

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 379

Original  Correction

Amendment  Substitute

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

**Agency Name**

**and Code**

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

**Person Writing** Nick Autio

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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 379 makes two changes to the Medical Malpractice Act. First, it increases the burden of proof applicable to punitive damages from a preponderance of evidence to a clear and convincing standard based on “evidence demonstrating that the acts of the health care provider were made with deliberate disregard for the rights or safety of others.” Second, HB 379 also caps punitive damages awarded under the MMA to an amount “not ... greater than thirty times the state median annual household income at the time the award is made.”

#### **FISCAL IMPLICATIONS**

Note: HB 379 is not anticipated to have any direct 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 379 would decrease premiums paid for coverage under the MMA and, thereby, increase New Mexico’s ability to recruit and retain medical providers by lowering the cost of professional liability insurance. In particular, punitive damages are not currently capped and they are not covered by the MMA. In other words, if punitive damages are awarded against a medical provider, the award of punitive damages can be enforced against the personal assets of a medical provider. Moreover, there is no standard in New Mexico as to when punitive damages can be pled. Accordingly, the vast majority of medical malpractice lawsuits include a request for punitive damages. In recent years and months, New Mexico has seen a number of significant punitive damages awards which range from eight to nine figure amounts. Most notably, in December 2024,

a New Mexico jury awarded an injured patient \$412 million in damages, which included \$375 million in punitive damages. Plaintiffs' attorneys rely on those nuclear verdicts, and the low bar for punitive damages in New Mexico, to leverage settlements in cases. For example, when a physician is faced with the possibility of a jury awarding unlimited punitive damages that could be enforced against the physician and his assets, the physician is likely to settle a claim for the amount covered by the MMA to avoid the risk of going to trial even if the physician does not believe that malpractice occurred. With recent jury verdicts, the low burden of proof applied to punitive damages, and no cap on punitive damages, cases are routinely settled simply to avoid the risk of punitive damages. That is one reason why loss ratios are abysmal in New Mexico and it also explains why New Mexico sees more malpractice suits than any state other than Pennsylvania.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

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

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

If HB 379 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.

## **AMENDMENTS**