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FISCAL IMPACT REPORT

ORIGINAL DATE 03/14/11

SPONSOR SJC LAST UPDATED _____ HB _____

SHORT TITLE Dental Professional Liability Act SB 467/SJCS

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	\$150.0*	\$150.0*	\$300.0*	Recurring	Dental Board Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative of the Courts (AOC)
 Attorney General's Office (AGO)
 Regulation & Licensing Department (RLD)
 Department of Health (DOH)

Note: All responses were received on original bill. Comments from them are included in this analysis of the SJC substitute for SB 467 to the extent they appear to apply to the provisions of the substitute.

SUMMARY

Synopsis of Bill

The Senate Judiciary Committee substitute for Senate Bill 467 enacts the Dental-Legal Review Commission Act. The Commission's function is to provide panels to review all dental professional liability claims against dental care providers licensed or certified by the state.

The Commission is overseen by a director, who must be an attorney and is hired by the director of the Administrative Office of the Courts, who sets the director's salary. The Commission director serves at the pleasure of the AOC director. The Commission provides panels, each composed of, in addition to the Commission director, three New Mexico licensed dentists and three New Mexico lawyers, who must hear any dental malpractice claim before a lawsuit may be filed against a provider. A panel decides only if there is substantial evidence that malpractice occurred and if there is a reasonable probability that the malpractice caused the patient's injury. The panel's decision is not public, is not binding on the parties, is not admissible in any subsequent legal action, has no administrative or judicial authority and is not subject to

subpoena. The Act also tolls the statute of limitations for filing a lawsuit in order to allow a claim to be heard by a Commission panel. In addition, it makes provision for an expert witness in cases where a determination in favor of the patient is made.

FISCAL IMPLICATIONS

The Act requires the New Mexico Board of Dental Health Care (Board) pay all expenses incurred in carrying out the powers, duties and functions of the commission, including salary of director, from licensing fees, not to exceed \$150,000 in a single calendar year. The RLD reports that:

The fiscal impact to create a New Mexico Dental-Legal Review Commission is projected at \$150,000. Currently the Board is operating in a negative fund balance due to deferred revenue; however, the fund balance is projected to reflect a positive fund balance in the next three fiscal years.

The current operating budget for the Board is \$424.5 and the projected revenue for FY 11 is \$544.2 which leaves a difference of \$119.0 of revenue collected in excess of budget. The Board has the ability to increase fees for the following license types: dentists, dental Hygienists and dental assistants. By increasing fees the Board will be able to implement the creation of the New Mexico Dental-Legal Review Commission; however, it will affect how quickly the fund balance of the board will return to a positive balance.

SIGNIFICANT ISSUES

SB 467 is substantially different from the Medical Malpractice Act which governs medical malpractice claims against qualified health care providers. SB 467 sets no damage award limitations or statute of limitations, nor does it create any fund for payment of compensation. It is limited in its scope to creating the Dental-Legal Review Commission and providing a structure under which all dental professional liability claims are heard by Commission panels prior to the instigation of any litigation alleging dental malpractice.

The AGO notes that any type of malpractice or professional liability act will be subject to legal scrutiny. It cites eight appellate decisions addressing challenges to various provisions of the Medical Malpractice Act in which the courts have: upheld the application of that act to third party claims, determined the level of specificity needed in a claim filed with the review commission, found that the act did not apply to criminal acts, applied the statute of limitations under varying circumstances, and upheld the application of the damage cap.

PERFORMANCE IMPLICATIONS

The AOC reports that the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas: cases disposed of as a percent of cases filed and percent change in case filings by case type.

TECHNICAL ISSUES

Section 4 contains a reference on page 3, line 17 to a “qualifying” dental care provider. Since this bill applies to all such providers and contains no qualifying criteria, that reference may be no longer relevant.

Section 11 contains a reference on page 10, lines 17-18 to a “malpractice claim”. In light of the definition for “dental professional liability claim” contained in Section 2(C), use of that defined phrase may be more consistent.

OTHER SUBSTANTIVE ISSUES

The DOH reports that thirty-two New Mexico counties have a dental professional shortage. Health Professional Shortage Areas (HPSAs) are designated by the federal Health Resources and Services Administration (HRSA) as having shortages of primary medical care, dental or mental health providers and may be geographic (a county or service area), demographic (low income population), or institutional (comprehensive health center, federally qualified health center or other public facility). Medically Underserved Areas and Populations also have high infant mortality, high poverty and/or high elderly population.

The DOH Office of Primary Care and Rural Health also reports that there are six New Mexico counties without a dentist.

MD/bym:svb