



Synopsis of SFC Amendments

The Senate Finance Committee amendment to House Bill 167 as amended by the House Appropriations Committee:

- 1) Adds a requirement that awards shall be disbursed based on the percentage of Medicaid patients or indigent patients seen in the practice; and
- 2) Clarify that the money in the fund is appropriated to the Department of Health for the purpose of making awards pursuant to the provisions of Section 1 of the bill.

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee Amendment requires applicants to also demonstrate need by showing that their malpractice insurance premiums have increased every year for two years; requires any award to be subject to availability of funds; provides that awards be no more than \$5 thousand; clarifies that physicians need not have a low number of patients before they can apply for an award; and, removes the appropriation to the birthing workforce retention fund from the bill.

**SIGNIFICANT ISSUES**

There is no longer an appropriation from the General Fund to carry out the purposes of the fund.

Synopsis of Original Bill

House Bill 167 appropriates \$250 thousand from the General Fund to the newly proposed Birthing Workforce Retention Fund for FY09 and subsequent fiscal years. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the General Fund.

The bill states the purpose of the fund is to provide malpractice insurance premium assistance for certified nurse-midwives (CNM's) or physicians whose insurance premium costs jeopardize their ability to continue their obstetrics practices in New Mexico. The fund shall be administratively attached to the DOH.

**FISCAL IMPLICATIONS**

The appropriation of \$250 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY09 shall not revert to the General Fund. The use of legislative appropriations to fund malpractice premiums may raise potential constitutional law questions under the Anti-Donation Clause of Article IX, Section 14. The HPC reports that given the significant rural population in New Mexico and the high rates of both rural and urban poverty, reinsurance efforts designed to increase, improve and ensure access to pre- and post- pregnancy-related healthcare for those populations is a goal that may fit within the Anti-Donation Clause's exception of the State providing for the care and maintenance of the sick and indigent.

The applicant must have a malpractice liability insurance policy currently in force. Any award from the fund shall not be less than \$10 thousand; and, priority for awards will be given to

certified nurse-midwives, family practice physicians and obstetricians having a low number of patients. There appears to be no maximum cap for any amount awarded an applicant.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

### **SIGNIFICANT ISSUES**

The rules will require that the applicant demonstrate need by showing that Medicaid patients or indigent patients constitute at least one-half of the obstetric practice of the applicant; and, that malpractice insurance premium costs have threatened the health of the practice.

### **PERFORMANCE IMPLICATIONS**

The NM Medical Board notes a shortage of physicians in rural areas providing specialized practice such as obstetrics. One fact reportedly, they believe, is the pressure of malpractice coverage.

The bill establishes the "birthing workforce retention fund" for physicians and certified nurse midwives but does not include licensed midwives. A licensed midwife is not a nurse but has met licensure requirements to perform a specified array of services. Licensed Midwives, not Certified Nurse Midwives, provide most out-of-hospital births and also are the practitioners for whom obtaining professional malpractice insurance is the greatest problem.

### **ADMINISTRATIVE IMPLICATIONS**

The Department of Health will need to develop rules, process applications and award funds and the Department believes they will need at least six to eight months to able to do so within existing resources.

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

Duplicates HB 134

Relates to SM 1, a memorial requesting the HPC to continue the task force on obstetric health care practitioner liability insurance.

### **TECHNICAL**

Clarification may be needed to define the terms "indigent" and "financial stability" as used within the bill.

### **OTHER SUBSTANTIVE ISSUES**

Proponents of the bill believe the cost of insurance is prohibitive for obstetrical providers. According to previous agency analyses from 2006, between Aug 2001 and July 2005 obstetrician premiums rose from \$40,801 to \$89,710. This was even with the cap in New Mexico on damages other than medical bills and punitive damages, as well as the mandatory review of claims before a medical/legal panel provisions.

DOH notes that family Practice physicians face significant increases in liability insurance rates if they provide childbirth services. Most family practice physicians devote little or none of their practice to childbirth, and are less able to cover such increases with payments for childbirth services. Many have chosen not to provide these services in order to avoid high liability insurance premiums.

DOH reports there are currently 137 CNMs licensed and actively practicing in New Mexico. Since 2005, 82% of CNMs have estimated that half or more of their patients were on public assistance. DOH further reports that CNMs are affected more than physician providers by medical malpractice claims because they are not included in the Med-Mal Act and because their incomes are smaller. A 2007 study by the HPC's Task Force on Alternative Compensation found that liability insurance premiums for various CNMs in urban and rural private practices increased 432% in five years, from an average of about \$6,000 per year in 2001 to \$31,900 in 2007. The reason for the rapid rise in liability premiums for CNMs is related to the rise in the awards for each claim, not to an increase in claims made against CNMs.

### **ALTERNATIVES**

In 2006 HSD implemented a Birthing Options Program that allows Licensed Midwives and Certified Nurse Midwives who certify they cannot obtain malpractice insurance at reasonable costs for out-of-hospital births to participate in the Medicaid Program. The mother acknowledges that she is aware the practitioner does not carry malpractice insurance. The governing statute of the Medical Board has no requirement that these providers carry medical malpractice insurance.

HPC further provides that their "Task Force on Alternative Compensation" worked during 2007 to develop long-term solutions to the rising costs of professional liability insurance for childbirth health care providers and is in the process of developing proposals to further address this issue.

AHO:GG/mt:nt:bb