

# An Issue of Access: Medical Malpractice Insurance in New Mexico

Health and Human Services Committee  
November 29, 2022



New Mexico  
Hospital Association



# New Mexico Hospital Association (NMHA)

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**NMHA is the advocate and supporter** of 47 hospitals and the patients and communities they serve—and of hospital healthcare champions in public office. We work with others to advance public policy to create a healthier New Mexico by ensuring access to quality care.



# Troy Clark

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- President & CEO  
New Mexico Hospital Association  
(NMHA)
- Leadership of rural, non-profit,  
governmental and for-profit hospitals
- Patient Compensation Fund Advisory  
Member







# Medical Malpractice 101

Protection is the  
purpose.

Medical malpractice is for  
patients who have been  
harmed, but it must also  
work for patients needing  
care today, and tomorrow.

# What is the Patient's Compensation Fund (PCF)?

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- The PCF exists to promote the availability of medical malpractice insurance coverage for healthcare providers practicing in New Mexico.
- Provides an excess layer of coverage and caps non-economic damages to qualified providers.
- In part, provides limitations on monetary awards and covers:
  - past incurred medical expenses,
  - future medical expenses related to the malpractice incident, and
  - non-economic damages (between \$250,000-\$750,000).

# How does medical malpractice insurance work in New Mexico?

Independent  
Providers

<b>Patient's Compensation Fund Layer</b> \$250,000 - \$750,000 Surcharges
<b>Base Layer</b> First \$250,000 Coverage from commercial insurer

Hospitals

<b>Excess Malpractice Insurance Layer</b> \$750,000 - cap (current \$4 million) Coverage from commercial insurer
<b>Patient's Compensation Fund Layer</b> \$250,000 - \$750,000 Surcharges
<b>Base Layer</b> First \$250,000 Coverage from commercial insurer

# Insurance Coverage by Hospital Type

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1. Hospitals subject to the Medical Malpractice Act and qualified to participate in the PCF
2. Hospitals subject to the Medical Malpractice Act and not qualified to participate in the PCF
3. Hospitals subject to the Tort Claims Act





# Impacts to Access to Care

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1. Risks hospitals closing
2. Adds challenges in retaining providers
3. Recruiting providers to practice in New Mexico is more difficult





# These impacts lead to:

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1. Increased costs for all patients accessing care in New Mexico
2. An outsized negative impact to access to care in rural communities





## Consequences of HB75

# What's happening under HB75?

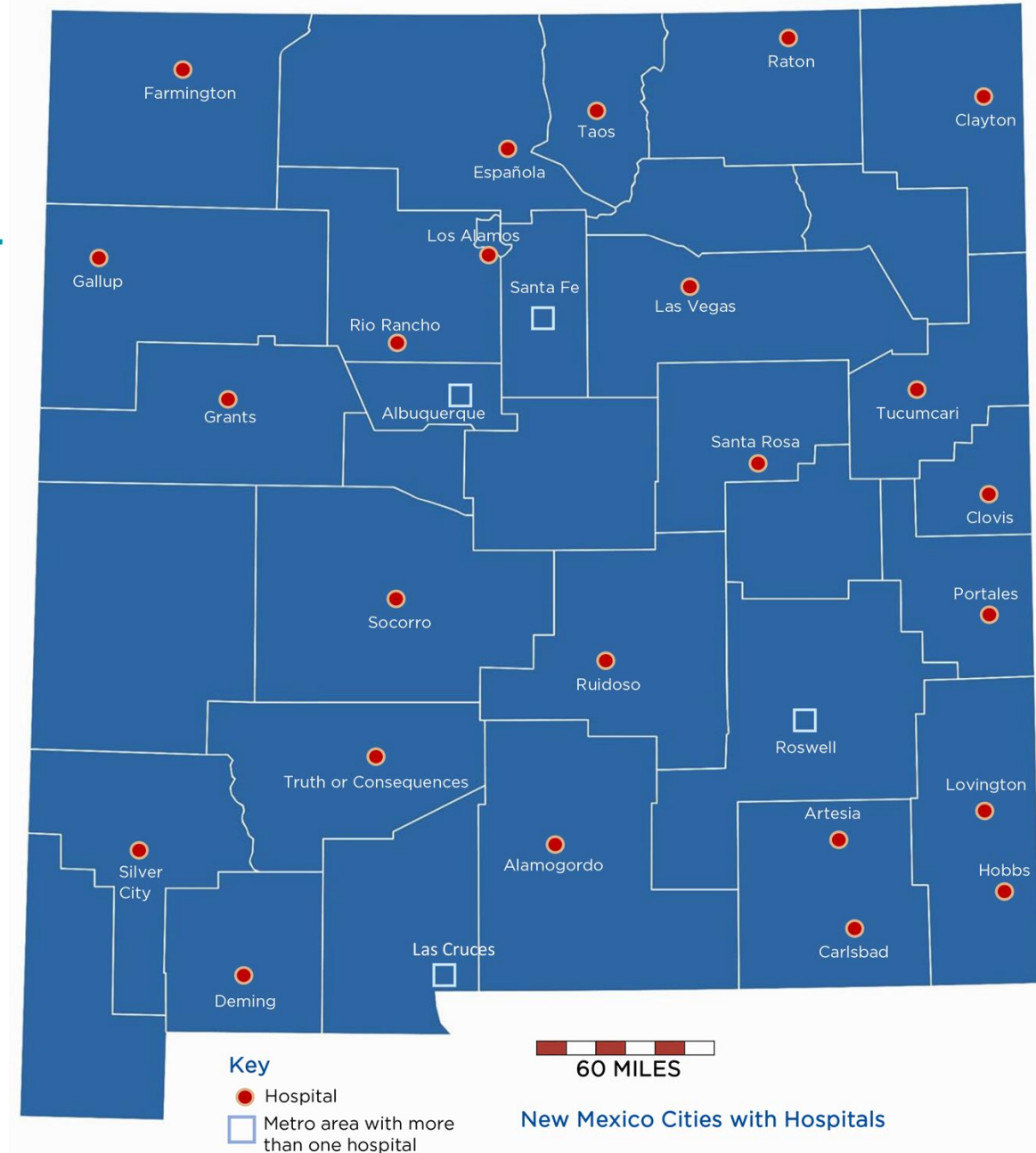
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- Reduction in malpractice insurance companies willing to underwrite commercial base and excess insurance in the state.
- Significant increase in premiums for commercial base and excess insurance.
- Large year-over-year PCF surcharge rate growth for both providers and hospitals.
- Peripheral but serious/consequential impacts to hospitals covered by the Tort Claims Act.



# Christina Campos

- Administrator, Guadalupe County Hospital, Santa Rosa



# Preferred changes to the Medical Malpractice Act

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- Define “malpractice claim” and “occurrence” synonymously.
- Permanently lower the cap for outpatient healthcare facilities not majority-owned and -controlled by a hospital.
- Reinstate that PCF payments for medical care are paid as expenses are incurred and prohibit future medical expenses being lump sum payments.
- Limit medical malpractice actions be brought in the county where the medical care occurred or in the county where the patient resided at the time of the alleged malpractice.





# Thank You.



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