

LFC Requestor: Self Assigned

2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: Senate

Category: Bill

Number: 444

Type: Introduced

Date (of THIS analysis): 02/20/2025

Sponsor(s): Pat Woods

Short Title: Judge to Determine Damages Awarded in Medical Malpractice

Reviewing Agency: Agency 665 - Department of Health

Analysis Contact Person: Arya Lamb

Phone Number: 505-470-4141

e-Mail: arya.lamb@doh.nm.gov

Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
\$ 0.00	\$ 0.00	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
\$ 0.00	\$ 0.00	\$ 0.00	N/A	N/A

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	\$ 0.00	\$ 0.00	\$ 0.00	\$ N/A	N/A	N/A

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: HB374, HB378, HB379, SB176, SB449

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

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

Senate Bill 444 (SB444) proposes to amend Section 41-5-7 of the Medical Malpractice Act stipulating that a judge, not a jury, will determine the dollar amount of punitive damages to be awarded to a plaintiff in medical malpractice cases.

Is this an amendment or substitution? Yes No

Is there an emergency clause? Yes No

b) Significant Issues

Many states have sought changes to their medical malpractice laws to reduce the cost of malpractice insurance in their state. Medical malpractice rates are not often affected by changes in laws related to medical malpractice (<https://centerjd.org/content/fact-sheet-caps-do-not-lower-insurance-premiums-doctors-and-insurance-insiders-admit-it>). The potential rate hikes or inaccessibility of medical malpractice insurance mostly impacts smaller, independent medical providers (<https://www.kob.com/new-mexico/4-investigates-doctors-warn-malpractice-changes-could-drive-providers-out-of-new-mexico/>) which often serve rural communities. This can leave small practices with no option but to close or to merge with a larger healthcare business which can result in closure if the practice is not deemed to be economically sustainable.

The cost of medical malpractice is one of the determining factors that medical providers look at when choosing where to practice. Addressing medical malpractice costs is a priority in and key to improving the ability of the state to attract and retain providers.

Many states "cap" (or limit) the amount of damages that can be awarded in medical malpractice cases. Most states' damage caps apply only to compensation for "noneconomic" losses, which can include such intangible injuries as pain and suffering or loss of enjoyment of life. New Mexico's damage caps, however, apply to total damages, except for awards for:

- past and future medical care (and related benefits), and

- punitive damages, which are intended to punish particularly bad conduct and deter similar conduct in the future.

SB 444 does not cap or change the actual awards in malpractice cases but changes the fact that a judge would make the determination of any punitive damages awarded to a plaintiff. For many people it is believed that jury awards on medical malpractice cases are higher due to the bias held by the public. New Mexico faces a unique issue where medical malpractice awards are higher than other states which has led to either an increase in the cost of medical malpractice insurance or for small agencies no insurance being available (<https://searchlightnm.org/high-costs-malpractice-insurance-threaten-new-mexico-hospitals/>)

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?

Yes No

If yes, describe how.

- Is this proposal related to the NMDOH Strategic Plan? Yes No

Goal 1: We expand equitable access to services for all New Mexicans

Goal 2: We ensure safety in New Mexico healthcare environments

Goal 3: We improve health status for all New Mexicans

Goal 4: We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?

Yes No N/A

- If there is an appropriation, is it included in the LFC Budget Request?

Yes No N/A

- Does this bill have a fiscal impact on NMDOH? Yes No

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? Yes No

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

SB444 relates to:

- HB374, which proposes to amend the definition for “occurrence” in Section 41-5-3 NMSA, the Medical Malpractice Act
- HB378, which addresses medical malpractice by proposing to amend the definition for “occurrence” in Section 41-5-3 NMSA, the Medical Malpractice Act, exactly as HB374 does, but also amends Section 2 to limit recovery to \$600,000 per occurrence (not including punitive damages, and past and future medical care) and removing increases in limits for independent providers, outpatient facilities, or hospitals.

- HB379, which would limit the amount of a punitive damage to not greater than thirty times the state median annual household income at the time of the award. HB379 would also require that punitive damages only be awarded if the prevailing party provides clear and convincing evidence demonstrating that the acts of the health care provider were made with deliberate disregard for the rights or safety of others for Section 41-5-7 of the Medical Malpractice Act.
- SB176, which would amend Section 41-5-6 NMSA to require payments from the Patient Compensation Fund to be made as expenses are incurred (as proposed in HB378) but would also require 75% of punitive damages to be awarded to the state, limit attorney fees, and create a Patient Safety Improvement Fund, including an appropriation.
- SB449, relating to medical malpractice, including litigation, venue determination, limiting recovery from the Patient’s Compensation Fund, limiting attorney’s fees, requiring 75% of punitive damages awarded in claims to be awarded to the state, and creating the Patient Safety Improvement Fund.

6. TECHNICAL ISSUES

Are there technical issues with the bill? Yes No.

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? Yes No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? Yes No
- Does this bill conflict with federal grant requirements or associated regulations?
 Yes No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? Yes No.

8. DISPARITIES ISSUES

None

9. HEALTH IMPACT(S)

New Mexico was ranked the 43rd healthiest state for 2023 in the United Health Foundation’s America’s Health Rankings and this is partly due to New Mexico’s healthcare provider shortage. Provider shortages contribute to lack of care and delayed care, both of which result in adverse health outcomes.([New Mexico State Health Assessment](#)) Some studies (e.g., [Impact of malpractice reforms on the supply of physician services - PubMed](#)) do find that “direct” malpractice reforms are associated with greater growth in the aggregate supply of physicians.

Existing evidence also does not support the notion that the threat of medical malpractice improves quality of care or patient outcomes, but it may increase ‘defensive medicine’ among physicians practicing in high-risk specialties, indirectly increasing health care costs.([The impact of tort reform on defensive medicine, quality of care, and physician supply: A systematic review - PMC7](#))

Therefore, medical malpractice reform – such as limiting punitive damages - could help address provider shortages in New Mexico, thereby reducing lack of or delay of care, and result in improved health outcomes.

10. ALTERNATIVES

None.

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If SB444 is not enacted, a judge will not determine the dollar amount of punitive damages to be awarded to a plaintiff in medical malpractice cases.

12. AMENDMENTS

None