

LFC Requester:

Kelly Klundt

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to 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: 1/31/2025

Check all that apply:

Bill Number: SB 176

Original Correction

Amendment Substitute

Sponsor: Senator Martin Hickey, Senator Pat Woods

Agency Name and Code Number:

Office of Superintendent of Insurance - 440

Short Title: Medical Malpractice Changes

Person Writing: Timothy Vigil

Phone: (505) 690- **Email:** Timothy.Vigil@osi.n

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
Total	\$0	\$0	\$0	\$0	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

- Duplicates/Relates to Appropriation in the General Appropriation Act;
- Relates to SB 121 (Patient Compensation Fund Liability);
- Relates to SB 132 (Limit Damages in Legal Action).

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Senate Bill 176 (SB 176) amends the Medical Malpractice Act concerning payments for awards for future medical care and awards of punitive damages, imposes a limitation on the percentage of a judgment which can be taken for attorneys' fees, and creates the Patient Safety Improvement Fund to be administered by the Department of Health. More specifically:

- The bill requires that payments made from the Patient's Compensation Fund (PCF) for medical care and related benefits are to be paid as those expenses are incurred, rather than in a lump sum.
- The bill contains a cap on attorneys' fees by limiting the percentage of the recovered amount which attorneys may claim under a contingency agreement. SB 176 would impose a limitation of 25% of the dollar amount recovered if the award or settlement occurred prior to the start of a trial or arbitration, and 33% if the award or settlement occurred after trial or arbitration had begun.
- The bill requires that any award of punitive damages in an action under the Medical Malpractice Act be apportioned 25% to the prevailing party, and 75% to the newly created Patient Safety Improvement Fund.
- The bill creates the Patient Safety Improvement Fund as a non-reverting fund administered by the Department of Health for the purposes of improving patient safety and health care outcomes.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

1. The bill provides that punitive damages awards are to be apportioned 25% to the prevailing party, and 75% to the Patient Safety Improvement Fund. While the bill elsewhere limits attorneys' fees collected from a judgment to 33% of the dollar amount recovered, it does not address how those fees are to be paid from an award of punitive damages apportioned between the state and the plaintiff.

Without clarification, it is foreseeable that a prevailing party could end up paying more to attorneys than the amount personally recovered from the judgment. For example, if the court apportions 75% of a punitive damages award to the Patient Safety Improvement Fund, the injured patient would only receive 25% of the total punitive damages award. If the contingency agreement with his lawyer required the client to give 33% of the total judgment amount in attorneys' fees, the patient could be unable to even satisfy the attorney fee agreement with the amount of the judgment actually received.

This concern can be resolved by clarifying that the attorneys' fees limitations are percentages of the amount of a judgment actually received by the prevailing party. Alternatively, the bill could mandate that attorneys' fees are to be taken out of the amount of the punitive damages award appropriated to the state, or that the patient's award and the state's percentage must share in the apportionment of contingent attorneys' fees.

2. The bill requires that punitive damages awards are apportioned 25% to the prevailing party, and 75% to the Patient Safety Improvement Fund. This provision would satisfy the purpose of punitive damages, which are to punish bad actors and dissuade similar future conduct, while allowing the state to utilize some of those funds for the public interest. However, a concern with the legislation is the question of whether an injured patient would be required to pay income taxes on the total amount of the judgment, despite never seeing the vast majority of the punitive damages awarded.

In medical malpractice suits, attorneys generally take a large percentage of an award of damages under a contingency fee agreement. A prevailing party must pay taxes on the entire award of punitive damages, including that portion which went to attorneys. If an injured patient must pay taxes on the entire punitive damages amount including the funds appropriated to the Patient Safety Improvement Fund, that party may owe significantly more than the party ever receives from a judgment.

3. The bill's requirement that payments from the Patient's Compensation Fund for medical care and related benefits are to be paid as those expenses are incurred provides welcome clarification concerning such payments. Similar language was contained in prior versions of the Medical Malpractice Act and is consistent with the Patient's Compensation Fund's longstanding practice.

This language is necessary to ensure that awards for future medical treatment are actually able to be used for treatment. If payments are allowed to be made in a lump sum after trial, there is no guarantee that the patient's continued medical care will not exceed the awarded amount, or that a patient will not owe his or her attorney a large percentage of that award under a contingency agreement. Such a provision likewise ensures that a patient does not receive a lump sum meant to cover future medical care and then spend it elsewhere. In such a situation Medicaid would likely be burdened with that patient's care, despite the Patient's Compensation Fund already making a large payment for that purpose directly to the patient.

However, SB 176 could further promote the purposes of the Medical Malpractice Act by also clarifying that the payments for any medical care from the Patient's Compensation Fund must be equal to the amounts actually spent on a patient's care after all discounts and write-offs have been accounted for. Such would prevent a loophole requiring the Patient's Compensation Fund to potentially pay an injured patient several times the amount actually spent on their care. This potential is due to medical billing regularly being artificially inflated, and then systematically reduced under negotiated rates. Amounts paid from the Patient's Compensation Fund should reflect actual amounts paid or incurred, not initial amounts billed that are several times that actually paid.

4. The bill could be revised to clarify that the requirements concerning payments for

medical and related benefits apply regardless of whether such payments are a result of a verdict or a settlement. Under previous versions of the Medical Malpractice Act, some argued that a similar provision only applied to verdicts and was inapplicable to settlements.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

None

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None