



**New Mexico Medical Society Report
2020 Legislative Session
January 21 – February 20
Santa Fe, NM**

The New Mexico Legislature begins the 30-day session January 21, 2020 and Governor Lujan Grisham has an ambitious agenda, a summary of which is provided at the end of this report. For legislation to be germane in the 30-day session, it must be a fiscal matter or on the "Governor's Call."

Anticipated are amendments to the Medical Malpractice Act (MMA). We should hear soon whether Governor Lujan Grisham will send a message placing this controversial issue before the legislature.

In 1976, New Mexico Medical Society and the New Mexico State Bar Association worked together with the legislature to enact the New Mexico Medical Malpractice Act. The Act provides for a panel of doctors and lawyers to consider, or pre-screen, medical malpractice claims before they are filed in district court. The Act further provides a limit of liability of which the primary carrier (The Doctor Company, Medical Protective, etc.) covers the first \$200,000 plus attorney fees and the Patient Compensation Fund (PCF) covers the next \$400,000 plus past and future medical care to the injured patient. Most cases settle under \$200,000. To qualify for benefits of the Act, a contribution to the PCF must be paid. For physicians, approximately 2/3 of their annual liability insurance premium is paid to the underlying carrier (the insurance company) and the other 1/3 of the premium is paid into the PCF as their contribution, qualifying them under the Act.

The New Mexico Medical Society priority this session is to oppose the Trial Lawyers' initiative to remove hospitals from under the Medical Malpractice Act.

Hospitals have been included as a health care provider since the inception of the Act in 1976, however few took advantage until 2009 when Christus contributed to the Patient Compensation Fund and qualified under the Act. In 2016-2017, a total of 25 hospitals,

57 outpatient facilities, and 1,179 physicians contributed to the Patient Compensation Fund, making them eligible as a qualified health care provider, or as a participant under the Act.

Should such a bill be signed into law, several significant and concerning issues would arise.

The most recent actuarial study (2018) found the Patient Compensation Fund has \$143.5M of outstanding claims and a fund balance of \$87.1M, resulting in a deficit of \$56.4M. Should hospitals be removed from the Act, the contribution to the PCF that qualifies each of the 25 hospitals, 57 outpatient facilities and 1,179 physicians, would stop being collected. Yet, **despite not continuing to pay into the fund, the hospitals, outpatient facilities and employed physicians would continue to have outstanding claims** for occurrences while they were covered under the Act (2009-2020). These claims will result in payment from the PCF for cases settled or judgements over \$200,000 up to \$600,000, plus past and future medical care (which is un-capped). Adding to the problem, **liability claims can take 10 years or more from the date of occurrence to be settled or court awarded.** The hospital would be responsible to find an insurance carrier to provide coverage for the prior acts for the underlying \$200,000. Cases exceeding the \$200,000 underlying coverage would continue to be paid out by the PCF even though no additional contribution would be collected by the PCF from the hospital. **This depletion without replenishment would quickly empty the PCF and crush the protection afforded by MMA.**

Physicians remaining under the fund would be responsible for paying much higher contribution to the PCF to make up for the loss of the contributions collected from the hospitals. Private practice physicians would be responsible for the deficit or would find liability coverage outside the of the Act. According to the Order from the previous Superintendent of Insurance, private practice physicians will be charged a 20% increase in their PCF contribution as of March 1, 2020 followed up by another 9.3% increase March 1, 2021. This is in addition to the 18% increase (9% in 2016, 9% in 2017) they just finished absorbing.

If the Patient Compensation Fund runs out of money to settle all the cases and pay for past and future medical care of injured patients, who will pay the claims? The PCF is created by private funds so the state cannot step in to pay claims due to anti-donation provisions. Where will the money come from? Or will the patients be left without?

If the PCF is depleted, which would destroy the MMA, one of the **prime tools this state has used for recruitment and retention of doctors will disappear**. Many physicians will become employees, retire, move out of state, or change professions.

NMMS proposes the state move cautiously and methodically as we all look to find a solution to the current predicament and:

1. Commission a new, independent actuarial study using a new, independent actuarial firm.
2. Require the New Mexico Hospital Association to provide the OSI with the Milliman actuarial study used to set contribution rates for 15 hospitals to qualify under the PCF.

After these two steps are completed and an accurate and dependable report is publicly available:

3. Appoint a blue-ribbon task force to work throughout 2020 on legislation to introduce in 2021 that would update the current MMA and fairly remedy the PCF deficit.

NMMS will once again publish weekly updates and alerts asking for specific calls on important issues. We will need everyone to communicate with their Representative and Senator and make them aware of this significant issue for the medical community.[www.nmlegis.gov] Let's work together to keep the Medical Malpractice Act.

Governor Lujan Grisham's Call for the 2020 legislative session includes:

Education:

- ***Early Childhood Trust Fund (HB83, Representative Gallegos & Senator Smith)*** Providing a dedicated and self-sustaining revenue stream to fund early childhood programs into the future, delivering a permanent investment in our youngest children. Part of the governor's agenda to expand the education moonshot to begin from a child's earliest days, the Early Childhood Trust Fund (ECTF) will fulfill a promise to parents and the next generation of families of New Mexico, created with a \$320 million one-time initial appropriation. Centered on fiscal responsibility with financial safeguards built in, the ECTF will launch a

positive and self-fulfilling cycle of investment and opportunity in our families and young children.

- ***New Mexico Opportunity Scholarship (Representative Salazar)*** Establishing tuition-free college for New Mexico residents, extending the education moonshot through greater access to higher education and careers. Estimated to benefit 55,000 New Mexico students, the New Mexico Opportunity Scholarship will cover tuition and fees at any of the state's 29 public institutions of higher education, providing up to four or two years of college for recent high school graduates and two years of college for returning adults. Funded with a \$35 million appropriation to the Higher Education Department, the Opportunity Scholarship will remove the barrier of tuition costs, restoring the original promise of the New Mexico Lottery Scholarship, enabling more New Mexicans to obtain college degrees and certificates, resulting in better employment opportunities, higher overall incomes and a stronger workforce for New Mexico's economy.

Economy:

- ***Recreational Cannabis (Representative J. Martinez)*** Legalizing the use of recreational cannabis in New Mexico and establishing a regulatory framework for its use, including public safety considerations, public health safeguards, and the protection of the state's existing medical cannabis program. Supported by 75 percent of New Mexicans [in a recent poll](#), the legalization of recreational cannabis is projected to create 11,000 New Mexico jobs and generate hundreds of millions of dollars in revenue.
- ***PERA Solvency (SB72, Senator Munoz, Senator Smith, Senator Neville, Representative Lundstrom, Representative Roybal Caballero)*** Delivering essential and equitable reform to the state pension system, setting the state on a course to eliminate the current \$6.6 billion unfunded liability and accommodating the concerns of current and future state of New Mexico retirees while establishing safeguards against the effects of future economic downturns. Requiring shared responsibility in order to ensure New Mexico's public pension system remains one of the best in the country, the fix for the Public Employees Retirement Association (PERA) ensures that the pension system is solvent within 25 years; strengthens recruitment and retention of public employees; ensures that cost-of-living adjustments are sustainable; has been endorsed by the PERA board; and makes important accommodations for the most senior and most vulnerable retirees; in all, ensuring a sustainable future for PERA.
- ***Lift Cap on Economically Targeted Investments as Percentage of Severance Tax Permanent Fund (Senator Campos)*** Raising the cap on economically targeted investments (ETIs) from the Severance Tax Permanent Fund (STPF) in order to ensure sufficient headroom between the investment cap and the investment target, enabling the State Investment Council to implement its recent policy decision to increase the target ETIs out of the STPF from five percent to nine percent. Unanimously approved by the SIC, increasing the target

percentage of the fund to be invested in ETIs allows for an additional \$200 million to be invested in New Mexico businesses, building on the significant investments in small business Gov. Lujan Grisham and the Legislature delivered in 2019.

- ***Electric Generating Facility Economic District Act*** (*Representative Lundstrom*) Establishing guidance on the next steps for the surrounding communities affected by the potential closing of the Escalante Power Plant, allowing McKinley County to establish a new special district use and a new authority for the purpose of converting the existing power plant site into a new industrial site. Specifically crafted to have expertise in the area of redevelopment, the new district authority board and staff will work to repurpose the area for the attraction of best-fit industrial companies.

Public Safety:

- ***Extreme-Risk Protection Order*** (*SB5, Senator Cervantes, Representative Ely, Representative Garratt*) Giving law enforcement an additional tool to prevent gun violence by enabling the use of extreme-risk protection orders, allowing firearms and ammunition to be temporarily removed by court order from someone threatening themselves or others. Proactive, constitutional, and proven effective, extreme-risk protection orders will allow police and family to take direct action, while following due process, that enables law enforcement to protect New Mexico communities and those most at risk of harming themselves. In a state with the eighth-highest rate of gun deaths in the nation, with a suicide rate at least 50% higher than the national average when over 50% of suicides are caused by firearm, this common-sense measure, a version of which has already been enacted by 17 states and the District of Columbia, will enhance New Mexicans' public safety.
- ***Increased Penalties for Use of a Firearm in a Non-Capital Felony*** (*Representative Rehm*) Part of a coordinated effort to target cartels, gangs and violent criminals.
- ***Increased Penalties for Violations of New Mexico State Racketeering Laws*** Increasing penalties for drug trafficking and adding a "kingpin provision" to the New Mexico Racketeering Act specifically directed at targeting organized crime and drug trafficking.
- ***Threats and Acts of Mass Violence*** (*Representative Hochman-Vigil*) Creating penalties for those who make threats disrupting public educational or governmental institutions, including those who engage in cyberattacks against public institutions, and expanding the state's Anti-Terrorism Act to criminalize terroristic threats and conduct. The proposal originated at the bipartisan Domestic Terrorism Summit convened by the governor earlier this year.
- ***Criminal Penalties for Operating a Vehicle Chop Shop*** (*Representative Akhil*) Creating penalties for the destruction and resale of illegally obtained

vehicles and the operation of institutions conducting such practices, commonly referred to as “chop shops.”

- ***Sex Offender Registration Requirements (HB43, Representative McQueen)*** Broadening state sex offender registration requirements to require those who are registered as a sex offender in another state to register as such in New Mexico, in addition to requiring sex offender registration for those convicted of human trafficking and sexual exploitation of children by prostitution.
- ***Increased Distribution From Law Enforcement Protection Fund for Acute Crime Interventions (Representative Ruiloba)*** Increasing the annual distribution limit to New Mexico law enforcement departments from the Law Enforcement Protection Fund from \$20,000 to \$45,000 per department and from \$600 to \$1,000 for each individual officer, enabling additional available funding for law enforcement training and equipment across the state. Furthermore, it enables a distribution to State Police of up to \$2 million annually for special deployment use after all local law enforcement distributions have been made.
- ***Increased Penalties for Human Trafficking*** Expanding the definition of human trafficking in New Mexico, increasing felony penalties, creating a minimum term of imprisonment of three years in circumstances in which the victim is under the age of sixteen, and precluding authorities from charging victims of human trafficking with prostitution.

Health:

- ***Drug Importation (SB1, Senator Papen & Representative D. Armstrong)*** Creating the Office of Wholesale Drug Importation at the Department of Health and authorizing it to develop, plan, apply for, and negotiate with the federal government for approval of a Canadian wholesale drug importation plan, ensuring drug safety and significantly reducing drug costs for New Mexicans, who currently pay roughly twice as much for brand name drugs than Canadians.
- ***Residency Requirements for Medical Cannabis Program Enrollment (Senator Ortiz y Pino)*** Amending the 2019 legislation regarding residency requirements for the New Mexico Medical Cannabis Program to clarify that only residents of the state of New Mexico shall participate in the state’s medical cannabis program in order to protect the program and its patients.
- ***Increasing Access and Affordability in the New Mexico Health Insurance Exchange (HB100, Representative D. Armstrong & Representative Cadena)*** Strengthening New Mexico’s own health insurance coverage and health care laws and systems by giving the board of the New Mexico Health Insurance Exchange needed flexibility to increase access and affordability of health insurance plans for New Mexicans. Additionally, codifying into New Mexico state law key provisions of the Affordable Care Act to ensure that New Mexico continues to maintain a strong health insurance exchange.

- ***Tobacco Licensing and Tobacco and E-Cigarette Sales*** (*Senator Lopez & Representative Thomson*) Creating a regulatory licensing system for the manufacturing, distribution and retail of tobacco products, to be administered by the Alcoholic Beverage Control Division at the Regulation and Licensing Department, and raising the legal age for purchases of e-cigarette and other tobacco products from 18 to 21, aligning New Mexico law with recently enacted federal law, in addition to creating criminal penalties for those who sell these products to purchasers under the age of 21.
- ***Kiki Saavedra Senior Dignity Fund*** (*Representative D. Armstrong*) Creating a \$25 million trust fund to address high-priority areas for seniors across New Mexico to include transportation, food insecurity, physical and behavioral health services, case management, and caregiver services. The funding will address increased access for seniors and adults with disabilities, including veterans, to receive specialty physical and behavioral health care most often only provided in urban areas; increased access to ADA vehicles for seniors and adults with disabilities not able to participate in senior center events, congregate meals and local appointments due to inadequate services; and care coordination through community health workers. Named for the late state Representative Henry “Kiki” Saavedra in honor of his many incredible years of service to New Mexicans, the fund will continue his legacy by specifically targeting expanded access to critical services for one of the state’s most vulnerable populations.

Environment:

- ***Solar Tax Credit*** (*SB29, Senator Stewart*) Renewing a prior tax credit for residential, commercial and agricultural solar, proven successful, that previously expired in 2016. Creating an income tax credit of 10% of the purchase and installation costs, with a maximum aggregate of \$10 million, to make solar more accessible for New Mexico residences and businesses and enable New Mexicans to take full advantage of the state’s plentiful solar energy.
- ***Electric Vehicle Tax Credit*** (*Senator Woods & Representative J. Trujillo*) Creating a \$2,500 tax credit for the purchase or lease of an electric vehicle and a \$300 tax credit for the installation of at-home charging infrastructure, enabling more New Mexicans to purchase electric vehicles and utilize the electric vehicle framework expanded across the state in last year’s session. The tax credit is doubled for low-income purchasers, enabling a \$5,000 tax credit.
- ***PRC Reform*** (*Representative Small*) Making structural changes to the Public Regulation Commission (PRC) to improve the agency’s functionality for the public, the regulated community, intervenors in dockets, and PRC commissioners and staff. This good-government initiative will result in an agency fully staffed with technical experts that produces timely docket processes and decisions, consistent regulatory outcomes grounded in the law, and fewer ethics complaints and allegations of misconduct, in addition to the possibility of greater investment in

the electricity, pipeline, and water infrastructure needed to keep New Mexico's economy growing.

- ***IRB Authority for Transmission Lines*** (SB6, Senator Neville & Senator Candelaria) Establishing the authority for counties to issue Industrial Revenue Bonds (IRBs) with the purpose of funding transmission line projects, creating a funding mechanism to deploy more transmission lines across the state.
- ***Community Energy Efficiency Block Grants*** (Senator Ortiz y Pino) Creating an Energy Efficiency Block Grant Program, administered by the state Energy, Minerals and Natural Resources Department, to provide grants for energy efficiency improvements for low-income households. Established with a \$2.5 million appropriation in order to enable low-income households to reduce their utility bills, improve their comfort, and minimize their climate change footprint.
