

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: February 3, 2025

Check all that apply:

Bill Number: SB 224

Original X Correction
Amendment Substitute

Sponsor: Sen. Linda M. Trujillo

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

Short Title: Super. of Insurance & Med. Malpractice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Table with columns: Appropriation (FY25, FY26), Recurring or Nonrecurring, Fund Affected

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Table with columns: Estimated Revenue (FY25, FY26, FY27), Recurring or Nonrecurring, Fund Affected

(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**

*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.*

**BILL SUMMARY**

**Synopsis:** SB 224 would add a new section to Chapter 41, Article 5 NMSA 1978, the Medical Malpractice Act (“MMA”). This new section would do the following:

- Subsection A would allow the superintendent of insurance to participate in any mediation that concerns a claim filed under the MMA.
- Subsection B would prohibit the superintendent of insurance and the third-party administrator of the MMA’s patient compensation fund from making public any records they keep regarding malpractice claims. It would also make any such records not subject to subpoena.
- Subsection C would require that the superintendent of insurance be served notice of any settlement that may result in payment from the patient compensation fund. It would also require that the superintendent of insurance be allowed the opportunity to intervene concerning the settlement.

**FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

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

**SIGNIFICANT ISSUES**

**Subsection B:** Prohibiting the disclosure of records may present an issue under the Inspection of Public Records Act (IPRA), NMSA 1978 § 14-2-1. “[U]nder IPRA, public records are broadly defined.” *Dunn v. N.M. Dep’t of Game & Fish*, 2020-NMCA-026, ¶ 7. However, a public record is not subject to inspection if it is to be kept confidential “as otherwise provided by law.” Section 14-2-1(L). To the extent that this subsection may include records that are kept private under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 201, for example, those records may not be subject to disclosure under IPRA. However, there may be other records maintained by the superintendent or third-party administrator that would be subject to inspection under IPRA. It may be necessary to expressly state in the statute that the records are an exception to IPRA if that is the intention.

**PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

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

### Related:

SB 124 would add clauses to the Insurance Code, NMSA 1978, Sec. 59A-2-8 to allow the superintendent of insurance or their delegated staff to issue civil investigative subpoenas prior to the issuance of a notice of contemplated action, and to allow the superintendent to petition the district court to compel compliance with any such subpoena.

SB 121 would add language to Section 41-5-25 of the MMA to provide immunity from liability to the third-party administrator of the patient's compensation fund for actions taken within the scope of their duties under the MMA.

SB 176 would add language to Section 41-5-6 of the MMA to require payments from the patient compensation fund be made as expenses are incurred. It would also require that punitive damages be divided between the prevailing party and the state, with the state's allocation going to the patient safety improvement fund. It would also cap attorneys' fees in an action under the MMA.

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

Subsection A: Allowing the superintendent the option to participate in any mediation process that concerns a malpractice claim brought pursuant to the MMA may implicate the Mediation Procedures Act, NMSA 1978 § 44-7B-1. The Mediation Procedures Act defines a mediation party as "a person who participates in a mediation and whose agreement is necessary to resolve the dispute[.]" § 44-7B-2 (C). The Mediation Procedures Act also defines a nonparty participant as "a person, other than a mediation party or mediator, who participates in, is present during the mediation or is a mediation program administrator, including a person consulted by a mediation party to assist the mediation party with evaluating, considering or generating offers of settlement." § 44-7B-2 (F). If the superintendent's agreement is not necessary to resolve the dispute, then their role in a mediation may be better categorized as a nonparty participant.

Subsection C: The proposed language does not provide a time or deadline by which the superintendent must be served with notice, nor does it specify which party must serve the notice. Additionally, providing the superintendent "the opportunity to intervene" may implicate Rule 1-024 NMRA, which would require the superintendent to serve a motion to intervene upon the parties. Rule 1-024 (C).

## **ALTERNATIVES**

N/A

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

Status quo.

## **AMENDMENTS**

See Significant Issues, above.