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SENATE BILL 121

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

INTRODUCED BY

George K. Muñoz

AN ACT

RELATING TO MEDICAL MALPRACTICE; PROVIDING IMMUNITY FROM
LIABILITY TO THE THIRD-PARTY ADMINISTRATOR THAT ADMINISTERS THE
PATIENT'S COMPENSATION FUND.

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

SECTION 1. Section 41-5-25 NMSA 1978 (being Laws 1992,
Chapter 33, Section 9, as amended) is amended to read:

"41-5-25. PATIENT'S COMPENSATION FUND--THIRD-PARTY
ADMINISTRATOR--ACTUARIAL STUDIES--SURCHARGES--CLAIMS--
PRORATION--PROOFS OF AUTHENTICITY.--

A. The "patient's compensation fund" is created as
a nonreverting fund in the state treasury. The fund consists
of money from surcharges, income from investment of the fund
and any other money deposited to the credit of the fund. The
fund shall be held in trust, deposited in a segregated account

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1 in the state treasury and invested by the state investment
2 office and shall not become a part of or revert to the general
3 fund or any other fund of the state. Money from the fund shall
4 be expended only for the purposes of and to the extent provided
5 in the Medical Malpractice Act. All approved expenses of
6 collecting, protecting and administering the fund, including
7 purchasing insurance for the fund, shall be paid from the fund.

8 B. The superintendent shall contract for the
9 administration and operation of the fund with a qualified,
10 licensed third-party administrator, selected in consultation
11 with the advisory board, no later than January 1, 2022. The
12 third-party administrator shall provide an annual audit of the
13 fund to the superintendent. The third-party administrator
14 shall have the same immunity from liability as the
15 superintendent for actions taken within the scope of the duties
16 prescribed by the Medical Malpractice Act.

17 C. The superintendent, as custodian of the fund,
18 and the third-party administrator shall be notified by the
19 health care provider or the health care provider's insurer
20 within thirty days of service on the health care provider of a
21 complaint asserting a malpractice claim brought in a court in
22 this state against the health care provider.

23 D. The superintendent shall levy an annual
24 surcharge on all New Mexico health care providers qualifying
25 under Section 41-5-5 NMSA 1978. The surcharge shall be

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1 determined by the superintendent with the advice of the
2 advisory board and based on the annual independent actuarial
3 study of the fund. The surcharges for health care providers,
4 including hospitals and outpatient health care facilities whose
5 qualifications for the fund end on January 1, 2027, shall be
6 based on sound actuarial principles, using data obtained from
7 New Mexico claims and loss experience. A hospital or
8 outpatient health care facility seeking participation in the
9 fund during the remaining qualifying years shall provide, at a
10 minimum, the hospital's or outpatient health care facility's
11 direct and indirect cost information as reported to the federal
12 centers for medicare and medicaid services for all self-insured
13 malpractice claims, including claims and paid loss detail, and
14 the claims and paid loss detail from any professional liability
15 insurance carriers for each hospital or outpatient health care
16 facility and each employed health care provider for the past
17 eight years to the third-party actuary. The same information
18 shall be available to the advisory board for review, including
19 financial information and data, and excluding individually
20 identifying case information, which information shall not be
21 subject to the Inspection of Public Records Act. The
22 superintendent, the third-party actuary or the advisory board
23 shall not use or disclose the information for any purpose other
24 than to fulfill the duties pursuant to this subsection.

25 E. The surcharge shall be collected on the same

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1 basis as premiums by each insurer from the health care
2 provider. The surcharge shall be due and payable within thirty
3 days after the premiums for malpractice liability insurance
4 have been received by the insurer from the health care provider
5 in New Mexico. If the surcharge is collected but not paid
6 timely, the superintendent may suspend the certificate of
7 authority of the insurer until the annual premium surcharge is
8 paid.

9 F. Surcharges shall be set by October 31 of each
10 year for the next calendar year. Beginning in 2021, the
11 surcharges shall be set with the intention of bringing the fund
12 to solvency with no projected deficit by December 31, 2026.
13 All qualified and participating hospitals and outpatient health
14 care facilities shall cure any fund deficit attributable to
15 hospitals and outpatient health care facilities by December 31,
16 2026.

17 G. If the fund would be exhausted by payment of all
18 claims allowed during a particular calendar year, then the
19 amounts paid to each patient and other parties obtaining
20 judgments shall be prorated, with each such party receiving an
21 amount equal to the percentage the party's own payment schedule
22 bears to the total of payment schedules outstanding and payable
23 by the fund. Any amounts due and unpaid as a result of such
24 proration shall be paid in the following calendar years.

25 H. Upon receipt of one of the proofs of

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1 authenticity listed in this subsection, reflecting a judgment
2 for damages rendered pursuant to the Medical Malpractice Act,
3 the superintendent shall issue or have issued warrants in
4 accordance with the payment schedule constructed by the court
5 and made a part of its final judgment. The only claim against
6 the fund shall be a voucher or other appropriate request by the
7 superintendent after the superintendent receives:

8 (1) until January 1, 2022, a certified copy of
9 a final judgment in excess of two hundred thousand dollars
10 (\$200,000) against a health care provider;

11 (2) until January 1, 2022, a certified copy of
12 a court-approved settlement or certification of settlement made
13 prior to initiating suit, signed by both parties, in excess of
14 two hundred thousand dollars (\$200,000) against a health care
15 provider; or

16 (3) until January 1, 2022, a certified copy of
17 a final judgment less than two hundred thousand dollars
18 (\$200,000) and an affidavit of a health care provider or its
19 insurer attesting that payments made pursuant to Subsection B
20 of Section 41-5-7 NMSA 1978, combined with the monetary
21 recovery, exceed two hundred thousand dollars (\$200,000).

22 I. On or after January 1, 2022, the amounts
23 specified in Paragraphs (1) through (3) of Subsection H of this
24 section shall be two hundred fifty thousand dollars
25 (\$250,000)."

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