

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 736

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Keith J. Gardner

AN ACT

RELATING TO MEDICAL MALPRACTICE; ENACTING THE INDEPENDENT
HEALTH CARE PROVIDER LIABILITY ACT; PROVIDING LIABILITY LIMITS
FOR CERTAIN MALPRACTICE CLAIMS AGAINST INDEPENDENT HEALTH CARE
PROVIDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Independent Health Care Provider Liability Act".

Section 2. PURPOSE.--The purpose of the Independent
Health Care Provider Liability Act is to promote the health and
welfare of the people of New Mexico and to assist health care
providers providing care in New Mexico in the control of health
care costs.

Section 3. DEFINITIONS.--As used in the Independent
Health Care Provider Liability Act:

.175893.2

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 A. "health care provider" means:

2 (1) a person licensed, certified, registered
3 or chartered in this state to provide health care or
4 professional services, including a physician, hospital,
5 hospital system, ambulatory surgical center, outpatient health
6 care facility, hospice, nursing home, osteopathic physician,
7 chiropractic physician, podiatrist, medical laboratory,
8 pharmacist, nurse of any type, nurse anesthetist, physician
9 assistant or health technician of any type;

10 (2) a person who provides health care or
11 health-care-related services through any person described in
12 Paragraph (1) of this subsection;

13 (3) an employee of a person described in
14 Paragraph (1) or (2) of this subsection, while working within
15 the scope and course of the employment; or

16 (4) a board of directors, board of trustees or
17 any similar body of a person described in Paragraph (1), (2) or
18 (3) of this subsection;

19 B. "independent health care provider" means a
20 health care provider who is not a qualified health care
21 provider;

22 C. "malpractice claim" includes any cause of action
23 arising in this state against an independent health care
24 provider for medical treatment, lack of medical treatment or
25 other claimed departure from accepted standards of health care

.175893.2

1 that proximately results in injury to the patient, whether the
2 patient's claim or cause of action sounds in tort or contract,
3 and includes actions based on battery or wrongful death, as
4 well as claims brought by others as a result of the claimed
5 departure from accepted standards of health care that injured
6 the patient, including claims for loss of consortium.

7 "Malpractice claim" includes a cause of action arising out of
8 the driving, flying or nonmedical acts involved in the
9 operation, use or maintenance of a vehicular or aircraft
10 ambulance while being used for or within the intended purpose
11 of the operation of an ambulance service;

12 D. "noneconomic damages" means all recoverable
13 damages except:

- 14 (1) past and future medical expenses;
15 (2) past and future loss of income and earning
16 capacity; and
17 (3) punitive damages; and

18 E. "qualified health care provider" means a health
19 care provider who is qualified under the provisions of the
20 Medical Malpractice Act.

21 Section 4. MALPRACTICE CLAIMS--LIMITATION ON LIABILITY.--

22 A. Except as provided in Section 5 of the
23 Independent Health Care Provider Liability Act, in any action
24 based on a malpractice claim, for personal injury or death
25 against an independent health care provider:

.175893.2

underscored material = new
[bracketed material] = delete

1 (1) the maximum amount recoverable for all
2 noneconomic damages shall equal five hundred thousand dollars
3 (\$500,000) as adjusted by the percentage increase or decrease
4 in the consumer price index for all items and for all urban
5 consumers as published by the United States department of labor
6 between the month of July 2009 and the month immediately
7 preceding the date that final judgment is entered for the
8 damage award; and

9 (2) the maximum amount recoverable for all
10 punitive damages shall equal four times the maximum amount
11 specified in Paragraph (1) of this subsection.

12 B. The limitation of Subsection A of this section
13 shall cover any and all claims of all individuals who are
14 claiming damages as a consequence of all personal injuries and
15 death related to the malpractice claims at issue, regardless of
16 whether the claims belong to a person other than the patient,
17 including claims for bystander recovery or loss of consortium.

18 C. The limitation of Subsection A of this section
19 shall apply regardless of the number of independent health care
20 providers found to be liable or the number of separate causes
21 of action on which the claim is based; provided, however, in an
22 action where a final judgment is rendered against one or more
23 independent health care providers, and one or more qualified
24 health care providers, the limitations of this section shall
25 apply only to the independent health care providers and the

.175893.2

underscored material = new
[bracketed material] = delete

1 judgment against the qualified health care providers shall be
2 governed by the provisions of the Medical Malpractice Act.

3 Section 5. CLAIMS BASED ON APPARENT OR OSTENSIBLE AGENCY
4 OR VICARIOUS LIABILITY.--In an action against an independent
5 health care provider, against whom a claim is made based on
6 apparent or ostensible agency or vicarious liability, for a
7 malpractice claim arising out of the conduct of a qualified
8 health care provider:

9 A. the limitation of recovery provided in Section
10 41-5-6 NMSA 1978 and the tolling of the statute of limitations
11 provided in Section 41-5-22 NMSA 1978 shall apply to the claim
12 against the independent health care provider for the
13 comparative fault portion of the malpractice claim alleged to
14 be caused by the conduct of the qualified health care provider;

15 B. if the independent health care provider is found
16 liable for only its vicarious liability for a qualified health
17 care provider, the limitation of recovery provided in Section
18 41-5-6 NMSA 1978 and the tolling of the statute of limitations
19 provided in Section 41-5-22 NMSA 1978 shall apply;

20 C. if the independent health care provider is found
21 liable for both vicarious liability for the conduct of a
22 qualified health care provider, as well as for its own
23 nonvicarious liability, then the limits of the Independent
24 Health Care Provider Liability Act shall be the sole limits for
25 all recovery against the independent health care provider;

.175893.2

underscoring material = new
[bracketed material] = delete

1 D. if the independent health care provider is found
2 liable for only its vicarious liability for another independent
3 health care provider, or for both its vicarious liability for
4 another independent health care provider and its own
5 nonvicarious liability, then the limits of recovery of the
6 Independent Health Care Provider Liability Act shall be the
7 sole limits against the independent health care provider; and

8 E. nothing in the Independent Health Care Provider
9 Liability Act shall revoke or amend any right of
10 indemnification that an independent health care provider may
11 have against a qualified health care provider for payment of a
12 vicarious award against the independent health care provider.

13 Section 6. LAW OF COMPARATIVE FAULT UNAFFECTED.--Nothing
14 in the Independent Health Care Provider Liability Act shall be
15 deemed to revoke the law of comparative fault.

16 Section 7. DISCLOSURE OF LIMITS PROHIBITED.--The limits
17 of liability provided under the Independent Health Care
18 Provider Liability Act shall not be disclosed to any jury
19 hearing a malpractice claim.

20 Section 8. APPLICABILITY OF TORT CLAIMS ACT.--The
21 provisions of the Independent Health Care Provider Liability
22 Act do not apply to independent health care providers who are
23 governmental entities or public employees under the Tort Claims
24 Act.

25 Section 9. EFFECTIVE DATE.--The effective date of the
.175893.2

underscored material = new
[bracketed material] = delete

1 provisions of this act is July 1, 2009.

2 - 7 -

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

.175893.2