

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

**SPONSOR** Chatfield, Vincent **LAST UPDATED** \_\_\_\_\_  
**ORIGINAL DATE** 2/14/24  
**BILL**  
**SHORT TITLE** Medical Malpractice Limit of Recovery **NUMBER** House Bill 107  
**ANALYST** Esquibel

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

| Agency/Program | FY24 | FY25          | FY26          | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected                      |
|----------------|------|---------------|---------------|-------------------|---------------------------|------------------------------------|
| <b>OSI</b>     |      | Indeterminate | Indeterminate | Indeterminate     | Recurring                 | <b>Patient's Compensation Fund</b> |

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

Duplicates Senate Bill 53

### Sources of Information

LFC Files

Agency Analysis Received From  
 Attorney General's Office (NMAG)  
 Health Care Authority (HCA)  
 New Mexico Medical Society  
 New Mexico Hospital Association  
 Office of Superintendent of Insurance

## SUMMARY

### Synopsis of Senate Bill 53

House Bill 107 would amend the Medical Malpractice Act to lower the maximum recoverable amount against a hospital or hospital-controlled outpatient facility.

The effective date of this bill is January 1, 2025.

## FISCAL IMPLICATIONS

This bill does not impose a cap on actual medical expenses, which are currently unlimited.

## SIGNIFICANT ISSUES

The Attorney General’s Office writes House Bill 107 would amend Section 41-5-6(E) NMSA 1978 of the Medical Malpractice Act. If passed, the bill would reduce the aggregate dollar amount recoverable by all persons for any medical malpractice claims brought against a hospital or a hospital-controlled outpatient facility by between approximately \$4.5 million to \$5 million, depending on the year. The table below compares the total amount recoverable against hospitals and hospital-controlled outpatient facilities (excluding punitive damages and past and future medical care and related benefits) for any injury or death to a patient as a result of malpractice under the current statutory limits compared to this bill:

| Year                          | Limit Under Current Section 41-5-6(E)  | Limit Under HB107  | Limit Reduction under HB107 |
|-------------------------------|--|--|-----------------------------|
| 2025                          | \$5,500,000  | \$1,000,000  | \$4,500,000                 |
| 2026                          | \$6,000,000  | \$1,000,000 adjusted annually by the prior three-year average consumer price index | ~ \$5,000,000               |
| 2027 and each year thereafter | \$6,000,000 adjusted annually by the prior three-year average consumer price index | \$1,000,000 adjusted annually by the prior three-year average consumer price index | \$5,000,000                 |

NMAG reports HB107 makes changes to subsection (E) and leaves the aggregate limits to recovery at existing levels for malpractice claims against independent providers (Section 41-5-6(B) NMSA 1978 and independent outpatient health care facilities (Section 41-5-6(D) NMSA 1978). HB107 would effectively repeal the 2023 amendments to Section 41-5-6, which increased malpractice claim limits against hospitals from \$600 thousand for claims arising in calendar year 2022 and beyond.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 107 duplicates Senate Bill 53.

## TECHNICAL ISSUES

OSI reports the provisions of the bill would reduce the liability of medical malpractice claims for hospitals and hospital-controlled outpatient facilities. It is unclear if the proposed amendments are intended to apply to pending litigation. The nature of medical malpractice claims means cases where injuries and death occurred in 2022 and onwards would be pending at the time this legislation goes into effect. Clarity will be needed to ascertain if the lower recovery amounts apply to pending litigation, or only to newly filed cases.

## OTHER SUBSTANTIVE ISSUES

NMAG indicates the new language in HB107 applies solely to claims against hospitals and hospital-controlled outpatient facilities for injuries and deaths that occurred in calendar year

2025 and thereafter. However, the bill would also delete the limits for injuries and deaths that occurred in 2022 through 2024. This deletion could create ambiguity regarding limits for claims against hospitals and hospital-controlled outpatient facilities for injuries and deaths that occurred in 2022 through 2024. Clarity could be provided regarding whether the previous limits found in Section 41-5-6(E) NMSA 1978 will apply to existing and future medical malpractice claims related to those years or whether this change to the statute will abolish the caps against hospitals and hospital-controlled outpatient facilities for injuries and deaths that occurred in 2022 through 2024.

The Health Care Authority writes lowering the financial penalties on providers may attract more providers to the state or help keep more providers within the state, especially providers who work in specialties with large rates of malpractice, such as obstetricians. Per the same 2022 American Medical Association report, the number of doctors working in specialties with a high-risk of lawsuit were 7 percent higher in states with caps on non-economic damages. <https://www.ama-assn.org/system/files/mlr-now.pdf>

RAE/ne/al