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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Montoya/Armstrong/Terrazas</u>	<b>LAST UPDATED</b> _____
<b>SHORT TITLE</b> <u>Medical Malpractice Punitive Claim Evidence</u>	<b>ORIGINAL DATE</b> <u>3/20/2025</u>
	<b>BILL NUMBER</b> <u>House Bill 379</u>
	<b>ANALYST</b> <u>Esquibel</u>

### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
	See Fiscal Implications	See Fiscal Implications					

Parentheses ( ) indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 374 and 378, and Senate Bills 121, 124, 176, 224, 444, and 449.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Office of the Courts (AOC)

Attorney General’s Office (NMAG)

Department of Health (DOH)

Miners’ Hospital of New Mexico (MH)

New Mexico Hospital Association (NMHA)

New Mexico Medical Board (NMMB)

New Mexico Medical Society (NMMS)

Office of Superintendent of Insurance (OSI)

University of New Mexico Health Sciences Center (UNMHSC)

## SUMMARY

### Synopsis of House Bill 379

House Bill 379 (HB379) adds new language to the Medical Malpractice Act that would require a plaintiff seeking punitive damages to prove by clear and convincing evidence that “the acts of the healthcare provider were made with deliberate disregard for the rights or safety of others.” The bill would also cap the amount of punitive damages available to a plaintiff to no greater than 30 times the state median annual household income at the time the award is made.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## **FISCAL IMPLICATIONS**

The bill proposes to cap the amount of punitive damages available to a plaintiff to no greater than 30 times the state median annual household income at the time the award is made. According to the Census Bureau, the 2023 median household income for New Mexico was \$62,125.

The Office of Superintendent of Insurance administers the patient's compensation fund (PCF); however, punitive damages are not paid from the PCF.

## **SIGNIFICANT ISSUES**

The Attorney General's Office notes the Supreme Court of the United States has said punitive damages exceeding an amount greater than ten times the compensatory damages may violate the Due Process and or Taking Clause of the United States Constitution. In theory, a situation could arise where a plaintiff recovers, for example, \$10 thousand in compensatory damages and then receives substantially more than ten times in punitive damages.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB379 relates to Senate Bill 449 and House Bill 374, which seek to amend the Medical Malpractice Act (MMA) to change the statutory definition of "occurrence" in Section 41-5-3(K). The definitions for occurrence in the three bills are identical. However, HB378 would cap the compensatory damages for medical malpractice to \$600 thousand.

HB379 is related to Senate Bill 121, which would add language to Section 41-5-25 of the MMA to provide immunity from liability to the third-party administrator of the patient's compensation fund for actions taken within the scope of their duties under the MMA. It is also related to Senate Bill 124, which would add clauses to the Insurance Code to allow the superintendent of insurance or delegated staff to issue civil investigative subpoenas prior to the issuance of a notice of contemplated action and allow the superintendent to petition the district court to compel compliance with any such subpoena.

HB379 relates to Senate Bill 176, which would add language to Section 41-5-6 of the MMA to require payments from the patient's compensation fund be made as expenses are incurred. It would also require that punitive damages be divided between the prevailing party and the state, with the state's allocation going to the patient safety improvement fund. It would also cap attorneys' fees in an action under the MMA.

HB379 is related to Senate Bill 224, which would add a new section to the MMA to allow the superintendent of insurance to intervene in mediation and court proceedings that involve the Medical Malpractice Act.

Finally, HB379 relates to Senate Bill 444, which seeks to have a judge determine the amount of punitive damages that should be awarded to a plaintiff.

## TECHNICAL ISSUES

The Office of Superintendent of Insurance reports the bill is not clear whether juries may be advised of the limit on punitive damages. Elsewhere in the Medical Malpractice Act, a limit is placed on the amount of compensatory damages a qualified healthcare provider can incur. In that section it is clearly stated: “In jury cases, the jury shall not be given any instructions dealing with the limitations provided in this section.” [see NMSA 1978, Section 41-5-6 (2023).]

A similar provision in HB379 would provide consistency and ensure that a jury’s award is not influenced by knowledge of the limitations on awards of certain damages. In the event a jury awards more than the amount permitted by statute, the judge would conform the verdict to the law after trial

## OTHER SUBSTANTIVE ISSUES

The New Mexico Medical Society notes New Mexico has some of the highest numbers of medical malpractice lawsuits in the country and medical malpractice premiums are significantly higher in New Mexico compared with other states.

The New Mexico Hospital Association notes hospitals across the state have seen increases in malpractice plan premiums in the past four years and punitive damages have grown, potentially affecting fiscal solvency for smaller hospitals.

The Department of Health notes many states have changed their medical malpractice laws to reduce the cost of malpractice insurance. Malpractice insurance rate increases and lack of access to medical malpractice insurance may disproportionately impact smaller, independent medical providers who often serve rural, underserved communities.

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