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FISCAL IMPACT REPORT

SPONSOR <u>Baca/Schmedes</u> SHORT TITLE <u>Medical Malpractice Definition of Occurrence</u>	LAST UPDATED _____ ORIGINAL DATE <u>3/6/23</u> BILL NUMBER <u>Senate Bill 446</u> ANALYST <u>Esquibel</u>
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ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PCF Impact		Indeterminate	Indeterminate	Indeterminate	Recurring	Patient's Compensation Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (NMAG)
 Department of Health (DOH)
 Human Services Department (HSD)
 Office of Superintendent of Insurance (OSI)

SUMMARY

Synopsis of Senate Bill 446

Senate Bill 446 (SB446) would amend Section 41-5-3 NMSA 1978, within the Medical Malpractice Act (MMA), to change the definition of "occurrence" to mean all claims for damages from every person seeking damages that arise from harm to a single patient, no matter how many qualified healthcare providers or errors or omissions contributed to the harm.

SB446 would amend Section 41-5-6 NMSA 1978 to remove the prohibition against limiting recovery to only one maximum statutory payment if separate acts or omissions cause additional or enhanced injury or harm as a result of the separate acts or omissions.

FISCAL IMPLICATIONS

OSI notes it cannot determine the impact of the proposed legislation to the patient's compensation fund.

Volume 2 of the LFC annual recommendation to the Legislature, *Legislative for Results: Appropriations Recommendations*, notes:

The patient’s compensation fund (PCF) pays malpractice settlements for member physicians and hospitals. Established under the New Mexico Medical Malpractice Act, the program provides affordable malpractice coverage that caps the amount of damages awarded against the member healthcare providers. The fund’s solvency has been a concern in recent years as Laws 2021, Chapter 16, amended the Medical Malpractice Act to include new providers eligible for participation in the PCF, raised the required underlying coverage limit from \$200 thousand to \$250 thousand, and increased the cap on nonmedical damages for independent providers from \$600 thousand to \$750 thousand in 2022, with an inflation adjustment annually thereafter.

Laws 2021, Chapter 16, also required the PCF deficit be eliminated by January 1, 2027. The fund has a projected deficit of almost \$69 million despite a \$30 million infusion of state funds during the 2022 regular legislative session. According to a September 2022 actuarial report, OSI would need to issue a 32 percent surcharge increase to meet solvency requirements, which could potentially push physicians out of the PCF or, worse, out of the state. Instead, the superintendent issued a 10 percent surcharge increase on physician contributions to the PCF coupled with proposed changes to the Medical Malpractice Act that would result in cost-savings to the fund. Suggested statutory changes included limiting “medical care and related benefits” only to amounts actually paid by or on behalf of an injured patient and accepted by a healthcare provider in payment of charges, clarifying what constitutes a “reasonable charge,” and permitting examinations to determine the necessity of future medical care.

SIGNIFICANT ISSUES

The Office of Superintendent of Insurance (OSI) reports a clear definition of “occurrence” would assist OSI and the patient’s compensation fund (PCF) advisory board in determining how to set the surcharges on qualified healthcare providers to attain and maintain the solvency of the PCF. An unclear definition makes rate setting difficult and may cause inaccuracies in projecting future PCF assets and liabilities.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

AOC notes SB446 conflicts with HB63, HB465, and SB296 (also amending Sections 40-5-3 and 40-5-6 NMSA 1978), and HB88 and SB447 (also amending Section 40-5-6 NMSA 1978). HB63 proposes to reverse the changes made to the Medical Malpractice Act in 2021, including guidance as to what constitutes an “occurrence.”

TECHNICAL ISSUES

The Attorney General’s Office notes the proposed definition of “occurrence” can cause confusion as it uses the term “harm” rather than “injury,” and the rest of the act uses the term “injury.”

The proposed definition of “occurrence” does not provide a clear meaning for “damages.” It is unclear if the “damages” reference punitive damages and past and future care and related benefits.

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