THINK NEW MEXICO
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MEDIA ALERT

January 28, 2025

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Senate Bill 176 Introduced to Reform the Medical Malpractice Law to Center Patient Needs and Safety

Senate Bill 176 has been introduced by Senator Martin Hickey (D-Albuquerque and the only doctor in the legislature) and Senate Minority Whip Pat Woods (R-Curry, Harding, Quay & Union Counties). The bill would reform New Mexico's medical malpractice system by:

- capping attorney's fees in medical malpractice attorney lawsuits;
- ending lump-sum payouts from the Patient Compensation Fund (PCF); and
- sending 75% of any punitive damages awarded in a medical malpractice cases to a new public fund designed to improve patient safety.

The bill was drafted by the nonpartisan think tank Think New Mexico, which published a 2024 report, *How to Solve New Mexico's Health Care Worker Shortage*, which identified New Mexico's malpractice laws as a major cause of doctors retiring early or leaving the state.

In its report, Think New Mexico noted that New Mexico currently has the second highest rate of medical malpractice lawsuits of any state in the nation, according to data collected by the U.S. Department of Health and Human Services. Medical malpractice insurance premiums are about twice as high in New Mexico as in other states in our region, and they continue to rise rapidly. The high cost of malpractice insurance and the high likelihood of being sued discourage doctors and other health care providers from practicing in New Mexico.

The cap on attorney's fees in Senate Bill 176 follows the California model, which caps attorney's fees in that state at 25% of the money awarded if a case is settled, and 33% if a case goes to trial. Every dollar that goes to the attorney is a dollar that does not go to the injured patient, so capping attorney's fees maximizes the amount of the verdict that reaches the patient. A total of 20 states cap attorney's fees, including California, Connecticut, Delaware, Hawaii, Illinois, Massachusetts, Nevada, and Oregon. New Mexico currently has no limits on attorney's fees.

Senate Bill 176 would also return to the system that worked well for many years, in which the Patient Compensation Fund (PCF) paid out medical costs as they are incurred by a patient injured by malpractice. The PCF is a public fund that was created to make sure that patients who are injured by malpractice will have all of their medical expenses paid for. Up until 2021, payments were made from the PCF as a patient incurred medical expenses, for as many years as needed. However, that year New Mexico began allowing lump-sum payouts from the PCF. An up-front lump-sum payout is meant to cover a patient's medical costs for the rest of their life, but it is based on an estimate, which may or may not be accurate (for example, a patient may live longer than expected or may have greater medical needs than anticipated). As a result, a patient that receives a lump-sum payout may run out of money for their medical care. The lump-sum

payout is better for attorneys, however, as they receive their percentage of the funds up front rather than over time.

Finally, Senate Bill 176 would use punitive damage verdicts to improve patient safety and reduce future malpractice. Punitive damages are meant to be an extraordinary remedy, awarded in rare instances where it is necessary to punish someone for committing gross negligence or intentional harm. They are separate from compensatory damages, which are meant to compensate the patient. However, New Mexico allows unlimited punitive damages and requires only the lowest standard of proof in order to award them. Unlimited damages are a windfall for the attorneys bringing the cases, some of whom are based out of state, but they undermine medical care across the state by draining millions of dollars out of the state's health care system. Three states, Alaska, Oregon, and Pennsylvania, instead use a significant portion of any punitive damage award to benefit the public instead. Senate Bill 176 would send 75% of any punitive damages to a new fund earmarked for improving patient safety and reducing medical malpractice.

Governor Lujan Grisham acknowledged the link between New Mexico's medical malpractice system and its growing shortage of health care workers in her 2025 State of the State address, when she said: "We're making a better health care system in New Mexico. But talk to any New Mexican in a doctor's office, or frankly, anyone in this room, and they'll tell you it's not enough. There's still a long wait for appointments. Patients are still driving long distances to see a specialist. And health care leaders are clear that the high cost of medical malpractice insurance is the barrier to recruiting and retaining the providers we need."

"A fair medical malpractice system should make injured patients whole, provide reasonable compensation for their attorneys, and treat doctors and other health care providers fairly. Unfortunately New Mexico's system fails to protect the interests of patients and health care workers," says Senator Martin Hickey, lead sponsor of SB 176.

"Senate Bill 176 shifts New Mexico's medical malpractice system from a lawyer-centered system to a patient-centered system, while reducing the likelihood of malpractice in the future," says Fred Nathan, Jr., Executive Director of Think New Mexico.

More information is available on Think New Mexico's website at: www.thinknewmexico.org.

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