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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Montoya/Lane/Nibert **ORIGINAL DATE** 3/2/23

**BILL**

**SHORT TITLE** Medical Malpractice Court Venue **NUMBER** House Bill 435

**ANALYST** Esquibel

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Court workload costs</b>	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund

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

Relates to House Bills 465, 500, and 63 and Senate Bills 296, 446, and 447  
 Relates to an appropriation in the General Appropriation Act

### Sources of Information

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General’s Office (NMAG)  
 Office of Superintendent of Insurance (OSI)  
 New Mexico Medical Society (NMMS)

## SUMMARY

### Synopsis of House Bill 435

House Bill 435 (HB435) would amend Section 38-3-1 NMSA 1978, governing the county in which a civil action in district court may be commenced, to provide, in Subsection H, that in a claim asserted by a personal representative pursuant to Section 41-2-3 NMSA 1978, a conservator, a guardian, or guardian ad litem appointed pursuant to Chapter 45, Article 5, NMSA 1978 or a third-person representative, the residence of the person bringing the claim shall not be considered in determining the venue in any civil action. Subsection I provides that, subject to the provisions of Subsection H, the venue in a claim asserting medical malpractice shall be limited to the county in which the patient received the medical treatment that is the basis for the medical malpractice lawsuit. The bill defines “medical malpractice lawsuit” and “patient.”

HB435 would amend Section 41-5-4 NMSA 1978, within the Medical Malpractice Act, to

provide that the venue in a medical malpractice claim shall be proper when the claim is filed in the county in which the patient received the medical treatment that is the basis for the medical malpractice lawsuit.

## **FISCAL IMPLICATIONS**

The Administrative Office of the Courts reports any additional fiscal impact on the judiciary would be proportional to the workload distribution across judicial districts requiring additional resources to handle the increase.

## **SIGNIFICANT ISSUES**

The Attorney General's Office reports the bill 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 very generally honors the plaintiff's choice of forums.

The bill adds a venue section to the Medical Malpractice Act but not to the Wrongful Death Act, which means the venue for a wrongful death action will continue to be governed by the general venue statute (38-3-1 NMSA 1978). If this bill is enacted, that general venue statute will impose new limitations on the venue for a specific subset of lawsuits (i.e., medical malpractice suits).

The Administrative Office of the Courts reports, currently, the venue statute allows a case to be filed in the county where the named plaintiff resides. The named plaintiff is not necessarily the person who was actually injured.

## **ADMINISTRATIVE IMPLICATIONS**

AOC reports a result of the current venue statute is that the 1st, 2nd, 4th and 8th judicial districts have numerous filed lawsuits where nothing related to the case happened in those districts, other than the personal representative lives in the county.

HB 435 may help to even out the workload of the judicial districts so that the 1st, 2nd, 4th and 8<sup>th</sup> districts are not hearing cases where the wrongdoing complained of actually occurred in another county.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB435 relates to HB500, Medical Malpractice Premium Assistance; SB296, Medical Malpractice Changes; HB88, Medical Malpractice Damages Cap, which similar to SB296 limits the cap on non-hospital owned facilities to \$750 thousand; HB63, Medical Malpractice Changes, which proposes a cap of \$600 thousand on malpractice claims; HB465, Medical Malpractice Changes; HB500, Medical Malpractice Premium Assistance; SB446, Medical Malpractice Definition of Occurrence; and SB447, Medical Malpractice Recovery Amounts.

## **OTHER SUBSTANTIVE ISSUES**

Based on the most recent actuarial analysis of the patient’s compensation fund (PCF), the PCF has a \$68.9 million deficit. The Office of Superintendent of Insurance is the custodian of the PCF and in the office’s October 2022 order on PCF surcharges, the office noted “several recommended actions that would deliver significant cost savings to the PCF for an extended period of time.” One recommendation was to “include a venue provision, which requires that medical malpractice actions be brought in the county where the medical care occurred or in the county where the patient resided at the time of the alleged malpractice.” HB435 adopts the office’s recommendation in an effort to reduce the PCF deficit.

Under current law, if medical malpractice allegedly results in the death of a patient, the resulting malpractice case does not have to be brought in the county or the district where the malpractice occurred. For example, a jury in Santa Fe can decide a medical malpractice case against a clinician, medical practice, or a hospital in Doña Ana County.

RAE/rl/hg/mg