

LFC Requester:	RubyAnn Esquibel
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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: 02/24/2025 *Check all that apply:*
Bill Number: SB 449 Original Correction
 Amendment Substitute

Sponsor: Larry Scott, James Townsend, and Candy Spence Ezzell **Agency Name and Code Number:** _____
Short Title: An Act Relating to Litigation **Person Writing:** Nick Autio
Title: An Act Relating to Litigation **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
Total						

(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 449 makes several changes to the Medical Malpractice Act (“MMA”). First, it amends the statute governing venue in civil actions (NMSA 1978, § 38-3-1) and the venue provision of the MMA to require medical malpractice claims to be brought in the county where the patient received the medical treatment at issue in the medical malpractice lawsuit. Second, in a technical amendment, SB 449 amends references to “podiatrist” to “podiatric physician” in the MMA. Third, SB 449 amends the definition of “occurrence” from “all injuries to a patient caused by a health care providers’ successive acts or omissions that combined concurrently to create a malpractice claim” to “all claims for damages from all persons arising from harm to a single patient, no matter how many health care providers, errors or omissions contributed to the harm.” Fourth, it amends annual Consumer Price Index (“CPI”) increases to the MMA cap by requiring the increases to be based on a prior three-year average of the CPI and by capping any applicable increase at 3% per year. Next, SB 449 amends the MMA to allow hospitals to continue participation in the MMA and the Patient’s Compensation Fund (“PCF”) after December 31, 2026. The sixth amendment to the MMA would require any award of past or future medical care to be awarded based on the amount paid for the service—not the amount billed. The seventh amendment requires all payments from the PCF for medical care and related benefits to be made as those expenses are incurred, which would prevent lump sum payments for medical care and related benefits if those payments are made from the PCF. Next, SB 449 would require any award of punitive damages under the MMA to be divided with 25% being awarded to the prevailing party and 75% awarded to the state and removed to the state treasurer to be deposited into the Patient Safety Improvement Fund, which is created by Section 8 of SB 449. Next, SB 449 increases the burden of proof to recover punitive damages under the MMA from a preponderance of the evidence standard to a clear and convincing standard. In addition to increasing the burden of proof, SB 449 also caps an award of punitive damage to an amount no greater than three times the compensatory damages awarded. Lastly, SB 449 would require the Office of the Superintendent of Insurance to evaluate and approve any proposed settlement if the proposed settlement would be paid from the PCF.

FISCAL IMPLICATIONS

Note: SB 449 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

New Mexico is facing a significant shortage of health care providers. For example, according to data from the New Mexico Health Care Workforce Committee, from 2017 to 2021 New Mexico lost a total of 711 primary care physicians, which represents approximately 30% of New Mexico’s primary care physicians. According to data from the Physician Advocacy Institute, New Mexico lost 248 practicing physicians from 2019 to 2024. Although many states are

struggling to recruit and retain physicians, New Mexico is the only state to have suffered a net loss of physicians from 2019 to 2024. Although there are many factors that negatively impact New Mexico's ability to recruit and retain physicians, the MMA has resulted in high professional liability costs for medical providers, which has a negative impact on recruitment and retention. According to data from New Mexico's Office of the Superintendent of Insurance, the base rate for a physician's professional liability policy in New Mexico is \$43,020. In nearby states, the same policy ranges from approximately \$22,000 to \$28,000. The increased malpractice costs in New Mexico can largely be explained by the loss ratios that medical malpractice insurers experience in New Mexico. In particular, New Mexico has the highest loss ratio in the nation: 183.6% versus the national average of 73.5%. In other words, for every \$1 professional liability insurers receive in premiums, they pay out \$1.83 on medical malpractice claims in New Mexico. Second to Pennsylvania, New Mexico experienced a greater number of medical malpractice lawsuits than any other state.

SB 449 would improve the MMA and, thereby, New Mexico's ability to recruit and retain medical providers by lowering the cost of professional liability insurance. In particular, the changes to venue requirements for medical malpractice claims will require malpractice claims to be decided by juries in the communities where individual acts of malpractice allegedly occurred. It is anticipated that a juries will continue to hand-down verdicts that hold medical providers and medical entities accountable, but juries are unlikely to award damages that would close a medical entity in their community. Accordingly, the venue provision of SB 449 will decrease malpractice premiums in New Mexico. The amended definition of "occurrence" will limit "claims stacking" and ensure that one injury equals one occurrence under the MMA, which will prevent multiple cap amounts from being paid out of the PCF for one individual malpractice claim. The amendment related to CPI increases will also decrease premium costs because the CPI will gradually increase the caps applicable to medical malpractice claims. SB 449's move to allow hospitals to continue their participation in the PCF will decrease premium costs and protect patients by decreasing the volatility of the PCF and ensuring that the PCF can continue to cover all future medical expenses for injured patients. SB 449's change to the way in which past and future medical expenses are paid would reduce premiums by ensuring that all past medical expenses are paid at the amount actually paid by the patient, not the amount billed to the patient, and by eliminating lump sum payments, which increase the volatility of the PCF. Lastly, SB 449's changes to awards of punitive damages would decrease premiums because it would decrease the number of claims that are settled because clinicians simply do not want to incur the risk of a jury awarding substantial punitives damages on claims that involve bad outcomes, but which were not the result of medical malpractice.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

SB 449 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 449 is not passed, New Mexico's struggle to retain and recruit medical providers will continue because the cost of malpractice insurance will be significantly higher than surrounding states.

AMENDMENTS