AN ACT

RELATING TO MEDICAL MALPRACTICE; REMOVING HOSPITALS FROM THE DEFINITION OF "HEALTH CARE PROVIDER" IN THE MEDICAL MALPRACTICE ACT.

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

SECTION 1. Section 41-5-3 NMSA 1978 (being Laws 1976, Chapter 2, Section 3, as amended) is amended to read:

"41-5-3. DEFINITIONS.--As used in the Medical Malpractice Act:

A. "health care provider" means a person, corporation, organization, facility or institution licensed or certified by this state to provide health care or professional services as a doctor of medicine, doctor of osteopathy, chiropractor, podiatrist, nurse anesthetist or physician's assistant;
B. "insurer" means an insurance company engaged in writing health care provider malpractice liability insurance in this state;

C. "malpractice claim" includes any cause of action arising in this state against a health care provider for medical treatment, lack of medical treatment or other claimed departure from accepted standards of health care [which] that proximately results in injury to the patient, whether the patient's claim or cause of action sounds in tort or contract, and includes [but is not limited to] actions based on battery or wrongful death; "malpractice claim" does not include a cause of action arising out of the driving, flying or nonmedical acts involved in the operation, use or maintenance of a vehicular or aircraft ambulance;

D. "medical care and related benefits" means all reasonable medical, surgical, physical rehabilitation and custodial services and includes drugs, prosthetic devices and other similar materials reasonably necessary in the provision of such services;

E. "patient" means a natural person who received or should have received health care from a licensed health care provider, under a contract, express or implied; and

F. "superintendent" means the superintendent of insurance [of this state]."

SECTION 2. Section 41-5-5 NMSA 1978 (being Laws 1992, .218619.2
Chapter 33, Section 2) is amended to read:

"41-5-5. QUALIFICATIONS.--

A. To be qualified under the provisions of the Medical Malpractice Act, a health care provider shall:

(1) establish its financial responsibility by filing proof with the superintendent that the health care provider is insured by a policy of malpractice liability insurance issued by an authorized insurer in the amount of at least two hundred thousand dollars ($200,000) per occurrence or for an individual health care provider, excluding [hospitals and] outpatient health care facilities, by having continuously on deposit the sum of six hundred thousand dollars ($600,000) in cash with the superintendent or such other like deposit as the superintendent may allow by rule or regulation; provided that in the absence of an additional deposit or policy as required by this subsection, the deposit or policy shall provide coverage for not more than three separate occurrences; and

(2) pay the surcharge assessed on health care providers by the superintendent pursuant to Section 41-5-25 NMSA 1978.

B. For [hospitals or] outpatient health care facilities electing to be covered under the Medical Malpractice Act, the superintendent shall determine, based on a risk assessment of each [hospital or] outpatient health care facility...
facility, each [hospital's or] outpatient health care
facility's base coverage or deposit and additional charges for
the patient's compensation fund. The superintendent shall
arrange for an actuarial study, as provided in Section 41-5-25
NMSA 1978.

C. A health care provider not qualifying under this
section shall not have the benefit of any of the provisions of
the Medical Malpractice Act in the event of a malpractice claim
against it."