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## FISCAL IMPACT REPORT

ORIGINAL DATE 3/16/09

SPONSOR Gardner LAST UPDATED \_\_\_\_\_ HM 116

SHORT TITLE Study Health Care Liability Insurance SB \_\_\_\_\_

ANALYST Earnest

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of Bill

House Memorial 116 requests that a task force be formed to study how medical and professional liability insurance can be made more affordable to health care providers and facilities and to examine alternatives to current policies on medical and professional liability insurance, providing limitations on claims and stemming any abuse in the system.

The memorial request the secretary of human services and the superintendent of insurance to assemble a task force that includes representatives from the New Mexico Health Care Association, the New Mexico Trial Lawyers Association, the New Mexico Defense Lawyers Association, the Risk Management Division of the General Services Department, the Medical and Professional Liability Insurance Industry, health care providers, health care facilities and other relevant and interested parties.

The task force is requested to present its report and recommendations no later than November 2009 to the interim legislative committee that oversees the judiciary and to the interim legislative committee that oversees health and human services.

## FISCAL IMPLICATIONS

None identified. HSD and PRC would be required to convene the task force and produce the report, which may carry some costs.

## SIGNIFICANT ISSUES

The Public Regulation Commission reports:

The memorial does not include the Health Policy Commission (HPC) for leading the study, yet the HPC produced the very recent “Obstetric Health Care Practitioner Liability Insurance” August 2008 report that captures a lot of the issues raised in the memorial.

One of the conclusions of the HPC report is the following: “The proposed benefits of a structural change away from tort-based compensation and discipline outweigh the costs of maintaining the ongoing and recurrent current system. Benefits of an administrative compensation system include more predictable and leveling total costs of patient compensation, more compensation dollars going to patients, increased quality and decreased cost of care by eliminating defensive medicine based practice pressures.”

Current law, under the New Mexico Medical Malpractice Act, provides for limitations on liability for qualified providers and health care facilities, pursuant to Section 41-5-5 NMSA 1978, which states:

1. To be qualified under the provisions of the Medical Malpractice Act [this article], a health care provider shall:
  - a. establish its financial responsibility by filing proof with the superintendent that the health care provider is insured by a policy of malpractice liability insurance issued by an authorized insurer in the amount of at least two hundred thousand dollars (\$200,000) per occurrence or for an individual health care provider, excluding hospitals and outpatient health care facilities, by having continuously on deposit the sum of six hundred thousand dollars (\$600,000) in cash with the superintendent or such other like deposit as the superintendent may allow by rule or regulation; provided that in the absence of an additional deposit or policy as required by this subsection, the deposit or policy shall provide coverage for not more than three separate occurrences; and
  - b. pay the surcharge assessed on health care providers by the superintendent pursuant to Section 41-5-25 NMSA 1978.
2. For hospitals or outpatient health care facilities electing to be covered under the Medical Malpractice Act, the superintendent shall determine, based on a risk assessment of each hospital or outpatient health care facility, each hospital's or outpatient health care facility's base coverage or deposit and additional charges for the patient's compensation fund. The superintendent shall arrange for an actuarial study, as provided in Section 41-5-25 NMSA 1978.
3. A health care provider not qualifying under this section shall not have the benefit of any of the provisions of the Medical Malpractice Act in the event of a malpractice claim against it.