

<b>LFC Requester:</b>	<b>Esquibel, RubyAnn</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:** 1/31/25 *Check all that apply:*  
**Bill Number:** SB 176 Original  Correction   
 Amendment  Substitute

**Sponsor:** Sen. Martin Hickey **Agency Name and Code:** AOC 218  
**Short Title:** Medical Malpractice Changes **Person Writing:** Kathleen Sabo  
**Title:** \_\_\_\_\_ **Phone:** 505-470-3214 **Email:** aoccaj@nmcourts.gov

**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: None.

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

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: SB 176 enacts a new statutory section within the Medical Malpractice Act, Section 41-5-1 NMSA 1978 et. seq, to create the Patient Safety Improvement Fund (PSIF) in the state treasury and administered by the Department of Health (DOH). Under SB 176, money in the PSIF is subject to appropriation by the legislature to the DOH for the purposes of improving patient safety and health care outcomes. Any unexpended or unencumbered balance remaining in the PSIF at the end of a fiscal year is prohibited from reverting and is required to remain to the credit of the PSIF.

SB 176 amends Section 41-5-7 NMSA 1978, governing medical expenses and punitive damages within the Medical Malpractice Act, to require payments made from the Patient's Compensation Fund for medical care and related benefits as expenses are incurred. The SB 176 amendment to Section 41-5-7 NMSA 1978 also requires the court, in a malpractice claim in which punitive damages are awarded, to divide the punitive damage award and enter judgment as follows: 1) 25% of the punitive damage award shall be awarded to the prevailing party; and 2) 75% of the punitive damage award shall be awarded to the state, with all amounts remitted to the state treasurer to be deposited into the PSIF.

SB 176 amends Section 41-5-6 NMSA 1978, governing limitation of recovery within the Medical Malpractice Act, to provide that, except as provided in Section 41-5-7 NMSA 1978, the value of accrued medical care and related benefits shall not be subject to any limitation.

SB 176 also enacts a new statutory section limiting attorney fees by prohibiting and attorney from contracting for or collecting a contingency fee for representing a person seeking damages in a malpractice claim in an amount that exceeds:

A. twenty-five percent of the dollar amount recovered, if the recovery is pursuant to a settlement agreement and release of all claims executed by all parties prior to the start of a trial or an arbitration proceeding; or

B. thirty-three percent of the dollar amount recovered, if the recovery is pursuant to settlement, arbitration or judgment that occurs after a trial or arbitration proceeding begins.

#### **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 enforcement of this law and commenced medical malpractice actions and appeals of damage awards, as well as constitutional challenges to the law. 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) For a 2024 chart detailing state laws presenting medical malpractice liability reforms, including limiting attorney fees, see State Laws Chart I: Liability Reforms, Advocacy

Resource Center, American Medical Association, 2024, <https://www.ama-assn.org/system/files/mlr-state-laws-chart-I.pdf>

- 2) It can be anticipated that there will be challenges by attorneys to the constitutionality of the SB 176 limitations on attorney fees in medical malpractice actions, based on due process and equal protection claims.) See *Constitutionality of Limitations on Attorneys' Fees in Medical Malpractice Actions. Roa v. Lodi Medical Group, Inc.*, 695 P.2d 164 (Cal.), Washington University Law Review, 1986, [https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2145&context=law\\_lawreview](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2145&context=law_lawreview) . See also *Siebert v. Okun*, 485 P.3d 1265 (2021), where the NM Supreme Court held that the nonmedical, nonpunitive damages cap in the Medical Malpractice Act did not violate the Art. II, Section 12 right to trial by jury. <https://statecourtreport.org/sites/default/files/fastcase/converted/Siebert%20v.%20%20Okun%2C%20N.M.%20NO.%20S-1-SC-37231.pdf>
- 3) There is a question as to whether the SB 176 limitations on attorney fees in medical malpractice actions violates the Separation of Powers Clause in the New Mexico Constitution, Art. III, Section 1. In *Roa v. Lodi Medical Group, Inc.*, 37 Cal. 3d 920, 695 P.2d 164, 211 Cal. Rptr. 77 (1985), plaintiffs argued that the legislature's regulation and limitation on attorney fees encroached on a matter left solely to the judiciary. The court rejected the plaintiffs' argument, noting that regulation of attorney fees has never been within the sole province of the judiciary and that the legislature has regulated attorney fees throughout history. [https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2145&context=law\\_lawreview](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2145&context=law_lawreview)
- 4) There is also a question as to whether the SB 176, Section 2 amendment to Section 41-5-7 NMSA 1978, requiring court division of a punitive damage award and entering judgement such that 25% is awarded to the prevailing party and 75% is awarded to the state, with all amounts deposited in the PSIF, is a violation of the Supremacy Clause, Art. III, Section 1 and the Art. II, Section 12 right to trial by jury, as well as violating due process and equal protection, and constituting an unjust taking.

Some states have enacted a split-recovery statute in which a portion of the punitive damages goes to the state, not the plaintiff. See Split Recovery Statutes, The Sedona Conference, (2011),

[https://thesedonaconference.org/sites/default/files/commentary\\_drafts/Sub%2520team%25206%2520%2520Distribution%2520Split%2520Recovery%2520Statutes%252009072011.pdf](https://thesedonaconference.org/sites/default/files/commentary_drafts/Sub%2520team%25206%2520%2520Distribution%2520Split%2520Recovery%2520Statutes%252009072011.pdf) . See also *Uncle Sam and the Partitioning Punitive Problem: A Federal Split-Recovery Statute or a Federal Tax*, Pepperdine Law Review, (2013),

<https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=2135&context=plr> , re: state court cases challenging the constitutionality of split-recovery statutes and a listing of split-recovery statutes by state, I'll Take That: Legal and Public Policy Problems Raised by Statutes That Require Punitive Damages Awards to be Shared with the State, Missouri Law Review, (2003), <https://scholarship.law.missouri.edu/mlr/vol68/iss3/1/> , and *The Constitutionality of Split-Recovery Punitive Damage Statutes: Good Policy but Bad Law*, 2008 Utah L. Rev. 333 (2008).

## 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**

None.

**TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

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

**AMENDMENTS**