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FISCAL IMPACT REPORT

SPONSOR <u>Trujillo</u> SHORT TITLE <u>Super. Of Insurance & Med. Malpractice</u>	LAST UPDATED _____ ORIGINAL DATE <u>02/14/2025</u> BILL NUMBER <u>Senate Bill 224</u> ANALYST <u>Chilton</u>
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ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
OSI	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

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

Relates to House Bills 374, 378, 379, and 402 and Senate Bills 121 and 176

Sources of Information

LFC Files

Agency Analysis Received From
 New Mexico Medical Board (NMMB)
 New Mexico Attorney General (NMAG)
 Office of the Superintendent of Insurance (OSI)

SUMMARY

Synopsis of Senate Bill 224

Senate Bill 224 enacts a new section of the Medical Malpractice Act (Section 41-5 NMSA 1978) to allow the superintendent of insurance to participate in a medical malpractice case mediation and would require notice to the superintendent of insurance prior to district court approval of a medical malpractice settlement. Records regarding the case must be kept confidential by the superintendent or third-party administrators of the medical practice fund and would not be subject to subpoena.

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

No fiscal implications are identified, although additional time of OSI personnel may be required.

SIGNIFICANT ISSUES

Senate Bill 224 (SB224) provides means by which the superintendent of insurance can more closely monitor payments from the patient compensation fund, interacting with the third-party administrator of that fund. As noted by the Office of Superintendent of Insurance (OSI), intervention may be needed if payments are unreasonable or if purported patient expenses are not related to the incidence of malpractice or violate provisions in the Medical Malpractice Act.

Subsection 1B provides for confidentiality of the information provided, which may make parties in the case more willing to share important information.

Section 1C mandates OSI approval before a settlement can be made in a malpractice case. OSI reports, currently, it is often in the interest of both plaintiff and defendant to settle, regardless of the amount that would have to be paid out of the patient compensation fund, to the detriment of that fund. Involvement of OSI before a settlement is finalized would help to protect the patient compensation fund.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB224 relates to House Bill 374, House Bill 378, and House Bill 379 and Senate Bill 176, all of which change elements of the medical malpractice law. It also relates to House Bill 402 on health insurance provider information and Senate Bill 121, concerning the patient compensation.

TECHNICAL ISSUES

NMAG indicates uncertainty about the application of the Inspection of Public Records and the Health Insurance Portability and Accountability Act to the confidentiality provision in Section 1B of this act, stating, “It may be necessary to expressly state in the statute that the records are an exception to IPRA if that is the intention.”

NMAG raises two other concerns with the legal effects of the bill:

- Subsection A: Allowing the superintendent the option to participate in any mediation process that concerns a malpractice claim brought pursuant to the MMA may implicate the Mediation Procedures Act, NMSA 1978 § 44-7B-1. The Mediation Procedures Act defines a mediation party as “a person who participates in a mediation and whose agreement is necessary to resolve the dispute[.]” § 44-7B-2 (C). The Mediation Procedures Act also defines a nonparty participant as “a person, other than a mediation party or mediator, who participates in, is present during the mediation or is a mediation program administrator, including a person consulted by a mediation party to assist the mediation party with evaluating, considering or generating offers of settlement.” § 44-7B-2 (F). If the superintendent’s agreement is not necessary to resolve the dispute, then their role in a mediation may be better categorized as a nonparty participant.
- Subsection C: The proposed language does not provide a time or deadline by which the superintendent must be served with notice, nor does it specify which party must serve the notice. Additionally, providing the superintendent “the opportunity to intervene” may implicate Rule 1-024 NMRA, which would require the superintendent to serve a motion to intervene upon the parties. Rule 1-024 (C).

LAC/rl/hg