

1 SENATE BILL 446

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO MEDICAL MALPRACTICE; AMENDING THE MEDICAL  
12 MALPRACTICE ACT TO UPDATE THE DEFINITION OF "OCCURRENCE".

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

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

17 "41-5-3. DEFINITIONS.--As used in the Medical Malpractice  
18 Act:

19 A. "advisory board" means the patient's  
20 compensation fund advisory board;

21 B. "fund" means the patient's compensation fund;

22 C. "health care provider" means a person,  
23 corporation, organization, facility or institution licensed or  
24 certified by this state to provide health care or professional  
25 services as a doctor of medicine, hospital, outpatient health

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1 care facility, doctor of osteopathy, chiropractor, podiatrist,  
2 nurse anesthetist, physician's assistant, certified nurse  
3 practitioner, clinical nurse specialist or certified nurse-  
4 midwife or a business entity that is organized, incorporated or  
5 formed pursuant to the laws of New Mexico that provides health  
6 care services primarily through natural persons identified in  
7 this subsection;

8 D. "hospital" means a facility licensed as a  
9 hospital in this state that offers in-patient services, nursing  
10 or overnight care on a twenty-four-hour basis for diagnosing,  
11 treating and providing medical, psychological or surgical care  
12 for three or more separate persons who have a physical or  
13 mental illness, disease, injury or rehabilitative condition or  
14 are pregnant and may offer emergency services. "Hospital"  
15 includes a hospital's parent corporation, subsidiary  
16 corporations or affiliates if incorporated or registered in New  
17 Mexico; employees and locum tenens providing services at the  
18 hospital; and agency nurses providing services at the hospital;

19 E. "independent provider" means a doctor of  
20 medicine, doctor of osteopathy, chiropractor, podiatrist, nurse  
21 anesthetist, physician's assistant, certified nurse  
22 practitioner, clinical nurse specialist or certified nurse-  
23 midwife who is not an employee of a hospital or outpatient  
24 health care facility. "Independent provider" includes a  
25 business entity that is not a hospital or outpatient health

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1 care facility that employs or consists of members who are  
2 licensed or certified as doctors of medicine, doctors of  
3 osteopathy, chiropractors, podiatrists, nurse anesthetists,  
4 physician's assistants, certified nurse practitioners, clinical  
5 nurse specialists or certified nurse-midwives and the business  
6 entity's employees;

7 F. "insurer" means an insurance company engaged in  
8 writing health care provider malpractice liability insurance in  
9 this state;

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

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

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1 I. "occurrence" means all ~~[injuries to a patient~~  
2 ~~caused by health care providers' successive acts or omissions~~  
3 ~~that combined concurrently to create a malpractice claim]~~  
4 claims for damages from every person seeking damages that arise  
5 from harm to a single patient, no matter how many qualified  
6 health care providers or errors or omissions contributed to the  
7 harm;

8 J. "outpatient health care facility" means an  
9 entity that is licensed pursuant to the Public Health Act as an  
10 outpatient facility, including ambulatory surgical centers,  
11 free-standing emergency rooms, urgent care clinics, acute care  
12 centers and intermediate care facilities and includes a  
13 facility's employees, locum tenens providers and agency nurses  
14 providing services at the facility. "Outpatient health care  
15 facility" does not include independent providers;

16 K. "patient" means a natural person who received or  
17 should have received health care from a health care provider,  
18 under a contract, express or implied; and

19 L. "superintendent" means the superintendent of  
20 insurance."

21 SECTION 2. Section 41-5-6 NMSA 1978 (being Laws 1992,  
22 Chapter 33, Section 4, as amended) is amended to read:

23 "41-5-6. LIMITATION OF RECOVERY.--

24 A. Except for punitive damages and past and future  
25 medical care and related benefits, the aggregate dollar amount

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1 recoverable by all persons for or arising from any injury or  
2 death to a patient as a result of malpractice shall not exceed  
3 six hundred thousand dollars (\$600,000) per occurrence for  
4 malpractice claims brought against health care providers if the  
5 injury or death occurred prior to January 1, 2022. In jury  
6 cases, the jury shall not be given any instructions dealing  
7 with this limitation.

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

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

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

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1 calendar years 2022 and 2023, seven hundred fifty thousand  
2 dollars (\$750,000) per occurrence;

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

6 (3) 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 (4) for an injury or death that occurred in  
10 calendar year 2026, six million dollars (\$6,000,000) per  
11 occurrence; and

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

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

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

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1 calendar year 2022, four million dollars (\$4,000,000) per  
2 occurrence;

3 (2) for an injury or death that occurred in  
4 calendar year 2023, four million five hundred thousand dollars  
5 (\$4,500,000) per occurrence;

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

9 (4) for an injury or death that occurred in  
10 calendar year 2025, five million five hundred thousand dollars  
11 (\$5,500,000) per occurrence;

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

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

20 E. The aggregate dollar amounts provided in  
21 Subsections B through D of this section include payment to any  
22 person for any number of loss of consortium claims or other  
23 claims per occurrence that arise solely because of the injuries  
24 or death of the patient.

25 F. In jury cases, the jury shall not be given any

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1 instructions dealing with the limitations provided in this  
2 section.

3 G. The value of accrued medical care and related  
4 benefits shall not be subject to any limitation.

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

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

20 ~~[J. The term "occurrence" shall not be construed in~~  
21 ~~such a way as to limit recovery to only one maximum statutory~~  
22 ~~payment if separate acts or omissions cause additional or~~  
23 ~~enhanced injury or harm as a result of the separate acts or~~  
24 ~~omissions. A patient who suffers two or more distinct injuries~~  
25 ~~as a result of two or more different acts or omissions that~~

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1 ~~occur at different times by one or more health care providers~~  
2 ~~is entitled to up to the maximum statutory recovery for each~~  
3 ~~injury.]"~~