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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Schmedes/Moores **ORIGINAL DATE** 3/6/23

BILL

SHORT TITLE Medical Malpractice Recovery Amounts **NUMBER** Senate Bill 447

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PCF impact		Indeterminate	Indeterminate	Indeterminate	Recurring	Patient's Compensation Fund

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

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (NMAG)
 Department of Health (DOH)
 Human Services Department (HSD)
 Office of Superintendent of Insurance (OSI)

SUMMARY

Senate Bill 447 (SB447) would amend the Medical Malpractice Act to:

- Adjust the recovery cap against independent health care providers in correspondence with the consumer price index (CPI), with any adjustment amount capped at an increase of no greater than 2 percent. These adjustments would not apply until after three consecutive annual actuarial studies have found the patient's compensation fund solvent.
- In cases after 2027 and beyond where recovery is from an outpatient facility not majority owned and controlled by a hospital, the recovery maximum shall be adjusted annually to correspond to the percentage change in the CPI and shall not result in a percentage increase of more than 2 percent of the maximum recoverable amount;
- In cases after 2027 and beyond where recovery is from a hospital or outpatient health care facility that is majority owned and controlled by a hospital, the recovery maximum shall be adjusted annually to correspond to the percentage change in the CPI and shall not result in a percentage increase of more than 2 percent of the maximum recoverable amount; and
- Provide a definition of the CPI.

FISCAL IMPLICATIONS

The Office of Superintendent of Insurance does not provide an estimates regarding the bill's fiscal impact to the patient's compensation fund.

Volume 2 of the LFC annual recommendation to the Legislature, *Legislative for Results: Appropriations Recommendations*, notes:

The patient's compensation fund (PCF) pays malpractice settlements for member physicians and hospitals. Established under the New Mexico Medical Malpractice Act, the program provides affordable malpractice coverage that caps the amount of damages awarded against the member healthcare providers. The fund's solvency has been a concern in recent years as Laws 2021, Chapter 16, amended the Medical Malpractice Act to include new providers eligible for participation in the PCF, raised the required underlying coverage limit from \$200 thousand to \$250 thousand, and increased the cap on nonmedical damages for independent providers from \$600 thousand to \$750 thousand in 2022, with an inflation adjustment annually thereafter.

Laws 2021, Chapter 16, also required the PCF deficit be eliminated by January 1, 2027. The fund has a projected deficit of almost \$69 million despite a \$30 million infusion of state funds during the 2022 regular legislative session. According to a September 2022 actuarial report, OSI would need to issue a 32 percent surcharge increase to meet solvency requirements, which could potentially push physicians out of the PCF or, worse, out of the state. Instead, the superintendent issued a 10 percent surcharge increase on physician contributions to the PCF coupled with proposed changes to the Medical Malpractice Act that would result in cost-savings to the fund. Suggested statutory changes included limiting "medical care and related benefits" only to amounts actually paid by or on behalf of an injured patient and accepted by a healthcare provider in payment of charges, clarifying what constitutes a "reasonable charge," and permitting examinations to determine the necessity of future medical care.

SIGNIFICANT ISSUES

OSI notes the bill would amend provisions of the Medical Malpractice Act (MMA) that govern the annual increase in the applicable MMA claim caps. The changes would cause the claim cap for independent providers to increase annually by CPI-U (but limited to 2 percent), and only after three consecutive actuarial studies show the patient's compensation fund (PCF) is solvent. For hospitals and outpatient health facilities, the caps will increase as previously stated through 2026, then increase by the higher of CPI-U or 2 percent annually, starting in 2027, without regard to the solvency status of the PCF.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Attorney General's Office reports SB447 relates to SB445 and potentially conflicts with HB63, HB88, SB296, and SB446.

TECHNICAL ISSUES

The Department of Health notes on page 6, lines 15-17, the phrase "...between the month ending December of the penultimate calendar year and the month ending December of the immediately

preceding calendar year” is unclear. A suggested amount is “... between the month ending December of the penultimate calendar year and the month ending December of the immediately preceding calendar year.”

RAE/al/ne