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FISCAL IMPACT REPORT

SPONSOR <u>HJC</u>	LAST UPDATED _____ ORIGINAL DATE <u>3/7/23</u>
SHORT TITLE <u>Motor Vehicle Code Subrogation Rights</u>	BILL <u>CS/House Bill</u> NUMBER <u>317/HJCS</u>
ANALYST <u>J. Torres</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From (Prior to substitute and amendment*)
 Workers' Compensation Administration
 New Mexico Attorney General

*Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of HJC Substitute for House Bill 317

The substitute bill adds the critical provisions outlined below for the purpose of better clarifying the rights and remedies it provides. These modifications are necessary to better specify the bill's application to subrogation rights pertaining to motor vehicle accidents.

The substitute bill modifies Section 48-8-1(C) NMSA 1978 as follows:

As used in Chapter 48, Article 8 NMSA 1978, 'service provider' means a natural person, corporation, company, trust, partnership, incorporated or unincorporated or cooperative association, hospital or other legal entity permitted by law to provide care to an injured patient and that provides care to that patient. A service provider shall be licensed to provide that care when a license is required. The care provided to the injured patient shall be provided in the normal course of business.

This expanded definition of the bill's operable term "service provider" is essential in specifying that only licensed and authorized persons and entities providing patient care fall within its scope.

Section 66-5-301(E) is modified as follows:

If a driver is covered by a motor vehicle or automobile liability policy in the minimum limits set forth in Section 66-5-215 NMSA 1978 at the time of an alleged loss, that person shall be immune from any third-party subrogation action seeking subrogation of payment of underinsured benefits paid in excess of those limits.

This modification provides immunity from “third-party subrogation” to those covered by motor vehicle or automobile insurance policies in the minimum limits of Section 66-5-215 NMSA 1978. This is an important and necessary clarification.

This act will apply to lien enforcement actions filed on or after its July 1, 2023 effective date.

FISCAL IMPLICATIONS

There is no fiscal impact indicated by either agency.

SIGNIFICANT ISSUES

NMAG states:

Page 2, lines 7 -11 may be ambiguous: It states that ‘Every service provider asserting a lien shall be liable for a share of any attorney fees and costs incurred in securing the judgment, settlement or compromise equal to the proportion of any attorney fees and costs paid by the patient pursuant to the common fund doctrine.’ This could be read to establish that the service provider pays the same amount as the patient, with the patient’s amount being determined by the common fund doctrine. But the intention may have been for the service provider to pay its proportion, as determined by the common fund doctrine, of the attorney fees and costs paid by the patient.

Page 2, lines 12-18: Given the implementation of the common fund doctrine on page 2 lines 7-11, it may be inconsistent for the lien amount limitation to be set at ‘the reasonable, usual and necessary service provider charges for treatment, care, and maintenance of the injured party by the service provider and to the date of payment of the damages.’ It may be appropriate to reduce this maximum lien amount by the amount of attorney fees and costs for which the service provider is liable (according to the common fund doctrine).

Page 2, line 20: Possibly ambiguous; does ‘person’ include hospitals, and other entities? The bill previously included hospitals.

Inconsistency: Page 3, line 20 establishes ‘injured party’ as a replacement for ‘patient.’ But ‘patient’ is then used throughout the suggested statute language (e.g.; Page 1 lines 20 and 23, Page 4 lines 13 and 14, Page 5 lines 2, 9, 12, and 13).

Inconsistency: Page 3 line 19 states ‘the injured party’s attorneys.’ Page 4 line 14 states ‘the patient’s attorney’. Attorney is plural in one instance and singular in another.