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FISCAL IMPACT REPORT

SPONSOR <u> SHPAC </u>	LAST UPDATED <u> 2/10/24 </u> ORIGINAL DATE <u> 2/1/24 </u>
SHORT TITLE <u> Health Care Consolidation Oversight Act </u>	BILL NUMBER <u> CS/Senate Bill 15/ec/SHPACS/aSJC/aSf1#1 </u>
ANALYST <u> Esquibel </u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Health Care Authority		\$50.0 to \$125.0	\$50.0 to \$125.0	\$100.0 to \$250.0	Recurring	General Fund
Health Care Authority		\$50.0 to \$125.0	\$50.0 to \$125.0	\$100.0 to \$250.0	Recurring	Federal funds
Total		\$100.0 to \$250.0	\$100.0 to \$250.0	\$200.0 to \$500.0	Recurring	

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

Senate Bill 224 is a companion to Senate Bill 15.

Sources of Information

LFC Files

Agency Analysis Received From
 Attorney General’s Office (NMAG)
 Health Care Authority (HCA)
 Office of Superintendent of Insurance (OSI)

SUMMARY

Synopsis of SFI#1 Amendment to the SHPAC Substitute for Senate Bill 15

The Senate Floor #1 amendment to the Senate Health and Public Affairs Committee (SHPAC) substitute for Senate Bill 15 (SB15/SHPACS) clarifies post-transaction reporting shall describe the growth, decline and other changes in services provided by the *person*.

Synopsis of SJC Amendment to the SHPAC Substitute for Senate Bill 15

The Senate Judiciary Committee (SJC) amendment to the Senate Health and Public Affairs Committee (SHPAC) substitute for Senate Bill 15 (SB15/SHPACS) clarifies that being subject to the Health Care Consolidation Oversight Act does not preclude or negate any *person* regulated pursuant to the Insurance Holding Company Law.

The SJC amendment also clarifies that the *person* that acquires control over the hospital through an approved or conditionally approved transaction shall submit reports to the Office of Superintendent of Insurance (OSI) and Health Care Authority (HCA) in the form and manner prescribed by OSI annually for three years after approval or conditional approval.

Synopsis of Original SHPAC Substitute for Senate Bill 15

The Senate Health and Public Affairs Committee (SHPAC) substitute for Senate Bill 15 (SB15/SHPACS) would create a review process that allows the Office of Superintendent of Insurance (OSI) to determine whether proposed transactions that materially change the control of a New Mexico hospital, excluding state- and university-owned facilities, could negatively impact the availability, accessibility, affordability, and quality of healthcare for New Mexicans.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

OSI reports, given the reduced scope of SB15/SHPACS from monitoring all healthcare entity transactions to just hospital transactions, OSI can absorb the costs within its existing resources.

The Health Care Authority (HCA) reports the review process described in SB15/SHPACS may have a fiscal impact to the Medicaid program ranging from \$50 thousand to \$125 thousand per year, depending on scope of the review and expertise required. The potential fiscal impact depends on the scope of the review and required expertise and is based on the cost of actuaries and auditors.

SIGNIFICANT ISSUES

OSI notes healthcare mergers and acquisitions are growing in New Mexico and across the nation, while evidence mounts that such transactions lead to higher prices without clear quality improvements, and in some circumstances lead to a reduction in services. Kaiser Family Foundation reports prices have increased between 6 percent and 17 percent due to these types of mergers.

However, healthcare mergers and acquisitions can help stabilize finances for smaller healthcare entities or expand services in a local area. Administrative efficiencies can be affected when a smaller entity is acquired by a larger entity. Sometimes a merger or acquisition is the only way for a healthcare entity to remain solvent.

OSI reports New Mexico currently does not have a review process in place to determine whether a proposed transaction involving a change of control in a hospital could negatively impact the availability, accessibility, affordability, or quality of care for New Mexico residents. SB15/SHPACS would create a process for OSI, in consultation with HCA, to review such transactions to ensure they are in the public interest.

The Attorney General's Office (NMAG) notes OSI was established by constitutional amendment which provides OSI "shall regulate insurance companies and others engaged in risk assumption

in such manner as provided by law.” SB15/SHPACS would give OSI regulatory authority over hospitals, not insurance companies. A constitutional amendment could be required to expand the jurisdiction of the Superintendent of Insurance because Article XI, Section 20 could be construed to preclude the Superintendent from regulating entities that are not insurers or engaged in risk assumption.

ADMINISTRATIVE IMPLICATIONS

NMAG indicates SB15/SHPACS does not provide any governmental entity with rule-making authority to develop regulations to implement the provisions of the bill. SB15/SHPACS lists factors OSI shall consider during the review to determine whether a proposed transaction should be approved or denied. Certain factors to be considered (i.e., whether a proposed transaction results in a potential loss or change in access to essential services, or what constitutes an improvement in health outcomes) could be difficult to evaluate without further clarification as to how such a determination is to be made. Vesting an agency with rule-making authority could provide more efficiency to the review process and give the public and affected hospitals a meaningful opportunity to participate in the process.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 224 includes a \$1.5 million general fund appropriation in FY25 for implementation of the Health Care Consolidation Oversight Act.

TECHNICAL ISSUES

HCA notes the following:

SB15/SHPACS specifies the timing of review and notification of the completion by the OSI. But the bill does not outline how OSI will coordinate with HCA’s Division of Health Improvement (DHI) regarding the timing of the review and approval of the transaction and the timing of licensing and change of ownership. The timing is unclear about whether the review and approval process by OSI would take place first, if the licensing process would occur first, or if they would occur simultaneously. The bill is unclear if a potential situation could occur where either OSI or DHI may approve their process and the other deny approval creating a conflict.

NMAG indicates other states that have adopted oversight legislation (i.e., Connecticut, Massachusetts), generally give authority to approve proposed healthcare entity transactions to their state attorneys general. SB15/SHPACS does not include the Attorney General within those governmental entities vested with providing review, oversight, and consultation. While state attorneys general around the country generally retain authority to bring anti-trust lawsuits that may have a significant impact to the public, this legislation should provide a mechanism by which attorneys general are required to receive notice of a proposed transaction.

OTHER SUBSTANTIVE ISSUES

NMAG reports the National Academy for State Health Policy (NASHP) notes, “A growing body of evidence demonstrates that healthcare consolidation leads to higher healthcare costs with little to no increase in quality.” See <https://nashp.org/a-tool-for-states-to-address-health-care->

consolidation-improved-oversight-of-health-care-provide r-mergers/. For these reasons, states have adopted legislation similar to SB15/SHPACS that seeks to provide state health agencies and attorneys general with more oversight of proposed healthcare entity transactions.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMAG writes if SB15/SHPACS is not enacted, any potential contracts and agreements that may have anti-trust implications will continue to be subject to the New Mexico Anti-Trust Act (NMSA 1978, §§ 57-1-1 et. seq.), which allows the Attorney General and any person threatened with injury to bring anti-trust actions.

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