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## FISCAL IMPACT REPORT

SPONSOR SPAC DATE TYPED 2/21/05 HB \_\_\_\_\_

SHORT TITLE Health Facility & Care Provider Insurance SB 427/SPACS

ANALYST Wilson

### APPROPRIATION

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

Relates to SB 292 & SB 427

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)  
 Health Policy Commission (HPC)  
 Human Services Department (HSD)  
 Public Regulation Commission (PRC)  
 Public School Insurance Authority (PSIA)  
 Retiree Health Care Authority (RHCA)

#### No Response from

General Services Department (GSD)

### SUMMARY

#### Synopsis of Bill

The Senate Public Affairs Committee Substitute for Senate Bill 427 amends the Risk Management Act, Chapter 15, Article 7, NMSA (1978) by adding a new section permitting a health care provider to voluntarily purchase risk insurance coverage presently offered to state agencies. A separate account must be set up for each participating provider.

The provisions in this bill apply to the following health care providers: a licensed physician, hospital, outpatient health care facility, nursing home, intermediate care facility, post-acute health care facility, osteopathic physician, chiropractic physician, podiatrist, nurse anesthetist, physician assistant, dentist, psychologist, doctor of oriental medicine, certified nurse practitioner, registered lay midwife or certified nurse-midwife.

The bill provides for the health care provider to be treated like a state agency for purposes of determining its contributions based upon assessment of risk, and for purposes of handling such contributions. The Secretary of the DOH will need to deem such coverage necessary for the provider for the public health, as a prerequisite to inclusion in the proposed program.

### Significant Issues

The mission of the RMD is to provide risk management and insurance-related services to the various agencies of state government. This bill will in essence widen that mission to include providing insurance to certain non-governmental persons and entities that have difficulty finding liability insurance in the voluntary marketplace. It is worth noting that the door to allowing non-government entities to enjoy access to insurance coverages procured by the RMD has already been opened by Subsection B of §15-7-3 which requires the RMD to provide liability coverage to certain nonprofit corporations under certain circumstances.

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This bill attempts to remedy restrictions in the availability of medical malpractice coverage to New Mexico health care providers by using the Risk Management Division (RMD) of GSD as an alternative source of professional liability coverage other than the Medical Malpractice Act.

The Medical Malpractice Act provides tort limitations and access to the New Mexico Patients Compensation Fund to physicians and certain other health care providers if these providers succeed in obtaining underlying coverage from an authorized insurance company as well as pay the required surcharges to the Patients Compensation Fund. The Medical Malpractice Act excludes nurses, midwives, dentists and psychologists and also requires that the underlying insurance coverage be provided on a somewhat obsolete type of policy form.

Obtaining affordable malpractice insurance is a problem for many groups of practitioners. Medicaid, through its fee-for-service program and its managed care contracts, requires malpractice insurance for its providers

The providers with whom DOH contracts to provide health care services, especially individuals or small entities, have difficulty in meeting requirements for carrying insurance. This bill will permit these providers to carry health insurance through the state's risk management functions.

### **FISCAL IMPLICATIONS**

RMD will need to do an actuarial study to determine premiums for health care providers. The premiums to be charged should reflect RMD's cost of administering the program.

RMD should avoid any cross-subsidization of new insureds by existing insureds including state employees. HSD notes any discounted premiums offered to health care providers may be considered a violation of the anti-donation clause.

The provisions of this his bill should be revenue neutral.

### **ADMINISTRATIVE IMPLICATIONS**

RMD should be able to recover administrative costs through premiums.

### **RELATIONSHIP**

This bill relates to SB 292 and SB 427 which provides similar coverages, but only to midwives.

### **OTHER SUBSTANTIVE ISSUES**

The HPC provided the following:

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 book of business available in the state. The state almost became the insurer of last resort to avoid a crisis in access to physician services if there was no entity underwriting liability insurance.

This bill appears to allow the state to become another insurer and places health care providers in the enviable position of having another insurer of last resort option with the state being that procurement vehicle to procure vision, dental, any group or individual health, life, accidental death, dismemberment or disability insurance. The bill positions the state and providers favorably in the event that insurance is unavailable or too expensive to obtain.

Whether or not having this option available to providers' influences the private insurance market's rating approaches and any segmenting of health care providers is not known. The state's intervention back in 1975 and 1976 did moderate the malpractice rate increases and allowed for the creation of a new mutual company to underwrite physician professional liability risk. New Mexico's experience under that approach has been positive. 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%.

**DW/njw:lg**