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

SPONSOR Gardner **ORIGINAL DATE** 03/01/09 **LAST UPDATED** **HB** 736

SHORT TITLE Independent Health Care Provider Liability **SB**

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal			Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Administrative Office of the Courts (AOC)
Human Services Department (HSD)
General Services Department (GSD)

SUMMARY

Synopsis of Bill

House Bill 736 enacts a the Independent Health Care Provider Liability Act to provide a limitation on liability in an action based on a malpractice claim, for personal injury or death against an independent health care provider.

The bill defines "Independent health care provider" as a provider who is not a qualified health care provider which is defined also defined within the bill as a health care provider who is qualified under the provisions of the Medical Malpractice Act, Section 41-5-1 NMSA 1978.

The bill limits liability to:

(1) a maximum recoverable amount of $500,000 for noneconomic damages; as adjusted by the Consumer Price Index; and
(2) punitive damages, the maximum amount recoverable is 4 times the maximum amount of noneconomic damages.

The bill provides that the limitation shall cover all claims for damages as a consequence of all personal injuries and death related to the malpractice claims at issue, regardless of whether the claims belong to a person other than the patient, including claims for bystander recovery or loss of consortium.

HB 736 also provides that the limitation applies regardless of the number of independent health care providers found to be liable or the number of separate causes of action on which the claim is based. In an action where a final judgment is rendered against one or more independent health care providers, and one or more qualified health care providers, the limitations apply only to the independent health care providers and the judgment against the qualified health care providers shall be governed by the provisions of the Medical Malpractice Act.

HB 736 also addresses limitations on recovery for claims based on apparent or ostensible agency or vicarious liability, including providing that nothing in the Act shall revoke or amend any right of indemnification that an independent health care provider may have against a qualified health care provider for payment of a vicarious award against the independent health care provider.

HB 736 provides that nothing in the Act shall be deemed to revoke the law of comparative fault. The bill also provides that the limits of liability provided under the Act shall not be disclosed to any jury hearing a malpractice claim. The bill clarifies that the provisions of the Act do not apply to independent health care providers who are governmental entities or public employees under the Tort Claims Act.

The effective date of the Act is July 1, 2009.

FISCAL IMPLICATIONS

There 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 malpractice actions. 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

HB736 limits liability of "Independent Health Care Providers" which are essentially defined as people that are not licensed, certified, registered or chartered to provide health care. The General Services Department (GSD) – Risk Management (RMD) does not use independent health care providers so the bill would not apply to our benefits bureau. Section 8 of the bill specifically excludes the Tort Claims Act from any provision of the bill so liability for public employees does not change.

TECHNICAL ISSUES

According to the Administrative Office of the Courts:

1) Currently, in Section 41-5-5 (C) NMSA 1978, Medical Malpractice Act (MMA), provides that a health care provider not qualifying under the Act does not have the benefit of any of the provisions of the Medical Malpractice Act in the event of a malpractice claim against it.
2) Section 41-5-7 NMSA 1978, within the MMA, covers future medical expenses and Section 41-5-9 provides that the district court from which final judgment issues has continuing jurisdiction in cases where medical care and related benefits are awarded pursuant to Section 41-5-7. HB 736 does not contain similar provisions.
3) Section 41-5-15 NMSA 1978 requires an application to be made to and a decision rendered by the Medical Review Commission before a malpractice action may be filed in court against a qualifying health care provider. HB 736 does not contain a similar provision.

4) Section 41-4-9 NMSA 1978 provides that the immunity from tort liability granted pursuant to Section 41-4-4 of the Tort Claims Act does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of any hospital, infirmary, mental institution, clinic, dispensary, medical care home or like facilities. Section 41-4-10 NMSA 1978 providing an exclusion from immunity for public employee health care providers. HB 736 does not contain a similar provision.
5) In New Mexico, hospitals are not generally liable for the acts of independent contractors who are members of the medical staff, only for their employees. However, whether a hospital exercises enough control over a physician to make him in fact an employee may be a question for the jury. *Reynolds v. Swigert*, 102 N.M. 504, 697 P.2d 504 (Ct. App. 1984). In addition, for physicians in the emergency department, New Mexico has also recognized that liability may be created by apparent agency. *Houghland v. Grant*, 119 N.M. 422, 891 P.2d 563 (Ct. App. 1995).

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