

LFC Requester:

RubyAnn Esquibel

**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

**[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)**

*(Analysis must be uploaded as a PDF)*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 02/12/2025

*Check all that apply:*

**Bill Number:** HB 378

Original  Correction

Amendment  Substitute

**Sponsor:** Rod Montoya and Gail Armstrong  
**Short Title:** An Act Relating to Medical Malpractice

**Agency Name**

**and Code**

**Number:** \_\_\_\_\_

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: HB 378 makes four changes to the Medical Malpractice Act (“MMA”). First, it amends references to “podiatrist” to “podiatric physician.” Second, HB 378 amends the definition of “occurrence” from “all injuries to a patient caused by a health care providers’ successive acts or omissions that combined concurrently to create a malpractice claim” to “all claims for damages from all persons arising from harm to a single patient, no matter how many health care providers, errors or omissions contributed to the harm.” Third, it repeals the increased limitations of recovery that were implemented by HB 75 in 2021 and replaces those increases with a \$600,000 cap on all compensatory damages, which was the cap under the MMA prior to HB 75. Lastly, HB 378 requires all payments from the Patients’ Compensation Fund (“PCF”) for medical care and related benefits to be made as those expenses are incurred, which would prevent lump sum payments for medical care and related benefits if those payments are made from the PCF.

#### **FISCAL IMPLICATIONS**

Note: HB 378’s proposed definition of “occurrence,” its decrease of the limitation of recovery, and its prohibition of lump sum payments would increase the solvency and stability of the PCF, which is funded through surcharges paid by participating medical providers. HB 378 is not anticipated to have any impact on the General Fund.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

#### **SIGNIFICANT ISSUES**

New Mexico is facing a significant shortage of health care providers. For example, according to data from the New Mexico Health Care Workforce Committee, from 2017 to 2021 New Mexico lost a total of 711 primary care physicians, which represents approximately 30% of New Mexico’s primary care physicians. According to data from the Physician Advocacy Institute, New Mexico lost 248 practicing physicians from 2019 to 2024. Although many states are struggling to recruit and retain physicians, New Mexico is the only state to have suffered a net loss of physicians from 2019 to 2024. Although there are many factors that negatively impact New Mexico’s ability to recruit and retain physicians, the MMA has resulted in high professional liability costs for medical providers, which has a negative impact on recruitment and retention. According to data from New Mexico’s Office of the Superintendent of Insurance, the base rate for a physician’s professional liability policy in New Mexico is \$43,020. In nearby states, the same policy ranges from approximately \$22,000 to \$28,000. The increased malpractice costs in New Mexico can largely be explained by the loss ratios that medical malpractice insurers experience in New Mexico. In particular, New Mexico has the highest loss ratio in the nation: 183.6% versus the national average of 73.5%. In other words, for every \$1 professional liability insurers receive in premiums, they pay out \$1.83 on medical malpractice claims in New Mexico. Second to Pennsylvania, New Mexico experienced a greater number of medical malpractice lawsuits than any other state.

HB 378 would improve the MMA and, thereby, New Mexico's ability to recruit and retain medical providers by lowering the cost of professional liability insurance. In particular, the amended definition of "occurrence" will limit "claims stacking" and ensure that one injury equals one occurrence under the MMA, which will prevent multiple cap amounts from being paid out of the PCF for one individual malpractice claim. The decrease in caps proposed by HB 378 would decrease the premiums charged for malpractice insurance in New Mexico and it would increase the solvency of the MMA, which would ensure that future medical expenses can be paid for injured patients. Lastly, the elimination of lump sum payments for future medical expenses and related benefits would decrease the volatility of the PCF, it would increase the PCF's solvency, and it would benefit injured patients by ensuring that all of their future medical care is paid for by the PCF.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

HB 378's elimination of lump sum payments will require the Office of the Superintendent of Insurance or the Third Party Administrator of the PCF to process medical expenses and related benefits as they are incurred.

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

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

If HB 378 is not passed, New Mexico's struggle to retain and recruit medical providers will continue because the cost of malpractice insurance will be significantly higher than surrounding states. Moreover, if HB 378 is not passed, lump sum payments of future medical expenses and related benefits paid pursuant to the MMA could result in injured patients lacking sufficient funds to cover their future medical needs.

## **AMENDMENTS**