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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/07  
 SPONSOR Grubestic LAST UPDATED 02/21/07 HB \_\_\_\_\_  
 SHORT TITLE Health Facility Receivership Liability SB 399/aSJC  
 ANALYST Geisler

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		(\$0.1)	(\$0.1)	(\$0.1)	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Enactment of this bill may reduce Costs. See Narrative

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)  
 Attorney General (AG)  
 Health Policy Commission (HPC)  
 Human Services Department (HSD)

### SUMMARY

#### Synopsis of SJC Amendments

The Senate Judiciary Committee amendments to Senate Bill 399:

- 1) Extends the notice of hearing requirement from 15 to 30 days and requires publication of a notice in a newspaper of general circulation at least 30 days prior to a hearing date;
- 2) Clarifies the receiver's limited liability for nonpayment of the health facilities pre-existing debts. As now written, the receiver's responsibility extends only to services deemed directly related to facility operations, providing adequate care, and providing necessary services.

#### Synopsis of Original Bill

Senate Bill 399 proposes an amendment to the Health Facility Receivership Act (NMSA Sections 24-1E-1 to 24-1E-7) to clarify the receiver (Secretary of DOH) and deputy receiver's powers and duties and limit their financial liability in performing acts directly related to a health

facility's continued operations while providing necessary services to residents or other persons in the health facility.

## **FISCAL IMPLICATIONS**

DOH notes that they are currently paying monthly attorney fees to defend a deputy receiver against claims for obligations incurred prior to a receivership undertaken by the state in 2005. Protections provided under this legislation would reduce the legal fees and internal resources utilized to defend against such claims.

## **SIGNIFICANT ISSUES**

The AG notes that the Secretary of the New Mexico Department of Health is authorized to apply for appointment as a receiver for a health facility under the Health Facility Receivership Act if the facility is being operated without a valid license; or the facility will be closed and adequate arrangements to relocate residents have not been made; or the facility has been or will be abandoned; or the residents are in danger. This bill protects the Secretary from certain claims and obligations contracted for by the owners of the facility prior to the receivership and which are unrelated to the operation of the facility.

Provided by DOH:

Once it is determined that receivership is necessary, a qualified deputy receiver is contracted to handle the on-site operations of the health facility. DOH has taken 7 healthcare facilities into receivership since the Act's inception.

- Currently the Health Facility Receivership Act only provides DOH and any deputy receiver the ability to void, with state court approval, those financial obligations incurred by the health facility within 1-year prior to receivership. To void the obligations and debt incurred within the 1-year period prior to receivership, DOH or the deputy receiver must prove "actual" intent to defraud by the health facility. This standard is exceptionally difficult to attain and problematic while putting an additional burden on the deputy receivers.
- All other outstanding obligations incurred by the health facility greater than a year old can be passed onto DOH and the deputy receiver and no statutory relief is granted.
- Under New Mexico law, DOH may not indemnify its deputy receiver because this conflicts with the Anti-Donation Clause of the NM Constitution (Art 9, Section 14) in that state money cannot be used for private enterprise.

The purpose of amendments to the Health Facility Receivership Act is to limit the liability to DOH and any appointed deputy receiver and without these protections the DOH will have tremendous difficulty finding and contracting deputy receivers. DOH is currently defending a deputy receiver against claims involving financial obligations incurred by the former owners of a nursing home prior to the receivership action.

SB 399 allows for nonpayment of any obligation or debt deemed by the receiver or deputy receiver to be unrelated to providing the necessary care and shall not subject the receiver or deputy receiver to the liability, but will not relieve the health facility from liability upon

termination of receivership. At their discretion, creditors may still seek relief provided by breach of contract law.

SB 399 does not authorize a complete invalidation of all contractual agreements and debts, but establishes a criteria and procedures to be followed by DOH, deputy receivers, and any creditor when attempting to recoup those obligations of the health facility.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

**DOH provides:**

Receivership is a key element of DOH's regulatory role and the department's capacity to ensure the safety and quality of service to residents, consumers and patients of failing health facilities. Failure to enact this bill will significantly diminish DOH's ability to fulfill this key regulatory role.

Not enacting SB 399 will continue to put DOH and any appointed deputy receiver at financial risk by not limiting their liability. The liability issue will reduce the already limited number of competent deputy receivers and could ultimately preclude DOH from contracting with competent deputy receivers.

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