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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/21/11  
**LAST UPDATED** 03/13/11    **HB** 267/HHGACS

**SPONSOR** HHGAC

**SHORT TITLE** Amend Medical Malpractice Act    **SB** \_\_\_\_\_

**ANALYST** Esquibel

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	Moderate	Moderate	Recurring	Patient's Compensation Fund

(Parenthesis ( ) Indicate Revenue Decreases)

HB267 relates to SB332, SB333 and HB282.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

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

### SUMMARY

#### Synopsis of HHGAC Substitute

The House Health and Government Affairs Committee Substitute for House Bill 267 amends the Medical Malpractice Act and:

- Includes business entities that provide health care services, such as doctor corporations and partnerships, and raises the current \$600,000 awards cap.
- Revises the language regarding the definition of a “corporation.”
- Raises the maximum cap on liability to \$1,000,000 as of January 1, 2012.
- Establishes a cost of living adjustment (COLA) on the liability cap based on the urban consumer price index, but not to exceed 3% annually. The COLA would begin July 1, 2014 and take effect the July of each subsequent year.
- Includes a provision that all settlements and awards will remain confidential.
- Defines health care providers as medical and osteopathic doctors, chiropractors,

podiatrists, physician assistants, certified registered nurse anesthetists, hospitals and outpatient facilities.

## **FISCAL IMPLICATIONS**

HB267/HHGACS requires each hospital and medical facility, business entity or health care to pay into the Patient's Compensation Fund an annual surcharge that will be based on "sound actuarial principals."

The Patient's Compensation Fund, which is the fiscal element of the Medical Malpractice Act, is funded exclusively from surcharges assessed to health care providers covered under the Act. Personal liability for a health care practitioner remains limited at \$200,000 with the remainder covered by the Patient's Compensation Fund.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The Medical Board indicates SB332 and duplicate bill HB282 amending the Medical Practice Act are unnecessary if either HB267 or SB333/SJCS pass because both of these bills would amend the Medical Malpractice Act to clarify that business entities providing health care services are health care providers under the Medical Malpractice Act.

HB267 also relates to the following bills:

- HB 454 would amend the Insurance Code to prohibit risk retention groups from providing the primary layer of medical professional liability insurance required of health care providers that are covered under the Medical Malpractice Act.
- HB 552 would provide award caps for hospitals that are not in the Patient's Compensation Fund as well as provide award caps for ambulances.
- HB 590 would raise the awards cap to \$1,500,000 and would allow injured patients to sue the underlying insurer and the Patient's Compensation Fund for their alleged failure to settle claims fairly and promptly.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Medical Board writes: "The Superintendent of Insurance of the Public Regulation Commission has raised concerns about the definition of a "medical corporation" as provided in the Medical Malpractice Act, expressing concern that although regulated and certified as a "corporation" by the State of New Mexico, that "medical corporations" are not "licensed" or "certified" by the State of New Mexico "to provide health care." Given the number of physicians in New Mexico who are either incorporated, have a limited liability company or a partnership, if this issue is not resolved this will adversely affect the heretofore attractiveness of New Mexico to practitioners, and retention of licensed practitioners in New Mexico: the malpractice insurance "cap" may no longer apply to their PCs or their LLCs.

This ruling is in direct contravention of two prior, formal Attorney General's letters (see attached: Buzzard, 1977 and Stratton, 1987), and the chilling effect it would have to the State of New Mexico when there is already a shortage of physicians. Further, the State of Texas, having

enacted strong tort reform would become significantly more attractive to physicians as a favorable State in which to establish their practice. Physicians must not be swayed from coming to New Mexico, or having to make a decision to leave New Mexico because New Mexico has undone a previously effective malpractice insurance coverage by creating a delimiting one.”

RAE/bym:mew