

LFC Requestor: ESQUIBEL, RubyAnn

**2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS**

Section I: General

Chamber: House
Number: HB379

Category: Bill
Type: Introduced

Date (of THIS analysis): 2/13/2025

Sponsor(s): Rod Montoya and Gail Armstrong

Short Title: Punitive Damages in Medical Malpractice Claim

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
Total	\$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 374 (HB374), 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 379 (HB379) proposes to revise Section 41-5-7 NMSA 1978 by:

- Amending Section E to add, “Punitive damages may only be awarded if the prevailing party provides clear and convincing evidence demonstrating that the acts of the health care provider were made with deliberate disregard for the rights or safety of others” (page 2, lines 14-18).
- Adding a new Section F to read, “The amount of a punitive damage award shall not be greater than thirty times the state median annual household income at the time the award is made” (page 2 line 25 through page 3 line 2).

Is this an amendment or substitution? Yes No

Is there an emergency clause? Yes No

b) Significant Issues

Punitive damages are assigned in instances where a healthcare provider’s conduct is either intentional or carries an element of malice. These damages act as a punishment for egregious behavior or gross negligence and are intended to prevent such actions from happening again in the future. ([Understanding Damages for Medical Malpractice Cases - The DiPietro Law Firm](#)) As a result, many medical malpractice insurance policies specifically exclude coverage for punitive damages. ([Does Medical Malpractice Insurance Cover Punitive Damages - MEDMAL](#)) This can leave the cost of coverage to a provider’s personal liability. In addition, New Mexico currently allows unlimited punitive damages and has a low standard of proof in order to award them. ([Senate Bill 176 Introduced To Reform Medical Malpractice Law To Center Patient Needs And Safety In New Mexico](#)). The prospect of obtaining greater compensation, especially in terms of punitive damages, stands as a significant incentive for litigation. ([Understanding Damages for Medical Malpractice Cases - The DiPietro Law Firm](#))

This risk, especially if not covered by their liability insurance, may limit the willingness of healthcare providers to practice in New Mexico, and therefore impact access to care for communities. Studies such as Kessler et al. ([Impact of malpractice reforms on the supply of physician services - PubMed](#)) find that direct malpractice reforms are associated with greater growth in the aggregate supply of physicians.

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

ADMINISTRATIVE IMPLICATIONS

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

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

- HB379 is related to HB374 which proposes to amend the definition for “occurrence” in Section 41-5-3 NMSA, the Medical Malpractice Act
- HB379 is related to HB378 which proposes to amend the definition for “occurrence” in Section 41-5-3 NMSA, the Medical Malpractice Act, but also amends Section 2 to limit recovery to \$600,000 per occurrence (not including punitive damages, and past and future medical care) and removing increases in limits for independent providers, outpatient facilities, or hospitals. It would also remove the qualification on the term “occurrence” that currently allows for maximum recovery for each distinct injury from different acts and would amend the Patient Compensation Fund to pay for medical care and benefits as expenses are incurred.
- HB379 is related to SB176 which would amend Section 41-5-6 NMSA to require payments from the Patient Compensation Fund to be made as expenses are incurred (as proposed in HB378) but would also require 75% of punitive damages to be awarded to the state, limits attorney fees, and creates a Patient Safety Improvement Fund, including 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 contributor to health disparities in New Mexico is lack of access to healthcare. Access is limited in part because of New Mexico's healthcare provider shortage, which negatively impacts all New Mexicans, but particularly those in rural areas, without health insurance, or with lower income levels. ([New Mexico State Health Assessment](#))

The risk of significant punitive damages may discourage healthcare professionals from practicing in New Mexico. This could reduce the availability of care in already underserved rural regions, where the pressure to retain an adequate supply of health care professionals is particularly acute. ([Health care providers and facilities: medical malpractice and tort reform--2005. End of Year Issue Brief - PubMed \(nih.gov\)](#)) Therefore, state malpractice reforms may improve the supply of physicians in a state ([The Impact of Medical Malpractice Reforms | Annual Reviews](#), [Impact of malpractice reforms on the supply of physician services - PubMed](#)), improving access to care for rural communities.

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)

The New Mexico Health Care Workforce Committee 2023 Annual Report documents the shortage of physicians in New Mexico. ([digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1010&context=nmhc_workforce](#))

This shortage contributes to New Mexico's poor health outcomes, with New Mexico ranking as the 43rd healthiest state for 2023 in the United Health Foundation's America's Health Rankings. ([New Mexico State Health Assessment](#)) 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](#)). Although 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](#)), studies such as Kessler et al. ([Impact of malpractice reforms on the supply of physician services - PubMed](#)) have found that "direct" malpractice reforms are associated with greater growth in the aggregate supply of physicians. Therefore, medical malpractice reform – such as setting a higher standard for proof and limiting punitive damages - could help

address provider shortages in New Mexico, thereby reducing lack of or delay of care, and result in improved health outcomes.

10. ALTERNATIVES

None.

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

If HB379 is not enacted, then Section 41-5-7 NMSA 1978 will not be amended to:

- Add to E. “Punitive damages may only be awarded if the prevailing party provides clear and convincing evidence demonstrating that the acts of the health care provider were made with deliberate disregard for the rights or safety of others”;
- Add F. “The amount of a punitive damage award shall not be greater than thirty times the state median annual household income at the time the award is made.”

12. AMENDMENTS

None.