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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/11

SPONSOR Irwin LAST UPDATED _____ HB 454

SHORT TITLE Malpractice Insurance by Certain Groups SB _____

ANALYST Hanika-Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Medical Board (Board)
 Health Policy Commission (HPC)
 Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

House Bill 454 amends Section 59A-55-11 NMSA 1978 of the Insurance Code to prohibit risk retention groups (RRGs) from providing the base layer of medical professional liability insurance required of health care providers that are covered under the Medical Malpractice Act (Act).

FISCAL IMPLICATIONS

To be qualified under the Act, a health care provider must obtain base coverage from an insurer on an occurrence policy or maintain a substantial cash deposit with the Superintendent of Insurance. In addition to their base coverage premium payments, health care providers must also pay an annual surcharge to the Patients Compensation Fund.

PRC notes that New Mexico's Property & Casualty Insurance Guaranty Fund provides a mechanism for paying claims from those insurance companies that are fully licensed and regulated by the Insurance Division and that become insolvent. RRGs are exempt from participating in this Guaranty Fund. Therefore if a RRG becomes insolvent, there is a greater chance that any of its policyholders that are doctors and hospitals covered under the Act will be

personally responsible for paying the first \$200,000 of malpractice judgments or settlements awarded against them.

SIGNIFICANT ISSUES

HPC notes that the federal Liability Risk Retention Act (LRRRA) helps professionals among others obtain liability insurance which has become either unaffordable or unavailable. In passing the LRRRA, Congress created RRGs and purchasing groups (PGs) to provide insurance buyers with a marketplace solution to the “liability crisis” enabling them to have greater control of their liability insurance programs.

A RRG is a liability insurance company that is owned by its members. Under the LRRRA, RRGs must be domiciled in a state. Once licensed by its state of domicile, an RRG can insure members in all states. RRGs are often formed from trade and professional associations which serve as the sponsor for the RRG liability insurance program.

The type of insurance coverage permitted includes all types of third party liability, such as general liability, errors and omissions, directors and officers, medical malpractice, professional liability, products liability, and so forth. The LRRRA does not extend to workers compensation, property insurance, or to personal lines insurance, such as homeowners and personal auto insurance coverage. Before offering insurance coverage to state residents, RRGs and PGs must register with state insurance departments.

PERFORMANCE IMPLICATIONS

PRC maintains that HB 454 conflicts with the federal LRRRA, which prohibits states from restricting the rights of RRGs to write liability insurance anywhere in the United States.

ADMINISTRATIVE IMPLICATIONS

Although the LRRRA is a federal law, it has no enforcement mechanism of its own, and relies wholly on state insurance departments for its implementation. The state in which the RRG is domiciled has primary regulatory authority over the entity.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 454 relates to HB 267 (Amend Medical Malpractice Act) and SB 333 (Amend Medical Malpractice Act).

OTHER SUBSTANTIVE ISSUES

Between 1987 and 2010, 401 RRGs had been licensed in 29 states. At the end of 2010, there were 251 operating RRGs and 150 that had retired. As of February 2011, there were a total number 252 RRGs.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Insurance Code would not attempt to prohibit RRGs from writing health care provider malpractice liability insurance pursuant to the Medical Malpractice Act.