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FISCAL IMPACT REPORT

SPONSOR Ingle ORIGINAL DATE 02/16/11
LAST UPDATED _____ HB _____
SHORT TITLE Amend Medical Malpractice Act SB 332
ANALYST Hanika-Ortiz

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$160.0	\$53.2	Recurring	OSF

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Medical Board (Board)
Regulation and Licensing Department (RLD)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 332 amends the Medical Practice Act (Act) to provide for the licensing of certain business entities. A business entity is defined as a “corporation, limited liability company or partnership that is licensed or seeking a license to practice medicine pursuant to the Medical Practice Act.”

The bill provides for the following:

Sections 1 and 2 amend Sections 61-6-1 and 61-6-6 NMSA 1978, to include coverage of a “business entity”, defined as a *corporation, limited liability company or partnership that is licensed to practice medicine pursuant to the Act*;

Section 3 amends Section 61-6-19 to include business entities in the fee requirements, including an application and renewal fee for a business entity license not to exceed \$400;

Sections 4 and 5 amend Sections 61-6-26 and -27 to include business entities in the triennial renewal fee requirements, including requirements for certificates of renewal and display, and penalties for failure to renew;

Section 6 adds a new section to the Act, providing that the Board may grant a license to practice medicine in NM to a business entity that is organized under the laws of NM and is *controlled* by persons licensed to practice medicine in NM. A business entity applying for a license or a renewal must pay a fee, provide equity ownership information, and provide the identity of directors and officers, managing members, or general partners, as well as *such other information as may be required by the board*. The board's responsibility and authority over business entities is limited to processing and either granting or denying license applications, assessing and collecting fees and suspending a license for nonpayment of fees.

This bill contains an emergency clause.

FISCAL IMPLICATIONS

The Board states that it has the capacity to implement the amendments to the Act and the additional revenue would help offset future expenses incurred with management. The revenue reflected in the table above is based on 400 applications at \$400 each in FY12.

New Mexico's Patient Compensation Fund (PCF) provides coverage for damages in excess of \$200,000 rendered against a health care provider pursuant to the Act. To qualify, individual health care providers must have at least \$200,000 in medical liability insurance or deposit \$600,000 in cash with the superintendent and pay a surcharge. The surcharge is determined by the superintendent based upon sound actuarial principles and must be collected from health care providers by medical liability insurers on the same basis as premiums.

Payments from the PCF are made in accordance with the court's payment schedule. If the PCF would be exhausted by payment of all claims in a given year, the amount paid to each party is prorated and subsequent payments made in the following calendar years. Several state patient compensation funds have had trouble maintaining their financial viability.

SIGNIFICANT ISSUES

The bill is an attempt to bring the business entities of doctors within the definition of "health care provider" under the Medical Malpractice Act, specifically NMSA 1978, § 41-5-3(A).

It has been suggested that the definition of health care provider as used in the Act does not include the corporations, limited liability companies, and partnerships formed by doctors of medicine. Therefore, these business entities may not be eligible for the protections provided by the Act and for participation in the PCF.

The Board believes that given the number of physicians who are either incorporated, have a limited liability company or a partnership, it may adversely affect the recruitment and retention of practitioners in New Mexico if the malpractice insurance "cap" does not apply.

PERFORMANCE IMPLICATIONS

The Board notes that the Superintendent of Insurance has raised concerns that "medical corporations" are not licensed or certified by the State to provide health care. Therefore, it remains uncertain whether these business entities are "doctors of medicine" for the purpose of PCF coverage and application of the State's medical malpractice "cap".

ADMINISTRATIVE IMPLICATIONS

Currently the Board licenses physicians, physician assistants, and anesthesiology assistants, but does not license the business entities that they own or that employ them.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 267 and SB 333 which amends the Medical Malpractice Act to clarify that business entities providing health care services are health care providers under the Act.

SB 332 conflicts with HB 267 and its duplicate bill SB 333 which amends and renames the Medical Malpractice Act to the New Mexico Medical Professional Liability Act and defines a health care provider to include business entities that provide health care services.

TECHNICAL ISSUES

A business entity applying for a license or a renewal must provide *such other information as may be required by the board*. The bill is vague on how the Board would use this information.

The bill appears to amend the Act only for doctors of medicine, physician assistants, and anesthesiologist assistants. Doctors of osteopathy are not mentioned.

OTHER SUBSTANTIVE ISSUES

Section 41-5-6 establishes a limitation on recovery as follows: *except for punitive damages and medical care and related benefits, 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 \$600,000 per occurrence*.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Medical Malpractice Act will not be changed to add the licensure of “business entities” to the responsibilities of the Board.

POSSIBLE QUESTIONS

Will persons controlling the business entity be the only ones that have to be licensed for the business entity to receive a license to practice medicine in NM?

AHO/bym