

LFC Requester:

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**AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

[AgencyAnalysis.nmlegis.gov](https://www.legis.nm.gov/AgencyAnalysis) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)*(Analysis must be uploaded as a PDF)***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*Date Prepared: 01-30-2026

Check all that apply:

Bill Number: SB173Original  Correction Amendment  Substitute Sponsor: Brandt/Tobiassen

EXPAND MEDICAL

MALPRACTICE

Short

INSURANCE TYPES

Title:

Agency Name  
and CodeOffice of Superintendent of  
Insurance -440

Number:

Person Writing

Stephen ThiesEmail Stephen.Thies@osi.nPhone: 505-470-7366 :m.gov**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
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

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

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

SB173 amends Section 41-5-5 of the Medical Malpractice Act to require a health care provider who seeks to become a qualified health care provider, which then allows the health care provider to receive the benefits of the Medical Malpractice Act, to obtain a claims-based policy instead of an occurrence-based policy. Currently, Section 41-5-5 allows a hospital and hospital-controlled out-patient health care facility to establish financial responsibility through the use of any form of malpractice insurance. Independent providers are currently required to obtain an occurrence-based policy.

SB173 adds a new subsection to Section 41-5-5 to provide that a health care provider may establish financial responsibility through either a claims-based policy or an occurrence-based policy. If the health care provider elects to use a claims-based policy, the provider must purchase tail coverage.

SB173 adds a new subsection to define claims-made and occurrence-based policies and tail coverage.

#### **FISCAL IMPLICATIONS**

Claims-made policies are less expensive until they reach maturity (typically at the fifth year of coverage) and also require the purchase of a tail coverage policy when terminated.

For example, the chart below contrasts an occurrence-based policy and a claims-made policy for an anesthesiologist written by the Doctors Company that works for 10 years is below.

<b><u>Maturity Year</u></b>	<b><u>Occurrence</u></b>	<b><u>Claims Made</u></b>
Year 1	\$ 31,035	\$ 11,946
Year 2	\$ 31,035	\$ 20,478
Year 3	\$ 31,035	\$ 27,304
Year 4	\$ 31,035	\$ 31,400
Year 5	\$ 31,035	\$ 34,130
Year 6	\$ 31,035	\$ 34,130
Year 7	\$ 31,035	\$ 34,130
Year 8	\$ 31,035	\$ 34,130
Year 9	\$ 31,035	\$ 34,130
Year 10	\$ 31,035	\$ 34,130
<b>Tail</b>	<b>Not Applicable</b>	<b>\$ 64,847</b>
<b>Lifetime Total</b>	<b>\$ 310,346</b>	<b>\$ 360,754</b>

It is unknown at the present time the impact mandating claims-based policy would have on the surcharges, but the surcharge would follow the same pattern as the table including an expensive tail policy at termination.

## **SIGNIFICANT ISSUES**

### **PERFORMANCE IMPLICATIONS**

### **ADMINISTRATIVE IMPLICATIONS**

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

### **TECHNICAL ISSUES**

Adoption of SB173 could create issues about whether a health care provider would receive the benefits of the Medical Malpractice Act if the provider elects to provide financial responsibility through a claims-based policy instead of an occurrence-based policy and a claim is made against the health care provider in a subsequent year when the provider no longer participates in the Patients Compensation Fund.

### **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

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

An independent outpatient health care facilities will continue to be required to provide financial responsibility through an occurrence-based policy.

### **AMENDMENTS**

SB173 seeks to provide any health care provider the option to provide financial responsibility through either or an occurrence-based policy. Instead of adding a qualifier to Section 41-5-5(A) and then adding the option to use any form of coverage through the adoption of a new Subsection D, Subsection A could be redrafted to provide the option to use any form.