F I S C A L I M P A C T R E P O R T

SPONSOR SPAC **ORIGINAL DATE** 02/18/15 **LAST UPDATED** 03/02/15 **HB**

SHORT TITLE Good Samaritan Liability **SB** 189/SPACS/aSJC

ANALYST Dunbar/Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	*Indeterminate	*Indeterminate	*Indeterminate	*Indeterminate	Recurring	General Fund

*Refer to Fiscal Implications

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

Responses Received From
Department of Health (DOH)
Attorney General (AG)
Administrative Office of the District Attorney (AODA)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 189 strikes the phrase "and operating under the supervision of a physician medical director" from the definition of "automated external defibrillator program", consistent with other changes made in the original bill.

Synopsis of Original Bill

Senate Public Affairs Committee substitute for Senate Bill 189 amends Section 24-10C-3 NMSA 1978 which introduces a new standard under the Cardiac Arrest Response Act, by which civil liability can be imposed on a "good Samaritan". CS/Senate Bill/189/SPAC defines:

- "Good Samaritan" as a person who provides emergency AED services to a person "in need of defibrillation" rather than a person "in apparent cardiac arrest,"
- "Good Samaritan" to mean a person who acts without compensation and "without willful , wanton or reckless behavior that is the cause of injury or death and

- "person" to mean "an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity. "

CS/SB/189/SPAC also amends Section 24-10C-7 NMSA 1978 within the Cardiac Arrest Response Act ("CARA"), to extend immunity from civil liability for those rendering emergency care or treatment by the use of an automated external defibrillator ("AED").

1. a trained targeted responder who provides supervisory services pursuant to CARA;
2. a person that acquires, provides or makes available to the public and AED;
3. the manager or operator of the property or facility where the AED is located;
4. and "a person that authorizes, directs or supervises the installation or placement of an AED; and
5. the trained targeted responder.

The above immunity is under the provision that these persons have acted with reasonable care and in compliance with the act.

CS/Senate Bill/189/SPAC also removes of the term "physician" from the definitions, as well as removing physician medical director required oversight of the program. The oversight will be provided by designated trained targeted responder.

FISCAL IMPLICATIONS

According to AOC, **t**here will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced civil actions. If contributory negligence is used as a defense to a claim of gross negligence, additional court time and resources may be needed to present the claim of contributory negligence, and, potentially, to contest an award of punitive damages. In general, new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

CS/Senate Bill/189/SPAC has no impact on DOH Emergency Medical Systems operations. The ERD EMS Bureau recognizes that the changes proposed by the bill provide clarity and positively impact the Act, especially by removing the physician medical director requirement. The physician medical director is no longer necessary due to the robust technology and safety of automatic external defibrillators. Removing this requirement will reduce the regulatory restrictions placed on those wanting to deploy automatic external defibrillators, potentially increasing the number of available automatic external defibrillators available to the public, as well as the potential for higher survival rates from cardiac arrest.

The AG explains that by eliminating "physician" from the Act altogether, the "trained targeted responder" replaces duties/liabilities of "physician" throughout the Act.

The new standard by which a "good Samaritan" can be found civilly liable under the Act is "willful, wanton or reckless behavior" replacing the current "good faith /reasonableness"

standard, effectively providing more protection to the "good Samaritan."

CS/SB/189/SPAC replaces "cause" for the term "proximate cause," in requiring that a Good Samaritan acts "without willful wanton or reckless behavior that is the cause of injury or death." The standard of "without willful wanton or reckless behavior that is the cause of injury or death is also used in the bill's amendment to Section 24-10C-7 NMSA 1978, in exempting a good Samaritan from civil liability. CS/SB/189/SPAC returns the use of a "reasonable care" standard in exempting other specified persons from civil liability, and as noted by AOC, lessens that standard of care to acting "without willful, wanton or reckless behavior" for a good Samaritan. In addition, AOC states that the change from "proximate cause" to simply "cause" reflects the need to show in a personal injury lawsuit that a defendant's actions were both the actual cause and proximate cause of the injury or damage suffered.

Section 24-10C-3(A)(2) defines "automated external defibrillator" to mean a medical device heart monitor and defibrillator that: "is capable of recognizing cardiac arrest that will respond to defibrillation, ventricular fibrillation or rapid ventricular tachycardia, and is capable of determining whether defibrillation should be performed."

AOC mentions that New Mexico allows a plaintiff to recover punitive damages so long as the wrongdoer's conduct is willful, wanton, malicious, reckless, oppressive, grossly negligent, or fraudulent and in bad faith. *Madrid v. Marquez*, 131 N.M. 132, 135 (N.M. Ct. App. 2001) citing *Sanchez v. Clayton*, 877 P.2d 567, 573 (1994).

A report dated January 31st 2012 issued by National Council of State Legislators (NCSL) indicates that State Legislators have become actively involved with this issue in the past six years. Most commonly, the recent state laws encourage broader availability, rather than creating new regulatory restrictions. Most of the bills enacted from 1997 to 2001 included one or more provisions to:

- Establish legislative intent that an "automatic external defibrillator may be used by any person for the purpose of saving the life of another person in cardiac arrest."
- Encourage or require training in the use of AED devices by potential users.
- Require AED devices to be maintained and tested to manufacturer's standards.
- Create a registry of the location of all such defibrillators, or notification of a local emergency medical authority.
- Allow a "Good Samaritan" exemption from liability for any individual who renders emergency treatment with a defibrillator.
- Authorize a state agency to establish more detailed requirements for training and registration.

In addition, NCSL reports that as of January 2012 there were a total of 56 state bills pending or recently passed which specifically relate to Defibrillators (AEDs) and Cardiac Arrest. They relate to a variety of subjects: training in the workplace, schools, and medical facilities, availability of Defibrillators (AEDs) in gyms, places of work, schools, government buildings, community centers, golf courses, public areas, and medical facilities, a declaration of Cardiac Awareness Month, emergency actions plans of school districts to include Defibrillators (AEDs) in their emergency plan equipment, immunity from civil liability for the use of Defibrillators (AEDs) in good faith during an emergency, and tax credits for the cost of purchasing Defibrillators (AEDs).

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

OTHER SUBSTANTIVE ISSUES

Mixing up the terms "heart attack" and "cardiac arrest" is quite common. In the media, reporters often misreport people dying from a "massive heart attack." Chances are the reporter is actually referring to sudden cardiac arrest. Making the distinction is important because, while both heart attack and cardiac arrest are medical emergencies, a person suffering cardiac arrest literally has minutes to live and responding with an AED within those minutes will mean the difference between life and death for the victim.

Source: American Heart Association, 1999

BD/bb