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## FISCAL IMPACT REPORT

**SPONSOR** Morales **ORIGINAL DATE** \_\_\_\_\_  
**LAST UPDATED** 02\08\15 **HB** \_\_\_\_\_

**SHORT TITLE** Health Security Act **SB** 152

**ANALYST** Dunbar

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	\$250.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SJM 2 and SJM 3.  
 Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

Responses Received From  
 Department of Health (DOH)  
 Office of the Superintendent of Insurance (OSI)  
 New Mexico Health Insurance Exchange (MHIX)  
 Human Services Department (HSD)

### SUMMARY

#### Synopsis of Bill

SB152 appropriates \$250 thousand from the general fund to the Legislative Finance Committee for expenditure in fiscal year 2016 to undertake the fiscal analysis required pursuant to Section 42 of the Health Security Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2016 shall revert to the General Fund.

Senate Bill 152 enacts the Health Security Act, which would

- 1.) establish a statewide comprehensive health care plan;
- 2.) provide for health care planning;
- 3.) establish procedures to contain health care costs;
- 4.) create a state Health Care Commission;
- 5.) authorize the Health Care Commission's powers and duties;
- 6.) establish health care delivery regions and regional councils;
- 7.) direct and authorize the development of a state Health Security Plan;

- 8.) eliminate the Health Insurance Exchange as soon as allowed by federal law, and transfer personal property held by it to the Health Care Commission;
- 9.) provide penalties;
- 10.) amend a section of the Tort Claims Act; and
- 11.) make an appropriation.

SB 152 would create a health care program to provide coverage for all New Mexicans through a combination of public and private financing. SB 152 would provide major changes to the health care system in New Mexico.

The provisions of SB 152 would become effective July 1, 2015. If the 52nd Legislature approves implementation and financing, the Health Security Plan will be operational by July 1, 2018. Although, the SB 152 offers a “phase in” approach in the implementation of the Health Security Act, several department’s questions and concerns are expressed below with regard to this interim period (July 1, 2015- July 1, 2018) discussed in the bill.

### **FISCAL IMPLICATIONS**

The appropriation of \$250 thousand FY16 contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY16 shall revert to the general fund.

Senate Bill 152 would have substantial fiscal implications for the Health Insurance Exchange (HIX). The purpose of the Exchange is to provide increased access to health insurance for New Mexicans. The Exchange does not receive any state appropriations to achieve this purpose. The Exchange is currently funded by federal grant money but is soon obligated by federal law to be self-funded. The Exchange is authorized by state and federal law to generate funding to support the administrative costs of the Exchange through assessments, user fees, or other means. The Exchange recently adopted a financial sustainability plan by which the Exchange would achieve financial sustainability by imposing assessments on health insurance issuers.

HIX is currently engaged in developing and establishing a state based exchange, which would not be necessary if Senate Bill 152 becomes law. The Exchange would undertake a review of programs and expected expenditures to ensure unnecessary activities were not conducted. The Exchange notes that since it is operating on federal grant funding and, in the near future, on carrier assessments, Senate Bill 152 would prove fiscally challenging for the Exchange. The Exchange would need to conduct more extensive analysis of the scope of the requirements in order to determine a more accurate estimation of the fiscal impact.

While there is no direct immediate fiscal impact to HSD, SB 152 requests that the Health Care Commission enter into agreements with HSD that could include the provision of certain Medicaid services to be administered by the Commission; and seeks payment to the Health Security Plan from Medicaid, Medicare and other federal/insurance programs. HSD is concerned that these provisions could have a significant impact on Medicaid financing and service delivery, as currently administered by HSD.

There will be immediate limited fiscal implications to OSI since there are some additional administrative duties imposed by the bill. The bill tasks the Commission with examining costs and developing a budget.

The vision outlined in the bill would involve a complete overhaul of the health care coverage system and some parts of the delivery system, so the future impact would need extensive analysis before any accurate predictions of impact could be made, but to the extent any state agency would be involved in the contemplated overhaul, e.g. OSI, DOH, HSD, RLD, all agency budgets would be affected.

## **SIGNIFICANT ISSUES**

The following is a summation of the DOH comments:

- The Health Care Commission duties are comprehensive and would include analyzing developments in federal law and regulation relevant to the New Mexico Health Security Plan. The Commission would also apply for any necessary federal waivers.
- In establishing Comprehensive Statewide Health Care, SB 152 may conflict with the federal Patient Protection and Affordable Care Act (PPACA) of 2010. Much of the language included in SB 152 is very similar to what is included in PPACA. SB152 is unclear on how Comprehensive Statewide Health Care would be enacted.
- The Health Care Commission’s issuance of “health resource certificates,” which must be applied for by participating health facilities and providers, but the purpose of which is undefined, may be in conflict with DOH’s obligation to license and oversee health facilities. There also seems to be a significant danger of conflict with Medicare and Medicaid billing rules, and DOH responsibility for imposing sanctions related to provider service and billing practices.
- In this bill “State-operated health care facility” is included in the definition of “health facility.” The “health resource certificate” provisions in Section 35 would impact Department of Health (DOH) run health facilities. SB 152 requires prior approval by the Commission for major capital expenditures for DOH facilities. The Commission would establish compensation methods for health care providers and health facilities and adopt standards and procedures for negotiating and entering into contract with participating health care providers and health facilities, including DOH facilities. The Commission would establish capital budgets for health facilities, including state-operated health care facilities. The ability of the commission to acquire or lease real property, identified at section 12(H), may impact the State General Services Department (GSD).
- The new health services reimbursement mechanisms that would be mandated under the provisions of the SB 152 could have significant impact on the DOH. It would be important for DOH to negotiate appropriate reimbursement arrangements with the Health Security Plan Health Care Commission for services provided in its local public health offices

According to the NM Health Insurance Exchange, Senate Bill 152 raises several significant issues that include:

1. The considerable work effort that the Exchange has expended to implement systems and processes to comply with the New Mexico Health Insurance Exchange Act and the federal Patient Protection and Affordable Care Act (ACA) would be nullified with the implementation of the Health Security Act. Many of the items being proposed would be duplicative and unnecessary based on the similarity to the current Board of Directors and organizational structure of the Exchange. Extensive time would be needed for staff of the Exchange to work on transition activities necessary for such an endeavor.
2. Identification of internal inconsistencies in Senate Bill 152 that may benefit from clarification. For example, Section 10 provides that the Chief Executive Officer of the commission “shall employ those persons necessary to administer and implement the provisions of the Health Security Act.” Section 12, on the other hand, says that “only the commission may “J. appoint and prescribe the duties of employees, fix their compensation, pay their expenses and provide an employee benefit program.” It is unclear whether the commission or the CEO would have authority to hire personnel necessary to accomplish the purposes of the Health Security Act. The duties of the CEO and the commission should be reconciled.
3. Another potential issue arises from Section 45’s statement that health insurance exchange property shall be transferred and that the Secretary of the Human Services Department shall seek the suspension of operations of the health insurance exchange. Such activities would render the Exchange unable to perform what it is statutorily required to do at this time. Senate Bill 152 stops short of repealing the New Mexico Health Insurance Exchange Act, however, leaving some uncertainty as to how the Exchange would continue to operate to meet the obligations of the New Mexico Health Insurance Exchange Act after having property transferred or operations suspended.

The Office of the Superintendent of Insurance offers the following comments by section of the bill:

- Section 11, Line 10 states-

“The transition plan shall ensure the proper assignment and payment of claims incurred on behalf of beneficiaries before the implementation of the health security plan.”

It is not completely clear specifically who the beneficiaries are or what they are transitioning from. OSI is responsible for enforcement of NM statute regarding insurance carrier payment of claims. This statute is extensive and specific and OSI would like to see much more specificity here and throughout the bill on issues regarding enforcement of claims statutes.

- Section 30 B. states -

The superintendent shall adopt and promulgate rules for the establishment or modification of premium rates and employer contribution rates. The rules shall include, at a minimum, provisions for:

1. the transparency of rate filings;
2. grounds for the establishment or modification of rates;

3. the issuance of findings by the superintendent
4. redetermination of the superintendent's findings; and
5. procedures pursuant to which the commission or a member of the public may appeal; and
6. redetermination of the superintendent's findings in a court of competent jurisdiction.

This portion of the bill refers to the Superintendent of Insurance, and these lines of the bill cover areas already established by extensive New Mexico statutes and federal regulations. Adoption of this language that addresses consumer protection could have far-reaching implications in possible conflicts with existing law that have been carefully crafted over several years.

- Section 41 states –

A. The superintendent shall work closely with the legislative finance committee pursuant to Section 42 of the Health Security Act to identify premium costs associated with health care coverage in workers' compensation and automobile medical coverage. The superintendent shall develop an estimate of expected reduction in those costs based upon assumptions of health care services coverage in the health security plan and, by September 15, 2015, shall report the findings to the legislative finance committee to determine the financing of the health security plan.

B. The superintendent shall ensure that workers' compensation and automobile insurance premiums on insurance policies written in New Mexico reflect a lower rate to account for the medical payment component to be assumed by the health security plan.

Should this bill become law, the Superintendent of Insurance would participate in an evaluation of the impact to other kinds of coverage. How this would determine the financing of the health security plan is not clear to OSI. Additionally, relative to item B., the Superintendent of Insurance already must follow existing statutory guidelines and actuarial formulas to determine if rates and rate increases are appropriate.

- Section 45-

Addresses the transfer of function from the Health Insurance Exchange and allocation of its property. The Health Insurance Exchange is a non-profit public corporation and not a state agency.

While the Superintendent of Insurance and the Secretary of Human Services Department do sit on the exchange board, it does not exist under the authority of the Human Service Department.

A critical issues indentified by HSD is that SB 152 does not describe in detail the relationship between the Health Security Plan and the Medicaid program, including whether or how Medicaid beneficiaries would be served under the Health Security Plan and the financing mechanics for state and federal funds currently administered by HSD for the Medicaid program. Moreover, HSD indicates that, as written, it appears that, in addition to violating the State's Medicaid Plan, SB 152 would violate the single agency requirement of the Social Security Act, 42 CFR 431.10. Any significant change to the state's Medicaid program – including changes to service delivery and financing – would require lengthy approval by the federal Centers for Medicare and Medicaid Services (CMS).

An another important concern raised by HSD is that SB 152 does not consider current legal and regulatory health insurance requirements under the Social Security Act and the Patient Protection and Affordable Care Act (ACA), and how those requirements would be affected by the Health Security Plan.

### **PERFORMANCE IMPLICATIONS**

Because Senate Bill 152 has a substantial fiscal impact on the Exchange, but only includes a \$250 thousand appropriation to the Legislative Finance Committee, the Exchange's is concerned that its performance of its core mission would be negatively impacted in the meantime by the diversion of resources away from the New Mexico Health Insurance Exchange Act's purpose of increasing New Mexican's access to health insurance.

### **ADMINISTRATIVE IMPLICATIONS**

Senate Bill 152 would require the Exchange to reassess its organizational structure and to engage additional personnel with the relevant expertise in order to comply with the obligations of the Act.

HSD anticipates that SB 152 would include a substantial system impact to both the state's Medicaid eligibility system (ASPEN) and Medicaid management information system (MMIS). In addition, SB 152 would suspend operations of the Health Insurance Exchange (HIX), making unclear the role of that system under the Health Care Commission.

### **RELATIONSHIP**

OSI states that SJM 2 and SJM 3 each overlap in some areas with the Duties outlined in Section 11.

Pursuant to NMSA 978, §59A-23F, the exchange is a governmental entity for purposes of the Tort Claims Act [41-4-1 through 41-4-27 NMSA 1978], and neither the exchange nor the board shall be considered a governmental entity for any other purpose.

### **TECHNICAL ISSUES**

HSD points out that SB 152 does not describe the relationship between the Health Care Commission and HSD. It is unclear how the Medicaid program would be administered under or in conjunction with the Health Security Plan; however, as written, it appears that, in addition to violating the State's Medicaid Plan, SB 152 would violate the single agency requirement of the Social Security Act, 42 CFR 431.10.

### **OTHER SUBSTANTIVE ISSUES**

The Health Security for NM Campaign supports the bill, stating:

1. "Under this proposal, NM will set up its own health insurance plan that will cover almost all NM residents. (Federal retirees, active duty and retired military

and TRICARE recipients, will continue with their plans. The tribes as sovereign nations may choose to join the plan.”)

2. Everyone covered by the NM Health Security Plan will receive the same comprehensive benefits regardless of age, income, employment, or health status.
3. SB 152 creates two separate sections: one dealing with beneficiary rights; the other with provider /health facility rights. Reference is made to Sections 27 and Section 29.

SB 152 offers the following “phase in” approach:

Year 1 (2015)

- LFC with public input will determine the cost of the plan, individual premiums and employer contributions and workers compensation and automobile insurance premium reductions.

End of Year (2016)

- Legislative and gubernatorial approval of financial report. If not approved, the plan will not go into effect.

- Year 2-3 (2016-2018)

- Development of the plan with legislative, executive and public input,
- Application for a Waiver for State Innovations
- Operational by 2018

The Health Security for NM Campaign reports that the Health Security Act has been endorsed by several municipalities and counties in New Mexico.

BD/je