in other states have soared - in some places to 500% - New Mexico's average rate increase last year was less than 10%. (Source: New Mexico Medical Society) While this may not appear to be a crisis, New Mexico physicians and nurse midwives are finding it increasingly difficult to afford the premiums. Obstetricians in New Mexico are paying \$90,000 annually for insurance, and general and orthopedic surgeons are paying \$76,000.

“One of the issues that physicians and nurse midwives have involves the small size of the risk pool in New Mexico. While the current medical society company, AP Assurance, is the result of a merger in the mid 1990s with Michigan Mutual Liability Company, the claims basis and liability rates for coverage are based upon New Mexico experience only, so the pool size continues to be an issue. If passed, HJM67 will look at other states risk pool size and claims experience to determine if other states’ best practices could be replicated, and if pool size is a factor in New Mexico’s rate determination.

“Also, the state’s thirty-two midwives have a legal and regulatory issue with the managed care organizations about the MCO requirements to carry professional liability insurance.

“Malpractice insurance covering home birth services is presently not available to any licensed midwives or certified nurse-midwives in New Mexico. As such, access to care could be compromised.”

PRC writes notes that some of the WHEREAS statements maybe inaccurate. The first references “skyrocketing malpractice insurance premiums for all types of health care practitioners and providers” which may be an overstatement. For example, the premiums for the majority of doctors who are currently in the Patients Compensation Fund have risen on average less than 25% over the last two years. This may not warrant the term “skyrocketing” although premiums for many obstetricians and midwives are rising at higher rates.

The third WHEREAS statement that “medical malpractice liability is capped at \$200,000 for those physicians who participate in the patient’s compensation fund” is inaccurate. The cap is \$600,000 and applies to everything except lifetime medical bills (which are uncapped and are paid by the patient’s compensation fund) and punitive damages (which would be paid by the health care provider).

PRC also notes that several sources, including the American Medical Association, have identified New Mexico as one of the states least in crisis regarding medical malpractice coverage in general.

EF/yr:rs