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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/07
 LAST UPDATED 01/14/07 HB 398/aHBIC

SPONSOR King

SHORT TITLE Certain Malpractice Premiums Emergency Fund SB _____

ANALYST Hanika Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$1,000.0	recurring	general fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$.1 see narrative			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)
 Health Policy Commission (HPC)
 Public Regulation Commission (PRC)
 Human Services Department (HSD)
 Medical Board

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee Amendment replaces the word “emergency” with “supplemental” when referring to use of the fund for malpractice premiums; and, allows for licensed midwives to fall under the provisions of the bill. The amendment further clarifies that either indigent or Medicaid patients must constitute at least one-half of a midwife, nurse or physician’s practice.

Synopsis of Original Bill

House Bill 398 appropriates \$1 million from the general fund to the birthing liability fund created in the state treasury to pay for a malpractice insurance premium for a nurse midwife or physician who “in an emergency” cannot afford the premium to purchase malpractice insurance for delivery of a child. The fund shall be administered by the DOH and will solicit contributions from non-governmental sources. Applicants for fund awards must be licensed in New Mexico, demonstrate need and merit, and provide evidence that Medicaid patients constitute at least one-half of their practice.

FISCAL IMPLICATIONS

The appropriation of \$1 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY08 or subsequent fiscal years shall not revert to the general fund. The use of legislative appropriations to fund malpractice premiums raises potential constitutional law questions under the Anti-Donation Clause of Article IX, Section 14.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

HPC reports that the cost of insurance is prohibitive for obstetrical providers. Between Aug. 2001 and July 2005 obstetrician premiums rose from \$40,801 to \$89,710. This is even with the cap in New Mexico on damages other than medical bills and punitive damages, as well as mandatory review of claims before a medical/legal panel. Certified nurse midwife premiums rose from \$19,347 to \$36,366 for the same period. Only those licensed midwives who deliver in birthing centers are able to obtain insurance, and at rates triple those from 2004. The market is even more restricted for licensed midwives who can obtain coverage from only one carrier.

One third of all babies born in New Mexico are delivered by midwives. This is by far the highest midwife-attended birthrate in the nation. New Mexico has approximately 166 midwives, three quarters of which are certified nurse midwives and the remaining are licensed midwives. Since midwives tend to service low-income families, a large part of licensed midwife reimbursement has been through Medicaid or self pay patients. The medical malpractice premiums consume roughly half of a midwives’ total annual income.

PERFORMANCE IMPLICATIONS

The bill establishes the "birthing liability fund" for physicians and nurse midwives but does not include licensed midwives. A licensed midwife is not a nurse but has met licensure requirements to perform a specified array of services. Licensed Midwives, not Certified Nurse Midwives, provide most out-of-hospital births and also are the practitioners for whom obtaining professional malpractice insurance is the greatest problem.

ADMINISTRATIVE IMPLICATIONS

DOH reports the Department will need additional staff time to develop rules, process applications and award funds.

TECHNICAL ISSUES

The “emergency” requirement is unclear in its intended purpose. Midwives and physicians do not purchase malpractice policies to cover an individual delivery of a child but rather to cover all of their deliveries and other professional exposures during a 12-month period.

ALTERNATIVES

In 2006 HSD implemented a Birthing Options Program that allows Licensed Midwives and Certified Nurse Midwives who certify they cannot obtain malpractice insurance at reasonable costs for out-of-hospital births to participate in the Medicaid Program. The mother acknowledges that she is aware the practitioner does not carry malpractice insurance. The governing statute of the Medical Board has no requirement that providers carry medical malpractice insurance.

AMENDMENTS

Delete the words “in an emergency” from paragraph A of Section 1.

Delete “physician” and replace with “licensed midwife” from paragraph A of Section 1.

The bill is silent as to whether this payment is to pay for the premium in total or as a supplement to what is paid for by the provider. Suggest the word “supplement” be added after “premium” on line 19 on page 1.

Providers who serve large proportions of patients who are uninsured but not eligible for Medicaid have the same access issues for malpractice insurance coverage. Suggest the addition of “ and/or self pay” after Medicaid on line 6 on page 2.

AHO/yr:nt