

LFC Requester:	Clint Elkins
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**AGENCY BILL ANALYSIS
2015 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 February 23, 2015
Bill No: HB 542

Sponsor: Rep. Terry H. McMillan
Short Title: Health Care Liability Act

Agency Code: Attorney General's Office
Person Writing: Patricia Padrino Tucker, AAG
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

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

BILL SUMMARY

Synopsis: House Bill 542 creates an act limiting aggregate non-economic damages and punitive damages for claims against health care providers that are not participants in the state-sponsored excess insurance program pursuant to the Medical Malpractice Act. House Bill 542 limits non-economic damages to \$300,000 and punitive damages to three times the aggregate amount of compensatory damages.

FISCAL IMPLICATIONS

If health care providers determine that protection under this act is adequate, they may choose not to participate in the insurance program provided for by the Medical Malpractice Act, and thereby deplete the Patient Compensation Fund.

SIGNIFICANT ISSUES

Rather than defining "non-economic damages," House Bill 542 defines what is not included in that term. It may be more clear to define what is included in the term, as has been done in other states. "Necessary nonmedical expenses" Section 2(E)(3), may need to be defined.

The cap amount of \$300,000 for non-economic damages is consistent with the range enacted in other states (though it is on the low end): anywhere from \$250,000-\$1,000,000.

There may be separation of powers challenges to House Bill 542, arguing that the legislature is attempting to usurp the province of the judiciary, as in *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997) out of the Illinois Supreme Court. In the same appeal, the Illinois Supreme Court found that the legislation imposing a cap on non-economic damages violated equal protection, since individuals with high damage claims were arbitrarily being treated differently than individuals with lower damage claims.

Such an equal protection challenge may also be raised in the context of the existence of two separate acts (the Medical Malpractice Act and House Bill 542) with different limitations for health care providers under the same or similar circumstances.

Many states have upheld the constitutionality of caps on non-economic damages, including Alaska, Wisconsin, Colorado, Kansas, Idaho, Maryland, Minnesota, California, Virginia, Missouri, West Virginia, and Louisiana. Many states have struck down caps of non-economic

damages based on various constitutional challenges, including separation of powers, restrictions on “special litigation,” equal protection, and right to jury trial, including Ohio, Illinois, Oregon, Alabama, New Hampshire, Florida, Washington, and Texas.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A