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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Montoya/Lord/Block/Reeb **ORIGINAL DATE** 3/7/23

SHORT TITLE Medical Malpractice Changes **BILL NUMBER** House Bill 465

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
OSI admin		\$300.0	\$300.0	\$600.0	Recurring	General Fund
PCF deficit		\$30,000.0- \$60,000.0	\$30,000.0- \$60,000.0	\$60,000.0- \$120,000.0	Recurring	Patient's Compensation Fund

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

Sources of Information

LFC Files

Responses Received From

Board of Medical Examiners
 Department of Health (DOH)
 Human Services Department (HSD)
 Office of Superintendent of Insurance (OSI)

SUMMARY

Synopsis of House Bill 465

House Bill 465 (HB465) proposes to change the Medical Malpractice Act by eliminating the patient’s compensation fund and excluding nurses, certain doctors, specialists, hospitals, outpatient medical facilities, and independent providers from coverage against malpractice lawsuits.

The bill would also limit the aggregate amount of money recoverable to a patient in a malpractice suit to \$600 thousand, deletes the definition of “occurrence,” and eliminates the possibility of paying punitive damages from the patient’s compensation fund.

The bill would reverse the changes to the Medical Malpractice Act made in 2021 via HB75 and a later amendment. The additional new changes include:

- Adds a new section on medical examinations of patients for the purpose of determining the patient’s continued need of medical care related to the original malpractice injury.
- Prohibits awarding monetary damages for future medical expenses and requires them to be paid on an “as incurred” basis. However, it requires the court to estimate the value of

future medicals and include the estimate in the record.

- Tasks the district court issuing the final judgement with continued jurisdiction over the cases.
- Adds guidance on the hearing procedures.

FISCAL IMPLICATIONS

OSI notes the patient's compensation fund (PCF) is self-funded and did not provide a fiscal impact to the fund.

Volume 2 of the LFC annual recommendation to the Legislature, *Legislative for Results: Appropriations Recommendations*, notes:

The patient's compensation fund (PCF) pays malpractice settlements for member physicians and hospitals. Established under the New Mexico Medical Malpractice Act, the program provides affordable malpractice coverage that caps the amount of damages awarded against the member healthcare providers. The fund's solvency has been a concern in recent years as Laws 2021, Chapter 16, amended the Medical Malpractice Act to include new providers eligible for participation in the PCF, raised the required underlying coverage limit from \$200 thousand to \$250 thousand, and increased the cap on nonmedical damages for independent providers from \$600 thousand to \$750 thousand in 2022, with an inflation adjustment annually thereafter.

Laws 2021, Chapter 16, also required the PCF deficit be eliminated by January 1, 2027. The fund has a projected deficit of almost \$69 million despite a \$30 million infusion of state funds during the 2022 regular legislative session. According to a September 2022 actuarial report, OSI would need to issue a 32 percent surcharge increase to meet solvency requirements, which could potentially push physicians out of the PCF or, worse, out of the state. Instead, the superintendent issued a 10 percent surcharge increase on physician contributions to the PCF coupled with proposed changes to the Medical Malpractice Act that would result in cost-savings to the fund. Suggested statutory changes included limiting "medical care and related benefits" only to amounts actually paid by or on behalf of an injured patient and accepted by a healthcare provider in payment of charges, clarifying what constitutes a "reasonable charge," and permitting examinations to determine the necessity of future medical care.

Though there are no proposed appropriations or changes in revenue forecast in the analysis submitted by responding agencies, the legislation could reduce the PCF deficit, and therefore result in reduced general fund infusions, lower physician rate increases, or both. It is difficult to accurately estimate potential savings associated with House Bill 465, as fund solvency is determined by a multitude of factors, including health care provider surcharges, which are set annually, and settlement payments that vary in size and frequency. Therefore, this analysis uses a range of \$30 million to \$60 million.

OSI reports if the administration of the patient's compensation fund is transferred back to OSI, OSI will have to employ 4 additional staff to perform the duties at a projected cost of \$300 thousand.

SIGNIFICANT ISSUES

OSI reports the effect of this bill is to reverse the changes implemented in 2021 by HB75. As

such, issues related to the passage of this bill would be the same as those affecting the patient’s compensation fund (PCF) prior to the passage of HB75 in 2021. The main issues include participation of hospitals in the fund, the increase in the underlying coverage limit and cap, and the limit on the Medical Review Commission expenses.

In the FIR for HB75 in 2021, OSI reported the PCF is funded with annual premium surcharges imposed on qualified healthcare providers. Hospitals have made significant contributions to the PCF since joining in 2015. Removing hospitals from the act would result in higher surcharges for the remaining participants.

OSI provided the following information regarding the potential effect of HB75 on the PCF:

PCF Balance and Deficit Summary

	Fund Balance	Fund Deficit = Fund Balance–Estimated Total Liabilities
12/31/2015 (before hospitals joined the PCF)	\$33.4 million	\$39.9 million
12/31/2019	\$109.4 million	\$65.2 million

The PCF deficit increased from \$40 million in 2015 to \$65 million as of 12/31/2019. However, since hospitals were included in the PCF, the deficit, as a percentage of annual surcharges, has decreased to 155 percent in 2019. This shows that the financial condition of the PCF improved by having the hospitals included.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB465 relates to:

- SB0445 (Patient Compensation and Solvency Fund);
- SB0446 (Medical Malpractice Definition of Occurrence);
- SB0447 (Medical Malpractice Recovery Amounts);
- HB0063 (Medical Malpractice Changes);
- HB0088 (Medical Malpractice Damages Cap);
- SB0296 (Medical Malpractice Changes); and
- HB0500 (Medical Malpractice Premium Assistance).

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