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FISCAL IMPACT REPORT

SPONSOR Muñoz LAST UPDATED _____
ORIGINAL DATE 02/04/2025
BILL
SHORT TITLE Patient Compensation Fund Liability NUMBER Senate Bill 121
ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
OSI	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 176

Sources of Information

LFC Files

Agency Analysis Received From

New Mexico Attorney General (NMAG)

Department of Health (DOH)

Office of the Superintendent of Insurance (OSI)

New Mexico Medical Board (NMMB)

SUMMARY

Synopsis of Senate Bill 121

Senate Bill 121 (SB121) makes a single change in the Medical Malpractice Act, Section 41-5-25 NMSA 1978, which deals with the patient's compensation fund and a third-party administrator of that fund. The change exempts the third-party administrator, like the superintendent of insurance, from liability regarding actions related to the Medical Malpractice Act. The Office of the Superintendent of Insurance (OSI) is required to engage the services of a third-party administrator to operate the patient's compensation fund.

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

There is no appropriation in SB121 and no apparent fiscal impact.

SIGNIFICANT ISSUES

OSI has had to assure potential applicants for the third-party administrator position that the third-party administrator would be covered for any judgments made against it as administrator of this fund. OSI notes that the agency will have to renew or replace the current third-party administrator when its contract with OSI expires on December 31 of this year.

The Department of Health points out that ensuring the viability of the patient's compensation fund is essential to keeping malpractice insurance costs down; New Mexico's malpractice insurance costs are already the second highest of any state in the country. The Office of the Attorney General (NMAG) indicates that it is unclear whether lawsuits against the current third-party administrator, Integrion, have been brought to court.

NMAG gives a comprehensive discussion of sovereign immunity as it may apply to the patient's compensation fund. NMAG concludes that, "To avoid the reach of Seibert, SB121 may need to clarify that the Legislature has not waived sovereign immunity regarding the administration and operation of the patient's compensation fund and that it is a state fund, if it wishes to afford derivative governmental immunity to the third-party administrator."

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to Senate Bill 176, Medical Malpractice Changes. That bill does not address the issue of the third-party administrator.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

OSI might not be able to renew or replace the holder of the third-party administrator position without agreeing to reimburse the third-party administrator for liability judgments, having to pay them out of the patient's compensation fund and depleting that fund.

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