

**LFC Requester:****Julisa Rodriguez**

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*

**Original**      X      **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_    **Substitute**    \_\_\_\_\_

**Date Prepared:** January 25, 2024**Bill No:** HB 234**Sponsor:** Dayan Hochman-Vigil**Agency Name and Code Number:** 305 – New Mexico  
Department of Justice**Short Title:** Medical Malpractice  
Premium Assistance**Person Writing Analysis:** AAG Lawrence Marcus**Phone:** 505-537-7676**Email:** legisfir@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0	\$70,000,000	Non-recurring*	general
0	0		

(Parenthesis ( ) Indicate Expenditure Decreases)

- **See Technical Issues Below**
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**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0	0	0		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	0	\$300,000	\$300,000	\$600,000	recurring	Healthcare Affordability Fund? Office of the Superintendent of Insurance

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

House Bill (“HB”) 234 would establish a premium assistance program to enable certain medical providers to purchase malpractice insurance.

Section 1:

Creates the Medical Malpractice Assistance Fund

Paragraph A: The Fund is created as a non-reverting fund in the state treasury, and consists of appropriations, gifts, grants and donations. The office of the superintendent of insurance (“OSI”) shall administer the fund, which will pay for a program to provide malpractice insurance premium reimbursement to certain health care providers (described below). Disbursements shall be made by the Secretary of Finance and Administration, and require vouchers from OSI.

Paragraph B: Creates a sliding scale of reimbursement, based on years of practice in the state of New Mexico and subject to funding availability, for malpractice insurance for providers or groups of providers not employed by a hospital or health system. This sliding scale will range from 25% for providers with zero to three years of practice to 100% for providers with twelve or more years.

Paragraph C: Establishes the conditions required for reimbursement, which are as follows:

1. Proof of licensure as certified nurse anesthetist, certified nurse-midwife, certified nurse practitioner, chiropractic physician, physician, physician assistant, or podiatrist.
2. Proof of practice in the state of New Mexico for the number of years claimed under Paragraph 2.

3. Proof of participation in the New Mexico's Patient Compensation Fund ("PCF"), and payment of the surcharge. The PCF was created by the Medical Malpractice Act, N.M.S.A. §§ 41-5-1 to -29. Under the Medical Malpractice Act, a qualifying health care provider's personal liability for medical malpractice is limited to \$250,000 per occurrence. N.M.S.A. § 41-5-6(I), and the PCF, funded by surcharges on medical malpractice insurance, provides the balance of any judgment or settlement. N.M.S.A. § 41-5-25.
4. Proof of payment for malpractice coverage of \$250,000 per occurrence for not more than three occurrences per calendar year.
5. Proof of completion of a full year of practice corresponding to the period of the above mentioned malpractice coverage.

Paragraph D: Authorizes OSI to carry out the administrative interpretation of the statute: to develop priority criteria for disbursement of the fund, develop forms, standards and procedures, and information, maintain information privacy, and adopt rules as necessary to implement the above provisions.

Section 2: Appropriates seventy million dollars (\$70,000,000) from the general fund to OSI. This appears to be intended as a non-recurring appropriation, because this money is earmarked for "expenditure in fiscal year 2025 and subsequent fiscal years." In addition, the funds do not revert back to the general fund at the end of each fiscal year. Moreover, this money is earmarked for reimbursement, rather than any administrative costs.

## **FISCAL IMPLICATIONS**

This bill requires an expenditure from the general fund of \$70,000,000 for fiscal year 2025. However, even if this is a non-recurring appropriation, it will likely require other expenditure. This fund is created to be maintained indefinitely, and without further appropriations, it will likely be exhausted in the near term. There is no explicit provision for investment of the funds, although the general powers granted to OSI may allow for such investments. However, if OSI were permitted to invest the funds, it is unclear that reasonably safe investments could recoup the amounts disbursed each year. In any event, there are no guidelines as to the type of investments, if any, that OSI would be permitted to make. Accordingly, it is likely that further appropriations will be needed in the near future. Moreover, since the fund is entirely earmarked for disbursements, additional funds will be needed each year to fund the substantial administrative overhead that OSI would likely incur.

## **SIGNIFICANT ISSUES**

HB 234 could present a significant anti-donation concern because it provides money for physicians without the state receiving any direct value in return. However, Section 14(A) of the Anti-Donation Clause states that "[n]othing in this section prohibits the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons." Although some, if not most, subsidized medical providers will provide services to sick persons, some of whom may be indigent, HB 234 does not limit providers who receive an insurance subsidy to serving only the sick and indigent. This office considered this exception in a prior Attorney General's Opinion, concerning the payment of relocation costs to providers who establish a practice in Luna County, and noted that "this exception does not justify payments

which directly benefit physicians and only incidentally benefit the poor and sick.” N.M.A.G. Op. No. 89-22 (1989), n.1.

## **PERFORMANCE IMPLICATIONS**

None likely.

## **ADMINISTRATIVE IMPLICATIONS**

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

There is a concern that, because OSI administers the PCF, and PCF surcharges are arguably part of the medical malpractice premiums, allowing OSI to control this fund would consolidate oversight and present a risk of conflicting interests. However, it is also unclear what other agency would be the appropriate manager of the fund.

See above for concerns regarding the anti-donation clause and the separation of powers issues.

## **TECHNICAL ISSUES**

The term “premium” is undefined, and it is unclear whether it includes PCF surcharges.

## **ALTERNATIVES**

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The status quo would remain. Providers would still be responsible for 100% of their malpractice premiums. This expense could result in more providers leaving the state.

## **AMENDMENTS**