

LFC Requester:

RubyAnn Esquibel

**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)*****(Analysis must be uploaded as a PDF)*****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}***Date Prepared:** 2/18/2025*Check all that apply:***Bill Number:** HB 378Original  Correction Amendment  Substitute 

**Sponsor:** Representative Rod Montoya;  
Representative Gail Armstrong

**Short Title:** Medical Malpractice Act  
Changes

**Agency Name and Code Number:** Office of Superintendent of Insurance - 440

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**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
\$0	\$0	N/A	N/A

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
\$0	\$0	\$0	N/A	N/A

(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>	\$0	Unknown – see below	Unknown- see below	Unknown- see below	Unknown- see below	PCF Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 374; HB 379; SB 121; & SB 224  
 Duplicates/Relates to Appropriation in the General Appropriation Act

## **SECTION III: NARRATIVE**

### **BILL SUMMARY**

#### **Synopsis:**

HB 378 is a proposed amendment to the Medical Malpractice Act. The following changes are the most notable revisions:

- The bill 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.” This coupled with the deletion of existing language stating that “occurrence” should not be construed as precluding separate occurrences for separate acts or omissions that caused additional or enhanced injury or harm is likely intended to reduce the number of separate “occurrences” that an individual may recover maximum damages for.
- The bill reduces the cap on compensatory damages in a medical malpractice action to \$600,000 for all types of providers (removing different limitations for different types of providers in the current statute). This does not include awards of punitive damages and awards for past and future medical care which remain unlimited.
- The bill limits a healthcare provider’s personal liability to \$200,000 (reduced from \$250,000 in the current statute), though this limitation does not apply if the health care provider is an independent outpatient health care facility.
- The bill reintroduces language clarifying that payments made from the Patient’s Compensation Fund for medical care and related benefits are to be made as expenses are incurred, rather than as a lump sum.

### **FISCAL IMPLICATIONS**

The estimated additional operating budget net impact may be neutral. The revised limits will lead to a reduction in claims costs that will be offset with a reduction in premium surcharges.

To best determine the fiscal impact requires an in-depth actuarial analysis. The ability to conduct such an analysis will require time to gather relevant information and evaluate the data.

### **SIGNIFICANT ISSUES**

### **PERFORMANCE IMPLICATIONS**

### **ADMINISTRATIVE IMPLICATIONS**

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

### **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

- The limitation on individual liability specifically excludes independent outpatient health care facilities, but otherwise seems to apply to all health care providers. Thus, it appears that for all health care providers, except for independent outpatient facilities, the maximum a provider would pay in damages would be \$200,000 (plus any amount of punitive damages awarded) with the PCF paying the remaining amounts. The maximum for an independent outpatient health care facility, however, would be the full amount of \$600,000 (plus any punitive damage award).

“Health care provider” is defined in Section 1 of the bill (41-5-3(D)) to include hospitals. Since the limitation only excludes independent outpatient facilities, and the bill removes language concerning the separate limits of liability/damages caps for hospitals, the bill could be understood to require that hospitals are only liable for \$200,000 plus any punitive damages awarded.

- The current statute provides more detail as to how hospitals will be treated when they are no longer eligible to have any portion of an award of damages paid from the PCF, however, much of that language is removed by HB 378. The bill retains language requiring that beginning January 1, 2027, the PCF will not pay any portion of a judgment or settlement against a hospital or outpatient health care facility (if the injury or death occurred after December 31, 2026) and does not remove NMSA 1978, Section 41-5-5 which states in part “beginning January 1, 2027, hospitals and hospital-controlled outpatient health care facilities shall have the benefits of the other provisions of the Medical Malpractice Act except participation in the fund.” However, it also seemingly caps the hospital’s individual liability at \$200,000, as hospitals are included in the definition of “health care provider” and are not independent outpatient facilities. The limitation on damages applying to all “health care providers” except for independent outpatient health care facilities may be considered incongruous with the other portions of the Medical Malpractice Act limiting hospitals’ participation in the PCF come January 1, 2027, since the PCF will no longer pay the remaining \$400,000 of the \$600,000 damages cap (nor past or future medical costs) for hospitals. While the Medical Malpractice Act currently has language which addresses this (such as outlining how damages against hospitals are to be awarded, the amount of which differs each year) that language would be removed from the act by HB 378. One possible solution would be the inclusion of language specifying that the limitation on individual liability does not apply to hospitals (like it does for independent outpatient facilities), or alternatively, by specifying that the limitation on individual liability does not apply to hospitals for events that occurred after December 31, 2026.

## **ALTERNATIVES**

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

## **AMENDMENTS**