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## FISCAL IMPACT REPORT

SPONSOR Campos DATE TYPED 2/16/05 HB \_\_\_\_\_

SHORT TITLE Health Care Practitioner Insurance Study SB SM 7

ANALYST Wilson

### APPROPRIATION

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

Relates to SB 6, SB 292 , SB 418, SB 427 and HM 13

#### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 Department of Health (DOH)  
 Health Policy Commission (HPC)  
 Public School Insurance Authority (PSIA)  
 Retiree Health Care Authority (RHCA)

#### SUMMARY

##### Synopsis of Bill

Senate Memorial 7 requests the HPC and the Insurance Division (ID) of the PRC to convene a task force on health care practitioner liability insurance to examine the malpractice insurance dilemma and its impact on providers and patients.

The task force will be comprised of representatives from statewide health care practitioner groups, including the New Mexico Medical Society, the American College of Nurse-Midwives, the New Mexico Nurse Anesthetist Association, the New Mexico Midwives Association, the New Mexico Dental Association, the New Mexico Hospital and Health Systems Association, the New Mexico Health Care Association, the New Mexico Trial Lawyers Association and Foundation, the Office of the Governor and others.

The HPC will be required to submit the task force findings and recommendations, including legislative initiatives for malpractice insurance reform for health care providers by November 1, 2005 to the Legislative Health and Human Services Committee, the Legislative Finance Committee, the Department of Health and the Office of the Governor.

Significant Issues

Fees for professional liability insurance for health care providers have greatly increased in cost in recent years, especially for practitioners attending deliveries. Certain types of providers cannot get underwriting at reasonable costs for their malpractice coverage. This can severely reduce the supply of needed health professionals in all parts of the state. SM 7 would permit a comprehensive review of these problems:

- Healthcare providers' malpractice premiums are skyrocketing;
- Medicare and Medicaid reimbursement rates are declining;
- Medical malpractice insurance is capped at \$600 thousand for health care providers who qualify by contributing the patient's compensation fund;
- Certain practitioners are required to carry \$3 million in malpractice coverage;
- Certain practitioners are not included in the Medical Malpractice Act and do not qualify under its provisions;
- Insurance coverage is unavailable for certain types of practitioners and certain types of services, including home births; and
- Various options may be available to address these problems.

The HPC provided the following:

Healthcare Practitioners in New Mexico

Salaries for NM practitioners are much lower compared to national averages.

Example:	US range	NM's average
Family Practitioners	\$135,016 to \$182,768.	\$ 125,000
Internal Medicine:	\$140,304 to \$172,352	\$ 150-170,000
Pediatrics:	\$140,890 to \$164,375	\$ 80,000

Malpractice insurance can range from \$70,000 to \$100,000, depending on specialty, employers, and other considerations. Some practitioners may pay less, particularly for those professions that do not perform medical procedures.

According to a NM Medical Society spokesperson:

The higher the risk in a medical profession, the higher the liability. For example, malpractice insurance rates have increased 67% in the last 3 years for Obstetrician and Gynecologists. In June 2004, rates increased 9%.

Malpractice insurance rates in other states increased greater than 50% or 100% in some states. New Mexico's rates have increased 9%, a seemingly low rate until it is compared to the state's low per capita level, low Medicaid reimbursement, and other economic indicators.

Nursing homes and hospitals are having a difficult time paying for their employee's malpractice insurance.

DOH notes that professional liability insurance premiums are set by the insurance companies, and often are not in line with the likelihood of lawsuits against a particular provider or type of provider. For example, there have been no lawsuits naming certified nurse-midwives in New Mexico since at least 1996, yet their premiums continue to grow.

This memorial takes a comprehensive approach to the needs of health professionals for liability coverage, and could lead to the creation of other approaches to meeting liability needs.

#### 2005 Legislation Proposed in Other States

In Arizona, trial lawyers and consumer advocates oppose damage caps, arguing that caps will not necessarily lower insurance premiums, that lawsuits contribute a small part to increasing health costs and that damage caps will intimidate patients from suing. Arizona is the only state in the Southwest without any damage caps.

In Texas, a medical malpractice reform bill would cap non-economic damages at \$250,000 for doctors and hospitals, and limit attorneys' fees in malpractice cases.

In Connecticut, the Governor outlined a medical malpractice insurance reform proposal that would not cap jury awards for pain and suffering. The Governor believes that people should be compensated for real injuries and sufferings, but also emphasized believes that "doctors and hospitals should do everything in their power to prevent those accidents from happening in the first place" and has proposed measures to further that goal.

In North Carolina, doctors and hospitals are currently lobbying for a \$250,000 cap on non-economic damages that would not affect economic damages (e.g., lost wages, medical bills) but would cap punitive damages and damages for pain and suffering. Personal injury lawyers refute that proposal saying that such caps could discriminate against people who don't work, like retirees and children.

RHCA suggests designating a representative of public health benefit administrators to the task force.

#### **ADMINISTRATIVE IMPLICATIONS**

All participating agencies should be able to fulfill the provisions of the memorial with existing staff.

## RELATIONSHIP

SM 7 relates to:

- SB 6, which amends the Medical Malpractice Act to add “certified nurse-midwife” to the definition of “health care provider” making them eligible for the protections of the Medical Malpractice Act.
- SB 292 and SB 418 amend the Risk Management Act to add licensed midwives or certified nurse midwives to form an association, cooperative or mutual alliance to purchase risk insurance coverage procured by the Risk Management Division of the General Services Department.
- SB 427 amends the Risk Management Act to add health facilities and health care health providers to purchase risk insurance coverage procured by the Risk Management Division of the General Services Department
- HM 13, which requests that the Congressional delegation of the State of New Mexico support the President of the United States’ Medical Malpractice Liability Reform.

## OTHER SUBSTANTIVE ISSUES

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