

LFC Requester:

Ruby Ann Esquibel

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 02/23/25

Check all that apply:

Bill Number: SB449

Original X Correction
Amendment Substitute

Sponsor: Sen. Larry Scott
Sen. James G. Townsend
Sen. Candy Spence Ezzell

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Person Writing

Short Title: Medical Malpractice Changes

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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

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: SB449 proposes amendments to statutes governing medical malpractice claims, particularly the venue statute for civil cases, NMSA 1978, Sections 38-3-1 to -11 and the Medical Malpractice Act, Sections 41-5-1 to -29 (“MMA”).

Section 1 proposes amendments and new subsections to Section 38-3-1, which establishes the county a civil action may be commenced.

- Subsection B removes “has rendered himself” and inserts “is”.
- Subsection D cleans up language regarding civil cases involving land.
- Subsection F adds language referencing an exemption to subsection H.
- Subsection H is a new subsection providing that, in claims brought by a personal representative, conservator, guardian, guardian ad litem, or a third person acting in any representative capacity, the claimant’s residence shall not determine venue.
- Subsection I is a new subsection that requires the venue in a claim asserting medical malpractice shall be limited to the county the patient received the treatment at issue. Paragraphs 1 and 2 provide definitions for “medical malpractice suit” and “patient”.

Section 2 proposes amendments to Section 41-5-3, which is the definitions section for the MMA.

- Subsection D and G amends the “health care provider” and “independent provider” definitions by replacing “podiatrist” with “podiatric physician.”
- Subsection K offers a new definition for “occurrence”.

Section 3 proposes amendments and new subsections regarding venue to Section 41-5-4, which establishes the ad damnum clause for the MMA.

- Subsection A proposes language clarity amendments and adds “where venue is proper”.
- Subsection B is a new subsection that establishes venue in malpractice claims.
- Subsection C proposes language clarity amendments.

Section 4 proposes amendments to Section 41-5-6, which establishes limitation of recovery under the MMA.

- Subsection B requires the cap on recoverable damages against independent providers be adjusted on the first day of each calendar year and shall be adjusted by the prior three-year average consumer price index for all urban consumers. Additionally, the

adjustment shall not result in a percentage increase greater than three (3) percent.

- Subsection D, paragraph 2 adds that the adjustment to the cap for malpractice claims against independent outpatient health care facilities for an injury or death that occurred in 2025, and each calendar year thereafter shall not result in a percentage increase greater than three (3) percent.
- Subsection E requires the cap on recoverable damages against hospitals or a hospital-controlled outpatient health care facility for an injury or death that occurred in 2027 and each calendar year thereafter, be adjusted on the first day of each calendar year and shall be adjusted by the prior three-year average consumer price index for all urban consumers. Additionally, the adjustment shall not result in a percentage increase greater than three (3) percent.
- Subsection K removes language requiring that recovery against a hospital or hospital controlled outpatient health care facility not be paid from the fund.
- Subsection L is removed and replaced with a new subsection that provides a definition for “consumer price index”.

Section 5 proposes amendments and new subsections to Section 41-5-7, which establishes awards of medical expenses and punitive damages.

- Subsection C is a new subsection providing that awards of past or future medical expenses shall not be paid from the fund unless the award was actually paid by, or on behalf, of the injured person and accepted by a health care provider as payment of services.
- Subsection D is a new subsection that requires that awards of past or future medical expenses be paid from the fund as the expenses are incurred, and future medical expenses shall not be paid in a lump-sum payment.
- Subsection G is a new subsection that requires that punitive damages to be divided between the prevailing party and state. The prevailing party shall be awarded twenty-five percent, and the state shall be awarded seventy-five percent.
- Subsection H is amended to establish that punitive damages may only be awarded through clear and convincing evidence that the acts of the health care provider were made with deliberate disregard for the rights or safety of others.
- Subsection I is a new subsection that requires punitive damages shall not exceed an amount greater than three times the compensatory damage award.

Section 6 proposes amendments to Section 41-5-25, which establishes the patient compensation fund.

- Subsection D is a new subsection that requires the superintendent to approve proposed settlements if any amount is to be paid from the fund.
- Subsection G is amended to remove the sentence that requires beginning in 2021, the surcharges shall be set to bring the fund to solvency by the end of 2026.

Section 7 proposes a new section to the MMA that establishes a limit to attorney fees to twenty-five percent of the dollar amount recovered prior to the start of a trial or arbitration proceeding and thirty-three percent of the dollar amount recovered after a trial or arbitration proceeding.

Section 8 proposes a new section to the MMA that establishes a patient safety improvement fund.

- Subsection A establishes that the fund shall be administered by the department of health and consists of distributions, appropriations, gifts, grants, donations, and

receipts of punitive damage awards from medical malpractice claims. The fund shall be invested by the state treasurer, investment income shall be credited to the fund, and money shall be expended only as provided in the section.

- Subsection B establishes that the fund is subject to appropriation to the department of health for purposes related to improving patient safety and health care outcomes and any balance remaining at the end of a fiscal year shall not revert.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

SB 449 may affect the ability of people living in rural areas to litigate malpractice claims. Considering that patients from rural areas often travel for medical care, this will require them to litigate from afar, which slightly modifies the discretionary *forum non conveniens* doctrine, which generally honors the plaintiff's choice of forums.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB378 is somewhat duplicative to SB449, as HB378 seeks to amend the MMA to change the statutory definition of "occurrence" in Section 41-5-3(K). This definition for occurrence in HB374 and SB449 is identical. However, HB378 would cap the compensatory damages for medical malpractice to \$600,000.

HB374 is somewhat duplicative of SB449, as HB374 seeks to amend the MMA to change the statutory definition of "occurrence" in Section 41-5-3(K). This definition for occurrence in HB374 and SB449 is identical.

HB379 is an alternative to SB449, as HB379 adds new language to Section 41-5-7(E) that requires 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." It also creates Section 41-5-7(F) which caps the amount of punitive damages available to a plaintiff. The conflict between the bills is the amount of punitive damages available to a plaintiff.

SB121 is related to SB449, as SB121 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.

SB124 is related to SB449, as SB124 would add clauses to the Insurance Code, NMSA 1978, Sec. 59A-2-8 to allow the superintendent of insurance or their delegated staff to issue civil investigative subpoenas prior to the issuance of a notice of contemplated action, and to allow the

superintendent to petition the district court to compel compliance with any such subpoena.

SB176 is somewhat duplicative to SB449, as SB176 would add language to Section 41-5-6 of the MMA to require payments from the patient 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

SB224 is related to SB449, as SB224 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.

SB444 is in conflict with SB449, as SB444 seeks to have a judge determine the amount of punitive damages that should be awarded to a plaintiff.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.