

LFC Requester:	Micaela Fischer
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to 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: 02/04/25 *Check all that apply:*
Bill Number: SB 220 Original Correction
 Amendment Substitute

Sponsor: Senators P. Woods, G. Ramos **Agency Name and Code** University of New Mexico-952
Short Title: Publication of Legal Settlement Terms **Number:** _____
Person Writing Lenaya Montoya
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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
Total						

(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:

This bill amends the Sunshine Portal Transparency Act as follows:

- State agencies that enter into an agreement to settle a potential legal or other claim without the assistance of the risk management division of GSD shall, within 30 days, provide the terms of the settlement agreements for publication on the sunshine portal.

Further, this bill vests within the director of the risk management division of the general services department the authority and mandate to appoint a “loss prevention review team” (“Team”) upon notification by a state agency of awareness of an individual’s death or serious injury or other substantial loss that is alleged or suspected to be caused at least in part by the actions of the state agency, and to promulgate rules for implementation.

- “Serious injury” means an injury that involves a substantial risk of death, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
- “Substantial loss” means a loss in a possible amount greater than \$250,000, or a lesser amount as determined by the director.
- Notification from the state agency to the division is mandatory.
- The Team shall be appointed by the RMD director in conjunction with “the defense counsel of the division” within 30 days of receiving notice.
- The Team will be led by an attorney appointed by the director.
- The leader of the Team may appoint members of the Team, which may include independent consultants, contractors, experts or state employees.
 - The Team may not include a person directly involved in the loss or risk of loss, or a person with testimonial knowledge of the incident.
- The Team will review the circumstances of the injury or loss, evaluate its causes and recommend steps to reduce future risks.
- A state agency shall provide the Team ready access to the agency’s employees and to relevant documents in the agency’s possession.
- Any interviews, transcripts, reports, recommendations, communications or other documents adduced or created in connection with the loss review investigation shall remain confidential until after final disposition of any related claims pursuant to 15-7-9 NMSA 1978
- After the final judgment resolving any claims and exhaustion of rights of appeal, or upon finalization of any settlement agreements, the review team shall submit a report in writing to the director and the head of the state agency involved in the loss.
- The report shall include the team’s findings, an analysis of the causes, contributing factors and future risk and an exploration of methods that the state agency may use to address and mitigate the risks identified, including changes to policy or procedure, and any legislative recommendations.

- The report shall include the manner in which the agency will measure the effectiveness of its changes, and shall include a written response to findings, conclusions and recommendations from the head of the agency involved in the loss.
- By October 1 of each year, the director shall submit a report to the legislature identifying the reviews conducted in the past fiscal year, providing metrics on effectiveness and efficiency of Team programs, and summarizing any determinations of trends, including reductions or increases in the frequency or magnitude of losses and innovative approaches to mitigating the risks identified.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

While UNM is not technically a state agency, this proposed legislation will have the same applicability to UNM as it would to a state agency as UNM is an institution of the state.

Regarding the Sunshine Portal, this change would affect any settlements that UNM may enter into that are not paid for or defended by RMD. For example, coverage for contractual disputes is expressly excluded from consideration for payment under the Public Liability Fund managed by RMD. UNM resolves those matters independently of RMD. This change mandates posting of the settlement agreements in those independent matters on the Sunshine Portal and could potentially affect the ability to assure or maintain any agreement for confidentiality when negotiating and resolving those matters.

Regarding the loss review prevention team initiative, there are multiple concerns related to medical malpractice exposures.

- 1) UNM's clinical delivery system is regulated and/or accredited by multiple entities, including the Center for Medicare and Medicaid Services, The Joint Commission and the New Mexico Department of Health. Subject to this regulatory oversight, UNM participates in robust patient safety analysis, quality improvement and quality assurance as well as peer review. The oversight proposed here is likely largely duplicative of these measures.
- 2) The phrase "caused at least in part" is vague and quite broad. Legally, liability exists when negligence is established. Causation is only one component of negligence. Negligence is established only when there is a duty of care, a breach of that duty of care, an injury, and an act or omission that was the cause of the injury. This bill may contemplate review of poor outcomes in general for which there was no apparent negligence; no apparent breach in the standard of care. This is quite a broad catchment of events.
- 3) RMD is currently tasked statutorily with managing for UNM those matters in which negligence is *alleged* by a third party, i.e., for which a tort claim notice has been submitted or a lawsuit filed on a patient's behalf. UNM received 125 distinct medical malpractice claims or suits in FY24. Each is tendered to RMD for indemnity and defense, and is assigned to an RMD attorney who works closely with UNM counsel to evaluate the exposures for purposes of settlement and to manage litigation. Pursuant to

this bill, and as a threshold for this analysis, each of these matters would be subject to additional oversight by a Team.

But more importantly, pursuant to this bill, RMD's oversight accountability would extend substantially beyond matters for which there has been no express third-party allegation of negligence or intent to pursue recovery into those matters for which there was death or serious injury for which "causation" is *suspected*. The bill places the onus on UNM to identify those matters. Subject to the confidentiality privilege under the Patient Safety and Quality Improvement Act and the Health Care Quality Improvement Act, the following information is offered as a potential method for identifying the potential universe of matters that may fall under the provisions of this bill:

While there will likely be some overlap between the alleged and suspected events, the number of matters potentially subject to reporting by UNM and review by RMD is substantial: a minimum of 275 and potentially more than 600 events per year. This would be a substantial burden on leadership, providers and staff.

- 4) Highly problematic is the potential disclosure of documents and data that would otherwise be protected from use in litigation by the privilege afforded by PSQIA, HCQIA and ROIA. UNM will be required to provide the team "ready access" to relevant documents and make providers and staff available for interviews. While the Team's report and recommendations and UNM's response will not be created until a claim or suit has been resolved, and there is a provision for confidentiality of data during the pendency of a medical malpractice claim or suit, the bill does not proscribe the potential for the review to begin prior to the matter's resolution. Accordingly, any providers or staff interviewed by the Team prior to resolution of a matter could be subject to questioning about their participation in the review process itself. There is also no assurance of confidentiality of any documents provided to or created by the Team once a matter is settled or otherwise resolved.

In addition, the bill requires an annual report to the legislature of a report identifying the reviews conducted in the past year. The bill does not specify the level of detail of this report, but disclosure within will likely prevent UNM and its providers from asserting those statutory privileges in any future litigation. RMD and UNM and its providers and staff should anticipate IPRA requests as well as discovery and deposition requests for this information for use in future medical malpractice actions.

- 5) The potential composition of the Team is of concern. The bill does state that a person directly involved in the matter, or with testimonial knowledge of the incident cannot be named to the Team. However, potential remains for members of the plaintiff's bar to be named to lead or participate on a Team. With only limited temporal confidentiality of documents, interviews and reports, material that would ordinarily fall under the privilege afforded by PSQIA, HCQIA and ROIA instead becomes fully accessible and usable in future litigation.
- 6) The bill provides that the Team shall be appointed by the director in conjunction with "the defense counsel of the division." RMD does not have a "defense counsel" job title. This is likely meant instead to reference the general counsel of the division, which is a role separate and distinct from the general counsel of GSD.

PERFORMANCE IMPLICATIONS

UNM would be responsible for identifying any and all potential exposures that fit the definitions, and disclosing them in a format and timeframe pursuant to rules promulgated by the director, which will create a staffing burden. UNM would be expected to make its staff and providers available to the Teams, which could potentially have an effect on clinical coverage. UNM leadership would be tasked with responding to the Team's findings, recommendations regarding changes to policies and procedures and risk treatment strategies and manner of measuring effectiveness of changes, which would be an additional burden on leadership and staff.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS