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## FISCAL IMPACT REPORT

SPONSOR Cervantes DATE TYPED 2/10/05 HB 709

SHORT TITLE Interstate Compact on Communicable Diseases SB \_\_\_\_\_

ANALYST Collard

### APPROPRIATION

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

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AG)  
 Human Services Department (HSD)  
 Department of Health (DOH)  
 Health Policy Commission (HPC)  
 Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

House Bill 709 enacts the Interstate Compact on Threatening Communicable Diseases and provides the compact is entered into with all other jurisdictions which have also joined. The compact provides a mechanism for transporting patients with communicable diseases between states for treatment. A threatening communicable disease is defined as "a disease that causes death or great bodily harm, passes from one person to another and for which there is no means by which the public reasonably can avoid the risk of contracting the disease." Although patients who object to a transfer have the right to request a court hearing, their consent is not necessary. The compact provides for an allocation of costs, treatment of non-residents who are sick and in New Mexico, transfer to more appropriate treatment facilities in other states, and priorities for admitting patients. The bill provides that the director of the Public Health Division of DOH or their designee is the "compact administrator" whose primary duty is to coordinate patient transfers and pay the costs of transferring patients out of state.

### Significant Issues

DOH notes the Interstate Compact on Communicable Disease would be an important public health tool in preventing the transmission of communicable diseases, for example, active tuberculosis. Individuals who are diagnosed with active tuberculosis and are non-adherent in taking their medications can, under court order, be confined in order to prevent transmission of the disease. New Mexico does not have a suitable secure facility to retain and treat these patients. An Interstate Compact on Communicable Diseases would enable New Mexico to enter into compacts with other states in order to provide access to specialized health care facilities not available in the state.

AG notes a bill in this form has been submitted to the New Mexico Legislature for consideration during the past several sessions. Research indicates that no other state has adopted this compact. According to an analysis submitted by the Health Policy Commission in 2003, New Mexico receives hantavirus patients from Arizona and Colorado since the UNM hospital has expertise in treating that disease. New Mexico also transfers tuberculosis patients to Texas because New Mexico does not have a suitable treatment facility.

The bill and compact provide for cost allocation between the sending and receiving states. Generally the sending state pays the costs of transportation and treatment. Although there is an “anti-donation clause” exception for treatment of the sick, New Mexico would be financially obligated to pay the cost of transporting and treating patients sent to another state under the compact. The receiving state must agree to receive and treat the patient.

The compact does not require patient consent before transfer to another state. Patients who agree to detention and treatment, or who are ordered detained and treated by a court under a public health act may be transported and treated in another state without their consent. Notice is required, and patients are given the right to request a hearing before transfer.

HPC analysis indicates, under the Eligibility and Transfer article, funds and bed space have to be available regardless of whether the person has a communicable disease and irrespective of primary residence. This may mean that a person cannot be sent to an out-of-state institution (pursuant to a written agreement with the receiving state) due to lack of funds, beds or both.

### **FISCAL IMPLICATIONS**

Although there is no appropriation associated with this bill, AG notes the state of New Mexico would be obligated under the terms of the compact to pay the costs of transportation and treatment of patients it sends to other states.

HPC notes the bill does not describe the source of the financing for out-of-state health care expenditures. Given the nature of communicable diseases, this could be a large potential liability to the state. For example, assume hundreds of New Mexico SARS or bioterrorism patients having to receive care out-of-state would be a significant expenditure to the state of New Mexico. Additionally, the bill is silent about what constitutes the total time limit involved in which “sending” state has the fiscal liability. Does it include follow up care for out-of-state providers? Would it include long-term or rehabilitative care if required?

## **ADMINISTRATIVE IMPLICATIONS**

DOH indicates the existence of this compact would improve DOH's administrative efficiency when handling individual cases. Administrative implications related to interstate transfers of patients in response to a public health emergency would be accomplished through a declared emergency by the governor.

## **TECHNICAL ISSUES**

HSD recommends adding under Article II definition of "party state."

HPC notes the bill appears to address issues with transfers between facilities and suggests review of federal Emergency Medical Treatment and Active Labor Act of 1986 (EMTALA) law to ensure compliance with all of the current issues and language associated with patient transfers and obligations of receiving/sending facilities. The EMTALA law deals with medical stabilization as well, which is not noted in this section of the bill.

## **OTHER SUBSTANTIVE ISSUES**

DOH indicates, without directly observed therapy, approximately 25 percent to 33 percent of patients with active tuberculosis will not take the required medications and will likely relapse. A minority of individuals diagnosed with active tuberculosis may not have ties to the community, are without a support system encouraging adherence to regimen (which may last from six months to two years), or fundamentally refuse to take the medications. These individuals must be confined in order to ensure that the prescribed regimen is completed so that they no longer threaten the public health by infecting others.

New Mexico does not have a facility devoted to the care of infected patients who must be confined in order to ensure the completion of treatment. There are no secure wards to treat such active infectious disease in any acute care facility. Consequently, when a patient with active tuberculosis refuses to be treated voluntarily and a court order for treatment is obtained, the options for confinement essentially involve the client being placed in isolation at a local hospital or state hospital with permanent security guards or more commonly, at a detention center which should only serve as a temporary hold for the client's protection.

Texas has established a secure treatment facility for infectious diseases with the necessary specialized staff. Legislation was recently passed in Texas allowing the treatment of non-residents in state facilities. The passage of an Interstate Compact on Communicable Diseases would allow New Mexico to take advantage of this now-available resource.

The ability of New Mexico to send a noncompliant individual to Texas for treatment would help protect the public health by ensuring that the individual receives treatment. By utilizing an already existing facility, New Mexico would also be spared the expense of maintaining such a facility for only a few individuals.

HPC notes the Public Health Emergency Response Act was enacted to provide the state of New Mexico the ability to manage public health emergencies, including handling "threatening communicable diseases" that pose a threat to the population of New Mexico. Under the act, HIV/AIDS is not considered as threatening. Under the act, the state is charged with managing

public health emergencies in a manner that protects the rights and liberties of individuals and to provide access to appropriate care, if needed, in the event of a public health emergency.

Additionally, the bill recognizes that cooperative action is needed between New Mexico and neighboring states to find and expedite treatment for patients with threatening communicable disease. Treatment location should be focused on the most effective and efficient care to benefit the patient and not related to the patient's primary residence, while at the same time considering community safety factors.

During a public health emergency due to bioterrorism or some sort of communicable outbreak, DOH would have the potential to rely on a pre-established compact for inter-state transfer of patients who require specialized care when the resources in New Mexico are depleted or unavailable. It would also allow for DOH to assist other states that have a need for assistance in such events. Patient population and transfer patterns do not recognize state boundaries (e.g., Las Cruces/El Paso; Eastern New Mexico/Western Texas; Farmington/Colorado and Silver City/Tucson). Experience with the trauma system demonstrates that the transfer across state lines is routine and occurs daily.

#### **ALTERNATIVES**

HPC recommends incorporating this legislation into the Public Health Emergency Response Act (NMSA 12-10A-1), which already provides the basic rules for handling public health issues regarding threatening communicable diseases.

**KBC/sb**