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## FISCAL IMPACT REPORT

**BILL NUMBER:** CS/House Bill 99/HJCS/aSJC/aSFI#1

**SHORT TITLE:** Medical Malpractice Changes

**SPONSOR:** House Judiciary Committee

**LAST ORIGINAL**  
**UPDATE:** 2/18/2026      **DATE:** 1/28/2026      **ANALYST:** Hernandez/Rodriguez

### REVENUE\* (dollars in thousands)

<u>Type</u>	<u>FY26</u>	<u>FY27</u>	<u>FY28</u>	<u>FY29</u>	<u>FY30</u>	<u>Recurring or Nonrecurring</u>	<u>Fund Affected</u>
PCF Surcharges	No fiscal impact	At least (\$8,300.0)	At least (\$8,300.0)	At least (\$8,300.0)	At least (\$8,300.0)	Recurring	PCF
PCF Settlements	\$383.3 to \$966.7	\$4,600.0 to \$11,600.0	\$4,600.0 to \$11,600.0	\$4,600.0 to \$11,600.0	\$4,600.0 to \$11,600.0	Recurring	PCF

Parentheses indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bills 107 and 143 and Senate Bill 173

### Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Office of Superintendent of Insurance  
 University of New Mexico Health Sciences  
 New Mexico Medical Board  
 New Mexico Hospital Association

Agency or Agencies That Were Asked for Analysis but did not Respond

Miner’s Colfax Medical Center

## SUMMARY

### Synopsis of Senate Floor Amendment to HJC Substitute for House Bill 99

The Senate Floor Amendment strikes all Senate Judiciary Committee (SJC) amendments from House Bill 99, returning the bill to its House Judiciary Committee (HJC) substitute form.

### Synopsis of SJC Amendment to HJC Substitute for House Bill 99

The SJC amendment to the HJC substitute for House Bill 99 does two things:

First, it strikes the original definition of occurrence and replaces it language that is legally clearer but substantively the same, defining it as a “single, indivisible injury to a patient caused by the acts or omissions of one or more health care providers whose negligence

combined to cause that injury, regardless of the number of health care providers whose acts or omissions contributed to that injury or the temporal sequence of those acts or omissions; provided that when a health care provider's negligence causes a distinct original injury to a patient, and a separate health care provider's negligence causes a second, causally distinct injury or a causally distinct enhancement of the original injury, each causally distinct injury or enhancement of an original injury constitutes a separate occurrence”

Second, it removes the condition that a hospital that is not part of a hospital system must be “operated by a New Mexico resident or domestic corporation” to the group for which punitive damages are capped.

## **Synopsis of HJC Substitute for House Bill 99**

The HJC substitute for HB99 does the following:

Section 1 amends the definition of a medical malpractice “occurrence” to an injury or set of injuries to a patient caused by acts or omissions in the course of medical treatment that combine to create malpractice claims—thereby limiting the number of claims an individual can file per distinct injury to one. This section also clarifies the costs recoverable by a plaintiff in a medical malpractice suit is limited to the costs actually incurred for the patient’s treatment. Moreover, it clarifies that an “occurrence” happens when a provider or providers’ acts or omissions combine to create an injury or injuries to a patient. The amendment shifts the focus from the injury or set of injuries that create a malpractice claim to a provider’s or providers’ acts or omissions that create an injury or injuries.

Section 2 extends hospital and hospital-controlled outpatient facilities participation in the patient compensation fund (PCF) indefinitely. Similarly, Section 3 also extends PCF coverage of judgments or settlements below \$750 thousand for hospitals and hospital-controlled outpatient facilities.

Section 4 prohibits lump sum payments for the estimated costs of a plaintiff’s future medical care and instead requires that payments are made by the PCF for expenses incurred. Furthermore, HB99 repeals an existing provision allowing parties to negotiate a settlement whereby a plaintiff’s right to receive future medical care is limited by the settlement agreement. Section 4 also strikes language clarifying that punitive damages against a healthcare provider are personal liabilities against the provider and cannot be paid from the PCF.

Section 5 is a new section of the Medical Malpractice Act that focuses on punitive damages. This section amends the process of punitive damages so that an individual must first file a claim without punitive damages on the table, then discovery takes place to determine if there is a triable issue of medical malpractice, a plaintiff can then amend the pleadings to include punitive damages, and the court determines if the suit includes punitive damages. Punitive damages may only be awarded if the plaintiff provides clear and convincing evidence that the acts of the healthcare provider were malicious, willful, wonton, reckless, fraudulent, or in bad faith. Furthermore, HB99 details that a provider has caps on punitive damages if they are a person, a hospital owned and operated by a New Mexico resident, or a domestic corporation. However, if it is a hospital system—

meaning a group of two or more hospitals that are owned and operated by the same person—then there are no caps on punitive damages.

Section 6 clarifies how the PCF surcharges are to be calculated. For hospitals and outpatient healthcare facilities, it is based on actuarial losses and claims. For independent practitioners, it is determined by the Office of Superintendent of Insurance with advice from the advisory board and an independent actuarial study of the fund. The amendment also clarifies the surcharge for hospitals and outpatient healthcare facilities cannot be less than the actuary’s recommended surcharges based on the expected value to fully fund their current and projected claim obligations.

Section 7 clarifies the provisions of this act apply to all claims of medical malpractice that arrive on or after the effective date of this act.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

## FISCAL IMPLICATIONS

The Office of Superintendent of Insurance (OSI) “anticipates that medical malpractice premiums will be reduced” if HB99 is passed.

In analysis of the original bill, OSI’s actuary estimates that medical malpractice premiums and surcharges could potentially decrease by 3 percent based on the change in the occurrence definition. While the definition is changed by the Senate Judiciary Committee amendment, the new definition is substantively the same as in the original bill.

OSI points out that medical expenses have accounted for 32 percent of the PCF portion of settlements over the past three years. LFC analysis takes the projected lump sum settlement amount for FY26 of \$72.5 million and multiplies it by 32 percent to approximate expected medical expenses from the PCF, approximately \$23.3 million.

OSI notes that paid medical bills are estimated to be somewhere between 20 percent and 50 percent lower than billed amounts—although this is not always the case. Therefore, LFC analysis estimates an annual cost savings of \$4.6 million to \$11.6 million—a range of 20 percent to 50 percent of the calculated estimated medical expenses.

According to OSI, the changes related to billed versus paid amounts in settlements should result in a 6 percent decrease in premiums and 6 percent decrease in PCF surcharges—as seen in the table below. LFC analysis takes the FY25 annual PCF surcharge of \$138.8 million and multiplies it by 6 percent for an estimated decrease in PCF surcharges of \$8.3 million.

Independent Provider Specialty	Current Medical Malpractice Premium (PCF plus Primary Layer)	Post Bill Medical Malpractice Premium (PCF plus Primary Layer)
Internal Medicine	\$21,110	\$17,200
General Surgery	\$101,521	\$82,719
OB/GYN	\$107,961	\$87,967
Average	\$76,864	\$62,629

OSI notes that within the next five to ten years, PCF settlements and surcharges will converge as

surcharges more accurately reflect projected settlements.

## SIGNIFICANT ISSUES

**Workforce Shortages.** New Mexico continues to face a critical, chronic shortage of health professionals across the disciplines, particularly in rural areas. Thirty-two of 33 New Mexico counties are designated as health professional shortage areas (HPSAs) in primary care, behavioral health, dental health, or a combination of the three. On average, New Mexico needs at least an additional 5,000 healthcare workers to address current shortages. In December 2025, according to the Workforce Solutions Department, 69 percent of online job postings were for health and personal care and 15 percent of those were postings for physicians.

**Medical Malpractice Research.** According to the New Mexico Medical Society, New Mexico has some of the highest numbers of medical malpractice lawsuits in the country and medical malpractice premiums are significantly higher in New Mexico compared with other states. The New Mexico Hospital Association previously stated that hospitals across the state have seen increases in malpractice plan premiums in the past four years and punitive damages have grown, potentially affecting fiscal solvency for smaller hospitals. In response to a proposed bill during the 2025 session, the Department of Health noted many states have changed their medical malpractice laws to reduce the cost of malpractice insurance. Malpractice insurance rate increases and lack of access to medical malpractice insurance may disproportionately impact smaller, independent medical providers who often serve in rural, underserved communities.

New Mexico's medical malpractice cap limitations are higher than two out of three neighboring states. Research is mixed on the impact of tort reform on physician supply, with many articles showing a correlation between high medical malpractice and reduced physician supply. However, studies of states that implemented tort reform have seen varied impacts on physician supply. New Mexico recently changed its medical malpractice laws, allowing for claims up to \$4 million against hospitals and outpatient facilities. This cap will increase to \$6 million in 2026. Meanwhile Colorado, Texas, and other states have lower caps on medical malpractice, while Arizona has no limitations.

**Punitive Damages.** An LFC survey found that 65 percent of New Mexico physicians surveyed are currently considering leaving the state to practice elsewhere. Of New Mexican physicians who are considering leaving the state, 83 percent reported the cause as punitive damages associated with medical malpractice—the most picked option—with 76 percent citing medical malpractice and 51 percent citing quality of life and compensation.

Any hospital that is not owned and operated by a domestic corporation that does not own several hospitals has caps on punitive damages. Private equity owned hospitals do not have caps on punitive damages in HB99. Private equity firms are increasingly purchasing hospitals both nationally and in New Mexico. A report written by the Private Equity Stakeholder Project highlights that New Mexico has the highest proportion of hospitals owned by private equity firms in the country, with 38 percent of private hospitals (17 out of 45) owned by private equity firms. The state with the second highest proportion is Idaho with 23 percent of hospitals being owned by private equity firms. Nationally, between 2009 to 2019, the acquisition values of healthcare related private equity firms were set at \$750 billion. Generally, private-equity-owned hospitals are in lower income, non-urban areas and have fewer patients discharged, fewer employees per bed, and lower patient experience scores.

Below are the punitive damages caps for different provider types in HB99 as amended, as long as the hospital is owned and operated by a New Mexican.

Independent Providers	
Injury Year	Punitive Damages Cap
Prior to January 1, 2022	\$600,000
2022-2023	\$750,000
2024	\$750,000 (CPI adjusted)

Independent Outpatient Healthcare Facilities	
Injury Year	Punitive Damages Cap
2024	\$1,000,000
2025 and forward	\$1,000,000 (CPI adjusted)

Hospitals and Hospital-Controlled Outpatient Facilities	
Injury Year	Punitive Damages Cap
2022	\$4,000,000
2023	\$4,500,000
2024	\$5,000,000
2025	\$5,500,000
2026	\$6,000,000
2027	\$6,000,000 (CPI adjusted)

**Patient’s Compensation Fund.** Established under the New Mexico Medical Malpractice Act, the patient’s compensation fund (PCF) provides a second layer of malpractice coverage and caps the amount of certain damages awarded against member healthcare providers. The program is funded by surcharges on providers who are members. As of August 2025, 14 hospitals, 417 independent provider groups, and 5,013 individual providers were participating in the program. OSI is responsible for approving surcharge increases—in 2026, OSI approved a 10 percent assessment increase for independent providers and 25.6 percent assessment increase for hospitals. As it stands, the PCF does not cover punitive damages. PCF only covers monetary damages and medical care and related benefits.

**Limitations on Recovery.** Section 41-5-6 NMSA 197 outlines limitations on malpractice settlements, not including punitive damages and past and future medical care and related expenditures. The limitation for damages against independent providers is \$750 thousand, \$1 million for independent outpatient healthcare facilities starting in 2024, \$6 million for hospitals or hospital-controlled outpatient healthcare facilities starting in 2026. These limitations can be adjusted annually by the consumer price index.

## OTHER SUBSTANTIVE ISSUES

**Underlying Coverage for PCF.** In 2021, the Legislature increased the underlying malpractice insurance requirement for healthcare providers participating in the PCF. Providers, except for independent outpatient healthcare facilities, must maintain malpractice insurance of at least \$250 thousand per occurrence or deposit \$750 thousand in cash with OSI. Hospitals and hospital-controlled outpatient facilities may satisfy this requirement using any form of malpractice insurance. For independent healthcare providers, the required malpractice insurance policy or cash deposit provides coverage for no more than three malpractice occurrences. Independent outpatient healthcare facilities must maintain malpractice insurance of at least \$500 thousand per occurrence or deposit \$1.5 million in cash with OSI.

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

Conflicts with Senate Bill 173, House Bill 107, and House Bill 143, which modify the same section of law.

AH/JR/sgs/hg/sgs/ct/hg/sgs/dw/hg/sgs/hg/dw/rl