Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

BILL NUMBER: House Bill 99/aHHHC
SHORT TITLE: Medical Malpractice Changes
SPONSOR: Chandler/Armstrong/Hochman-Vigil/Silva/Gallegos
LAST UPDATE: 2/05/2026 **ORIGINAL DATE:** 1/28/2026 **ANALYST:** Hernandez/Rodriguez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
OSI	No fiscal impact	No fiscal impact	No fiscal impact			

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

Conflicts with House Bills 107 and 143 and Senate Bill 173

Sources of Information

LFC Files

Agency or Agencies Providing Analysis
Office of Superintendent of Insurance
University of New Mexico Health Sciences
New Mexico Medical Board
New Mexico Hospital Association

Agency or Agencies That Were Asked for Analysis but did not Respond
Miner's Colfax Medical Center

SUMMARY

Synopsis of HHHC Amendments to House Bill 99

The House Health and Human Services Committee amendments to House Bill 99 (HB99) make three changes. The first clarifies that an "occurrence" happens when a provider or providers' acts or omissions combine to create an injury or injuries to a patient. The amendment shifts the anchor from the injury or set of injuries that a create malpractice claim to a provider's or providers' acts or omissions that create an injury or injuries.

The second change clarifies how the patient compensation fund (PCF) surcharges are to be calculated. For hospitals and outpatient healthcare facilities, it is based on actuarial losses and claims. For independent practitioners, it is determined by the Office of Superintendent of Insurance with advice from the advisory board and an independent actuarial study of the fund. The amendment also clarifies the surcharge for hospitals and outpatient healthcare facilities cannot be less than the actuary's recommended surcharges based on the expected value to fully

fund their current and projected claim obligations.

The third change to HB99 details that a provider has caps on punitive damages if they are a person, a hospital owned and operated by a New Mexico resident, or a domestic corporation. However, if it is a hospital system—meaning a group of two or more hospitals that are owned and operated by the same person—then there are no caps on punitive damages.

Synopsis of House Bill 99

House Bill 99 (HB99) does the following:

Section 1 amends the definition of a medical malpractice "occurrence" to an injury or set of injuries to a patient caused by acts or omissions in the course of medical treatment that combine to create malpractice claims—thereby limiting the number of claims an individual can file per distinct injury to one. This section also clarifies that the costs recoverable by a plaintiff in a medical malpractice suit is limited to the costs that were actually incurred for the patient's treatment.

Section 2 extends hospital and hospital-controlled outpatient facilities participation in the patient compensation fund (PCF) to January 1, 2030. Once hospitals are no longer participating in the PCF, they will not have to establish financial liability with the Office of Superintendent of Insurance but will continue to receive the benefits of the other provisions of the Medical Malpractice Act. Similarly, section 3 also extends until January 1, 2030, PCF coverage of judgments or settlements below $750 thousand. After January 1, 2030, amounts due from a judgment or settlement are not paid by the PCF. Section 3 also strikes a section clarifying that separate acts or omissions causing multiple injuries are each eligible for the full statutory maximum. This amendment is consistent with the amendments in Section 1.

Section 4 prohibits lump sum payments for the estimated costs of a plaintiff's future medical care and instead requires that payments are made by the PCF for expenses incurred. Furthermore, HB99 repeals an existing provision allowing parties to negotiate a settlement whereby a plaintiff's right to receive future medical care is limited by the settlement agreement. Section 4 also strikes language clarifying that punitive damages against a health care provider are personal liabilities against the provider and cannot be paid from the PCF.

Section 5 is a new section of the Medical Malpractice Act that focuses on punitive damages. This section amends the process of punitive damages so that an individual must first file a claim without punitive damages on the table, then discovery takes place to determine if there is a triable issue of medical malpractice, a plaintiff can then amend the pleadings to include punitive damages, and the court determines if the suit includes punitive damages. Punitive damages may only be awarded if the plaintiff provides clear and convincing evidence that the acts of the health care provider were malicious, willful, wonton, reckless, fraudulent, or in bad faith.

Section 7 clarifies the provisions of this act apply to all claims of medical malpractice that arrive on or after the effective date of this act.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the

Legislature adjourns, which is May 20, 2026.

FISCAL IMPLICATIONS

The Office of Superintendent of Insurance (OSI) "anticipates that medical malpractice premiums will be reduced" if HB99 as amended is passed. OSI's actuary estimates that medical malpractice premiums and surcharges could potentially decrease by 3 percent. Additionally, OSI points out that medical expenses have accounted for 32 percent of the PCF portion of settlements over the past three years, while paid medical bills are estimated to be somewhere between 20 and 50 percent lower than billed amounts—although this is not always the case. According to OSI, the changes related to billed versus paid amounts in settlements should result in a 6 percent decrease in premiums and 6 percent decrease in PCF surcharges—as seen in the table below.

Independent Provider Specialty	Current Medical Malpractice Premium (PCF plus Primary Layer)	Post Bill Medical Malpractice Premium (PCF plus Primary Layer)
Internal Medicine	$21,110	$17,200
General Surgery	$101,521	$82,719
OB/GYN	$107,961	$87,967
Average	$76,864	$62,629

SIGNIFICANT ISSUES

Workforce Shortages. New Mexico continues to face a critical, chronic shortage of health professionals across the disciplines, particularly in rural areas. Thirty-two of 33 New Mexico counties are designated as health professional shortage areas (HPSAs) in primary care, behavioral health, dental health, or a combination of the three. On average, New Mexico needs at least an additional 5,000 healthcare workers to address current shortages. In December 2025, according to the Workforce Solutions Department, 69 percent of online job postings were for health and personal care and 15 percent of those were postings for physicians.

Medical Malpractice Research. According to the New Mexico Medical Society, 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 previously stated that 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. In response to a proposed bill during the 2025 session, the Department of Health noted 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 in rural, underserved communities.

New Mexico's medical malpractice cap limitations are higher than two out of three neighboring states. Research is mixed on the impact of tort reform on physician supply, with many articles showing a correlation between high medical malpractice and reduced physician supply. However, studies of states that implemented tort reform have seen varied impacts on physician supply. New Mexico recently changed its medical malpractice laws, allowing for claims up to $4 million against hospitals and outpatient facilities. This cap will increase to $6 million in 2026. Meanwhile Colorado, Texas, and other states have lower caps on medical malpractice, while Arizona has no limitations.

Punitive Damages. An LFC survey found that 65 percent of New Mexico physicians surveyed are currently considering leaving the state to practice elsewhere. Of New Mexican physicians who are considering leaving the state, 83 percent reported the cause as punitive damages associated with medical malpractice—the most picked option—with 76 percent citing medical malpractice and 51 percent citing quality of life and compensation.

HB99 as amended by HHHC makes it so that private-equity-owned hospitals in New Mexico do not have caps on punitive damages. Private equity firms are increasingly purchasing hospitals both nationally and in New Mexico. A report written by the Private Equity Stakeholder Project highlights that New Mexico has the highest proportion of hospitals owned by private equity firms in the country, with 38 percent of private hospitals (17 out of 45) owned by private equity firms. The state with the second highest proportion is Idaho with 23 percent of hospitals being owned by private equity firms. Nationally, between 2009 to 2019, the acquisition values of healthcare related private equity firms were set at $750 billion. Generally, private-equity-owned hospitals are in lower income, non-urban areas and have fewer patients discharged, fewer employees per bed, and lower patient experience scores.

Below are the punitive damages caps for different provider types in HB99 as amended, as long the hospital is owned and operated by a New Mexican.

Independent Providers	
Injury Year	**Punitive Damages Cap**
Prior to January 1, 2022	$600,000
2022-2023	$750,000
2024	$750,000 (CPI adjusted)

Independent Outpatient Health Care Facilities	
Injury Year	**Punitive Damages Cap**
2024	$1,000,000
2025 and forward	$1,000,000 (CPI adjusted)

Hospitals and Hospital-Controlled Outpatient Facilities	
Injury Year	**Punitive Damages Cap**
2022	$4,000,000
2023	$4,500,000
2024	$5,000,000
2025	$5,500,000
2026	$6,000,000
2027	$6,000,000 (CPI adjusted)

Patient's Compensation Fund. Established under the New Mexico Medical Malpractice Act, the patient's compensation fund (PCF) provides a second layer of malpractice coverage and caps the amount of certain damages awarded against member healthcare providers. The program is funded by surcharges on providers who are members. As of August 2025, 14 hospitals, 417 independent provider groups, and 5,013 individual providers were participating in the program. OSI is responsible for approving surcharge increases—in 2026, OSI approved a 10 percent assessment increase for independent providers and 25.6 percent assessment increase for hospitals. As it stands, the PCF does not cover punitive damages. PCF only covers monetary damages and medical care and related benefits.

Limitations on Recovery. Section 41-5-6 NMSA 197 outlines limitations on malpractice settlements, not including punitive damages and past and future medical care and related

expenditures. The limitation for damages against independent providers is $750 thousand, $1 million for independent outpatient healthcare facilities starting in 2024, $6 million for hospitals or hospital-controlled outpatient healthcare facilities starting in 2026. These limitations can be adjusted annually by the consumer price index.

OTHER SUBSTANTIVE ISSUES

Underlying Coverage for PCF. In 2021, the Legislature increased the underlying malpractice insurance requirement for healthcare providers participating in the PCF. Providers, except for independent outpatient healthcare facilities, must maintain malpractice insurance of at least $250 thousand per occurrence or deposit $750 thousand in cash with OSI. Hospitals and hospital-controlled outpatient facilities may satisfy this requirement using any form of malpractice insurance. For independent healthcare providers, the required malpractice insurance policy or cash deposit provides coverage for no more than three malpractice occurrences. Independent outpatient healthcare facilities must maintain malpractice insurance of at least $500 thousand per occurrence or deposit $1.5 million in cash with OSI.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with Senate Bill 173, House Bill 107, and House Bill 143, which modify the same section of law.

TECHNICAL ISSUES

According to Section 2 of the HB99 as amended, subsection D adds language removing the qualification requirements under subsection A of Section 2 for hospitals and hospital-controlled outpatient health care facilities. This makes it unclear if hospitals and hospital-controlled outpatient healthcare facilities are no longer required to (1) establish financial responsibility with the Office of Superintendent of Insurance using any form of malpractice insurance and (2) pay the surcharge assessed on healthcare providers by the office. The language should be clarified to state if the amendment aims to remove the requirements listed under subsection A(1), subsection A(2), or both. If the amendment applies to subsection A(1), hospitals and hospital-controlled outpatient healthcare facilities would no longer be required to establish financial responsibility through any form of malpractice liability insurance to qualify under the provisions of the Medical Malpractice Act.

~~Section 4 of HB99 as amended three times in HHHC strikes language clarifying that punitive damages are the provider's personal liability and cannot be paid from the PCF. It is unclear if by removing this language if the PCF could be used to cover punitive damages.~~

AH/JR/sgs/hg/sgs/ct/hg/sgs