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HOUSE BILL 378

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Rod Montoya and Gail Armstrong

AN ACT

RELATING TO MEDICAL MALPRACTICE; AMENDING THE DEFINITION OF
"OCCURRENCE" IN THE MEDICAL MALPRACTICE ACT; LIMITING THE
AMOUNT OF DAMAGES THAT CAN BE AWARDED DUE TO A MEDICAL
MALPRACTICE CLAIM; REQUIRING PAYMENTS FROM THE PATIENT'S
COMPENSATION FUND TO BE MADE AS EXPENSES ARE INCURRED.

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

B. "control" means equity ownership in a business
entity that:

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1 (1) represents more than fifty percent of the
2 total voting power of the business entity; or

3 (2) has a value of more than fifty percent of
4 that business entity;

5 C. "fund" means the patient's compensation fund;

6 D. "health care provider" means a person,
7 corporation, organization, facility or institution licensed or
8 certified by this state to provide health care or professional
9 services as a doctor of medicine, hospital, outpatient health
10 care facility, doctor of osteopathy, chiropractor, [~~podiatrist~~]
11 podiatric physician, nurse anesthetist, physician's assistant,
12 certified nurse practitioner, clinical nurse specialist or
13 certified nurse-midwife or a business entity that is organized,
14 incorporated or formed pursuant to the laws of New Mexico that
15 provides health care services primarily through natural persons
16 identified in this subsection. "Health care provider" does not
17 mean a person or entity protected pursuant to the Tort Claims
18 Act or the Federal Tort Claims Act;

19 E. "hospital" means a facility licensed as a
20 hospital in this state that offers in-patient services, nursing
21 or overnight care on a twenty-four-hour basis for diagnosing,
22 treating and providing medical, psychological or surgical care
23 for three or more separate persons who have a physical or
24 mental illness, disease, injury or rehabilitative condition or
25 are pregnant and may offer emergency services. "Hospital"

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1 includes a hospital's parent corporation, subsidiary
2 corporations or affiliates if incorporated or registered in New
3 Mexico; employees and locum tenens providing services at the
4 hospital; and agency nurses providing services at the hospital.
5 "Hospital" does not mean a person or entity protected pursuant
6 to the Tort Claims Act or the Federal Tort Claims Act;

7 F. "independent outpatient health care facility"
8 means a health care facility that is an ambulatory surgical
9 center, urgent care facility or free-standing emergency room
10 that is not, directly or indirectly through one or more
11 intermediaries, controlled or under common control with a
12 hospital. "Independent outpatient health care facility"
13 includes a facility's employees, locum tenens providers and
14 agency nurses providing services at the facility. "Independent
15 outpatient health care facility" does not mean a person or
16 entity protected pursuant to the Tort Claims Act or the Federal
17 Tort Claims Act;

18 G. "independent provider" means a doctor of
19 medicine, doctor of osteopathy, chiropractor, ~~[podiatrist]~~
20 podiatric physician, nurse anesthetist, physician's assistant,
21 certified nurse practitioner, clinical nurse specialist or
22 certified nurse-midwife who is not an employee of a hospital or
23 outpatient health care facility. "Independent provider" does
24 not mean a person or entity protected pursuant to the Tort
25 Claims Act or the Federal Tort Claims Act. "Independent

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1 provider" includes:

2 (1) a health care facility that is:

3 (a) licensed pursuant to the Public
4 Health Act as an outpatient facility;

5 (b) not an ambulatory surgical center,
6 urgent care facility or free-standing emergency room; and

7 (c) not hospital-controlled; and

8 (2) a business entity that is not a hospital
9 or outpatient health care facility that employs or consists of
10 members who are licensed or certified as doctors of medicine,
11 doctors of osteopathy, chiropractors, ~~[podiatrists]~~ podiatric
12 physicians, nurse anesthetists, physician's assistants,
13 certified nurse practitioners, clinical nurse specialists or
14 certified nurse-midwives and the business entity's employees;

15 H. "insurer" means an insurance company engaged in
16 writing health care provider malpractice liability insurance in
17 this state;

18 I. "malpractice claim" includes any cause of action
19 arising in this state against a health care provider for
20 medical treatment, lack of medical treatment or other claimed
21 departure from accepted standards of health care that
22 proximately results in injury to the patient, whether the
23 patient's claim or cause of action sounds in tort or contract,
24 and includes but is not limited to actions based on battery or
25 wrongful death; "malpractice claim" does not include a cause of

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1 action arising out of the driving, flying or nonmedical acts
2 involved in the operation, use or maintenance of a vehicular or
3 aircraft ambulance;

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

9 K. "occurrence" means all ~~[injuries to a patient~~
10 ~~caused by health care providers' successive acts or omissions~~
11 ~~that combined concurrently to create a malpractice claim]~~
12 claims for damages from all persons arising from harm to a
13 single patient, no matter how many health care providers,
14 errors or omissions contributed to the harm;

15 L. "outpatient health care facility" means an
16 entity that is hospital-controlled and is licensed pursuant to
17 the Public Health Act as an outpatient facility, including
18 ambulatory surgical centers, free-standing emergency rooms,
19 urgent care clinics, acute care centers and intermediate care
20 facilities and includes a facility's employees, locum tenens
21 providers and agency nurses providing services at the facility.

22 "Outpatient health care facility" does not include:

- 23 (1) independent providers;
24 (2) independent outpatient health care
25 facilities; or

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1 (3) individuals or entities protected pursuant
2 to the Tort Claims Act or the Federal Tort Claims Act;

3 M. "patient" means a natural person who received or
4 should have received health care from a health care provider,
5 under a contract, express or implied; and

6 N. "superintendent" means the superintendent of
7 insurance."

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

10 "41-5-6. LIMITATION OF RECOVERY.--

11 A. Except for punitive damages and past and future
12 medical care and related benefits, the aggregate dollar amount
13 recoverable by all persons for or arising from any injury or
14 death to a patient as a result of malpractice shall not exceed
15 six hundred thousand dollars (\$600,000) per occurrence. [~~for~~
16 ~~malpractice claims brought against health care providers if the~~
17 ~~injury or death occurred prior to January 1, 2022. In jury~~
18 ~~cases, the jury shall not be given any instructions dealing~~
19 ~~with this limitation.~~

20 B. ~~Except for punitive damages and past and future~~
21 ~~medical care and related benefits, the aggregate dollar amount~~
22 ~~recoverable by all persons for or arising from any injury or~~
23 ~~death to a patient as a result of malpractice shall not exceed~~
24 ~~seven hundred fifty thousand dollars (\$750,000) per occurrence~~
25 ~~for malpractice claims against independent providers; provided~~

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1 ~~that, beginning January 1, 2023, the per occurrence limit on~~
2 ~~recovery shall be adjusted annually by the consumer price index~~
3 ~~for all urban consumers.~~

4 ~~C. The aggregate dollar amount recoverable by all~~
5 ~~persons for or arising from any injury or death to a patient as~~
6 ~~a result of malpractice, except for punitive damages and past~~
7 ~~and future medical care and related benefits, shall not exceed~~
8 ~~seven hundred fifty thousand dollars (\$750,000) for claims~~
9 ~~brought against an independent outpatient health care facility~~
10 ~~for an injury or death that occurred in calendar years 2022 and~~
11 ~~2023.~~

12 ~~D. In calendar year 2024 and subsequent years, the~~
13 ~~aggregate dollar amount recoverable by all persons for or~~
14 ~~arising from an injury or death to a patient as a result of~~
15 ~~malpractice, except for punitive damages and past and future~~
16 ~~medical care and related benefits, shall not exceed the~~
17 ~~following amounts for claims brought against an independent~~
18 ~~outpatient health care facility:~~

19 ~~(1) for an injury or death that occurred in~~
20 ~~calendar year 2024, one million dollars (\$1,000,000) per~~
21 ~~occurrence; and~~

22 ~~(2) for an injury or death that occurred in~~
23 ~~calendar year 2025 and thereafter, the amount provided in~~
24 ~~Paragraph (1) of this subsection, adjusted annually by the~~
25 ~~prior three-year average consumer price index for all urban~~

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1 ~~consumers, per occurrence.~~

2 ~~E. In calendar year 2022 and subsequent calendar~~
3 ~~years, the aggregate dollar amount recoverable by all persons~~
4 ~~for or arising from any injury or death to a patient as a~~
5 ~~result of malpractice, except for punitive damages and past and~~
6 ~~future medical care and related benefits, shall not exceed the~~
7 ~~following amounts for claims brought against a hospital or a~~
8 ~~hospital-controlled outpatient health care facility:~~

9 ~~(1) for an injury or death that occurred in~~
10 ~~calendar year 2022, four million dollars (\$4,000,000) per~~
11 ~~occurrence;~~

12 ~~(2) for an injury or death that occurred in~~
13 ~~calendar year 2023, four million five hundred thousand dollars~~
14 ~~(\$4,500,000) per occurrence;~~

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

18 ~~(4) for an injury or death that occurred in~~
19 ~~calendar year 2025, five million five hundred thousand dollars~~
20 ~~(\$5,500,000) per occurrence;~~

21 ~~(5) for an injury or death that occurred in~~
22 ~~calendar year 2026, six million dollars (\$6,000,000) per~~
23 ~~occurrence; and~~

24 ~~(6) for an injury or death that occurred in~~
25 ~~calendar year 2027 and each calendar year thereafter, the~~

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1 ~~amount provided in Paragraph (5) of this subsection, adjusted~~
2 ~~annually by the consumer price index for all urban consumers,~~
3 ~~per occurrence.~~

4 ~~F. The aggregate dollar amounts provided in~~
5 ~~Subsections B through E of this section include payment to any~~
6 ~~person for any number of loss of consortium claims or other~~
7 ~~claims per occurrence that arise solely because of the injuries~~
8 ~~or death of the patient.~~

9 ~~G.] B.~~ In jury cases, the jury shall not be given
10 any instructions dealing with the limitations provided in this
11 section.

12 ~~[H.] C.~~ The value of accrued medical care and
13 related benefits shall not be subject to any limitation.

14 ~~[I.] D.~~ Except for an independent outpatient health
15 care facility, a health care provider's personal liability is
16 limited to ~~[two hundred fifty thousand dollars (\$250,000)]~~ two
17 hundred thousand dollars (\$200,000) for monetary damages and
18 medical care and related benefits as provided in Section 41-5-7
19 NMSA 1978. Any amount due from a judgment or settlement in
20 excess of ~~[two hundred fifty thousand dollars (\$250,000)]~~ two
21 hundred thousand dollars (\$200,000) shall be paid from the fund
22 ~~[except as provided in Subsections J and K of this section.~~

23 ~~J. An independent outpatient health care facility's~~
24 ~~personal liability is limited to five hundred thousand dollars~~
25 ~~(\$500,000) for monetary damages and medical care and related~~

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1 ~~benefits as provided in Section 41-5-7 NMSA 1978. Any amount~~
2 ~~due from a judgment or settlement in excess of five hundred~~
3 ~~thousand dollars (\$500,000) shall be paid from the fund.~~

4 ~~K. Until January 1, 2027, amounts due from a~~
5 ~~judgment or settlement against a hospital or hospital-~~
6 ~~controlled outpatient health care facility in excess of seven~~
7 ~~hundred fifty thousand dollars (\$750,000), excluding past and~~
8 ~~future medical expenses, shall be paid by the hospital or~~
9 ~~hospital-controlled outpatient health care facility and not by~~
10 ~~the fund. Beginning January 1, 2027, amounts due from a~~
11 ~~judgment or settlement against a hospital or hospital-~~
12 ~~controlled outpatient health care facility shall not be paid~~
13 ~~from the fund.~~

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

23 SECTION 3. Section 41-5-7 NMSA 1978 (being Laws 1992,
24 Chapter 33, Section 5, as amended) is amended to read:

25 "41-5-7. MEDICAL EXPENSES AND PUNITIVE DAMAGES.--

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1 A. Awards of past and future medical care and
2 related benefits shall not be subject to the limitations of
3 recovery imposed in Section 41-5-6 NMSA 1978.

4 B. The health care provider shall be liable for all
5 medical care and related benefit payments until the total
6 payments made by or on behalf of it for monetary damages and
7 medical care and related benefits combined equals the health
8 care provider's personal liability limit as provided in
9 Subsection ~~[F]~~ D of Section 41-5-6 NMSA 1978, after which the
10 payments shall be made by the fund.

11 C. Payments made from the fund for medical care and
12 related benefits shall be made as expenses are incurred.

13 ~~[G-]~~ D. Beginning January 1, 2027, any amounts due
14 from a judgment or settlement against a hospital or outpatient
15 health care facility shall not be paid from the fund if the
16 injury or death occurred after December 31, 2026.

17 ~~[D-]~~ E. This section shall not be construed to
18 prevent a patient and a health care provider from entering into
19 a settlement agreement whereby medical care and related
20 benefits shall be provided for a limited period of time only or
21 to a limited degree.

22 ~~[E-]~~ F. A judgment of punitive damages against a
23 health care provider shall be the personal liability of the
24 health care provider. Punitive damages shall not be paid from
25 the fund or from the proceeds of the health care provider's

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1 insurance contract unless the contract expressly provides
2 coverage. Nothing in Section 41-5-6 NMSA 1978 precludes the
3 award of punitive damages to a patient. Nothing in this
4 subsection authorizes the imposition of liability for punitive
5 damages where that imposition would not be otherwise authorized
6 by law."

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