

**FISCAL NOTE**  
 LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *				
	FY 2010-11		FY 2011-12	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS			See Below	
CASH FUNDS			See Below	
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

\*Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

LB 876 pertains to the Hospital-Medical Liability Act. The bill eliminates the current cap of \$1,750,000 of liability for any occurrence under the act which includes the recovery of economic and noneconomic damages. LB 876 provides that the amount recoverable for economic damages is unlimited for occurrences after December 31, 2010.

The bill also specifically delineates the amount recoverable under the act for noneconomic damages. The recovery for noneconomic damages is limited to a maximum of \$1,750,000, if there are no economic damages. If there are economic damages of less than \$1,750,000, then the recovery for noneconomic damages may be up to the difference between \$1,750,000 and the amount of economic damages. If the recovery for economic damages exceeds \$1,750,000, then no noneconomic damages may be recovered. Section 2 obligates the Excess Liability Fund for more than \$500,000 for economic damages under the Residual Malpractice Insurance Authority.

The increase in the amount recoverable under the act will likely increase expenditures of the Excess Liability Fund, which had a balance of \$75.1 million on 12/31/09. The amount of increased claims pursuant to the bill is unknown but could be substantial in the instance of some claims. The Department of Insurance indicates there is no insurance data available to show the effect of an unlimited cap. It is assumed the actual impact of the elimination of the cap will not occur for a couple of years, since it typically takes one to three years for a claim to be settled. At the present time, it appears the Excess Liability Fund has a balance that is sufficient to cover any increase in claims pursuant to the bill in the near future. However, one or more catastrophic claim awards could impair the fund.

The act provides for a surcharge of up to 50% to be assessed annually on all health care providers covered by the act. The surcharge is currently at 35% of the cost of underlying insurance. It is likely the surcharge will increase in the future, up to the 50% allowed by current law, if claims increase pursuant to the bill.

The University of Nebraska pays the surcharge for its residents and fellows at UNMC. The University estimates an increased cost of \$210,000 (\$105,000 General, \$105,000 Cash) in 2010-11 and \$561,000 (\$280,500 General, \$280,500 Cash) in 2011-12, if the surcharge is increased from 35% to 50%. The actual timing and percentage increase in the surcharge pursuant to the bill are dependent upon awarded damages and actuarial projections. It is assumed an increase in the surcharge will not occur until 2011-12 or thereafter unless some fairly substantial claims are filed in the initial year the cap is removed.

The Department of Insurance may have increased administrative expenses to administer the act, if claims increase pursuant to the bill. Any administrative expenses are paid from the Excess Liability Fund.

DEPARTMENT OF ADMINISTRATIVE SERVICES

REVIEWED BY	Gary Bush	DATE	2/5/10	PHONE	471-2526
COMMENTS					
DEPT. OF INSURANCE – Agency's estimate of impact appears reasonable.					