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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

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**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 2/12/25 *Check all that apply:*  
**Bill Number:** HB 378 Original  Correction   
 Amendment  Substitute

**Sponsor:** Rep. Rod Montoya **Agency Name and Code:** AOC 218  
**Short Title:** Medical Malpractice Act Changes **Person Writing:** Kathleen Sabo  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 374 duplicates the HB 378 amendment to Section 41-5-3 NMSA 1978.

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

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: SB 378 amends Section 41-5-3 NMSA 1978, within the Medical Malpractice Act (MMA), to change the definition of “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.

SB 378 also amends Section 41-5-6 NMSA 1978 to limit the aggregate dollar amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice to \$600,000 per occurrence. SB 378, Section 2(D) limits a health care provider’s personal liability to \$200,000, except for an independent outpatient health care facility. The SB 378 amendment provides that any amount due from a judgment or settlement in excess of \$200,00 shall be paid from the Patient’s Compensation Fund. (Hereinafter “fund”).

SB 378 further amends Section 41-5-7 NMSA 1978 to require payments made from the fund for medical care and related benefits be made as expenses are incurred.

#### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the increase or decrease in court resources devoted to medical malpractice actions as a result of the HB 378 amendment. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

#### **SIGNIFICANT ISSUES**

1) In 2021, the MMA, Section 41-5-3 NMSA 1978, was amended to define “occurrence” to mean all injuries to a patient caused by health care providers’ successive acts or omissions that combined concurrently to create a malpractice claim.

The HB 378 amendment to Section 41-5-3 NMSA 1978 defines “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.

On December 31, 2020, prior to the 2021 legislative session where the amendment to the MMA occurred, the Office of the Superintendent of Insurance for the State of New Mexico published a report titled, Medical Malpractice Act/Patient’s Compensation Fund Modification Report, in which the superintendent recommended that the terms “malpractice claim” and “occurrence” be synonymously defined in such a way that a single, individual injury event be treated as a single malpractice claim or occurrence, regardless of the number of contributing providers or acts. The superintendent noted that the lack of a clear definition of “occurrence” – prior to the 2021 amendment – creates a significant debate in mediation and was the subject of litigation, and that many were suggesting that clarity is needed. See pp.4, 12 and 13,

There is the potential that the HB 378 amendment to Section 41-5-3 NMSA 1978 would bring sufficient clarity and a change in the law so as to make medical malpractice actions move more expeditiously and/or efficiently, decreasing the need for court resources.

2) Section 41-5-7(A) NMSA 1978 provides that awards of past and future medical care and related benefits shall not be subject to the limitations of recovery imposed in Section 41-5-6 NMSA 1978. Subsection F provides that

A judgment of punitive damages against a health care provider shall be the personal liability of the health care provider. Punitive damages shall not be paid from the fund or from the proceeds of the health care provider's insurance contract unless the contract expressly provides coverage. Nothing in Section 41-5-6 NMSA 1978 precludes the award of punitive damages to a patient. Nothing in this subsection authorizes the imposition of liability for punitive damages where that imposition would not be otherwise authorized by law.

### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

### **ADMINISTRATIVE IMPLICATIONS**

See “Fiscal Implications,” above.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 374 duplicates the HB 378 amendment to Section 41-5-3 NMSA 1978.

### **TECHNICAL ISSUES**

### **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

### **AMENDMENTS**