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FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 2/28/03 HB 900

SHORT TITLE: Medical Tort Claims Maximum Liability SB _____

ANALYST: Chavez

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
NFI	NFI		\$5,400.0	Recurring	Public Liability Fund
			\$7,000.0 in FY05	Recurring	General Fund & Others

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Attorney General (AG)
 Administrative Office of the Courts (AOC)
 New Mexico Corrections Department (NMCD)
 Risk Management Division, (GSD)
 LFC Files

SUMMARY

Synopsis of Bill

House Bill 900 amends Section 41-4-19 NMSA 1978 by eliminating the \$300,000 cap presently contained in the Tort Claims Act for damages against a governmental entity or public employee while acting within the scope of his duties for all past and future medical and medically related expenses arising out of a single occurrence.

Significant Issues

The bill has a *significant* impact to the state by exposing the state to unlimited liability for past and future medical and medically related expenses arising out of a single occurrence. Its applicability is to both medical malpractice claims against state health institutions and/or public employee health care workers and to situations in which a person is injured and the state is liable under the Tort Claims Act.

According to General Services Division (GSD), premiums for state agencies are set 15 months ahead due to the budgeting process. Removing the maximum settlement limit would increase costs to the Risk Management Division (RMD) by an estimated \$5.4 million a year. The increased expenses that accrue from removing this cap will not be reflected in the premiums until well after it takes affect, which could place the Public Liability Fund in jeopardy. Premium increases to agencies for FY 05 are estimated to be at least \$7 million, most of which would be paid by general fund.

It was further stated by GSD that the Public Liability Fund could be depleted and the premiums for excess insurance would escalate.

Additionally, according to the Attorney General (AG), the bill contradicts the policy behind the procedural and monetary limitations the Tort Claims Act imposes on liability for governmental entities and public employees acting within the scope of their duties, which is to prevent a drain on the state's monetary resources.

FISCAL IMPLICATIONS

According to GSD, based on an analysis of claim payment history, and using the most conservative forecasting methodology available, implementation of HB 900 would likely result in an additional \$5.4 million average annual claim cost. Historically, in each 5-year period there is a high claim cost period, which is estimated to increase by approximately \$9.2 million in any 5-year period (to cover catastrophic loss, like the shuttle bus accident with school children near Santa Fe a few years ago). According to GSD, the increase in claims cost would result in charging higher premiums, estimated to be at least \$7 million a year, most of which would be paid by agencies supported by general fund.

ADMINISTRATIVE IMPLICATIONS

House Bill 900 would go into effect in June of this year, but premium increases would not be included in agency budgets until FY05. According to GSD, the lag time between implementation of the law and the ability for agencies to budget the increase premiums could jeopardize the stability of the Public Liability Fund.

GSD suggests that in order to control costs, future medical expenses may need to require ongoing documentation as a condition of settlement. According to GSD, this would mean a significant increase in file-handling time to monitor and audit incurred medical expense. Thus risk management division may need to hire staff or contract for medical cost containment assistance.

The elimination of the cap placed on past and future medical and medically related expenses could increase the potential for additional lawsuits and can effect the number of claims settled.

TECHNICAL ISSUES

1. Subparagraph B, on page 2 it is suggested that after the word "expenses" the following is inserted "arising out of a single occurrence".

OTHER SUBSTANTIVE ISSUES

Currently, there are caps on liability in the private sector for example in the Medical Malpractice Act, Section 41-5-1 NMSA 1978. The Medical Malpractice Act provides that except for punitive damages and medical care and related benefits the aggregate dollar amount recoverable by all persons for or arising from any injury or death to a patient, as a result of malpractice shall not exceed \$600,000. Although the Medical Malpractice Act does not subject the value of the *accrued* medical care and related benefits and awards (Section 41-5-6 NMSA 1978) and *future* medical care and related benefits (Section 41-5-7 NMSA 1978) to the \$600,000 limitation, the implications of this bill are much broader as the potential liability could extend beyond medical malpractice. Thus it may appear inconsistent to remove the caps from the public sector.

The implications of this bill are that where a governmental entity or a public employee found to be acting within the scope of his or her duties and where the actions of that employee fit into one of the waivers of immunity designated in the Tort Claims Act, Section 41-4-1, there will be **no damages cap** on past and future medical and medically related expenses for the injured plaintiff.

It was suggested by the AGO that an alternative to eliminating the cap on past and future medical and medically related expenses, the cap could be raised above the present cap. However, this suggestion will also have a great impact on the state.

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