

1 A MEMORIAL

2 REQUESTING THE LEGISLATIVE HEALTH AND HUMAN SERVICES  
3 COMMITTEE AND THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE  
4 TO STUDY THE TORT CLAIMS ACT LIFETIME MEDICAL CAP AND TO  
5 CONSIDER WAYS IN WHICH THE STATE OR ITS POLITICAL  
6 SUBDIVISIONS MAY OBTAIN ADDITIONAL COVERAGE FOR THE EXPENSES  
7 OF PROVIDING MEDICAL CARE FOR CHILDREN CATASTROPHICALLY  
8 INJURED BY PUBLIC EMPLOYEES.

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

12 WHEREAS, the Tort Claims Act limits the amount of  
13 lifetime medical expenses caused by that negligence to three  
14 hundred thousand dollars (\$300,000), which cap on past and  
15 future medical expenses was enacted over twenty years ago, in  
16 1991; and

17 WHEREAS, according to the Kaiser foundation, from 1990  
18 to 2007, national health expenditures per capita increased  
19 two hundred sixty-four percent; and

20 WHEREAS, lifetime medical expenses for a child who is  
21 catastrophically injured through the negligence of a public  
22 employee quickly exceed the three-hundred-thousand-dollar  
23 (\$300,000) Tort Claims Act cap; and

24 WHEREAS, many catastrophically injured children are  
25 dependent on special technology, equipment, supplies and

1 nursing care to survive each day; and

2 WHEREAS, many catastrophically injured children are  
3 periodically hospitalized; and

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

6 WHEREAS, the cap removes any financial incentive for a  
7 public hospital that injures a child to be responsible for  
8 the consequences of its negligence, as the hospital is paid  
9 more to care for the damage it has caused the child than the  
10 monetary limitation under the cap; and

11 WHEREAS, at least one parent of a catastrophically  
12 injured child commonly must serve as primary caregiver  
13 because medically related services are either unavailable or  
14 prohibitively expensive, thus setting up an untenable  
15 situation and further stressing the physical, emotional and  
16 financial well-being of the family; and

17 WHEREAS, the family suffers not only the injury and  
18 damage of the child being catastrophically injured, but also  
19 the inability to support itself;

20 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE  
21 STATE OF NEW MEXICO that the legislative health and human  
22 services committee and the courts, corrections and justice  
23 committee be requested to study this vital public policy  
24 question of the moral and financial obligations that a public  
25 employer has to children catastrophically injured through the

1 negligence of public employees; and

2 BE IT FURTHER RESOLVED that the committees consider the  
3 dire effects of the medical-expenses cap on an injured child  
4 and the child's family; and

5 BE IT FURTHER RESOLVED that the committees study the  
6 need to increase the cap or to provide coverage through other  
7 avenues, such as insurance or reinsurance, and that the study  
8 include the availability and costs of purchasing insurance or  
9 self-insuring sufficiently to pay for the actual costs of the  
10 lifetime medical care necessary to properly care for children  
11 catastrophically injured through the negligence of public  
12 employees; and

13 BE IT FURTHER RESOLVED that copies of this memorial be  
14 transmitted to the chairperson and staff of the legislative  
15 health and human services committee and to the co-chairs and  
16 staff of the courts, corrections and justice committee. \_\_\_\_\_

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