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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Armstrong/Duncan/Vincent/Terrazas</u> <b>SHORT TITLE</b> <u>Medical Malpractice “Occurrence” Definition</u>	<b>LAST UPDATED</b> _____ <b>ORIGINAL DATE</b> <u>3/18/2025</u> <b>BILL NUMBER</b> <u>House Bill 374</u> <b>ANALYST</b> <u>Esquibel</u>
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### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
	See Fiscal Implications	Recurring	Patient's Compensation Fund				

Parentheses ( ) indicate revenue decreases.  
 \*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 378 and 379 and Senate Bills 121, 124, 176, 224, 444 and 449.

### Sources of Information

LFC Files

#### Agency Analysis Received From

- Administrative Office of the Courts (AOC)
- Attorney General’s Office (NMAG)
- Department of Health (DOH)
- Health Care Authority (HCA)
- Miners’ Hospital of NM (MH)
- New Mexico Hospital Association (NMHA)
- New Mexico Medical Board (NMMB)
- NM Medical Society (NMMS)
- Office of Superintendent of Insurance (OSI)
- University of New Mexico Health Sciences Center (UNM-HSC)

## SUMMARY

### Synopsis of House Bill 374

House Bill 374 (HB374) would amend the definitions contained in the Medical Malpractice Act (MMA) by substituting “podiatric physician” for “podiatrist.” HB374 would amend the definition of “occurrence” in the MMA to mean “all claims for damages from all persons arising from harm to a single patient, no matter how many healthcare providers, errors or omissions contributed to the harm.”

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

The Office of Superintendent of Insurance (OSI) reports HB374 would result in a reduction in the damages paid out from the patient's compensation fund, helping with the fund's solvency and stability.

## SIGNIFICANT ISSUES

OSI notes the bill could 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.

## ADMINISTRATIVE IMPLICATIONS

The New Mexico Hospital Association writes:

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." The 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>)

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB374 relates to the following bills:

House Bill 378 (HB378) and Senate Bill (SB449) seek to amend the Medical Malpractice Act (MMA) to change the statutory definition of "occurrence" in Section 41-5-3(K). This definitions for occurrence in HB374, SB449 and HB378 are identical. However, HB378 would cap the compensatory damages for medical malpractice to \$600,000.

House Bill 379 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.

Senate Bill 121 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.

Senate Bill 124 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.

Senate Bill 176 would add language to Section 41-5-6 of the MMA to require payments from the patient's 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.

Senate Bill 224 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 (MMA).

Senate Bill 444 seeks to have a judge determine the amount of punitive damages that should be awarded to a plaintiff.

## **TECHNICAL ISSUES**

The Attorney General's Office writes the bill does not address or amend Section 41-5-6(L), which might help with clarity to incorporate into the proposed definition of "occurrence" language from Section 41-5-6(L) addressing "two or more distinct injuries as a result of two or more different acts or omissions that occur at different times."

A doctor of podiatric medicine is a different credential than a medical doctor and the term "physician" typically refers to an individual who either holds an MD or doctor of osteopathy credential. The proposed change could impact arguments that only "podiatric physicians" or those who hold an MD, rather than all "podiatrists" or those who hold a DPM but not an MD, are entitled to MMA protections.

## **OTHER SUBSTANTIVE ISSUES**

The New Mexico Medical Society notes New Mexico has some of the highest numbers of medical malpractice lawsuits in the country and medical malpractice premiums are significantly higher in New Mexico compared with other states.

The New Mexico Hospital Association notes hospitals across the state have seen increases in malpractice plan premiums in the past four years and punitive damages have grown, potentially affecting fiscal solvency for smaller hospitals.

The Department of Health notes many states have changed their medical malpractice laws to reduce the cost of malpractice insurance. Malpractice insurance rate increases and lack of access to medical malpractice insurance may disproportionately impact smaller, independent medical providers who often serve rural, underserved communities.