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FISCAL IMPACT REPORT

SPONSOR <u>Hochman-Vigil</u>	LAST UPDATED _____
	ORIGINAL DATE <u>02/02/2024</u>
SHORT TITLE <u>Medical Malpractice Premium Assistance</u>	BILL NUMBER <u>House Bill 234</u>
	ANALYST <u>Esquibel</u>

APPROPRIATION* (dollars in thousands)

FY24	FY25	Recurring or Nonrecurring	Fund Affected
	\$70,000.0	Nonrecurring	General Fund
	\$0.0	Recurring	Medical Malpractice Premium Assistance Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

REVENUE* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	Recurring or Nonrecurring	Fund Affected
		\$0.0			Recurring	Medical Malpractice Premium Assistance Fund

Parentheses () indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

House Bill 234 relates to House Bill 107 and Senate Bill 53, Medical Malpractice Changes.

Sources of Information

LFC Files

Agency Analysis Received From
 Attorney General’s Office (NMAG)
 Health Care Authority (HCA)
 New Mexico Medical Board (NMMB)
 Office of Superintendent of Insurance (OSI)

SUMMARY

Synopsis of House Bill 234

House Bill 234 (HB234) would establish a program to provide medical malpractice premium assistance for certain healthcare providers by creating a nonreverting fund and appropriating \$70 million to the Office of Superintendent of Insurance (OSI) for expenditure in FY25 and

subsequent years. The fund would reimburse independent healthcare providers or groups not employed by a hospital or health system a percentage of the cost of the independent healthcare provider's or group's annual medical malpractice premium.

HB234 would create the medical malpractice premium assistance fund to reimburse independent health care providers or groups not employed by a hospital or health system a percentage of the cost of their annual medical malpractice premium, depending on years practicing in the state, as follows:

- Zero to three years, 25 percent,
- Four to seven years, 50 percent,
- Eight to 11 years, 75 percent, or
- 12 years or more, 100 percent.

HB234 would require the following from applicants:

- Proof of licensure in the state as a certified registered nurse anesthetist, certified nurse midwife, certified nurse practitioner, chiropractic physician, physician, physician assistant, or podiatrist;
- Number of years of practice in the state;
- Participation in the patient's compensation fund and payment of the associated surcharge;
- Payment of professional liability insurance coverage, obtained from a medical liability insurer authorized to provide such insurance, for coverage at \$250 thousand per occurrence, for not more than three occurrences in one calendar year; and
- Completion of a full year of practice corresponding to the period of medical malpractice coverage for which reimbursement is being sought.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

The appropriation of \$70 million to the Office of Superintendent of Insurance (OSI) contained in the bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY25 and subsequent fiscal years would not revert to the general fund.

House Bill 234 creates the medical malpractice premium assistance fund as a nonreverting fund in the state treasury but does not appropriate any revenue to the fund to carry out the provisions of the bill. Further, the bill provides that revenue from the medical malpractice premium assistance fund is appropriated to OSI to establish and administer a program to provide medical malpractice premium reimbursement to certain healthcare providers. However, as noted above, the bill appropriates no revenue to the medical malpractice premium assistance fund.

The bill specifies disbursements from the medical malpractice premium fund shall be made by warrant of the secretary of the Department of Finance and Administration pursuant to vouchers signed by the superintendent of insurance or the superintendent's authorized representative.

Although HB234 does not contain a recurring appropriation, the bill creates a new fund and provides for continuing appropriations, as well as diverts money from the general fund by earmarking it for a specific purpose. LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as well as the earmarking of any funds, because it reduces the ability of the Legislature to establish spending priorities.

SIGNIFICANT ISSUES

The bill excludes medical malpractice premium assistance for obstetrics/gynecology, rural doctors, and primary care which are experiencing shortages in the state. Additionally, newly established healthcare providers may need more support than those who have established practices.

The Attorney General's Office writes:

HB234 could present a significant anti-donation concern because it provides money for physicians without the state receiving any direct value in return. However, Section 14(A) of the Anti-Donation Clause states “[n]othing in this section prohibits the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons.” Although some, if not most, subsidized medical providers will provide services to sick persons, some of whom may be indigent, HB234 does not limit providers who receive an insurance subsidy to serving only the sick and indigent. NMAG considered this exception in a prior Attorney General's Opinion, concerning the payment of relocation costs to providers who establish a practice in Luna County, and noted “this exception does not justify payments which directly benefit physicians and only incidentally benefit the poor and sick.” N.M.A.G. Op. No. 89-22 (1989), n.1.

The Attorney General's Office notes given that the Office of Superintendent of Insurance (OSI) administers the patient's compensation fund (PCF), and PCF surcharges are part of medical malpractice premiums, allowing OSI to administer the medical malpractice premium assistance fund could present a risk of conflicting interests.

ADMINISTRATIVE IMPLICATIONS

The Office of Superintendent of Insurance (OSI) states it does not have the infrastructure and resources to administer this program and would need additional funding and staff to develop and operate the program and monitor fraudulent claims.

OSI would further need to address clawing back funds if, for example, the subsidized physician left the state or quit practicing their respective specialty.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 234 relates to House Bill 107, Medical Malpractice Limit of Recovery, and Senate Bill 53, Medical Malpractice Changes.

TECHNICAL ISSUES

House Bill 234 creates the medical malpractice premium assistance fund but does not appropriate any revenue to the fund to carry out the provisions of the bill. The bill appropriates \$70 million to the Office of Superintendent of Insurance to reimburse certain healthcare providers for medical malpractice premiums in FY25 and subsequent fiscal years.

The Attorney General's Office notes the term “premium” is undefined, and it is unclear whether

it includes patient's compensation fund (PCF) surcharges.

The Office of Superintendent of Insurance (OSI) states the bill does not address if a provider who participates in the patient's compensation fund (PCF) is eligible for premium assistance under the provisions of the bill.

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