

<b>LFC Requester:</b>	<b>RubyAnn Esquibel</b>
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**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:** 01/31/2025 *Check all that apply:*  
**Bill Number:** SB 176 Original  Correction   
 Amendment  Substitute

**Sponsor:** Martin Hickey and Pat Woods **Agency Name and Code Number:** \_\_\_\_\_  
**Short Title:** An Act Relating to Medical Malpractice **Person Writing:** Nick Autio  
**Title:** Malpractice **Phone:** 5057963438 **Email:** nautio@nmms.org

**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
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

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

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: SB 176 makes four (4) substantive amendments to the Medical Malpractice Act (“MMA”). First, the bill amends Section 41-5-7 to require any award for future medical care and related benefits to be made as expenses are incurred. Second, the bill amends Section 41-5-7 to require any award of punitive damages to be divided between the prevailing party and the state. In particular, 25% of any punitive damages awarded would be paid to the prevailing party and the remaining 75% would be paid to the state and deposited into the Patient Safety Improvement Fund (“PSIF”), which is created in Section 4 of the bill. All money paid into the PSIF would be invested by the state treasurer and it could only be appropriated by the legislature to the department of health for the purpose of improving patient safety and health care outcomes. Lastly, Section 3 of the bill would create a new section of the MMA that would cap attorneys’ fees at 25% for any claims settled prior to the start of a trial or arbitration and at 33% for any judgement or settlement that occurs after trial or an arbitration proceeding.

#### **FISCAL IMPLICATIONS**

Note: SB 176 and its prohibition of lump sum payments would increase the solvency of the Patients’ Compensation Fund, which is funded through surcharges paid by participating medical providers. SB 176 is not anticipated to have any impact on the General Fund.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

#### **SIGNIFICANT ISSUES**

Currently, under the MMA, any judgment or settlement that includes a monetary award for future medical expenses or related benefits can be paid in a lump sum. There are three (3) issues with lump sum payments. First, the lump sum payment of future medical expenses or related benefits can impact the solvency and volatility of the PCF because future medical expenses and related benefits are uncapped and can result in substantial sums of money being paid in one time payments from the PCF. Second, the payment of medical expenses and related benefits as they are incurred ensures that an injured patient has access to all of the care they need, without limitation. If medical expenses and related benefits are paid in a lump sum, future expenses can be jeopardized if the amount needed to cover those expenses and benefits is underestimated at the time of the lump sum payment. Along similar lines, future medical expenses cannot always be predicted, which can result in an underpayment if a lump sum payment is made. Lastly, attorneys’ fees are typically taken out of lump sum payments to injured patient for future medical expenses, which can also jeopardize funding for future medical expenses and related benefits. Accordingly, SB 176 will help stabilize the PCF, it would improve the PCF’s solvency, and, most importantly, it would ensure that an injured patient’s future medical needs are met by the PCF.

SB 176’s division of punitive damages between the injured patient and the PSIF will not only

ensure that patients receive compensation for any injury sustained as a result of the medical malpractice, but the PSIF would also create a funding source to prevent future injuries and to improve patient safety.

In 2023, second to Pennsylvania, New Mexico had the second highest number of Medical Malpractice lawsuits per million people. In 2022, New Mexico's medical malpractice insurance loss ratio was estimated to be 183.6%. In other words, for every \$1.00 paid in malpractice premiums, \$1.83 was paid out by insurers pursuant to settlement agreements or judgments. Based on those numbers, medical malpractice premiums are nearly twice as high in New Mexico as they are in other states. By limiting fees paid to attorneys, SB 176 will decrease the number of frivolous lawsuits that are filed and SB 176 will also ensure that a greater percentage of any recovery is paid to injured patients.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

SB 176's elimination of lump sum payments will require the Office of the Superintendent of Insurance or the Third Party Administrator of the PCF to process medical expenses and related benefits as they are incurred.

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

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

If SB 176 is not passed, lump sum payments of future medical expenses and related benefits paid pursuant to the MMA could result in injured patients lacking sufficient funds to cover their future medical needs. Additionally, if attorneys' fees are not capped, New Mexico's premium costs for malpractice insurance will continue to rise, which will negatively impact the recruitment and retention of health care providers in New Mexico.

## **AMENDMENTS**