

LFC Requester:

Kelly Klundt

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:** 2/21/2025

Check all that apply:

Bill Number: SB 449Original Correction Amendment Substitute **Sponsor:** Senator Larry R. Scott, Senator
James G. Townsend, Senator
Candy Spence Ezzell**Agency Name
and Code
Number:**Office of Superintendent of
Insurance - 440**Short Title:** Medical Malpractice Changes**Person Writing** Timothy Vigil**Phone:** (505) 690-0651 **Email:** Timothy.Vigil@osi.nm.go**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	N/A

(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	N/A	Indeterminant	Indeterminant	Indeterminant	Indeterminant	Patient Compensation Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

HB 374, HB 378, HB 379, SB 121, SB 176, SB 224, SB 444.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Senate Bill 449 (SB 449) would impose several changes to lawsuits brought under the Medical Malpractice Act (“MMA”). Namely, SB 449 would:

- Amend NMSA 1978, Section 38-3-1 as well as Section 41-5-4 of the MMA concerning venue for medical malpractice cases, requiring that cases be heard in the county where the alleged malpractice occurred.
- Redefine “occurrence” to mean “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.” This coupled with the deletion of existing language stating that “occurrence” should not be construed as precluding separate occurrences for separate acts or omissions that caused additional or enhanced injury or harm is likely intended to reduce the number of separate “occurrences” that an individual may recover maximum damages for.
- Amend how the annual adjustment in the cap on damages for medical providers is calculated.
- Require that payments for past and future medical care made by the Patient’s Compensation Fund (“PCF”) be for amounts actually paid for medical treatment.
- Require that the PCF only pay for expenses related to past and future medical care as those expenses are incurred, rather than as a lumpsum.
- Provide that the Superintendent of Insurance shall evaluate and approve proposed settlements that involve payment from the PCF.
- Remove the current requirement that the surcharges for the PCF be set with the intent to bring the fund to solvency.
- Require that an award of punitive damages must be supported by a showing by clear and convincing evidence that the acts were made with deliberate disregard for the rights or safety of others.
- Impose a cap on punitive damages that may be awarded. Under the bill, punitive damages could not exceed three-times the amount of compensatory damages awarded.
- Create the Patient Safety Improvement Fund as a non-reverting fund administered by the Department of Health for the purposes of improving patient safety and health care outcomes.
- Require that 75% of any punitive damage award be awarded to the newly created Patient Safety Improvement Fund, with the remaining 25% to be awarded to the prevailing party.
- Impose a limit to attorneys' fees that can be included in a contract or contingency fee agreement for medical malpractice actions. SB 449 would limit attorneys’ fees to 25% of the dollar amount recovered if the award or settlement occurred prior to the start of a trial or arbitration, and 33% if the award or settlement occurred after trial or arbitration had begun.

FISCAL IMPLICATIONS

The impact to the fund is indeterminate as the calculation would require projecting and estimating future claim activities

SIGNIFICANT ISSUES

- Under the current law, medical malpractice suits can be brought in the county of residence of the conservator, guardian, personal representative or guardian ad litem. SB 449 would instead provide that lawsuits for medical malpractice are to be heard in the county that the medical treatment that is alleged to have been medical malpractice occurred.
- Presently, if a plaintiff can distinguish multiple occurrences of medical malpractice, he or she may receive payment of multiple “damages caps” from a single health care provider, or from several providers. If enacted, SB 449 will result in a plaintiff being entitled to a single award of non-medical, non-punitive damages up to the damage cap for a malpractice claim, thereby limiting the exposure of most medical malpractice defendants to a single occurrence.
- SB 449 would change how the annual adjustment in the cap on damages for health care providers is calculated. The bill would require that the cap be adjusted annually by the average of the three prior years consumer price index for all urban consumers, rather than solely the previous year, and additionally impose a requirement that such adjustment shall not result in an increase greater than three percent.
- SB 449 would require that awards for past or future medical care and related benefits be made for amounts actually paid by or on behalf of an injured patient and accepted by a provider as payment for those services. Such would prevent a loophole requiring the Patient’s Compensation Fund to potentially pay an injured patient several times the amount actually spent on their care. This potential is due to medical billing regularly being artificially inflated, and then systematically reduced under negotiated rates
- SB 449 would require that payments for medical expenses be made from the PCF as those expenses are incurred, rather than as a lump sum. Similar language was contained in prior versions of the Medical Malpractice Act and is consistent with the Patient’s Compensation Fund’s longstanding practice regarding such payments.
- Under the current law, the parties to a medical malpractice action can enter into a settlement that requires payment from the PCF without any input from the PCF or Superintendent so long as the district court approves the settlement. This may lead to settlements that are not in accordance with the MMA or for amounts that are not reasonably related to the injuries involved. SB 449 would require that the Superintendent of Insurance evaluate and approve a settlement involving payment from the PCF.
- The bill provides that punitive damages awards are to be apportioned 25% to the prevailing party, and 75% to the Patient Safety Improvement Fund. While the bill elsewhere limits attorneys’ fees collected from a judgment to 33% of the dollar amount recovered, it does not address how those fees are to be paid from an award of punitive damages apportioned between the state and the plaintiff. The bill could be amended to specify that the attorneys’ fees may only be taken as a percentage of the amount actually received by the patient, not from the amounts awarded to the state.
- The bill requires that punitive damages awards are apportioned 25% to the prevailing party, and 75% to the Patient Safety Improvement Fund. This provision would satisfy the purpose

of punitive damages, which are to punish bad actors and dissuade similar future conduct, while allowing the state to utilize some of those funds for the public interest. However, a concern with the legislation is the question of whether an injured patient would be required to pay income taxes on the total amount of the judgment, despite never seeing the vast majority of the punitive damages awarded. If so, the tax liability would likely be larger than the amount ever received. The bill's language that 75% of the punitive damage award is to be "awarded" to the Patient Safety Improvement Fund may be enough to prevent this unreasonable result, but clarifying language would also be welcome to ensure this possibility does not occur.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS