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## FISCAL IMPACT REPORT

**SPONSOR** Stewart      **ORIGINAL DATE** 02/27/09      815/aHHGAC/aHAFC/  
**LAST UPDATED** 03/12/09      **HB** aHFL#1

**SHORT TITLE** Gross Receipts to Midwife-Nurse Insurance      **SB** \_\_\_\_\_

**ANALYST** Gutierrez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	\$1,182.8	Recurring	Medical Malpractice Premium Assistance Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
Minimal See Narrative	\$1,182.8	\$1,242.0	Recurring	Medical Malpractice Premium Assistance Fund
(Minimal) See Narrative	(\$1,182.8)	(\$1,242.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB229 and SB349

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

See PRC's Administrative Implications.

**SOURCES OF INFORMATION**

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Department of Health (DOH)

Health Policy Commission (HPC)

Public Regulation Commission (PRC)

**SUMMARY**

Synopsis of HFL#1 Amendment

The House Floor amendment to House Bill 815 adds a new Subsection E to Section 2, stating that an attorney licensed to practice law in New Mexico and whose principal place of practice is in New Mexico shall not be required to comply with the provisions of Subsection C of Section 2.

Synopsis of HAFC Amendment

The House Appropriation and Finance Committee amendment to House Bill 815 adds a new Subsection C to Section 2, requiring an attorney who represents a corporation, partnership or other person at a hearing before the oil conservation division of EMNRD or the oil conservation commission to attach their New Mexico tax registration and tax identification number and a certified statement to the application for rulemaking or pre-hearing statement filed with the commission clerk which states that the attorney will remit the New Mexico gross receipts tax owed on all fees for services rendered pursuant to the rulemaking.

Synopsis of HHGAC Amendment

The House Health and Government Affairs Committee amendment to House Bill 815 amends the bill title to include “providing for a gross receipts tax on certain attorney fees; requiring registration for tax purposes”. It also adds “and other” to the litigation actions that gross receipts will come from, suggesting that gross receipts for actions other than medical malpractice actions may be applicable to the bill.

Synopsis of Original Bill

House Bill 815 creates the “Medical Malpractice Premium Assistance Fund” as a nonreverting fund in the state treasury. The fund will be administered by the Superintendent of Insurance and the money in the fund is appropriated to the Superintendent to assist certified nurse-midwives in the payment of medical malpractice premiums. The fund consists of distributions of gross receipts tax payments from attorneys litigating medical malpractice cases in New Mexico per the new section of the Gross Receipts and Compensating Tax Act. The new section of the Gross Receipts and Compensating Tax Act requires attorneys to report and pay gross receipts tax to TRD on gross receipts generated from litigating medical malpractice cases in New Mexico. From these gross receipts, 20 percent of the net receipts attributable to the gross receipts tax will be distributed to the Medical Malpractice Premium Assistance Fund.

Because this bill contains an emergency clause, its provisions will become effective upon signature by the governor.

## **FISCAL IMPLICATIONS**

The HFL#1 amendment to House Bill 815 has no fiscal impact.

The HAFC amendment to House Bill 815 has no fiscal impact; it simply adds more attorneys to the registration requirement of Section 2.

Based on a study of the number of malpractice claims, this estimate assumes there are 624 claims each year in New Mexico.<sup>1</sup> A New England Journal of Medicine study indicates the average total (defense and plaintiff) litigation costs per claim are \$172 thousand.<sup>2</sup> This results in attorney's medical malpractice receipts of \$125 million in FY10 and net gross receipts tax revenue of \$6.3 million at the 5 percent State rate. Twenty percent of that revenue, or \$1.26 million, would be diverted from the general fund to the Medical Malpractice Premium Assistance Fund.

### **TRD:**

If enacted, the proposal will affect at least part of FY09; however, even with a massive education effort, accurate taxpayer compliance and the amount of revenue transferred are expected to be minimal.

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**

### **PRC:**

In 2007, the New Mexico State Legislature passed legislation that appropriated \$44,000 for FY09 for a newly created Birthing Workforce Retention Fund. The Fund provided Medical Professional Liability Insurance Premium Assistance for Certified Nurse Midwives (CNM) or physicians with insurance premium costs for those that provide at least 50 percent of their services to Medicaid or indigent patients. In 2008, no appropriation was made for the fund. This bill attempts to create a continuous funding source and to provide standards for those who would be eligible to receive assistance from the fund.

A 2007 study by the Health Policy Commission (HPC) Task Force on Alternative Compensation found that liability insurance premiums for various CNMs increased 432 percent in five years, from an average of about \$6,000 per year in 2001 to \$31,900 in 2007.

There is no penalty imposed if attorneys refuse to identify gross receipts generated from that attorney's participation in litigating medical malpractice cases and any refusal may cause significant issues for TRD (see administrative implications).

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<sup>1</sup> Cohen T.H and Hughes K.A., "Medical Malpractice Insurance Claims in Seven States, 2000-2004", U.S Department of Justice, Office of Justice Programs, *Bureau of Justice Statistics Special Report*, March 2007.

<sup>2</sup> Studdert D.M et al, "Claims, Errors, and Compensation Payments in Medical Malpractice Litigation" *The New England Journal of Medicine* 354;19. Pg. 2024-2033, May 11, 2006.

## ADMINISTRATIVE IMPLICATIONS

### TRD:

This proposal will be difficult for the Department to administer. There will be high taxpayer education needs, to include a mail out and public announcements. The least expensive method of administering the proposal is to require a special rate code for gross receipts tax reporting. Although it is the easiest method for both compliance and administration, recording special gross receipts is still difficult to administer and results in uncertain distributions. The difficulties and uncertainties in distributions will be magnified by an effective date sooner than January 1, 2010, because not enough time would be allowed to fully educate taxpayers.

Experience with special reporting of the food deduction and certain medical deductions have shown that problems with taxpayer compliance are frequent. There is no incentive for taxpayers to spend additional time separating receipts by type or to amend returns to get the distributions correct. Time spent insuring proper compliance will reduce time that could have been spent bringing in additional revenues to the State and to local governments.

This proposal will increase the cost of processing CRS reports; it will require additional efforts to key in additional lines of data. New audit and compliance procedures, forms, publications, and distribution methods will be required.

This bill will have a low IT impact. A new rate type code will need to be added to GenTax CRS program and rates for all cities and counties set up.

- 1) Changes to configuration for the rate codes and reports - 40 hours
- 2) Changes to configuration for new transactions – 40 hours
- 3) Changes to revenue accounting – 40 hours

Total 120 hours

### PRC:

The bill requires the Superintendent of Insurance to promulgate some very straightforward rules regarding the application for assistance, which is a normal function of the Division of Insurance. The bill also allows the Superintendent of Insurance to create a joint underwriting authority, which would likely require additional personnel and time beyond the normal activities that are currently undertaken by the Division of Insurance.

## RELATIONSHIP

HB229 – appropriates \$46,000 from the general fund to the Birthing Workforce Retention Fund to provide malpractice insurance premium assistance for certified nurse-midwives or physicians

SB349 – creates the Birthing Workforce Retention Fund, but unlike Chapter 73, Laws 2008 this fund will not have a cap on awards and will not report annually to the LFC

## TECHNICAL ISSUES

The addition to the bill's title, from the HHGAC amendment, suggests that the bill “[provides] for a gross receipts tax on certain attorney fees.” The bill does add additional reporting requirements which should have been noted in the title, but the bill does not provide for any new or additional “gross receipts tax on certain attorney fees.”

The proposal should have an effective date of January 1, or July 1 to coincide with taxpayer reporting periods and to allow sufficient time for taxpayer education.

Relating to Section 2, Subsection B: Non-admitted counsel in New Mexico do not file motions to appear pro hac vice.

PRC:

This type of distribution of gross receipts taxes could violate Article IX, Section 14 (the anti-donation clause), which has been construed by New Mexico's courts to prohibit the state government from aiding non-governmental enterprises unless the enterprise is found to be beneficial to the community as a whole. HB815 includes language in Section 4 stating that this measure "is necessary for the public peace, health and safety that this act take effect immediately," indicating that there may be an exception to the anti-donation clause.

### POSSIBLE QUESTIONS

Since the Birthing Workforce Retention Fund was created in Laws 2008, is there really a need for another fund specifically created for certified nurse-midwives malpractice insurance?

BLG/svb:mc:mt

***The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:***

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

***More information about the LFC tax policy principles will soon be available on the LFC website at [www.nmlegis.gov/lcs/lfc](http://www.nmlegis.gov/lcs/lfc)***