

LFC Requestor: ESQUIBEL, RubyAnn

**2025 LEGISLATIVE SESSION  
AGENCY BILL ANALYSIS**

**Section I: General**

**Chamber:** House

**Category:** Bill

**Number:** 374

**Type:** Introduced

**Date (of THIS analysis):** 02/13/2025

**Sponsor(s):** Gail Armstrong, Mark Duncan, and Harlan Vincent

**Short Title:** Medical Malpractice Occurrence Definition

**Reviewing Agency:** Agency 665 - Department of Health

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**Section II: Fiscal Impact**

**APPROPRIATION (dollars in thousands)**

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
\$0	\$0	N/A	N/A

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
\$0	\$0	\$0	N/A	N/A

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
<b>Total</b>	\$0	\$0	\$0	\$0	N/A	N/A

### Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: House Bill 378 (HB378), House Bill 379 (HB379), Senate Bill 176 (SB176)

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

### Section IV: Narrative

#### 1. BILL SUMMARY

a) Synopsis

House Bill 374 (HB374) proposes to revise Section 41-5-3 NMSA 1978 “Definitions” for the following:

- Changing the word “podiatrist” to “podiatric physician” in two definitions of “health care provider” (page 2, line 8) and “independent provider” (page 3, line 17).
- Changing the entire definition of “occurrence” to read, “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” (page 5, lines 6-11).

Is this an amendment or substitution?  Yes  No

Is there an emergency clause?  Yes  No

b) Significant Issues

Medical malpractice is one of the determining factors that medical providers look at when choosing where to work. Currently, New Mexico is ranked 13<sup>th</sup> for Medical Malpractice cases in the U.S. (<https://www.forbes.com/advisor/legal/medical-malpractice/medical-malpractice-cases-by-state/>)

Legislation aimed at medical malpractice reform could help New Mexico’s healthcare providers stay in New Mexico, or help attract new providers., particularly those in rural hospitals or rural clinics.

#### 2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?  
 Yes  No

- Is this proposal related to the NMDOH Strategic Plan?  Yes  No

**Goal 1:** We expand equitable access to services for all New Mexicans

**Goal 2:** We ensure safety in New Mexico healthcare environments

**Goal 3:** We improve health status for all New Mexicans

**Goal 4:** We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

### 3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?  
 Yes  No  N/A
- If there is an appropriation, is it included in the LFC Budget Request?  
 Yes  No  N/A
- Does this bill have a fiscal impact on NMDOH?  Yes  No

### 4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH?  Yes  No

### 5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

- HB374 relates to HB378 Medical Malpractice Act Changes which introduces the exact same changes as HB374, but also amends material in Section 41-5-6 NMSA 1978 related to Limitation of Recovery.
- HB374 relates to HB379 Punitive Damages in Medical Malpractice Claim, which limit the availability of punitive damages in medical malpractice claims against a health care provider where acts were deliberately disregarded for the rights and safety of others.
- SB176 relates to SB176 Medical Malpractice Changes which proposes changes to the Patient's Compensation Fund related to patient expenses as they are incurred, the awarding of a proportion of punitive damages to the state, limiting attorney fees, creating a Patient Safety Improvement Fund, and making an appropriation.

### 6. TECHNICAL ISSUES

Are there technical issues with the bill?  Yes  No

### 7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written?  Yes  No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)?  Yes  No
- Does this bill conflict with federal grant requirements or associated regulations?  
 Yes  No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs?  Yes  No

## 8. DISPARITIES ISSUES

One contribution to health disparities in New Mexico is access to healthcare. Access is limited in part because of New Mexico's healthcare provider shortage, which negatively impacts all New Mexicans, and particularly those in rural areas, without health insurance, or with lower income levels. ([New Mexico State Health Assessment](#))

There is mixed evidence that state malpractice reforms affect the aggregate supply of physicians in a state. ([The Impact of Medical Malpractice Reforms | Annual Reviews](#)) However, studies such as Kessler et al. ([Impact of malpractice reforms on the supply of physician services - PubMed](#)) do find that "direct" malpractice reforms are associated with greater growth in the aggregate supply of physicians. In addition, a study of newly-trained physicians found that factors such as higher malpractice insurance premiums and damage award caps can affect provider decisions on practice location choice for at least some specialties. ([Practice Location Choice by New Physicians: The Importance of Malpractice Premiums, Damage Caps, and Health Professional Shortage Area Designation - PMC](#)).

Medical malpractice tort reform may also limit judgments that threaten the viability of hospitals – especially small rural hospitals with limited financial reserves. ([Rural New Mexico hospital may close its doors after \\$100M malpractice judgment](#))

Therefore, tort reform for medical malpractice may ultimately lead to more accessible health care for communities facing disparities. However, considerations of medical malpractice tort reform also need to include promoting civil justice, deterring substandard care, and encouraging systemic quality improvement. ([Health Care Reform and Medical Malpractice Claims - PMC](#))

## 9. HEALTH IMPACT(S)

New Mexico was ranked the 43rd healthiest state for 2023 in the United Health Foundation's America's Health Rankings and this is partly due to New Mexico's healthcare provider shortage. Provider shortages contribute to lack of care and delayed care, both of which result in adverse health outcomes. ([New Mexico State Health Assessment](#)) Some studies (e.g., [Impact of malpractice reforms on the supply of physician services - PubMed](#)) do find that "direct" malpractice reforms are associated with greater growth in the aggregate supply of physicians.

Existing evidence also does not support the notion that the threat of medical malpractice improves quality of care or patient outcomes, but it may increase 'defensive medicine' among physicians practicing in high-risk specialties, indirectly increasing health care costs. ([The impact of tort reform on defensive medicine, quality of care, and physician supply: A systematic review - PMC7](#))

Therefore, in general, medical malpractice tort reform may increase access to healthcare providers (and therefore improve health) without decreasing quality of care in New Mexico.

Specific to HB374, the main amendment to change the definition of "occurrence" may help to clarify that a single claim is for the individual person regardless of the number of providers, errors, or omissions, rather than for each provider. This may limit the ability to apply multiple claims for a single individual, thereby reducing overall malpractice costs.

## 10. ALTERNATIVES

None.

**11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

If HB374 is not enacted, then the proposed revisions to Section 41-5-3 NMSA 1978 "Definitions" will not be enacted.

**12. AMENDMENTS**

None.