LFC Requester:	Julisa Rodriguez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 1/27/25

Bill Number: SB 121

Check all that apply:

Original X Correction ____

Amendment ____ Substitute ____

Sponsor: Sen. George K. Muñoz

Short Title: Patient Compensation Fund Liability

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing Analysis: Benjamin L. Lammons

Phone: 505-537-7676

Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	**FY26**		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	**FY26**	**FY27**		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

Synopsis:

The New Mexico Medical Malpractice Act ("the MMA") was enacted in 1992. A few years ago, the MMA was amended to require the Superintendent of Insurance ("SOI") to contract with a qualified, licensed third-party administrator ("TPA) "for the administration and operation of the [patient compensation] fund ("PCF"), which is responsible for pay for damages in excess of MMA liability limits for qualified healthcare providers. NMSA 1978, § 41-5-25(B) (1992, as amended through 2021). Thereafter, the SOI contracted with Integrion, to serve as TPA of the PCF. Currently, Section 41-5-25(B) places no limits on the TPA's potential liability for administering and operating the PCF.

SB121 would amend Section 41-5-25(B) by providing the PCF TPA with "the same immunity from liability as the [S]uperintendent of Insurance ("SOI")] for actions taken within the scope of duties prescribed by the Medical Malpractice Act."

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

There is a question of whether the bill will afford the TPA the same immunity from liability for administering and operating the fund that the SOI possessed when it was administering and operating the fund. There does not appear to be any New Mexico case law directly on point, clarifying whether the Legislature may confer immunity on a third-party administrator of the PCF or not. However, reviewing recent case law from Texas and New Mexico together may provide some insight into the question.

In *Bellamy v. Allegiance Benefit Plan Management, Inc.*, 696 S.W.2nd 751, 755 (Tx. Ct. App July 25, 2024), a participant in a self-funded municipal healthcare plan sued the municipality. The trial court ruled that derivative governmental immunity barred the plaintiff's claims and dismissed them. *Id*. at 756. The Texas Court of Appeals affirmed the trial court, explaining that "[g]overnmental immunity is derived from the State's sovereign immunity" and that "it is significant that governmental immunity may also apply and extend to protect private companies who contract with the State or other governmental entities under certain circumstances." *Id*. at 759-60 (citation omitted). Importantly, the Court held that the Texas legislature and the municipality did not expressly and unambiguously waive immunity from suit. *Id*. at 763. It also

noted that the plaintiff conceded "that Texas courts have uniformly held that a private company acting as a third-party administrator to an insurance program that is funded by the State or another governmental entity for which it contracts is, like the governmental entity for which it contracts, immune from liability and suit." *Id*. (citations omitted).

Importantly, in *Bellamy*, the Texas Court of Appeals deemed the funds in the municipal health plan to be state funds. However, in *Seibert v. Okun*, 2024-NMCA-084, the New Mexico Court of Appeals examined the language of the MMA and NMSA 1978, Section 56-8-4D (2004), which bars the State from paying interest on damages awards and reached a different result. It explained: "The Legislature did not define 'the state and its political subdivisions' in the interest statute, and the MMA does not explicitly say whether or not the PCF should be considered 'the state' or a 'political subdivision' of the state." *Id*. ¶ 16. The Court of Appeals then stated:

> Mindful of the purpose of sovereign immunity and therefore of Section 56-8-4(D), the key question in determining whether Section 56-8-4(D) applies to the PCF is whether holding the PCF liable for interest would deplete public funds. Answered simply, monies in the PCF are not public funds, and thus holding the PCF liable for interest would not deplete public funds. We know that it would not because of how the PCF is funded and how those funds may and may not be used. Unlike our state's general fund—which receives "all revenue[ ] not otherwise allocated by law," NMSA 1978, § 6-4-2 (1957)—the PCF receives only one specific type of revenue. *See* § 41-5-25(B). The PCF is not funded by taxes on the public, but instead by annual surcharges on individual health care providers who wish to be covered by the MMA

Id. ¶ 20. For that reason, the Court of Appeals held, "because using PCF funds to pay interest on medical malpractice judgments would not deplete public funds, we conclude the PCF does not enjoy sovereign immunity from the payment of interest under Section 56-8-4(D)." *Id*. ¶ 20.

To avoid the reach of *Seibert*, SB121 may need to clarify that the Legislature has not waived sovereign immunity regarding the administration and operation of the PCF and that it is a state fund, if it wishes to afford derivative governmental immunity to the TPA.

PERFORMANCE IMPLICATIONS
N/A

ADMINISTRATIVE IMPLICATIONS
N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill is related to SB 176, which requires payments from the PCF to be made as expenses are incurred.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

It is unclear whether lawsuits have been brought against the current PCF TPA, Integrion, as

operator and administrator of the PCF. However, *Beecher Carlson Insurance Services, LLC v. Catechis,* No. A-1-CA-38334, mem. op. ¶¶ 1-9 (Mar. 9, 2023) suggests that lawsuits might be filed against Integrion unless derivative governmental immunity is granted. In that case, medical malpractice insurers brought a declaratory judgment action against the SOI and appealed the SOI's decision not to recognize a healthcare provider as a qualified provider under the MMA, because the provider tendered the MMA surcharge after the deadline. The insurers asked the district court to construe NMSA 1978, Section 41-5-25 of the MMA as requiring the SOI to accept the late MMA surcharge tendered by its insured, DaVita Medical Group of New Mexico, LLC ("DaVita"), and to recognize DaVita as a qualified healthcare provider under the MMA for the relevant period. *Id*. ¶ 1. The district court dismissed the declaratory judgment action and upheld the SOI's decision to deny DaVita qualified healthcare provider status. *Id*. ¶ 2. The Court of Appeals affirmed the district court. *Id*. ¶¶ 2-9, 10.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

Consider amending to clarify that the third-party administrator has the same immunity from liability as the superintendent for lawful actions taken that are within the scope of the third-party administrator's contractual duties to administer and operate the fund.