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HOUSE BILL 88

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

James G. Townsend and Randall T. Pettigrew and T. Ryan Lane
and William "Bill" R. Rehm and Rod Montoya

AN ACT

RELATING TO TORTS; AMENDING THE MEDICAL MALPRACTICE ACT TO
CHANGE THE LIMITATION OF RECOVERY FOR CERTAIN CLAIMS AGAINST
FACILITIES THAT ARE NOT MAJORITY-OWNED AND -CONTROLLED BY A
HOSPITAL.

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

SECTION 1. Section 41-5-6 NMSA 1978 (being Laws 1992,
Chapter 33, Section 4, as amended) is amended to read:

"41-5-6. LIMITATION OF RECOVERY.--

A. Except for punitive damages and past and future
medical care and related benefits, the aggregate dollar amount
recoverable by all persons for or arising from any injury or
death to a patient as a result of malpractice shall not exceed
six hundred thousand dollars (\$600,000) per occurrence for
malpractice claims brought against health care providers if the

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1 injury or death occurred prior to January 1, 2022. In jury
2 cases, the jury shall not be given any instructions dealing
3 with this limitation.

4 B. Except for punitive damages and past and future
5 medical care and related benefits, the aggregate dollar amount
6 recoverable by all persons for or arising from any injury or
7 death to a patient as a result of malpractice shall not exceed
8 seven hundred fifty thousand dollars (\$750,000) per occurrence
9 for malpractice claims against independent providers or an
10 outpatient health care facility that is not majority-owned and
11 -controlled by a hospital; provided that, beginning January 1,
12 2023, the per occurrence limit on recovery shall be adjusted
13 annually by the consumer price index for all urban consumers.

14 ~~[C. In calendar year 2022 and subsequent calendar~~
15 ~~years, the aggregate dollar amount recoverable by all persons~~
16 ~~for or arising from any injury or death to a patient as a~~
17 ~~result of malpractice, except for punitive damages and past and~~
18 ~~future medical care and related benefits, shall not exceed the~~
19 ~~following amounts for claims brought against an outpatient~~
20 ~~health care facility that is not majority-owned and -controlled~~
21 ~~by a hospital:~~

22 ~~(1) for an injury or death that occurred in~~
23 ~~calendar years 2022 and 2023, seven hundred fifty thousand~~
24 ~~dollars (\$750,000) per occurrence;~~

25 ~~(2) for an injury or death that occurred in~~

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1 ~~calendar year 2024, five million dollars (\$5,000,000) per~~
2 ~~occurrence;~~

3 ~~(3) for an injury or death that occurred in~~
4 ~~calendar year 2025, five million five hundred thousand dollars~~
5 ~~(\$5,500,000) per occurrence;~~

6 ~~(4) for an injury or death that occurred in~~
7 ~~calendar year 2026, six million dollars (\$6,000,000) per~~
8 ~~occurrence; and~~

9 ~~(5) for an injury or death that occurred in~~
10 ~~calendar year 2027 and each calendar year thereafter, the~~
11 ~~amount provided in Paragraph (4) of this subsection, adjusted~~
12 ~~annually by the consumer price index for all urban consumers,~~
13 ~~per occurrence.~~

14 ~~D.]~~ C. In calendar year 2022 and subsequent
15 calendar years, the aggregate dollar amount recoverable by all
16 persons for or arising from any injury or death to a patient as
17 a result of malpractice, except for punitive damages and past
18 and future medical care and related benefits, shall not exceed
19 the following amounts for claims brought against a hospital or
20 an outpatient health care facility that is majority-owned and
21 -controlled by a hospital:

22 (1) for an injury or death that occurred in
23 calendar year 2022, four million dollars (\$4,000,000) per
24 occurrence;

25 (2) for an injury or death that occurred in

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1 calendar year 2023, four million five hundred thousand dollars
2 (\$4,500,000) per occurrence;

3 (3) for an injury or death that occurred in
4 calendar year 2024, five million dollars (\$5,000,000) per
5 occurrence;

6 (4) for an injury or death that occurred in
7 calendar year 2025, five million five hundred thousand dollars
8 (\$5,500,000) per occurrence;

9 (5) for an injury or death that occurred in
10 calendar year 2026, six million dollars (\$6,000,000) per
11 occurrence; and

12 (6) for an injury or death that occurred in
13 calendar year 2027 and each calendar year thereafter, the
14 amount provided in Paragraph (5) of this subsection, adjusted
15 annually by the consumer price index for all urban consumers,
16 per occurrence.

17 ~~[E.]~~ D. The aggregate dollar amounts provided in
18 Subsections B ~~[through D]~~ and C of this section include payment
19 to any person for any number of loss of consortium claims or
20 other claims per occurrence that arise solely because of the
21 injuries or death of the patient.

22 ~~[F.]~~ E. In jury cases, the jury shall not be given
23 any instructions dealing with the limitations provided in this
24 section.

25 ~~[G.]~~ F. The value of accrued medical care and

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1 related benefits shall not be subject to any limitation.

2 ~~[H.]~~ G. A health care provider's personal liability
3 is limited to two hundred fifty thousand dollars (\$250,000) for
4 monetary damages and medical care and related benefits as
5 provided in Section 41-5-7 NMSA 1978. Any amount due from a
6 judgment or settlement in excess of two hundred fifty thousand
7 dollars (\$250,000) shall be paid from the fund, except as
8 provided in Subsection ~~[F.]~~ H of this section.

9 ~~[F.]~~ H. Until January 1, 2027, amounts due from a
10 judgment or settlement against a hospital or outpatient health
11 care facility in excess of seven hundred fifty thousand dollars
12 (\$750,000), excluding past and future medical expenses, shall
13 be paid by the hospital or outpatient health care facility and
14 not by the fund. Beginning January 1, 2027, amounts due from a
15 judgment or settlement against a hospital or outpatient health
16 care facility shall not be paid from the fund.

17 ~~[J.]~~ I. The term "occurrence" shall not be
18 construed in such a way as to limit recovery to only one
19 maximum statutory payment if separate acts or omissions cause
20 additional or enhanced injury or harm as a result of the
21 separate acts or omissions. A patient who suffers two or more
22 distinct injuries as a result of two or more different acts or
23 omissions that occur at different times by one or more health
24 care providers is entitled to up to the maximum statutory
25 recovery for each injury."

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