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## FISCAL IMPACT REPORT

SPONSOR Cook ORIGINAL DATE 2/24/15  
LAST UPDATED \_\_\_\_\_ HB 395  
SHORT TITLE Medical Malpractice Case Venues SB \_\_\_\_\_  
ANALYST Jorgensen

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Medical Board (MB)

### SUMMARY

#### Synopsis of Bill

House Bill 395 adds new sections to Section 38-3-1 NMSA 1978 that limit venue for medical malpractice actions to the county in which the patient received the medical treatment, the county that is the principal place of business of the health care provider (or any of the health care providers if there is more than one located at the time the lawsuit is filed); or the county in which the patient resided at the time the patient received the medical treatment. In a claim for wrongful death asserted by a personal representative pursuant to Section 41-2-3 NMSA 1978, or a conservator, a guardian or guardian ad litem appointed pursuant to Chapter 45, Article 5 NMSA 1978, or a third person acting in any representative capacity, the residence of the person bringing the claim shall not be considered in determining venue.

### FISCAL IMPLICATIONS

There is no fiscal impact associated with enactment of the provisions of HB 395.

### SIGNIFICANT ISSUES

HB 395 localizes, for venue purposes, malpractice suits brought against defendant doctors or other health care providers and their employing entities or institutions to the counties where they

performed services or where the entity or institution has its principal place of business, or alternatively, to the county of the patient's residence. Considering that patients from rural areas often travel for medical care, this will require them to litigate from afar. Yet most of the parties, by headcount alone, will be closer to the litigation. This bill thus slightly modifies the discretionary *forum non conveniens* doctrine which very generally honors the plaintiff's choice of forums.

AGO states that there is currently no venue statute in either the Wrongful Death Act [Sections 41-2-1 et seq.] or the Medical Malpractice Act [Sections 41-5-1 et seq.]. The venue for a medical malpractice action will continue to be governed by the general venue statute [NMSA 1978, § 38-3-1], and if HB 395 is enacted that general venue statute will impose new limitations on the venue for a specific subset of lawsuits (medical malpractice suits).

### **TECHNICAL ISSUES**

MB suggests the following changes to the bill:

The word "provider" should be changed to "practitioner on page 4, lines 22 and 23; and page 5, line 10.

Page 5, lines 3-7 should be amended, for clarity and specificity, to read"

"health care ~~provider~~ practitioner" means a person, and "health care provider means an entity providing health care services of any type and includes the entity that provides such services or that employs individuals who provide such services, and its parent entities, including all transient or foreign corporations or similar entities;

Page 5, line 22 should be amended to read "...health care practitioner or health care provider."

CJ/bb/je