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FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/2005

SPONSOR Jennings LAST UPDATED _____ HB _____

SHORT TITLE Civil Damages for Voluntary Services, CA SB SJR13

ANALYST McSherry

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	Minimal	Non-recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AGO)
 Regulation and Licensing Department (RLD)
 New Mexico Medical Practice Board.(NMMPB)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 13, "Civil Damages for Voluntary Services" proposes a constitutional amendment to allow for licensed individuals providing services voluntarily and without compensation not to be held liable for any civil damages as a result of providing those services.

FISCAL IMPLICATIONS

The resolution would not have any direct financial implication other than the inclusion of the proposed amendment on ballots and the determination of vote on the amendment.

SIGNIFICANT ISSUES

According to RLD, if the proposed amendments became part of the constitution, any licensed practitioner could avoid liability for malpractice simply by providing the service for free. This could mean that a practitioner could avoid malpractice actions by simply failing to bill a patient that had been harmed.

RLD contends that, although a practitioner could avoid civil liability, it is not clear whether a board could take disciplinary action against a licensee if this becomes law.

NM Medical Board cites New Mexico law (24-10-3 NMSA) as already providing protection from civil damages for persons who come to the aid or rescue of another person during an emergency. The Board contends that the proposed Constitutional Amendment would broaden this protection to a dangerous degree because immunity from civil suit would be extended to all licensed professionals simply because they are providing their services for free.

According to the NM Medical Board, for the medical profession, the amendment proposed by SJR 13 would mean that any physician, physician assistant, nurse or other health care practitioner who provided services without cost, under any circumstances, could not be held civilly accountable for even the worst possible outcome for the patient.

The Board contends that, just because the care rendered is provided for free and “in good faith” does not mean that it will be quality care, or that it might not have a seriously harmful impact on the health of the patient.

The Board further contends that:

- Some low-income New Mexicans may ask for or receive medical care free of charge – their indigent status should not make them any more vulnerable to poor medical care than a paying patient.
- Physicians and other individuals who come to the aid of a fellow citizen in an emergency deserve the protection of the Good Samaritan law, and possibly of a Good Samaritan Constitutional Amendment. In situations that are not emergencies, however, the potential risks to the health and safety of New Mexicans are too great to provide immunity simply because services are provided without cost.

OTHER SUBSTANTIVE ISSUES

The Attorney General’s Office asserts that, unlike “Good Samaritan” statutes that aim at relieving individuals who come to the aid/assistance of injured individuals from civil liabilities, this amendment focuses only on licensed individuals who volunteer services within the scope of their license.

AGO further reports that:

- Several states have enacted legislation protecting certain licensed individuals from liability while volunteering during emergency responses. For example, California, Colorado, Connecticut, Florida, Georgia, Kansas, Kentucky, Maryland, Missouri, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Virginia and Washington have a good Samaritan statute protecting architects, and sometimes engineers, during disaster responses; the Volunteer Protection Act of 1997 (42 USC §14501), as the name implies, protects all volunteers from liability with certain exceptions.)
- In New Mexico, there are three statutes dealing with good Samaritans:
 - The statute for professional engineers or professional surveyors addresses that issue in NMSA 1978, section 61-23-31.1;
 - The Energy Emergency Powers Act addresses the issue in section 12-12-28, for volunteers mitigating or attempting to mitigate the effects hazardous material releases; and

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- The Health and Safety Act in section 24-10-3 relieves from liability persons coming to the aid and rescue of other persons at the scene of an emergency.
- This proposed amendment to the New Mexico Constitution (SJR 13) would only addresses licensed volunteers and shield them from liability in the exercise of the licensed activity.

ALTERNATIVES

The New Mexico Medical Board suggests carving out physicians and other health care providers from the proposed amendment, or including them only with language that matches 24-10-3.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Licensed professionals who provide free but flawed services may be faced with civil suits.

EM/mt