

LFC Requestor: Kelly Klunt.

**2024 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS**

Section I: General

Chamber: House **Category:** Bill
Number: 0107 **Type:** Introduced

Date (of **THIS** analysis): 01/17/2024
Sponsor(s): Jack Chatfield and Harlan Vincent
Short Title: Medical Malpractice Limit of Recovery

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 24	FY 25		
\$0	\$0	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 24	FY 25	FY 26		
\$0	\$0	\$0	N/A	N/A

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 24	FY 25	FY 26	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	\$0	\$0	\$0	\$0	N/A	N/A

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: None

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

House Bill 107 (HB0107) proposes to amend the Medical Malpractice Act (Section 41-5-6 NMSA 1978) related to limitation of recovery to:

- Change E from calendar year “2022” to “2025” for implementation of the aggregate dollar amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice, except for punitive damages and past and future medical care/related benefits, the limits for a hospital or hospital-controlled outpatient healthcare facility.
- Delete the limits as defined for 2022-2027 and subsequent years
- Add new limits of:
 - For calendar year 2025, the limit would be \$1.0 million/occurrence (the limit under the current Medical Malpractice Act would be \$5.5 million/occurrence);
 - For calendar year 2026 and thereafter, amount would be \$1.0 million adjusted annually by the prior three-year average consumer price index for all urban consumers, per occurrence.

Note that this would bring liability limitations for hospitals and hospital-controlled outpatient healthcare facilities in line with the limitations for independent providers or independent outpatient healthcare facilities.

Note – the effective date for HB0107 would be January 1, 2025, enabling the current limitation of recovery for calendar year 2024 (\$5.0 million) to be effective until the end of the calendar year.

Is this an amendment or substitution? Yes No

Is there an emergency clause? Yes No

b) Significant Issues

This bill will affect New Mexico patients in that they will have a lower maximum amount for recovery on claims against hospitals or outpatient facilities as a result of injury or death resulting from medical malpractice: it would decrease from the current expected \$6 million/occurrence by calendar year 2026 to \$1 million/occurrence adjusted by annual prior three-year consumer price index.

Liability under tort law is proposed to serve both a private function (to correct the injustice created by a wrongdoer and/or to provide compensation to those harmed) as well as a broader public function of deterring potential wrongdoers from committing costly and harmful errors in the first place. However, there is very little evidence to support that medical liability induces the provision of higher quality of care.[\(Does Medical Malpractice Law Improve Health Care Quality? - PMC \(nih.gov\)\)](#)

However, medical malpractice costs are a consideration for providers, outpatient facilities, and hospitals, and may impact willingness to work in New Mexico or financial viability. This can translate to fewer providers, and therefore barriers to care. In a study of five “crisis” states, the federal Government Accountability Office (GAO) identified some evidence that the malpractice crisis was affecting access to care although they concluded that overall the impact was less severe than provider groups had claimed. A more detailed study of Pennsylvania physicians looked at whether liability costs drive physicians out of practice and create shortages/access-to-care issues. The study showed that liability costs did have an effect on the supply of specialist physicians in affected areas and their scope of practice, which likely impinged upon patients' access to care.[\(Effects of a Malpractice Crisis on Specialist Supply and Patient Access to Care - PMC \(nih.gov\)\)](#)

In addition, the discussion on medical liability has shifted from controlling liability costs to improving patient safety and reducing waste in health care, and the tort system has been linked with unnecessary costs.[\(The impact of tort reform on defensive medicine, quality of care, and physician supply: A systematic review - PMC \(nih.gov\)\)](#) That is, fear of lawsuits may cause providers to practice “defensive-medicine” - a side-effect / cost of this system where they unnecessarily order costly tests, procedures, referrals, and visits primarily to protect from liability rather than as a benefit to patients.[\(Does Medical Malpractice Law Improve Health Care Quality? - PMC \(nih.gov\)\)](#)

Therefore, reducing the maximum liability for hospitals or hospital-controlled outpatient facilities is likely to cause no change in patient safety or quality of care, but may improve health outcomes statewide due to improving providers and access to care, especially for small community hospitals that may be least likely to be able to manage high malpractice insurance costs. It could also result in lower healthcare costs related to unnecessary tests, procedures, referrals, and visits.

However, it should be noted that some studies have suggested that caps on economic damages may have a limited impact on decreased health care utilization and spending, physician supply, or quality of care.[\(The impact of tort reform on defensive medicine, quality of care, and physician supply: A systematic review - PMC \(nih.gov\)\)](#)

HB0107 resembles HB0088 from 2023 introduced by James Townsend and Randall Pettigrew – HB0088 died. HB0107 also resembles part of HB0465 from 2023 introduced by Rod Montoya, Stefani Lord, John Block, and Andrea Reeb – HB0465 died. HB0107 is related to HB0296 from 2023 introduced by Mark Moores and Martin Hickey although HB0296 sought to address limitations for outpatient healthcare facilities not controlled by a hospital – HB0296 died.

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?
 Yes No
- Is this proposal related to the NMDOH Strategic Plan? Yes No

- Goal 1:** We expand equitable access to services for all New Mexicans
- Goal 2:** We ensure safety in New Mexico healthcare environments
- Goal 3:** We improve health status for all New Mexicans
- Goal 4:** We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

Although patient rights and medical malpractice are important, there have been concerns that the current New Mexico medical malpractice limits raise malpractice insurance and litigation costs, reducing provider willingness to work in New Mexico. This may contribute to healthcare shortages across the state. As a result, addressing the medical malpractice limitations could improve access to care.

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?
 Yes No N/A
- If there is an appropriation, is it included in the LFC Budget Request?
 Yes No N/A
- Does this bill have a fiscal impact on NMDOH? Yes No

It is possible that HB0107 could result in lower medical malpractice insurance costs for the Department, resulting in a positive fiscal impact.

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? Yes No

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

None

6. TECHNICAL ISSUES

Are there technical issues with the bill? Yes No

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? Yes No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? Yes No
- Does this bill conflict with federal grant requirements or associated regulations?
 Yes No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs?
 Yes No

NONE

8. DISPARITIES ISSUES

None

9. HEALTH IMPACT(S)

Patient rights and medical malpractice are important, and some propose that these protect patients from negligent care, although there is little evidence for this position. There have been concerns that the current New Mexico medical malpractice limits raise malpractice insurance and litigation costs, reducing provider willingness to work in New Mexico. This may contribute to issues with access to care and resulting poor health outcomes. However, studies are mixed in terms of the impact of liability caps on the practice of defensive medicine, physician supply, health care spending, or quality of care.

Overall, it is unclear whether HB0107 will have a significant impact on health in New Mexico, but it is unlikely to have a negative impact and may result in a net positive impact.

10. ALTERNATIVES

Alternatives may include some other change in the proposed amount (either more or less than the proposed \$1 million/occurrence).

In addition, alternatives to simple tort reform may be needed for health reform. These could include:

- ‘Alternative dispute resolution’ methods that allow physicians and health systems to acknowledge when errors have occurred and offer reasonable compensation to injured parties. It is believed that such an approach facilitates open communication, transparency, and trust;
- ‘Enterprise liability’ which would retain the current malpractice system but providers are not named as the defendant – however, it is unclear whether the psychological benefits of not being named in a lawsuit would lead physicians to practice less defensively;
- Use of clinical practice guidelines as the standard of care replacing expert opinion;
- Designating certain avoidable adverse medical conditions as compensable under a no-fault system;
- Safe harbors for providers who adhere to clinical practice guidelines; or,
- A version of administrative ‘health courts.’

However, there is limited evidence on the effectiveness of such approaches at the present time. ([The impact of tort reform on defensive medicine, quality of care, and physician supply: A systematic review - PMC \(nih.gov\)](#))

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If HB0107 is not enacted then the Medical Malpractice Act will not be amended to limit recovery for punitive damages and past and future medical care/related benefits for a hospital or hospital-controlled outpatient healthcare facility from a progressively increasing level (from the planned \$5.5 million/occurrence in FY25 and \$6.0 million/occurrence in FY26 onward to \$1 million/occurrence in FY25 onward, adjusted annually by the prior three-year average consumer price index).

12. AMENDMENTS

None

