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FISCAL IMPACT REPORT

SPONSOR Campos DATE TYPED 01/24/05 HB _____

SHORT TITLE Malpractice for Certified Midwives SB 6

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APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
NFI	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Board of Nursing
Department of Health

SUMMARY

Synopsis of Bill

SB 6 proposes to amend sections of the NMSA 1978 adding Certified Nurse-Midwives to the definition of health care providers required to file a proof of financial responsibility with the superintendent of insurance making them eligible for the protections of the Medical Malpractice Act.

Section 2, subsection C, paragraph 2 lines 12, 13 and 14 deletes “The insured shall remain liable for all causes of action accruing prior to the effective date of the termination unless otherwise barred by the provision of the Medical Malpractice Act”. New language under Section 1, subsection B, adds both “occurrence form” or “claims made form” insurance coverage as eligible under the Medical Malpractice Act, provided events that happen during the duration of the policy will be covered indefinitely even after the policy is terminated.

Other corrections include line 24 page 1, which deletes “chiropractor” and replaces it with the term “chiropractic physician”, and line 1 page 2 which corrects the term “physician’s assistant” to “physician assistant”.

Significant Issues

Professional liability insurance for health care providers has greatly increased in cost, especially for practitioners attending deliveries. This has influenced some providers to leave the practice. Certified nurse-midwives currently pay from \$15,000 to \$18,000 annually for professional liability coverage. In 2003, certified nurse-midwives attended 32% of the deliveries in New Mexico. Even though there have been no lawsuits naming certified nurse-midwives in New Mexico since 1996, their premiums continue to grow and are not in line with the likelihood of lawsuits against a particular provider.

Insurance companies that cover malpractice insurance currently interpret the language “The insurer shall remain liable for all causes of action accruing prior to the effective date of the termination unless otherwise barred by the provisions of the Medical Malpractice Act,” to mean that the Medical Malpractice Act applies only to providers who hold occurrence form insurance. “Occurrence form” insurance covers events that occurred within the duration of the policy even after the policy is terminated. “Claims made form” insurance covers only events that occur during the time period stated in the policy, unless a “tail” (continuing endorsement) is added extending the time of coverage. According to the DOH, only one company is currently offering occurrence form insurance in New Mexico, and hospitals or physicians employed by hospitals are excluded from coverage. The DOH further states that if this company were to discontinue writing occurrence form policies in New Mexico, the Medical Malpractice Act as it is presently written and interpreted would no longer be applicable to anyone.

PERFORMANCE IMPLICATIONS

SB 6 would support the DOH Strategic Plan to increase the health workforce supply, in collaboration with other entities in New Mexico.

FISCAL IMPLICATIONS

Certified Nurse-Midwives may offer a solution to the problems of cost efficient, comprehensive, quality access to healthcare services for many of New Mexico’s vulnerable and underserved populations, especially in rural areas where physicians may be few.

ADMINISTRATIVE IMPLICATIONS

None significant.

TECHNICAL ISSUES

Certified Nurse Practitioners and Clinical Nurse Specialists are considered advanced practice nurses and may also benefit by being added to the Medical Malpractice Act.

OTHER SUBSTANTIVE ISSUES

The Medical Malpractice Act provides three protections to providers. Because of these protections, providers pay less for malpractice insurance. They include:

- A review of all claims by a Commission being brought to court. The Commission does

not prevent any claim; even so this process has reduced the number of claims brought to court by 77%.

- An awards cap of \$600,000 for all damages.
- A three year time limit allowing for claims to be filed, except for children under 6 years of age at the time of the occurrence being allowed to file up until the age of 9. (Many other States statute of limitation for infants lasts to the age of majority).

Health care providers can subscribe by purchasing an occurrence form policy that pays up to \$200,000 per occurrence and by paying a premium to the Patient Compensation Fund that covers the remainder of claims exceeding the provider's \$200,000 coverage.

Many doctors, hospital administrators, insurance executives, and risk managers in the past have assumed that vicarious liability exists with respect to physicians who work with Certified Nurse-Midwives. Rather, the independent Certified Nurse-Midwife admits his or her own patients and uses the physician as a consultant to facilitate his or her own practice. Even hospital-employed Certified Nurse-Midwives usually attend their own patients, rather than provide services for the patients of attending physicians. Control of care is no longer automatically assumed or implied by the courts to be only within the domain of the physician, but each professional's relative degree of fault is determined upon the basis of his or her own actions.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Certified nurse-midwives, hospitals and physicians employed by hospitals would have increased vulnerability to high liability insurance premiums and malpractice lawsuits.

The public may be restricted in the amount of damages they would be able to collect in the event of a malpractice claim by a certified nurse-midwife, hospital or physician employed by a hospital due to a rewards cap of \$600,000.

POSSIBLE QUESTIONS

Do New Mexico children have enough protection under the reward cap of \$600,000 for claims made against a provider?

AHO/lg