

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

Identify if analysis is on an original bill, an amendment, a substitute or a correction of a previous bill:

Date Prepared: 01-21-2026 **Check all that apply:**
Bill Number: HB107 Original Correction
 Amendment Substitute

Sponsor: Jenifer Jones, Catherine J. Cullen

Short Title: MEDICAL MALPRACTICE CLAIM CHANGES

| | |
|-------------------------------------|---|
| Agency Name and Code Number: | <u>Office of Superintendent of Insurance -440</u> |
| Person Writing | <u>Stephen Thies</u> |
| Email | <u>Stephen.Thies@osi.n</u> |
| Phone: | <u>505-470-7366</u> : <u>m.gov</u> |

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|----------------------|-------------|----------------------------------|----------------------|
| FY26 | FY27 | | |
| | | | |
| | | | |

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|--------------------------|-------------|-------------|----------------------------------|----------------------|
| FY26 | FY27 | FY28 | | |
| | | | | |
| | | | | |

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| FY26 | FY27 | FY28 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|--------------------------|----------------------------------|----------------------|
| Total | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 107 amends the Medical Malpractice Act (“MMA”) by reducing the maximum amount of damages recoverable for medical malpractice, imposing limitations on awards of punitive damages and attorneys’ fees, and requiring that payments from the Patient’s Compensation Fund (“PCF”) for future medical care be made as expenses are incurred.

Concerning damages, the bill reduces the maximum award of nonmedical damages available to \$600,000 per occurrence, not including punitive damages. It would additionally lower health care providers’ personal liability for a settlement or judgment to a maximum of \$200,000, with the remaining amounts up to the cap of \$600,000 paid by the PCF. While the bill does not modify the current provisions allowing a plaintiff to recover an unlimited amount of medical costs and related benefits from the PCF, it reintroduces language specifying that awards of future medical costs are to be paid as expenses are incurred, rather than as a lump sum estimate of future costs. HB 107 also revises the definition of “occurrence” to clarify that an occurrence means “all claims for damages from all persons arising from harm to a single patient, no matter how many health care providers, errors or omissions contributed to the harm.”

Regarding punitive damages, HB 107 restricts awards of punitive damages to cases where “malice, willful intent to harm or wanton disregard for the rights or safety of others” is demonstrated “beyond a reasonable doubt.” In cases with such awards, the bill limits punitive damages to a maximum of \$1.8 million for awards against a hospital, or \$600,000 for awards against other qualified health care providers. As with the current statute, punitive damages would not be paid by the PCF.

Finally, HB 107 imposes new limitations on the amount of fees attorneys could retain from a judgment or settlement. Under the bill’s provisions, an attorney’s contingency fee could not exceed 30% of the first \$250,000 recovered, 25% of amounts recovered between \$250,000 to \$500,000, 20% of amounts recovered between \$500,000 to \$1 million, and 15% of the recovery in excess of \$1 million. The bill also restricts amounts paid by the PCF from contributing to an attorney’s contingency fee.

FISCAL IMPLICATIONS

The OSI actuarial analysis anticipates medical malpractice premiums will be reduced if this bill is passed.

- The changes related to the definition of occurrence should reduce premiums. The OSI

actuary estimates premiums and surcharges will be lowered by roughly 3% based on the previous analysis from a major medical malpractice carrier.

- Medical expenses have accounted for 32% of the PCF portion of settlements over the past three years. Paid medicals are estimated to be 20% to 50% lower than billed amounts. However, the PCF has been involved in claims where billed medical expenses were as much as ten times as much as paid amounts.
- The changes related to billed vs paid should result in between a **6% (32% times 20%) and 16% (32% times 50%)** decrease in primary layer premiums and PCF surcharges.
- The reduction in the primary insurance layer from \$250,000 to \$200,000 will result in a **23% reduction in premium**. This was estimated from increased limit factors from a Colorado rate filing.
- For independent providers, the reduction in the non-economic damage cap from \$750,000 to \$600,000 in combination with the above change means the PCF will cover \$600,000 excess of \$200,000 rather than \$750,000 excess of \$250,000. This will result in a **reduction of PCF surcharges of 14%**. This is based on increased limit factors from a New Mexico rate filing.

| Independent Provider Specialty | Current Medical Malpractice Premium (PCF plus Primary Layer) | Post Bill Medical Malpractice Premium (PCF plus Primary Layer) |
|--------------------------------|--|--|
| Internal Medicine | \$21,110 | \$13,681 |
| General Surgery | \$101,521 | \$66,218 |
| OB/GYN | \$107,961 | \$70,565 |
| Average | \$76,864 | \$50,155 |

- For hospitals, the reduction in the non-economic damage cap would be reduced from \$6M to \$600K. This would result in a 67% reduction in costs excess of the primary layer.
- Over time, OSI anticipates these changes could further reduce medical malpractice premiums and surcharges as changes to punitive damage standards and caps influence settlement behavior and values.

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 99.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS