

LFC Requester:	Esquibel, Ruby Ann
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**AGENCY BILL ANALYSIS
2014 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 **Amendment**
Correction **Substitute**

Date January 30, 2014

Bill No: HB151-305 Jan 31

Sponsor: Rep. Terry H. McMillan

Reviewing Attorney General's Office

Short

Person Writing Mary H. Smith

Title: Health Care Liability Act

Phone: 222 9093 **Email** msmith@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHAGED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to:

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis: HB 151 enacts a new Health Care Liability Act so as to cap monetary damages arising from the individual or combined malpractice of a variety of health care providers, both individuals and facilities. Per Section 5(B), the Act applies to malpractice claims made on or after July 1, 2014.

Section 5(A) makes the new Health Care Liability Act inapplicable to claims made under the Medical Malpractice Act or the Tort Claims Act.

Per Section 3(A) and (B), for providers not participating in the state-sponsored excess insurance program pursuant to the Medical Malpractice Act, the “aggregate amount of noneconomic damages” is capped at \$300,000.00 for FY 2015, and is adjusted per a formula based on the consumer price index for each subsequent FY.

Per Section 3(C), punitive damages arising from the individual or combined malpractice of health care providers described in Section 3(A) and (B) is capped at three times the aggregate amount of “compensatory damages.” While “compensatory damages” is not defined in HB 151, the term may be intended to be the same as “noneconomic damages” defined in Section 2(E).

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

None for the AGO.

SIGNIFICANT LEGAL ISSUES

Section 2(A) defines “aggregate amount” as the sum of damages arising from a single occurrence of malpractice, regardless of both the number of claimants or claims and the number of parties against whom claims can be made.

Section 2(C) defines “health care provider” to include nineteen separate categories of individuals licensed pursuant to New Mexico law, certain federally certified clinical laboratories, eight categories of health care facilities licensed pursuant to the Public Health Act, and owners/operators/managers and employees/officers/agents/governing board members of an individual or group of health care providers.

Section 2(E) defines “noneconomic damages” to include recoverable damages, with eight exceptions.

Section 3(D) prohibits the disclosure of the caps on the “aggregate amount of noneconomic damages” and “punitive damages” to a jury hearing a malpractice claim against any health care provider specified in Section 2(A) or (C).

Section 4(A) applies the Medical Malpractice Act’s statutes of limitations and tolling of limitations to a malpractice claim against any health care provider alleging vicarious liability for the acts and omissions of an independent contractor who is a qualified health care provider.

Section 4(B) applies the Medical Malpractice Act’s monetary limitations of recovery in cases where a health care provider specified in Section 2(A) or (C) is adjudicated vicariously liable for the acts and omissions of an independent contractor who is a qualified health care provider.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

None for the AGO.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

None for the AGO.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

None.

TECHNICAL ISSUES OR DRAFTING ERROR

See Bill Summary comments re Section 3(C).

OTHER SUBSTANTIVE LEGAL ISSUES

None.

ALTERNATIVES TO ENACTING THIS BILL

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None; the public’s recovery of damages for a health care provider’s malpractice will continue to be governed by existing state law.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

None.