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FISCAL IMPACT REPORT

SPONSOR	<u>SPAC</u>	ORIGINAL DATE	<u>1/22/07</u>	LAST UPDATED	<u>3/14/07</u>	HB	
SHORT TITLE	<u>Health Care Provider Emergency Liability</u>	SB					<u>CS/23/aSPAC/aSJC/aSFI/aHHGAC/aHJC</u>
		ANALYST					<u>Wilson</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown	Unknown		Recurring	Public Liability Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 22, Health Care Provider Emergency Liability.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)

Department of Health (DOH)

Health Policy Commission (HPC)

General Services Department (GSD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to the Senate Public Affairs Committee Substitute for Senate Bill 23 adds that the rules promulgated by the secretary of DOH shall include requirements for the types of locations at which the services are rendered and the allowed scope of practice and measures to ensure quality of care.

Synopsis of HHGAC Amendment

The House Health & Government Affairs Committee amendment to the to Senate Public Affairs Committee Substitute for Senate Bill 23 changes a part of the title to COVERAGE UNDER THE TORT CLAIMS FOR instead of IMMUNITY TO in order to conform the title to the content of the bill.

Synopsis of SFI Amendment

The Senate Floor amendment requires that in order for the Risk Management Division to insure a

licensed health care provider providing voluntary services, the provider may not have existing medical liability insurance.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendments to Senate Bill 23 strikes all Senate Public Affairs Committee Amendments and deletes the list of 22 medical specialties covered by the legislation, amending it to read: “health care providers licensed in New Mexico who render voluntary health care services without compensation in accordance with rules promulgated by the secretary of health.” In addition, the effective date of the provisions of the act is July 1, 2007.

Synopsis of SPAC Amendments

The Senate Public Affairs Committee amendment to Senate Public Affairs Committee Substitute for Senate Bill 23 adds “certified registered nurse anesthetist” to the list of health care providers providing voluntary health care services that will be covered under this bill.

Synopsis of Original Bill

The Senate Public Affairs Committee Substitute for Senate Bill 23 amends the definition of “public employee” in the Tort Claims Act to exclude all health care providers licensed in New Mexico who render voluntary services on *behalf of a governmental entity without compensation*, thereby providing immunity from tort liability for such providers including optometrists, chiropractic physicians, dentists, physicians, podiatrists, osteopathic physicians, physician assistants, certified nurse practitioners, physical therapists, occupational therapists, speech-language therapists, doctors of oriental medicine, nutritionists, psychologists, certified nurse-midwives, clinical nurse specialists, registered nurses, dental hygienists, pharmacists, athletic trainers, anesthesiologist assistants and certified registered nurse anesthetists

FISCAL IMPLICATIONS

GSD notes that the governmental entity authorizing volunteer services of these health care providers will be assessed the cost of the premiums to cover the defense costs should a lawsuit be filed against the health care provider or the authorizing agency. (By granting limited liability to the volunteer health care provider, the authorizing agency’s liability will also increase.)

Associated costs will be difficult to predict and will be reflected as an increase in the authorizing agency’s future rate, based on experience (calculated at 70% of a 5-year average) and exposure (30%). Exposure will increase immediately because of the added potential liability. Experience will come into play only after a claim is paid in connection with a volunteer who had been authorized by a governmental entity to provide services.

SIGNIFICANT ISSUES

The intent of this bill is to encourage volunteer services of health care providers and maximize the resources devoted to delivering these services by reducing the liability exposure of the provider.

HPC notes that free or low cost care centers in New Mexico have a difficult time finding providers willing to provide volunteer services to the patients of the centers. Physicians in

particular in New Mexico that have retired but are still licensed could be a primary source of medical care providers for these clinics, but often cannot serve because of the expense of carrying professional liability coverage. The clinics can employ the physicians, but doing so greatly increases their professional liability exposure and consequently insurance expense in a tough financial environment.

The Risk Management Division (RMD) of GSD provided the following:

- Under the Tort Claims Act, the state provides general liability (not just professional or medical malpractice) coverage to “public employees”. This bill is not clear about the intended extent of coverage.
- If the bill is limited to providing professional liability coverage, does the coverage extend only to the time and activities during which the healthcare provider is actually providing voluntary professional services or, once defined as a healthcare provider who provides voluntary services, is the person covered regardless of when or where the act giving rise to the liability occurred?
- If the state either pays or subsidizes insurance coverage for private individuals or associations, it may conflict with the anti-donation clause in the New Mexico Constitution.
- The Tort Claims Act was passed in response to the New Mexico Supreme Court’s abolition of the common law doctrine of sovereign immunity. Whether the sovereign (e.g. government) can extend its cloak of immunity to cover what are clearly non-governmental entities or individuals is a question which the courts may well have to decide if this bill is enacted.
- If the intent of this bill is to cover New Mexico private health care providers whose volunteer service are authorized by a state or local government agency in response to a local, national or international disaster (e.g. Hurricane Katrina, forest fires, earthquakes in other countries), the scope of work that is covered by the Tort Claims Act will need to be defined e.g. are the volunteer and agency authorizing the volunteer covered if sued for any action at a disaster scene, or only in providing health care that the person is licensed in New Mexico to provide?
- If the healthcare provider both volunteers services and has a professional practice with private insurance, is the state coverage through RMD primary or secondary?

ADMINISTRATIVE IMPLICATIONS

RMD believes there could be a significant increase in RMD administrative and legal defense workload if authorized volunteers and the authorizing agency were sued in connection with response to disasters.

RELATIONSHIP

Senate Bill 23/SPACS relates to SB 22, Health Care Provider Emergency Liability.

OTHER SUBSTANTIVE ISSUES

A physician who is retired and wants to provide medical services must obtain an occurrence insurance policy which costs approximately \$16,700 for a family physician for a full year. New Mexico is one of a small number of states that does not provide limited liability laws for volunteer physicians. New Mexico grants immunity only to public employees including physicians, psychologists, or dentists providing services for the Corrections Department and Children, Youth & Families.

ALTERNATIVES

RMD suggests that the DOH could be authorized to establish a registry of health care professionals willing to provide volunteer services when authorized by the DOH Secretary to respond to disasters by providing the service that they are licensed in New Mexico to provide. This may be possible by rule under the existing DOH enabling statutes.

DW/nt