FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Chandler	**ORIGINAL DATE**	2/4/24
SHORT TITLE	Rural Hospital Malpractice Surcharges	**BILL NUMBER**	House Bill 304
		ANALYST	Rodriguez

APPROPRIATION*
(dollars in thousands)

FY24	FY25	Recurring or Nonrecurring	Fund Affected
	$10,000.0	Nonrecurring	General Fund

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
OSI		$600.0	$600.0	$1,800.0	Recurring	General Fund

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

Sources of Information

LFC Files

Agency Analysis Received From
Office of Superintendent of Insurance (OSI)

Agency Analysis was Solicited but Not Received From
Medical Board

SUMMARY

Synopsis of House Bill 304

House Bill 304 appropriates $10 million from the general fund to the Office of Superintendent of Insurance (OSI) for expenditure in fiscal year 2025 and subsequent fiscal years to assist small rural hospitals to pay surcharges for coverage under the Medical Malpractice Act.

The bill clarifies that hospitals owned, managed, or operated by an out-of-state corporation or other legal entity cannot receive an allocation from this appropriation.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

The appropriation of $10 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY25 shall not revert to the general fund.

The House passed version of the General Appropriation Act includes a nonrecurring appropriation to OSI of $8.1 million from the general fund for the reduction of the patient's compensation fund surcharges attributable to rural hospitals to promote availability of healthcare in rural areas.

OSI noted the following about this bill:

> The bill does not provide funds to OSI to establish and administer the program. Without a corresponding increase in funding for the necessary staff to implement and then operate program, OSI would be tasked with determining eligibility and then distributing a significant amount of funding without the necessary resources for program development, an eligibility determination platform, or additional staff/contractors to process payments.

SIGNIFICANT ISSUES

The bill appropriates $10 million to assist rural hospitals with surcharges related to the patient's compensation fund.

Patient's Compensation Fund. Section 41-5-25 of the Medical Practice Act provides that the patients' compensation fund (PCF) is created in the state treasury and administered by OSI. The PCF is funded with annual premium surcharges imposed on qualified healthcare providers. Amounts from the PCF are used to pay for malpractice settlements for member physicians and hospitals.

The program seeks to provide affordable malpractice coverage that caps the amount of certain damages awarded against member healthcare providers. The fund's solvency has been a concern in recent years because the number of court-ordered settlements increased. In addition to increased settlements, Laws 2021, Chapter 41, 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.

PCF Deficit. Chapter 41 also requires that the patient's compensation fund's projected actuarial deficit be eliminated by December 31, 2026. The fund has a projected actuarial deficit of almost $98.4 million, despite a $32.5 million infusion of general fund revenue during the 2023 regular session and $30 million infusion during the 2022 regular session. According to the most recent actuary report, OSI would need to issue a 32 percent surcharge increase to meet solvency requirements based on actuarial projections, which could potentially push physicians out of the PCF or, worse, out of the state. Instead, the superintendent issued an 11.8 percent surcharge on independent providers and will not assess a deficit reduction amount on providers in FY24. As of November 2023, the fund had a cash balance of $182 million.

Funding for Rural Hospitals Related to PCF. For FY25, the agency initially requested one-time funding of $10 million to provide surcharge assistance and relief for small and rural hospitals. However, the agency amended its request to $8.1 million. Without this one-time funding, hospitals will be required to pay the full amount of the PCF surcharge and the actuarial deficit assessment, which will likely be as high as 50 percent of the base surcharge.

ADMINISTRATIVE IMPLICATIONS

OSI notes the agency would need staffing to establish the program. OSI indicates:

> The time required to draft and then enact the necessary rules will delay implementation of the program through at least the first quarter of FY2025. HB304 does not provide any guidance with respect to the calculation or allocation of the assistance provided to the individual rural hospital.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The House passed version of the General Appropriation Act includes a nonrecurring appropriation to OSI of $8.1 million from the general fund for the reduction of the patient's compensation fund surcharges attributable to rural hospitals to promote availability of health care in rural areas.

TECHNICAL ISSUES

The bill does not include a definition for small rural hospitals. OSI notes:

> Providing financial assistance to the hospitals raises possible Anti-Donation issues (Art. IX, section 14). Excluding out-of-state corporations or other legal entities raises potential equal protection issues.

JR/hg/ss