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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/02/11

SPONSOR Park LAST UPDATED \_\_\_\_\_ HB 590

SHORT TITLE Increased Medical Malpractice Regulations SB \_\_\_\_\_

ANALYST Sanchez, C.

### APPROPRIATION (dollars in thousands)

| Appropriation |      | Recurring<br>or Non-Rec | Fund<br>Affected |
|---------------|------|-------------------------|------------------|
| FY11          | FY12 |                         |                  |
|               | NFI  |                         |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Department of Health (DOH)  
 Health Policy Commission (HPC)  
 Medical Board (MB)

### SUMMARY

#### Synopsis of Bill

House Bill 590 (HB590) would amend the Medical Malpractice Act to raise the recoverable limits and to provide a right of action under certain circumstances for injured persons against the Patient's Compensation Fund and insurers. The bill would also include injured persons, the Patient's Compensation Fund and insurers under the Medical Article 16 NMSA 1978 and the Unfair Practices Act. The bill provides for an effective date of July 1, 2011.

**Section 1** would amend Section 41-5-2 NMSA 1978 of the Medical Malpractice Act such that the purpose of the Act would include advancing the public policy of New Mexico by providing access to the courts for victims of medical malpractice to pursue meritorious claims of medical negligence and to promote the fair and expeditious settlement of claims in which liability has become reasonably clear.

**Section 2** would amend Section 41-5-6 NMSA 1978 of the Medical Malpractice Act to raise recoverable limits such that the aggregate dollar amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice shall not exceed the following

amounts:

- \$600,000 per occurrence for acts of malpractice occurring prior to January 1, 2012; and
- \$1,500,000 per occurrence for acts of malpractice occurring on or after January 1, 2012; provided that on July 1, 2013 and on July 1 of each year thereafter, the superintendent shall adjust the maximum recoverable amount specified in this paragraph to correspond to the percentage change in the consumer price index between the end of the penultimate calendar year and the end of the immediately preceding calendar year.

**Section 3** would amend Section 41-5-7 NMSA 1978 of the Medical Malpractice Act such that awards of future medical care and related benefits would not be subject to the applicable limitation imposed in Subsection A of Section 41-5-6 NMSA 1978 as specified above.

**Section 4** would enact a new section of the Medical Malpractice Act to provide a right of action under certain circumstances for injured persons against the Patient's Compensation Fund and insurers.

**Section 5** would enact a new section of the Unfair Practices Act such that the failure of the Patient's Compensation Fund or insurers providing coverage under the Medical Malpractice Act to attempt in good faith to effectuate a prompt, fair and equitable settlement of the claims against a health care provider where liability has become reasonably clear is an unlawful practice under the Unfair Practices Act.

**Section 6** would enact a new section of Chapter 59A, Article 16 NMSA 1978 such that the provisions of Chapter 59A, Article 16 NMSA 1978 would apply to the Patient's Compensation Fund, insurers under the Medical Malpractice Act and persons injured by the negligence of a health care provider within the scope of the Medical Malpractice Act. The new section provides definitions of "insured" and "insurer".

**Section 7** provides that the effective date of the provisions of the Act is July 1, 2011.

## **FISCAL IMPLICATIONS**

According to the Health Policy Commission (HPC), HB590 could increase the total malpractice losses incurred by health care providers in the Patient's Compensation Fund.

## **SIGNIFICANT ISSUES**

Currently, New Mexico limits the total amount of recoverable damages in medical malpractice cases to \$600,000. This cap is not applicable to the value of accrued medical care and benefits. A health care provider's personal liability is limited to \$200,000 for monetary damages and medical care and related benefits as provided in Section 41.5.7 NMSA 1978. Any amount due from a judgment or settlement in excess of \$200,000 shall be paid from the Patient's Compensation Fund, as provided in Section 41.5.25 NMSA 1978.

The New Mexico Patient's Compensation Fund is financed by a surcharge on all qualified health care providers. To qualify under the Patient's Compensation Fund plan, a health care provider must pay the surcharge and carry liability insurance with limits of \$200,000 per occurrence or deposit an equivalent amount of security with the Superintendent of Insurance. (41-5-25, NMSA 1978).

According to the Department of Health, HB590 does not specifically increase a health care provider's personal liability; however, increasing the maximum recoverable malpractice amount may increase the cost of medical liability insurance.

### **PERFORMANCE IMPLICATIONS**

The Medical Malpractice Act, enacted in 1976, was intended to promote the health and welfare of the people of New Mexico by making available professional liability insurance for health care providers in New Mexico. The current law contains the following benefits for qualifying health care providers:

- \$600,000 cap on damages other than medical bills and punitive damages (the current recovery limit has not changed since 1995.);
- 3-year statute of limitations on the filing of a claim (subject to extension for minors);
- Mandatory review of claims by a medical/legal panel prior to the filing of lawsuits;
- State participation in malpractice insurance coverage via the Patient's Compensation Fund.

While the medical malpractice insurance debate usually focuses on the impact to providers, the impact on patients is equally important. These impacts include:

- Failures of the current system in improving patient safety;
- Increased healthcare costs due to defensive medicine and to malpractice claims; and
- Access to health care providers in impacted specialties.

According to HPC, Section 10607 of the federal Patient Protection and Affordable Care Act (PPACA) appropriates \$50 million for a five-year period beginning in FY11, for the Secretary of Health and Human Services to award demonstration grants to states to develop, implement and evaluate alternatives to the current tort litigation system for resolving disputes over injuries caused by a health care provider. Preference will be given to states that have developed alternatives in consultation with relevant stakeholders and that have proposals that are likely to enhance patient safety by reducing medical errors and adverse events and are likely to improve access to liability insurance.

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

According to the Department of Health (DOH), HB590 relates to HB267 which would amend the Medical Malpractice Act to change the name to the NM Medical Professional Liability Act, to clarify that business entities providing health care services are health care providers under the Act, to raise recoverable limits, to create specific liability and recoverable limits for hospitals, to create the hospital patient's compensation fund and to prohibit the disclosure of certain confidential information.

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

NM Medical Malpractice Act will be amended to increase the maximum aggregate liability for medical malpractice from \$600,000 to \$1,500,000.