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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 3/18/2025

SPONSOR Scott/Townsend/Ezzell

BILL
NUMBER Senate Bill 449

SHORT TITLE Medical Malpractice Changes

ANALYST Esquibel

REVENUE* (dollars in thousands)

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

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 374, 378, and 379, and Senate Bills 121, 124, 176, 224, 444, and 449.

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)

NM Medical Society (NMMS)

Office of Superintendent of Insurance (OSI)

University of New Mexico Health Sciences Center (UNMHSC)

SUMMARY

Synopsis of Senate Bill 449

Senate Bill 449 (SB449) proposes multiple changes to the Medical Malpractice Act (MMA), Section 38-3-1:

- Amends NMSA 1978, as well as Section 41-5-4 of the MMA, concerning venue for medical malpractice cases, requiring that cases be heard in the county where the alleged malpractice occurred.
- Redefines “occurrence” to mean “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.” OSI notes this provision coupled with the deletion of existing language stating that “occurrence” should not be construed as precluding separate occurrences for separate acts or omissions that caused additional or enhanced injury or harm is likely intended to reduce the number of separate “occurrences” that an individual may recover maximum damages for.
- Amends how the annual adjustment on the cap on damages for medical providers is calculated.
- Requires that payments for past and future medical care made by the patient’s compensation fund (PCF) be for amounts actually paid for medical treatment.
- Requires the PCF only pay for expenses related to past and future medical care as those expenses are incurred, rather than as a lump sum.
- Provides that the superintendent of insurance shall evaluate and approve proposed settlements that involve payment from the PCF.
- Removes the current requirement that the surcharges for the PCF be set with the intent to bring the fund to solvency.
- Requires that an award of punitive damages must be supported by a showing of clear and convincing evidence the acts were made with deliberate disregard for the rights or safety of others.
- Imposes a cap on punitive damages that may be awarded. Under the bill, punitive damages could not exceed three times the amount of compensatory damages awarded.
- Creates the patient safety improvement fund as a nonreverting fund administered by the Department of Health for the purposes of improving patient safety and healthcare outcomes.
- Requires that 75 percent of any punitive damage award be awarded to the newly created patient safety improvement fund, with the remaining 25 percent to be awarded to the prevailing party.
- Imposes a limit to attorneys' fees that can be included in a contract or contingency fee agreement for medical malpractice actions. SB449 would limit attorneys’ fees to 25 percent of the dollar amount recovered if the award or settlement occurred prior to the start of a trial or arbitration, and 33 percent if the award or settlement occurred after trial or arbitration had begun.

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

SB449 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 on similar legislation that removing lump sum payments could help the solvency of the patient's compensation fund, which is funded through surcharges paid by participating medical providers.

The Office of Superintendent of Insurance (OSI) suggests clarifying that payments made from the patient's 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.

NMAG reports SB449 may affect the ability of people living in rural areas to litigate malpractice claims. Considering that patients from rural areas often travel for medical care, this will require them to litigate from afar, which slightly modifies the discretionary *forum non conveniens* doctrine, which generally honors the plaintiff's choice of forums.

ADMINISTRATIVE IMPLICATIONS

The New Mexico Medical Society reports the bill's proposed elimination of lump sum payments would require the Office of Superintendent of Insurance or the third-party administrator of the patient's compensation fund to process medical expenses and related benefits as they are incurred.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB449 is similar to HB378 and HB374, which seek to amend the Medical Malpractice Act (MMA) to change the statutory definition of "occurrence" in Section 41-5-3(K). The definitions for occurrence in the three bills are identical. However, HB378 would cap the compensatory damages for medical malpractice to \$600 thousand.

SB449 is an alternative to HB379, which adds new language to Section 41-5-7(E) that requires a plaintiff seeking punitive damages to prove by clear and convincing evidence that "the acts of the healthcare provider were made with deliberate disregard for the rights or safety of others." It also creates Section 41-5-7(F), which caps the amount of punitive damages available to a plaintiff. The conflict between the bills is the amount of punitive damages available to a plaintiff.

SB449 is related to SB121, which 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. It is also related to SB124, which would add clauses to the Insurance Code to allow the superintendent of insurance or delegated staff to issue civil investigative subpoenas prior to the issuance of a notice of contemplated action and allow the superintendent to petition the district court to compel compliance with any such subpoena.

SB449 partially duplicates SB176, which would add language to Section 41-5-6 of the MMA to require payments from the patient's 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.

SB449 is related to SB224, which would add a new section to the MMA to allow the superintendent of insurance to intervene in mediation and court proceedings that involve the Medical Malpractice Act.

Finally, SB449 is in conflict to SB444, which seeks to have a judge determine the amount of punitive damages that should be awarded to a plaintiff.

OTHER SUBSTANTIVE ISSUES

The New Mexico Medical Society notes New Mexico has some of the highest numbers 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.

The Department of Health 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.

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