

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 274

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AUTHORIZING AND MAKING A TRANSFER FROM THE PATIENT'S
COMPENSATION FUND TO THE GENERAL FUND OPERATING RESERVE; MAKING
APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 41-5-25 NMSA 1978 (being Laws 1992,
Chapter 33, Section 9, as amended) is amended to read:

"41-5-25. PATIENT'S COMPENSATION FUND--THIRD-PARTY
ADMINISTRATOR--ACTUARIAL STUDIES--SURCHARGES--CLAIMS--
PRORATION--PROOFS OF AUTHENTICITY.--

A. The "patient's compensation fund" is created as
a nonreverting fund in the state treasury. The fund consists
of money from surcharges, income from investment of the fund
and any other money deposited to the credit of the fund. The

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1 fund shall be held in trust, deposited in a segregated account
2 in the state treasury and invested by the state investment
3 office and shall not become a part of or revert to the general
4 fund or any other fund of the state. Except as provided in
5 Section 2 of this 2026 act, money from the fund shall be
6 expended only for the purposes of and to the extent provided in
7 the Medical Malpractice Act. All approved expenses of
8 collecting, protecting and administering the fund, including
9 purchasing insurance for the fund, shall be paid from the fund.

10 B. The superintendent shall contract for the
11 administration and operation of the fund with a qualified,
12 licensed third-party administrator, selected in consultation
13 with the advisory board, no later than January 1, 2022. The
14 third-party administrator shall provide an annual audit of the
15 fund to the superintendent.

16 C. The superintendent, as custodian of the fund,
17 and the third-party administrator shall be notified by the
18 health care provider or the health care provider's insurer
19 within thirty days of service on the health care provider of a
20 complaint asserting a malpractice claim brought in a court in
21 this state against the health care provider.

22 D. The superintendent shall levy an annual
23 surcharge on all New Mexico health care providers qualifying
24 under Section 41-5-5 NMSA 1978. The surcharge shall be
25 determined by the superintendent with the advice of the

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1 advisory board and based on the annual independent actuarial
2 study of the fund. The surcharges for health care providers,
3 including hospitals and outpatient health care facilities whose
4 qualifications for the fund end on January 1, 2027, shall be
5 based on sound actuarial principles, using data obtained from
6 New Mexico claims and loss experience. A hospital or
7 outpatient health care facility seeking participation in the
8 fund during the remaining qualifying years shall provide, at a
9 minimum, the hospital's or outpatient health care facility's
10 direct and indirect cost information as reported to the federal
11 centers for medicare and medicaid services for all self-insured
12 malpractice claims, including claims and paid loss detail, and
13 the claims and paid loss detail from any professional liability
14 insurance carriers for each hospital or outpatient health care
15 facility and each employed health care provider for the past
16 eight years to the third-party actuary. The same information
17 shall be available to the advisory board for review, including
18 financial information and data, and excluding individually
19 identifying case information, which information shall not be
20 subject to the Inspection of Public Records Act. The
21 superintendent, the third-party actuary or the advisory board
22 shall not use or disclose the information for any purpose other
23 than to fulfill the duties pursuant to this subsection.

24 E. The surcharge shall be collected on the same
25 basis as premiums by each insurer from the health care

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1 provider. The surcharge shall be due and payable within thirty
2 days after the premiums for malpractice liability insurance
3 have been received by the insurer from the health care provider
4 in New Mexico. If the surcharge is collected but not paid
5 timely, the superintendent may suspend the certificate of
6 authority of the insurer until the annual premium surcharge is
7 paid.

8 F. Surcharges shall be set by October 31 of each
9 year for the next calendar year. Beginning in 2021, the
10 surcharges shall be set with the intention of bringing the fund
11 to solvency with no projected deficit by December 31, 2026.
12 All qualified and participating hospitals and outpatient health
13 care facilities shall cure any fund deficit attributable to
14 hospitals and outpatient health care facilities by December 31,
15 2026.

16 G. If the fund would be exhausted by payment of all
17 claims allowed during a particular calendar year, then the
18 amounts paid to each patient and other parties obtaining
19 judgments shall be prorated, with each such party receiving an
20 amount equal to the percentage the party's own payment schedule
21 bears to the total of payment schedules outstanding and payable
22 by the fund. Any amounts due and unpaid as a result of such
23 proration shall be paid in the following calendar years.

24 H. Upon receipt of one of the proofs of
25 authenticity listed in this subsection, reflecting a judgment

1 for damages rendered pursuant to the Medical Malpractice Act,
2 the superintendent shall issue or have issued warrants in
3 accordance with the payment schedule constructed by the court
4 and made a part of its final judgment. The only claim against
5 the fund shall be a voucher or other appropriate request by the
6 superintendent after the superintendent receives:

7 (1) until January 1, 2022, a certified copy of
8 a final judgment in excess of two hundred thousand dollars
9 (\$200,000) against a health care provider;

10 (2) until January 1, 2022, a certified copy of
11 a court-approved settlement or certification of settlement made
12 prior to initiating suit, signed by both parties, in excess of
13 two hundred thousand dollars (\$200,000) against a health care
14 provider; or

15 (3) until January 1, 2022, a certified copy of
16 a final judgment less than two hundred thousand dollars
17 (\$200,000) and an affidavit of a health care provider or its
18 insurer attesting that payments made pursuant to Subsection B
19 of Section 41-5-7 NMSA 1978, combined with the monetary
20 recovery, exceed two hundred thousand dollars (\$200,000).

21 I. On or after January 1, 2022, the amounts
22 specified in Paragraphs (1) through (3) of Subsection H of this
23 section shall be two hundred fifty thousand dollars
24 (\$250,000)."

25 SECTION 2. TRANSFER.--Ninety-eight million four hundred

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1 thousand dollars (\$98,400,000) is transferred from the
2 patient's compensation fund to the general fund operating
3 reserve.

4 SECTION 3. OTHER APPROPRIATIONS.--

5 A. The following appropriations are made from the
6 general fund for expenditure in fiscal year 2026. Any
7 unexpended balance remaining at the end of fiscal year 2026
8 shall revert to the general fund:

9 (1) two million seven hundred thousand dollars
10 (\$2,700,000) to the juvenile justice division of the children,
11 youth and families department to carry out the duties of that
12 division; and

13 (2) seven million dollars (\$7,000,000) to the
14 protective services division of the children, youth and
15 families department to carry out the duties of that department.

16 B. The following appropriations are made from the
17 general fund for expenditure in fiscal year 2027. Any
18 unexpended balance remaining at the end of fiscal year 2027
19 shall revert to the general fund:

20 (1) eight million dollars (\$8,000,000) to the
21 children, youth and families department to finalize and
22 implement the department's child welfare information system;

23 (2) four million dollars (\$4,000,000) to the
24 public education department for school improvement activities;

25 (3) two million dollars (\$2,000,000) to the

1 department of finance and administration for payment to the
2 Pueblo of Zia for past, present and future use by the state of
3 the Zia symbol;

4 (4) four million dollars (\$4,000,000) to the
5 aging and long-term services department for the department's
6 New MexiCare program; and

7 (5) six million dollars (\$6,000,000) to the
8 department of transportation for the rural air service
9 enhancement grant program.

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