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FISCAL IMPACT REPORT

SPONSOR Hickey/Woods/Sanchez/Gonzales/Block **LAST UPDATED** _____
ORIGINAL DATE 3/2/2025
SHORT TITLE Medical Malpractice Changes **BILL NUMBER** Senate Bill 176
ANALYST Esquibel

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	Patient's Compensation Fund
	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	Patient Safety Improvement Fund

Parentheses () indicate revenue decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 449 and House Bills 374, 378, and 379

Sources of Information

LFC Files

Agency Analysis Received From
 Administrative Office of the Courts (AOC)
 Attorney General's Office (NMAG)
 Department of Health (DOH)
 Health Care Authority (HCA)
 New Mexico Hospital Association (NMHA)
 New Mexico Medical Board (NMMB)
 New Mexico Medical Society (NMMS)
 Office of Superintendent of Insurance (OSI)

SUMMARY

Synopsis of Senate Bill 176

Senate Bill 176 (SB176) proposes ending medical malpractice lump-sum payouts from the patient's compensation fund and instead require payments be made as treatment expenses are incurred. The bill would cap attorney fees in medical malpractice lawsuits at 25 percent of the money awarded if a case is settled and 33 percent if the case goes to trial. A patient safety improvement fund would be created which would receive 75 percent of any punitive damages

awarded in medical malpractice cases. The bill would set limits on the recoverable amounts in malpractice claims, adjusted by the consumer price index.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

SB176 would create the patient safety improvement fund administered by the Department of Health. The patient safety improvement fund would include distributions, appropriations, gifts, grants, donations, and receipts from punitive damage awards in medical malpractice claims. Money in the patient safety improvement fund would be subject to appropriation by the Legislature to improve patient safety and healthcare outcomes. Any unexpended or unencumbered balance remaining in the patient safety improvement fund at the end of a fiscal year would not revert and would accrue to the patient safety improvement fund.

The New Mexico Medical Society notes the provisions of the bill removing lump sum payments could help the solvency of the patients compensation fund, which is funded through surcharges paid by participating medical providers.

The Office of Superintendent of Insurance (OSI) suggests clarifying payments made from the patients compensation fund should be equal to the amounts expended on a patient's care after adjustments for all discounts and negotiated rates. Amounts paid from the patient's compensation fund should reflect actual healthcare treatment amounts paid or incurred, not initial billed amounts.

SIGNIFICANT ISSUES

OSI notes while the bill limits attorneys' fees collected from a judgment to 33 percent of the amount recovered, the bill does not address how those fees are to be paid from an award of punitive damages apportioned between the state and the plaintiff.

OSI questions whether an injured patient would be required to pay income taxes on the total amount of the judgment, despite not receiving the majority of the punitive damages awarded.

ADMINISTRATIVE IMPLICATIONS

The bill's elimination of lump sum payments would require OSI to process medical expenses and related benefits as they are incurred.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 176 relates to Senate Bill 449, Medical Malpractice Changes; House Bill 374, Medical Malpractice "Occurrence" Definition; House Bill 378, Medical Malpractice Changes; and House Bill 379, Punitive Damages in Medical Malpractice Claim.

TECHNICAL ISSUES

NMAG notes section 1, subsection H, proposes amending Section 41-5-6(H) to read: “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.” It may be advisable to substitute “accrued” with “received” as the meaning of “accrued” could be disputed. NMAG also raises questions regarding the state taking a substantial portion of a punitive damages award and limiting contingent attorney fees.

OTHER SUBSTANTIVE ISSUES

The New Mexico Medical Society notes New Mexico has some of the highest amounts of medical malpractice lawsuits in the country and medical malpractice premiums are significantly higher in New Mexico compared with other states.

The New Mexico Hospital Association notes hospitals across the state have seen increases in malpractice plan premiums in the past four years and punitive damages have grown, potentially affecting fiscal solvency for smaller hospitals.

DOH notes many states have changed their medical malpractice laws to reduce the cost of malpractice insurance. Malpractice insurance rate increases and lack of access to medical malpractice insurance may disproportionately impact smaller, independent medical providers who often serve rural, underserved communities.

RAE/SL2