

1 SENATE BILL 449

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

3 INTRODUCED BY

4 Larry R. Scott and James G. Townsend and Candy Spence Ezzell

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10 AN ACT

11 RELATING TO LITIGATION; AMENDING REQUIREMENTS FOR VENUE
12 DETERMINATION; PROVIDING REQUIREMENTS FOR DETERMINING VENUE IN
13 CASES INVOLVING MEDICAL MALPRACTICE; AMENDING THE MEDICAL
14 MALPRACTICE ACT; LIMITING RECOVERY FROM THE PATIENT'S
15 COMPENSATION FUND; REQUIRING PAYMENTS FROM THE PATIENT'S
16 COMPENSATION FUND TO BE MADE AS EXPENSES ARE INCURRED;
17 REQUIRING SEVENTY-FIVE PERCENT OF THE PUNITIVE DAMAGES AWARDED
18 IN MEDICAL MALPRACTICE CLAIMS TO BE AWARDED TO THE STATE;
19 LIMITING ATTORNEY FEES IN MALPRACTICE CLAIMS; REQUIRING THE
20 SUPERINTENDENT OF INSURANCE TO APPROVE PROPOSED SETTLEMENTS
21 PAID FROM THE PATIENT'S COMPENSATION FUND; REMOVING A
22 REQUIREMENT FOR SURCHARGES TO BE SET WITH THE INTENT OF
23 BRINGING THE FUND TO SOLVENCY; CREATING THE PATIENT SAFETY
24 IMPROVEMENT FUND; MAKING AN APPROPRIATION.

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

2 SECTION 1. Section 38-3-1 NMSA 1978 (being Laws 1875-
3 1876, Chapter 2, Section 1, as amended) is amended to read:

4 "38-3-1. COUNTY IN WHICH CIVIL ACTION IN DISTRICT COURT
5 MAY BE COMMENCED.--All civil actions commenced in the district
6 courts shall be brought and shall be commenced in counties as
7 follows and not otherwise.

8 A. First, except as provided in Subsection F of
9 this section relating to foreign corporations, all transitory
10 actions shall be brought in the county where either the
11 plaintiff or defendant, or any one of them in case there is
12 more than one of either, resides; or second, in the county
13 where the contract sued on was made or is to be performed or
14 where the cause of action originated or indebtedness sued on
15 was incurred; or third, in any county in which the defendant or
16 either of them may be found in the judicial district where the
17 defendant resides.

18 B. When the defendant [~~has rendered himself~~] is
19 liable to a civil action by any criminal act, suit may be
20 instituted against the defendant in the county in which the
21 offense was committed or in which the defendant may be found or
22 in the county where the plaintiff resides.

23 C. When suit is brought for the recovery of
24 personal property other than money, it may be brought as
25 provided in this section or in the county where the property

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1 may be found.

2 D. [~~(1)~~] When lands or any interest in lands [~~are~~]
3 is the object of any suit in whole or in part, the suit shall
4 be brought in the county where the land or any portion of the
5 land is situate; [~~(2)~~] provided that [~~where~~] if such lands are
6 located in more than one county and are contiguous, [~~that~~] the
7 suit may be brought as to all of the lands in any county in
8 which a portion of the lands is situate, with the same force
9 and effect as though the suit had been prosecuted in each
10 county in which any of the lands are situate. In all such
11 cases in which suit is prosecuted in one county as to
12 contiguous lands in more than one county, notice of lis pendens
13 shall be filed pursuant to Sections 38-1-14 and 38-1-15 NMSA
14 1978 in each county. For purposes of service of process
15 pursuant to Rule [~~4~~] 1-004 of the Rules of Civil Procedure for
16 the District Courts, any such suit involving contiguous lands
17 located in more than one county shall be deemed pending in each
18 county in which any portion of the land is located from the
19 date of filing of the lis pendens notice.

20 E. Suits for trespass on land shall be brought as
21 provided in Subsection A of this section or in the county where
22 the land or any portion of the land is situate.

23 F. Except as provided in Subsection H of this
24 section, suits may be brought against transient persons or
25 [~~non-residents~~] nonresidents in any county of this state,

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1 except that suits against foreign corporations admitted to do
2 business and [~~which~~] that designate and maintain a statutory
3 agent in this state upon whom service of process may be had
4 shall only be brought in the county where the plaintiff, or any
5 one of them in case there is more than one, resides or in the
6 county where the contract sued on was made or is to be
7 performed or where the cause of action originated or
8 indebtedness sued on was incurred or in the county where the
9 statutory agent designated by the foreign corporation resides.

10 G. Suits against any state officers as such shall
11 be brought in the court of the county in which their offices
12 are located, at the capital or in the county where a plaintiff,
13 or any one of them in case there is more than one, resides,
14 except that suits against the officers or employees of a state
15 educational institution as defined in Article 12, Section 11 of
16 the constitution of New Mexico, as such, shall be brought in
17 the district court of the county in which the principal office
18 of the state educational institution is located or the district
19 court of the county where the plaintiff resides.

20 H. In a claim asserted by a personal representative
21 pursuant to Section 41-2-3 NMSA 1978, a conservator, guardian
22 or guardian ad litem appointed pursuant to Chapter 45, Article
23 5 NMSA 1978 or a third person acting in any representative
24 capacity, the residence of the person bringing the claim shall
25 not be considered in determining venue in any civil action.

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1 I. Subject to the provisions of Subsection H of
2 this section, venue in a claim asserting medical malpractice
3 shall be limited to the county in which the patient received
4 the medical treatment that is the basis for the medical
5 malpractice lawsuit. As used in this subsection:

6 (1) "medical malpractice lawsuit" means any
7 legal proceeding alleging a cause of action arising in this
8 state against a health care provider for medical treatment,
9 lack of medical treatment or other claim of departure from
10 accepted standards of health care that proximately results in
11 injury to a patient, whether the patient's cause of action
12 sounds in tort or contract, including actions based on battery,
13 wrongful death, unfair trade practices or negligent hiring,
14 supervision, training, retention or credentialing and excluding
15 a cause of action arising out of nonmedical acts related to the
16 operation, use or maintenance of a vehicular or aircraft
17 ambulance; and

18 (2) "patient" means a natural person of any
19 age who received or should have received health care from a
20 health care provider."

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

23 "41-5-3. DEFINITIONS.--As used in the Medical Malpractice
24 Act:

25 A. "advisory board" means the patient's

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1 compensation fund advisory board;

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

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

6 (2) has a value of more than fifty percent of
7 that business entity;

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

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

22 E. "hospital" means a facility licensed as a
23 hospital in this state that offers in-patient services, nursing
24 or overnight care on a twenty-four-hour basis for diagnosing,
25 treating and providing medical, psychological or surgical care

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1 for three or more separate persons who have a physical or
2 mental illness, disease, injury or rehabilitative condition or
3 are pregnant and may offer emergency services. "Hospital"
4 includes a hospital's parent corporation, subsidiary
5 corporations or affiliates if incorporated or registered in New
6 Mexico; employees and locum tenens providing services at the
7 hospital; and agency nurses providing services at the hospital.
8 "Hospital" does not mean a person or entity protected pursuant
9 to the Tort Claims Act or the Federal Tort Claims Act;

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

21 G. "independent provider" means a doctor of
22 medicine, doctor of osteopathy, chiropractor, ~~[podiatrist]~~
23 podiatric physician, nurse anesthetist, physician's assistant,
24 certified nurse practitioner, clinical nurse specialist or
25 certified nurse-midwife who is not an employee of a hospital or

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1 outpatient health care facility. "Independent provider" does
2 not mean a person or entity protected pursuant to the Tort
3 Claims Act or the Federal Tort Claims Act. "Independent
4 provider" includes:

5 (1) a health care facility that is:

6 (a) licensed pursuant to the Public
7 Health Act as an outpatient facility;

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

10 (c) not hospital-controlled; and

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

18 H. "insurer" means an insurance company engaged in
19 writing health care provider malpractice liability insurance in
20 this state;

21 I. "malpractice claim" includes any cause of action
22 arising in this state against a health care provider for
23 medical treatment, lack of medical treatment or other claimed
24 departure from accepted standards of health care that
25 proximately results in injury to the patient, whether the

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1 patient's claim or cause of action sounds in tort or contract,
2 and includes but is not limited to actions based on battery or
3 wrongful death; "malpractice claim" does not include a cause of
4 action arising out of the driving, flying or nonmedical acts
5 involved in the operation, use or maintenance of a vehicular or
6 aircraft ambulance;

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

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

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

25 "Outpatient health care facility" does not include:

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- 1 (1) independent providers;
- 2 (2) independent outpatient health care
- 3 facilities; or
- 4 (3) individuals or entities protected pursuant
- 5 to the Tort Claims Act or the Federal Tort Claims Act;

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

9 N. "superintendent" means the superintendent of
10 insurance."

11 SECTION 3. Section 41-5-4 NMSA 1978 (being Laws 1976,
12 Chapter 2, Section 4, as amended) is amended to read:

13 "41-5-4. AD DAMNUM CLAUSE--VENUE.--

14 A. A patient or ~~[his]~~ a patient's representative
15 having a malpractice claim for bodily injury or death may file
16 a complaint and demand right of trial by jury in ~~[any]~~ a court
17 of law having requisite jurisdiction and ~~[demand right of trial~~
18 ~~by jury]~~ where venue is proper.

19 B. Venue in a malpractice claim shall be proper
20 when the claim is filed in the county in which the patient
21 received the medical treatment that is the basis for the
22 malpractice claim.

23 C. No dollar amount or figure shall be included in
24 the demand in ~~[any]~~ a complaint asserting a malpractice claim
25 and filed after the effective date of this section, but the

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1 request shall be for such damages as are reasonable. This
2 section shall not prevent a patient or ~~[his]~~ the patient's
3 representative from alleging a requisite jurisdictional amount
4 in a malpractice claim filed in a court requiring such an
5 allegation."

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

8 "41-5-6. LIMITATION OF RECOVERY.--

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

18 B. Except for punitive damages and past and future
19 medical care and related benefits, the aggregate dollar amount
20 recoverable by all persons for or arising from any injury or
21 death to a patient as a result of malpractice shall not exceed
22 seven hundred fifty thousand dollars (\$750,000) per occurrence
23 for malpractice claims against independent providers; provided
24 that ~~[beginning January 1, 2023]~~ on the first day of each
25 calendar year, the per occurrence limit on recovery shall be

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1 adjusted [~~annually~~] by the prior three-year average consumer
2 price index for all urban consumers; and provided further that
3 an adjustment shall not result in a percentage increase in the
4 per occurrence limit on recovery greater than three percent.

5 C. The aggregate dollar amount recoverable by all
6 persons for or arising from any injury or death to a patient as
7 a result of malpractice, except for punitive damages and past
8 and future medical care and related benefits, shall not exceed
9 seven hundred fifty thousand dollars (\$750,000) for claims
10 brought against an independent outpatient health care facility
11 for an injury or death that occurred in calendar years 2022 and
12 2023.

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

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

23 (2) for an injury or death that occurred in
24 calendar year 2025 and thereafter, the amount provided in
25 Paragraph (1) of this subsection, adjusted annually by the

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1 prior three-year average consumer price index for all urban
2 consumers, per occurrence; provided that an adjustment shall
3 not result in a percentage increase in the per occurrence limit
4 on recovery greater than three percent.

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

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

15 (2) for an injury or death that occurred in
16 calendar year 2023, four million five hundred thousand dollars
17 (\$4,500,000) per occurrence;

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

21 (4) for an injury or death that occurred in
22 calendar year 2025, five million five hundred thousand dollars
23 (\$5,500,000) per occurrence;

24 (5) for an injury or death that occurred
25 in calendar year 2026, six million dollars (\$6,000,000)

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1 per occurrence; and

2 (6) for an injury or death that occurred in
3 calendar year 2027 and each calendar year thereafter, the
4 amount provided in Paragraph (5) of this subsection, adjusted
5 annually by the prior three-year average consumer price index
6 for all urban consumers, per occurrence; provided that an
7 adjustment shall not result in a percentage increase in the per
8 occurrence limit on recovery greater than three percent.

9 F. The aggregate dollar amounts provided in
10 Subsections B through E of this section include payment to any
11 person for any number of loss of consortium claims or other
12 claims per occurrence that arise solely because of the injuries
13 or death of the patient.

14 G. In jury cases, the jury shall not be given any
15 instructions dealing with the limitations provided in this
16 section.

17 H. The value of accrued medical care and related
18 benefits shall not be subject to any limitation.

19 I. Except for an independent outpatient health care
20 facility, a health care provider's personal liability is
21 limited to two hundred fifty thousand dollars (\$250,000) for
22 monetary damages and medical care and related benefits as
23 provided in Section 41-5-7 NMSA 1978. Any amount due from a
24 judgment or settlement in excess of two hundred fifty thousand
25 dollars (\$250,000) shall be paid from the fund, except as

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1 provided in Subsections J and K of this section.

2 J. An independent outpatient health care facility's
3 personal liability is limited to five hundred thousand dollars
4 (\$500,000) for monetary damages and medical care and related
5 benefits as provided in Section 41-5-7 NMSA 1978. Any amount
6 due from a judgment or settlement in excess of five hundred
7 thousand dollars (\$500,000) shall be paid from the fund.

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

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

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1 ~~injury.]~~

2 L. As used in this section, "consumer price index"
3 means the consumer price index for all urban consumers, United
4 States city average, as published by the United States
5 department of labor, between the end of December of the
6 penultimate calendar year and the end of December of the
7 immediately preceding calendar year."

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

10 "41-5-7. MEDICAL EXPENSES AND PUNITIVE DAMAGES.--

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

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

21 C. Awards of past or future medical care and
22 related benefits shall not be paid from the fund unless the
23 amount of the award was actually paid by or on behalf of an
24 injured person and accepted by a health care provider as
25 payment for services rendered.

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1 D. Awards of future medical care and related
2 benefits shall only be paid from the fund as the expenses are
3 incurred. Payments from the fund for future medical care and
4 related benefits shall not be paid in a lump-sum payment.

5 ~~[G.]~~ E. Beginning January 1, 2027, any amounts due
6 from a judgment or settlement against a hospital or outpatient
7 health care facility shall not be paid from the fund if the
8 injury or death occurred after December 31, 2026.

9 ~~[D.]~~ F. This section shall not be construed to
10 prevent a patient and a health care provider from entering into
11 a settlement agreement whereby medical care and related
12 benefits shall be provided for a limited period of time only or
13 to a limited degree.

14 G. In a malpractice claim in which punitive damages
15 are awarded, the court shall divide the punitive damage award
16 and enter judgment as follows:

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

19 (2) seventy-five percent of the punitive
20 damage award shall be awarded to the state. All amounts
21 awarded to the state shall be remitted to the state treasurer
22 to be deposited into the patient safety improvement fund.

23 ~~[E.]~~ H. A judgment of punitive damages against a
24 health care provider shall be the personal liability of the
25 health care provider. Punitive damages may only be awarded if

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1 the prevailing party provides clear and convincing evidence
2 demonstrating that the acts of the health care provider were
3 made with deliberate disregard for the rights or safety of
4 others. Punitive damages shall not be paid from the fund or
5 from the proceeds of the health care provider's insurance
6 contract unless the contract expressly provides coverage.
7 Nothing in Section 41-5-6 NMSA 1978 precludes the award of
8 punitive damages to a patient. Nothing in this subsection
9 authorizes the imposition of liability for punitive damages
10 where that imposition would not be otherwise authorized by law.

11 I. A punitive damage award shall not exceed an
12 amount greater than three times the compensatory damage award."

13 SECTION 6. Section 41-5-25 NMSA 1978 (being Laws 1992,
14 Chapter 33, Section 9, as amended) is amended to read:

15 "41-5-25. PATIENT'S COMPENSATION FUND--THIRD-PARTY
16 ADMINISTRATOR--ACTUARIAL STUDIES--SURCHARGES--CLAIMS--
17 PRORATION--PROOFS OF AUTHENTICITY.--

18 A. The "patient's compensation fund" is created as
19 a nonreverting fund in the state treasury. The fund consists
20 of money from surcharges, income from investment of the fund
21 and any other money deposited to the credit of the fund. The
22 fund shall be held in trust, deposited in a segregated account
23 in the state treasury and invested by the state investment
24 office and shall not become a part of or revert to the general
25 fund or any other fund of the state. Money from the fund shall

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1 be expended only for the purposes of and to the extent provided
2 in the Medical Malpractice Act. All approved expenses of
3 collecting, protecting and administering the fund, including
4 purchasing insurance for the fund, shall be paid from the fund.

5 B. The superintendent shall contract for the
6 administration and operation of the fund with a qualified,
7 licensed third-party administrator, selected in consultation
8 with the advisory board, no later than January 1, 2022. The
9 third-party administrator shall provide an annual audit of the
10 fund to the superintendent.

11 C. The superintendent, as custodian of the fund,
12 and the third-party administrator shall be notified by the
13 health care provider or the health care provider's insurer
14 within thirty days of service on the health care provider of a
15 complaint asserting a malpractice claim brought in a court in
16 this state against the health care provider.

17 D. The superintendent, as custodian of the fund, or
18 the superintendent's designee, shall evaluate and approve a
19 proposed settlement if any amount of the proposed settlement is
20 to be paid from the fund.

21 [~~D.~~] E. The superintendent shall levy an annual
22 surcharge on all New Mexico health care providers qualifying
23 under Section 41-5-5 NMSA 1978. The surcharge shall be
24 determined by the superintendent with the advice of the
25 advisory board and based on the annual independent actuarial

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

23 ~~[E.]~~ F. The surcharge shall be collected on the
24 same basis as premiums by each insurer from the health care
25 provider. The surcharge shall be due and payable within thirty

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1 days after the premiums for malpractice liability insurance
2 have been received by the insurer from the health care provider
3 in New Mexico. If the surcharge is collected but not paid
4 timely, the superintendent may suspend the certificate of
5 authority of the insurer until the annual premium surcharge is
6 paid.

7 ~~[F.]~~ G. Surcharges shall be set by October 31 of
8 each year for the next calendar year. ~~[Beginning in 2021, the~~
9 ~~surcharges shall be set with the intention of bringing the fund~~
10 ~~to solvency with no projected deficit by December 31, 2026.]~~

11 All qualified and participating hospitals and outpatient health
12 care facilities shall cure any fund deficit attributable to
13 hospitals and outpatient health care facilities by December 31,
14 2026.

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

23 ~~[H.]~~ I. Upon receipt of one of the proofs of
24 authenticity listed in this subsection, reflecting a judgment
25 for damages rendered pursuant to the Medical Malpractice Act,

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1 the superintendent shall issue or have issued warrants in
2 accordance with the payment schedule constructed by the court
3 and made a part of its final judgment. The only claim against
4 the fund shall be a voucher or other appropriate request by the
5 superintendent after the superintendent receives:

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

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

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

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

24 **SECTION 7.** A new section of the Medical Malpractice Act
25 is enacted to read:

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underscoring material = new
[bracketed material] = delete

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

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

9 B. thirty-three percent of the dollar amount
10 recovered, if the recovery is pursuant to settlement,
11 arbitration or judgment that occurs after a trial or
12 arbitration proceeding begins."

13 SECTION 8. A new section of the Medical Malpractice Act
14 is enacted to read:

15 "[NEW MATERIAL] PATIENT SAFETY IMPROVEMENT FUND--
16 CREATED.--

17 A. The "patient safety improvement fund" is created
18 in the state treasury and shall be administered by the
19 department of health. The patient safety improvement fund
20 consists of distributions, appropriations, gifts, grants,
21 donations and receipts of punitive damage awards from medical
22 malpractice claims. Money in the patient safety improvement
23 fund shall be invested by the state treasurer, and income from
24 investment of the patient safety improvement fund shall be
25 credited to the patient safety improvement fund. Money in the

.230951.1

underscoring material = new
~~[bracketed material] = delete~~

1 patient safety improvement fund shall be expended only as
2 provided in this section.

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