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FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Kernan	**ORIGINAL DATE**	3/8/2023
SHORT TITLE	Patient Compensation Fund Solvency	**BILL NUMBER**	Senate Bill 445
		ANALYST	Dick-Peddie/Esquibel

REVENUE*
(dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	**FY24**	**FY25**		
$0.0	$8,000.0-$10,000.0	$8,000.0-$10,000.0	Recurring	General Fund

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

Relates to appropriation in General Appropriations Act

Sources of Information

LFC Files

<u>Responses Received From</u>
Office of the Attorney General (NMAG)
Public Schools Insurance Authority (NMPSIA)
General Services Department (GSD)
Medical Board (NMMB)
Office of the Superintendent of Insurance (OSI)

SUMMARY

Synopsis of Senate Bill 445

Section 1 of Senate Bill 445 amends Section 41-5-7.C of the Medical Malpractice Act to provide that awards for past and future medical expenses for injured patients from the patient compensation fund (administered by the OSI through a contract with a third party) shall not be paid unless the amount of the award was actually paid by or on behalf of an injured person and accepted by a health care provider as payment for services rendered. Section D would be amended to provide that awards of future medical care and related benefits shall only be paid from the fund as the expenses are incurred. Payments from the fund for future medical care and related benefits could not be paid in a lump-sum payment.

Section 2 of SB445 amends Section 41-5-25 of the Medical Malpractice Act by adding a new Section D that requires the Superintendent of Insurance evaluate and approve award settlement amounts if any the award is to be paid by the fund. In Section G, the bill removes the existing provision that require the fund to be solvent with no projected deficit by December 31, 2026.

The bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The patients 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 because the amount of court-ordered settlements increased. In addition to increased settlements, Laws 2021, Chapter 16, amended the Medical Malpractice Act to include new providers eligible for participation in the PCF, raise the required underlying coverage limit from $200 thousand to $250 thousand, and increase the cap on non-medical damages for independent providers from $600 thousand to $750 thousand in 2022, with an inflation adjustment annually thereafter.

Laws 2021, Chapter 16 also requires that the patient compensation fund 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 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 hospital and physician contributions to PCF coupled with proposed changes to the Medical Malpractice Act that would result in cost-savings to the fund, many of which are included in this legislation.

The patient's compensation fund is increasingly faced with demands for lump-sum payments for past and future medicals, which are not based on actual medical expenses. For FY24, OSI requested a general fund infusion of $32.5 million to the fund. The House Appropriations and Finance Committee substitute for House Bill 2 includes just over $16 million to the fund, contingent on "the office and the patient's compensation fund administrator taking action to ensure that future medical payments are paid as incurred and based on actual cost of service and settlement amounts are based on what has been paid by or on behalf of an injured patient and accepted by a healthcare provider," which is similar to what is proposed in Senate Bill 445.

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 Senate Bill 445, 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 assumes a revenue increase to the general fund ranging from $8 million to $10 million annually.

SIGNIFICANT ISSUES

The surcharges that health care providers pay for patient compensation fund coverage is tied to two things: anticipated costs of the fund in the upcoming calendar year, and an additional amount required to reduce the projected deficit of the fund. Also, the solvency of the fund is jeopardized by paying settlement amounts and past and future medical expenses based on provider charges, which virtually no individual pays. Charges are frequently significantly higher than the reimbursement rates accepted by providers as full payment from insurance plans. Solvency of the fund is further harmed by lump sum payments, which preclude paying for medical expenses as incurred.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to a $16 million appropriation in the General Appropriations Act for the patient's compensation fund.

ADP/RAE/ne