

1 SENATE BILL 176

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 Martin Hickey and Pat Woods

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10 AN ACT

11 RELATING TO MEDICAL MALPRACTICE; REQUIRING PAYMENTS FROM THE
12 PATIENT'S COMPENSATION FUND TO BE MADE AS EXPENSES ARE
13 INCURRED; REQUIRING SEVENTY-FIVE PERCENT OF THE PUNITIVE
14 DAMAGES AWARDED IN MEDICAL MALPRACTICE CLAIMS TO BE AWARDED TO
15 THE STATE; LIMITING ATTORNEY FEES IN MALPRACTICE CLAIMS;
16 CREATING THE PATIENT SAFETY IMPROVEMENT FUND; MAKING AN
17 APPROPRIATION.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

22 "41-5-6. LIMITATION OF RECOVERY.--

23 A. Except for punitive damages and past and future
24 medical care and related benefits, the aggregate dollar amount
25 recoverable by all persons for or arising from any injury or

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

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

16 C. The aggregate dollar amount recoverable by all
17 persons for or arising from any injury or death to a patient as
18 a result of malpractice, except for punitive damages and past
19 and future medical care and related benefits, shall not exceed
20 seven hundred fifty thousand dollars (\$750,000) for claims
21 brought against an independent outpatient health care facility
22 for an injury or death that occurred in calendar years 2022 and
23 2023.

24 D. In calendar year 2024 and subsequent years, the
25 aggregate dollar amount recoverable by all persons for or

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1 arising from an injury or death to a patient as a result of
2 malpractice, except for punitive damages and past and future
3 medical care and related benefits, shall not exceed the
4 following amounts for claims brought against an independent
5 outpatient health care facility:

6 (1) for an injury or death that occurred in
7 calendar year 2024, one million dollars (\$1,000,000) per
8 occurrence; and

9 (2) for an injury or death that occurred in
10 calendar year 2025 and thereafter, the amount provided in
11 Paragraph (1) of this subsection, adjusted annually by the
12 prior three-year average consumer price index for all urban
13 consumers, per occurrence.

14 E. 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 a hospital or a
20 hospital-controlled outpatient health care facility:

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

24 (2) for an injury or death that occurred in
25 calendar year 2023, four million five hundred thousand dollars

1 (\$4,500,000) per occurrence;

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

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

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

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

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

21 G. In jury cases, the jury shall not be given any
22 instructions dealing with the limitations provided in this
23 section.

24 H. Except as provided in Section 41-5-7 NMSA 1978,
25 the value of accrued medical care and related benefits shall

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1 not be subject to any limitation.

2 I. Except for an independent outpatient health care
3 facility, a health care provider's personal liability is
4 limited to two hundred fifty thousand dollars (\$250,000) for
5 monetary damages and medical care and related benefits as
6 provided in Section 41-5-7 NMSA 1978. Any amount due from a
7 judgment or settlement in excess of two hundred fifty thousand
8 dollars (\$250,000) shall be paid from the fund, except as
9 provided in Subsections J and K of this section.

10 J. An independent outpatient health care facility's
11 personal liability is limited to five hundred thousand dollars
12 (\$500,000) for monetary damages and medical care and related
13 benefits as provided in Section 41-5-7 NMSA 1978. Any amount
14 due from a judgment or settlement in excess of five hundred
15 thousand dollars (\$500,000) shall be paid from the fund.

16 K. Until January 1, 2027, amounts due from a
17 judgment or settlement against a hospital or hospital-
18 controlled outpatient health care facility in excess of seven
19 hundred fifty thousand dollars (\$750,000), excluding past and
20 future medical expenses, shall be paid by the hospital or
21 hospital-controlled outpatient health care facility and not by
22 the fund. Beginning January 1, 2027, amounts due from a
23 judgment or settlement against a hospital or hospital-
24 controlled outpatient health care facility shall not be paid
25 from the fund.

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1 L. The term "occurrence" shall not be construed in
2 such a way as to limit recovery to only one maximum statutory
3 payment if separate acts or omissions cause additional or
4 enhanced injury or harm as a result of the separate acts or
5 omissions. A patient who suffers two or more distinct injuries
6 as a result of two or more different acts or omissions that
7 occur at different times by one or more health care providers
8 is entitled to up to the maximum statutory recovery for each
9 injury."

10 SECTION 2. Section 41-5-7 NMSA 1978 (being Laws 1992,
11 Chapter 33, Section 5, as amended) is amended to read:

12 "41-5-7. MEDICAL EXPENSES AND PUNITIVE DAMAGES.--

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

16 B. The health care provider shall be liable for all
17 medical care and related benefit payments until the total
18 payments made by or on behalf of it for monetary damages and
19 medical care and related benefits combined equals the health
20 care provider's personal liability limit as provided in
21 Subsection I of Section 41-5-6 NMSA 1978, after which the
22 payments shall be made by the fund.

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

25 [~~C.~~] D. Beginning January 1, 2027, any amounts due

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1 from a judgment or settlement against a hospital or outpatient
2 health care facility shall not be paid from the fund if the
3 injury or death occurred after December 31, 2026.

4 ~~[D.]~~ E. This section shall not be construed to
5 prevent a patient and a health care provider from entering into
6 a settlement agreement whereby medical care and related
7 benefits shall be provided for a limited period of time only or
8 to a limited degree.

9 F. In a malpractice claim in which punitive damages
10 are awarded, the court shall divide the punitive damage award
11 and enter judgment as follows:

12 (1) twenty-five percent of the punitive damage
13 award shall be awarded to the prevailing party; and

14 (2) seventy-five percent of the punitive
15 damage award shall be awarded to the state. All amounts
16 awarded to the state shall be remitted to the state treasurer
17 to be deposited into the patient safety improvement fund.

18 ~~[E.]~~ G. A judgment of punitive damages against a
19 health care provider shall be the personal liability of the
20 health care provider. Punitive damages shall not be paid from
21 the fund or from the proceeds of the health care provider's
22 insurance contract unless the contract expressly provides
23 coverage. Nothing in Section 41-5-6 NMSA 1978 precludes the
24 award of punitive damages to a patient. Nothing in this
25 subsection authorizes the imposition of liability for punitive

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1 damages where that imposition would not be otherwise authorized
2 by law."

3 SECTION 3. A new section of the Medical Malpractice Act
4 is enacted to read:

5 "[NEW MATERIAL] LIMITING ATTORNEY FEES.--An attorney shall
6 not contract for or collect a contingency fee for representing
7 a person seeking damages in a malpractice claim in an amount
8 that exceeds:

9 A. twenty-five percent of the dollar amount
10 recovered, if the recovery is pursuant to a settlement
11 agreement and release of all claims executed by all parties
12 prior to the start of a trial or an arbitration proceeding; or

13 B. thirty-three percent of the dollar amount
14 recovered, if the recovery is pursuant to settlement,
15 arbitration or judgment that occurs after a trial or
16 arbitration proceeding begins."

17 SECTION 4. A new section of the Medical Malpractice Act
18 is enacted to read:

19 "[NEW MATERIAL] PATIENT SAFETY IMPROVEMENT FUND--
20 CREATED.--

21 A. The "patient safety improvement fund" is created
22 in the state treasury and shall be administered by the
23 department of health. The patient safety improvement fund
24 consists of distributions, appropriations, gifts, grants,
25 donations and receipts from punitive damage awards in medical

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1 malpractice claims. Money in the patient safety improvement
2 fund shall be invested by the state treasurer, and income from
3 investment of the patient safety improvement fund shall be
4 credited to the patient safety improvement fund. Money in the
5 patient safety improvement fund shall be expended only as
6 provided in this section.

7 B. Money in the patient safety improvement fund is
8 subject to appropriation by the legislature to the department
9 of health for the purposes of improving patient safety and
10 health care outcomes. All payments made from the patient
11 safety improvement fund shall be made by warrant of the
12 secretary of finance and administration pursuant to vouchers
13 signed by the secretary of health or the secretary's authorized
14 representative. Any unexpended or unencumbered balance
15 remaining in the patient safety improvement fund at the end of
16 a fiscal year shall not revert but shall remain to the credit
17 of the patient safety improvement fund."