LFC Requester:	RubyAnn Esquibel

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: *2/23/25* *Check all that apply:*
Bill Number: *SB 449* Original *x* Correction __
Amendment __ Substitute __

Sponsor: Scott, Townsend, Ezzell
Short Title: MEDICAL MALPRACTICE CHANGES

Agency Name and Code Number: NM Hospital Association
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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

The New Mexico Hospital Association supports SB 449, as introduced. The changes made to the Medical Malpractice Act in 2021 resulted in a cascade of unintended consequences, which the legislature has partially addressed, and the changes proposed in this bill will aid in slowing down and reversing the negative impacts to access to care. Currently, limited access to care is the leading healthcare issue facing all New Mexicans, and the medical malpractice environment is a primary driver of the access emergency.

Hospitals across the state have seen doubling and tripling of malpractice plan premiums in the last four years and there is a real risk of smaller hospitals not being able to afford the necessary coverage. This bill would begin to bring balance back to the system while continuing to protect patients who have been harmed.

SB 449 makes several changes to the Act that would impact hospitals (our analysis is bulleted below the change (if we have a response)):

1. Amends the trials venue statute and the venue portion of the Medical Malpractice Act to require that cases asserting medical malpractice must be filed in the county in which the patient received the medical treatment.
    - This is an important provision that would mean a seated jury on a medical malpractice case would be comprised of individuals in the community in which the health care provider and/or hospital serves. The citizens of a county have a vested interest in ensuring that the healthcare that is provided in their local community is safe, high quality, and accessible and that their friends, family, and neighbors receive that high level of care.
2. Changes the definition of occurrence in the Act to treat one malpractice injury event as one malpractice claim, regardless of the number of health care providers involved or the number of "errors or omissions [that] contributed to the harm." The existing definition of "occurrence" was added to the Medical Malpractice Act in 2021 when significant changes were made to the Act. (This is the same change as in HB 374 and HB 378.)
    - Without this change, trial attorneys will continue to advise patients pursuing malpractice claims to utilize this single definition to expand the potential awards or settlements, if there is cause found, which has inflated the amount of malpractice settlements and awards. On October 7, 2022, the custodian of the Patient's Compensation Fund (PCF), then Superintendent of Insurance Russell Toal, issued his Final Order for calendar year 2023 PCF surcharge rates. The Final Order included Exhibit A: "Recommended Changes to the Medical Malpractice Act" to "address the cost phenomena that are negatively impacting the PCF." His first recommendation was "that "malpractice claim" and "occurrence" be synonymously defined in such a way that a single, individual event be treated as a single malpractice claim or occurrence, regardless of the number of contributing providers or acts." (See https://pcf.osi.state.nm.us/wp-content/uploads/2022/10/FINAL-ORDER-FROM-SUPT.pdf)
3. Beginning in 2027, adjusts the compensatory recovery cap for claims against hospitals annually by the prior three-year average CPI for all urban consumers with a three percent

year-over-year increase cap. The current law will adjust the compensatory recovery cap annually by the CPI for all urban consumers (not a three-year average).
    - This change would insulate hospitals from the volatility of adjustments to the CPI and smooth out any large one-year increases.
4. Amends the Act to keep hospitals in the PCF after December 31, 2026.
    - This is an important change that would ensure two things: continued financial viability of the PCF due to the surcharges paid by the participating hospitals and access to ongoing medical care for patients whose successfully litigate medical malpractice cases against hospitals.
5. Requires that awards of past or future medical care shall only be paid from the PCF if the amount of the award was actually paid for services rendered.
    - This change ensures that the PCF is used for one of its intended purposes, which is to pay for the past and future medical expenses of patients harmed by medical malpractice. This change would prevent lump sum payments for medical expenses from occurring because it would be tied to the actual provision of care. This provision also ensures that patients who were harmed have the cost of their care covered and do not lose a portion (40% or more) to the attorneys who take a fee from the lump sum settlements.
6. Requires that payments made from the PCF for medical care and related benefits must be made as expenses are incurred rather than in a lump sum (this change is also in SB 176 and HB 378).
    - This addresses the importance of the PCF, which covers the cost of care for harmed patients as long as needed but is not being utilized as intended to ensure that patients' ongoing medical care is financially covered. This is due to settlements and judgements that lump-sum past and future medical expenses together, which increases percentage payouts to attorneys (paid for by the PCF) but has the real potential to further harm patients by leaving them on the hook for future care that they cannot afford when the lump sum payment runs out. Requiring that payments from the PCF be made as expenses are incurred will protect patients for the long term because all needed medical care will be paid by the PCF.
7. Requires 75% of any punitive damages awarded to be sent to a new public fund called the "patient safety improvement fund" which is intended to improve patient safety and healthcare outcomes and 25% go to the plaintiff and establishes "the Patient Safety Improvement Fund" (these are also in SB 176).
8. For awarding punitive damages, it establishes a "clear and convincing evidence" standard for demonstrating "that the acts of the health care provider were made with deliberate disregard for the rights or safety of others" (this is also in HB 379).
    - This important change to the Act would require a finding of deliberate disregard of safety executed by the defendant parties in order to award punitive damages. As the intent of punitive damages is to literally "punish" the party at fault, it aligns with the intent of ensuring that the act of malpractice was deliberate and not a mistake or oversight. This would begin to address the huge increase in the size of punitive damages awards that have been made recently that many hospitals will not be able to pay and will have to face bankruptcy and foreclosure if they're faced with these results in a malpractice case.
9. Caps punitive damages awards at three times the compensatory damage award.
    - As above, this change would begin to address the huge increase in the size of punitive damages awards that have been made recently that many hospitals will

not be able to pay and will have to face bankruptcy and foreclosure if they're faced with these results in a malpractice case. For malpractice cases occurring in 2026, it would cap punitive damages at $18 million.

10. Requires the OSI, as the PCF custodian to "evaluate and approve a proposed settlement if any amount of the proposed settlement is to be paid from the" PCF (this is similar to 224).
11. Removes the requirements that the PCF surcharges be set at an amount "with the intention of bringing the fund to solvency with no projected deficit by December 31, 2026."
    - If hospitals are kept in the PCF past December 31, 2026, then there will be more time for all PCF participants to make additional surcharge payments to address the solvency issues, which would make participation in the PCF for providers and hospitals less expensive.
12. Caps attorney's fees at 25% of the recovered amount for settlements before trial, 33% for settlements, arbitration, or judgment after trial has begun.
    - This change would ensure that patients receive the vast majority of the compensatory damage award and any punitive damages, if applicable. Currently, it is standard for attorneys to take 40% of a patient's recovered amount.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

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

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS