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FISCAL IMPACT REPORT

SPONSOR Sanchez, M. **ORIGINAL DATE** 02/27/11 **LAST UPDATED** _____ **HB** _____
SHORT TITLE New Statutes of Limitation Established **SB** 390
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		*See Fiscal Impact			Recurring	PCF

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

Department of Health (DOH)

New Mexico Medical Board (MB)

SUMMARY

Synopsis of Bill

Senate Bill 390 (SB 390) amends Section 37-1-8 to eliminate time limitations on when an action can be brought against a health care provider for medical malpractice and against a surety for personal injury.

FISCAL IMPLICATIONS

*PRC reports that the Patient's Compensation Fund (PCF) and insurers that provide the primary layer of coverage for participating health care providers will be liable for paying claims filed more than three years after alleged incidents of malpractice. This potential for late-reported claims will increase the insurance premiums charged to health care providers in the PCF and will reduce the desire for some insurers to continue to participate in the fund.

SIGNIFICANT ISSUES

In New Mexico, any medical malpractice action for injury or wrongful death must be brought within three years from the date when the alleged malpractice occurred. A minor under the age of six has until his ninth birthday to bring a medical malpractice action.

The New Mexico Supreme Court has ruled that under certain circumstances the application of the statute is unconstitutional. In the case of a child who suffered a cardiac arrest two years and 280 days after the last day of treatment, the court ruled that 85 days was an unfairly short period of time between the injury and the running of the statute. *Garcia v. La Farge*, 119 N.M. 532, 893 P.2d 428 (1995).

PERFORMANCE IMPLICATIONS

Health care providers may need to retain records for an indefinite period of time.

OTHER SUBSTANTIVE ISSUES

The PCF was established to limit medical malpractice liability to \$200,000 per occurrence and is financed by a surcharge on all eligible healthcare providers. The fund pays the excess over \$200,000 per occurrence of any judgment obtained in a medical malpractice action against a qualified health care provider, but does not cover punitive damages. New Mexico caps damages at \$600,000. Payments for future medical care and related benefits are not subject to this limit.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current three-year statute of limitations will remain in place.

QUESTIONS

How often does PRC Insurance Division adjust the surcharge fees based on true actuarial data?

AHO/svb