FISCAL IMPACT REPORT

SPONSOR Montoya/Armstrong/Terrazas **LAST UPDATED** **ORIGINAL DATE** 3/19/2025

SHORT TITLE Medical Malpractice Act Changes **BILL NUMBER** House Bill 378

ANALYST Esquibel

REVENUE*
(dollars in thousands)

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

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

Relates to House Bills 374 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)
Miners' Hospital of New Mexico (MH)
New Mexico Hospital Association (NMHA)
New Mexico Medical Board (NMMB)
New Mexico Medical Society (NMMS)
Office of Superintendent of Insurance (OSI)
University of New Mexico Health Sciences Center (UNMHSC)

SUMMARY

Synopsis of House Bill 378

House Bill 378 (HB378) proposes the following changes to the Medical Malpractice Act (MMA):

- Redefines "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."
- Reduces the cap on compensatory damages in a medical malpractice action to $600 thousand for all types of providers (removing different limitations for different types of providers in the current statute). This does not include awards for punitive damages and awards for past and future medical care which remain unlimited.

- Limits a healthcare provider's personal liability to $200 thousand (reduced from $250 thousand in the current statute), though this limitation does not apply if the healthcare provider is an independent outpatient healthcare facility.
- Clarifies payments made from the patient's compensation fund for medical care and related benefits are to be disbursed as expenses are incurred, rather than as a lump sum.

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 New Mexico Medical Society notes on similar legislation that removing lump sum payments could help the solvency of the patient's compensation fund, which is funded through surcharges paid by participating medical providers.

The Office of Superintendent of Insurance (OSI) suggests clarifying that payments made from the patient's compensation fund should be equal to the amounts expended on a patient's care after adjustments for all discounts and negotiated rates. Amounts paid from the patient's compensation fund should reflect actual healthcare treatment amounts paid or incurred, not initial billed amounts.

SIGNIFICANT ISSUES

The New Mexico Medical Society reports the bill's proposed elimination of lump sum payments would require the Office of Superintendent of Insurance or the third-party administrator of the patient's compensation fund to process medical expenses and related benefits as they are incurred.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB378 is similar to Senate Bill 449 and House Bill 374, which seek to amend the Medical Malpractice Act (MMA) to change the statutory definition of "occurrence" in Section 41-5-3(K). The definitions for occurrence in the three bills are identical. However, HB378 would cap the compensatory damages for medical malpractice to $600 thousand.

HB378 is an alternative to House Bill 379, which 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.

HB378 is related to Senate Bill 121, which 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. It is also related to Senate Bill 124, which would add clauses to the Insurance Code to allow the superintendent of insurance or delegated staff to issue civil investigative subpoenas prior to the issuance of a notice of contemplated action and allow the superintendent to petition the district court to compel

compliance with any such subpoena.

HB378 partially duplicates Senate Bill 176, which 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.

HB378 is related to Senate Bill 224, which 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.

Finally, HB378 is in conflict to Senate Bill 444, which seeks to have a judge determine the amount of punitive damages that should be awarded to a plaintiff.

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.

RAE/hj/hg/sgs