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SENATE MEMORIAL 27

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Lisa Curtis

A MEMORIAL

REQUESTING THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE TO STUDY THE TORT CLAIMS ACT LIFETIME MEDICAL CAP AND TO CONSIDER WAYS IN WHICH THE STATE OR ITS POLITICAL SUBDIVISIONS MAY OBTAIN ADDITIONAL COVERAGE FOR THE EXPENSES OF PROVIDING MEDICAL CARE FOR CHILDREN CATASTROPHICALLY INJURED BY PUBLIC EMPLOYEES.

WHEREAS, New Mexican children have been catastrophically injured by the negligence of public employees; and

WHEREAS, the Tort Claims Act limits the amount of lifetime medical expenses caused by that negligence to three hundred thousand dollars (\$300,000), which cap on past and future medical expenses was enacted over twenty years ago, in 1991; and

WHEREAS, according to the Kaiser foundation, from 1990 to

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1 2007, national health expenditures per capita increased two
2 hundred sixty-four percent; and

3 WHEREAS, lifetime medical expenses for a child who is
4 catastrophically injured through the negligence of a public
5 employee quickly exceed the three-hundred-thousand-dollar
6 (\$300,000) Tort Claims Act cap; and

7 WHEREAS, many catastrophically injured children are
8 dependent on special technology, equipment, supplies and
9 nursing care to survive each day; and

10 WHEREAS, many catastrophically injured children are
11 periodically hospitalized; and

12 WHEREAS, medicaid is ill-equipped to provide the care
13 necessary for a catastrophically injured child; and

14 WHEREAS, the cap removes any financial incentive for a
15 public hospital that injures a child to be responsible for the
16 consequences of its negligence, as the hospital is paid more to
17 care for the damage it has caused the child than the monetary
18 limitation under the cap; and

19 WHEREAS, at least one parent of a catastrophically injured
20 child commonly must serve as primary caregiver because
21 medically related services are either unavailable or
22 prohibitively expensive, thus setting up an untenable situation
23 and further stressing the physical, emotional and financial
24 well-being of the family; and

25 WHEREAS, the family suffers not only the injury and damage

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1 of the child being catastrophically injured, but also the
2 inability to support itself;

3 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE
4 OF NEW MEXICO that the legislative health and human services
5 committee be requested to study this vital public policy
6 question of the moral and financial obligations that a public
7 employer has to children catastrophically injured through the
8 negligence of public employees; and

9 BE IT FURTHER RESOLVED that the committee consider the
10 dire effects of the medical-expenses cap on an injured child
11 and the child's family; and

12 BE IT FURTHER RESOLVED that the committee study the need
13 to increase the cap or to provide coverage through other
14 avenues, such as insurance or reinsurance, and that the study
15 include the availability and costs of purchasing insurance or
16 self-insuring sufficiently to pay for the actual costs of the
17 lifetime medical care necessary to properly care for children
18 catastrophically injured through the negligence of public
19 employees; and

20 BE IT FURTHER RESOLVED that copies of this memorial be
21 transmitted to the chairperson and staff of the legislative
22 health and human services committee.