

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

RELATING TO MEDICAL MALPRACTICE; MODIFYING DEFINITIONS IN THE
MEDICAL MALPRACTICE ACT; RAISING PERSONAL LIABILITY AND
RECOVERY CAPS; REPEALING LAWS 2021, CHAPTER 16, SECTIONS 1
AND 3; DECLARING AN EMERGENCY.

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. "fund" means the patient's compensation fund;
- C. "health care provider" means a person,
corporation, organization, facility or institution licensed
or certified by this state to provide health care or
professional services as a doctor of medicine, hospital,
outpatient health care facility, doctor of osteopathy,
chiropractor, podiatrist, nurse anesthetist, physician's
assistant, certified nurse practitioner, clinical nurse
specialist or certified nurse-midwife or a business entity
that is organized, incorporated or formed pursuant to the
laws of New Mexico that provides health care services
primarily through natural persons identified in this

1 subsection;

2 D. "hospital" means a facility licensed as a
3 hospital in this state that offers in-patient services,
4 nursing or overnight care on a twenty-four-hour basis for
5 diagnosing, treating and providing medical, psychological or
6 surgical care for three or more separate persons who have a
7 physical or mental illness, disease, injury or rehabilitative
8 condition or are pregnant and may offer emergency services.

9 "Hospital" includes a hospital's parent corporation,
10 subsidiary corporations or affiliates if incorporated or
11 registered in New Mexico; employees and locum tenens
12 providing services at the hospital; and agency nurses
13 providing services at the hospital;

14 E. "independent provider" means a doctor of
15 medicine, doctor of osteopathy, chiropractor, podiatrist,
16 nurse anesthetist, physician's assistant, certified nurse
17 practitioner, clinical nurse specialist or certified
18 nurse-midwife who is not an employee of a hospital or
19 outpatient health care facility. "Independent provider"
20 includes a business entity that is not a hospital or
21 outpatient health care facility that employs or consists of
22 members who are licensed or certified as doctors of medicine,
23 doctors of osteopathy, chiropractors, podiatrists, nurse
24 anesthetists, physician's assistants, certified nurse
25 practitioners, clinical nurse specialists or certified

1 nurse-midwives and the business entity's employees;

2 F. "insurer" means an insurance company engaged in
3 writing health care provider malpractice liability insurance
4 in this state;

5 G. "malpractice claim" includes any cause of
6 action arising in this state against a health care provider
7 for medical treatment, lack of medical treatment or other
8 claimed departure from accepted standards of health care that
9 proximately results in injury to the patient, whether the
10 patient's claim or cause of action sounds in tort or
11 contract, and includes but is not limited to actions based on
12 battery or wrongful death; "malpractice claim" does not
13 include a cause of action arising out of the driving, flying
14 or nonmedical acts involved in the operation, use or
15 maintenance of a vehicular or aircraft ambulance;

16 H. "medical care and related benefits" means all
17 reasonable medical, surgical, physical rehabilitation and
18 custodial services and includes drugs, prosthetic devices and
19 other similar materials reasonably necessary in the provision
20 of such services;

21 I. "occurrence" means all injuries to a patient
22 caused by health care providers' successive acts or omissions
23 that combined concurrently to create a malpractice claim;

24 J. "outpatient health care facility" means an
25 entity that is licensed pursuant to the Public Health Act as

1 an outpatient facility, including ambulatory surgical
2 centers, free-standing emergency rooms, urgent care clinics,
3 acute care centers and intermediate care facilities and
4 includes a facility's employees, locum tenens providers and
5 agency nurses providing services at the facility.

6 "Outpatient health care facility" does not include
7 independent providers;

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

11 L. "superintendent" means the superintendent of
12 insurance."

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

15 "41-5-6. LIMITATION OF RECOVERY.--

16 A. Except for punitive damages and past and future
17 medical care and related benefits, the aggregate dollar
18 amount recoverable by all persons for or arising from any
19 injury or death to a patient as a result of malpractice shall
20 not exceed six hundred thousand dollars (\$600,000) per
21 occurrence for malpractice claims brought against health care
22 providers if the injury or death occurred prior to January 1,
23 2022. In jury cases, the jury shall not be given any
24 instructions dealing with this limitation.

25 B. Except for punitive damages and past and future

1 medical care and related benefits, the aggregate dollar
2 amount recoverable by all persons for or arising from any
3 injury or death to a patient as a result of malpractice shall
4 not exceed seven hundred fifty thousand dollars (\$750,000)
5 per occurrence for malpractice claims against independent
6 providers; provided that, beginning January 1, 2023, the per
7 occurrence limit on recovery shall be adjusted annually by
8 the consumer price index for all urban consumers.

9 C. In calendar year 2022 and subsequent calendar
10 years, the aggregate dollar amount recoverable by all persons
11 for or arising from any injury or death to a patient as a
12 result of malpractice, except for punitive damages and past
13 and future medical care and related benefits, shall not
14 exceed the following amounts for claims brought against an
15 outpatient health care facility that is not majority-owned
16 and -controlled by a hospital:

17 (1) for an injury or death that occurred in
18 calendar years 2022 and 2023, seven hundred fifty thousand
19 dollars (\$750,000) per occurrence;

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

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

1 (4) for an injury or death that occurred in
2 calendar year 2026, six million dollars (\$6,000,000) per
3 occurrence; and

4 (5) for an injury or death that occurred in
5 calendar year 2027 and each calendar year thereafter, the
6 amount provided in Paragraph (4) of this subsection, adjusted
7 annually by the consumer price index for all urban consumers,
8 per occurrence.

9 D. In calendar year 2022 and subsequent calendar
10 years, the aggregate dollar amount recoverable by all persons
11 for or arising from any injury or death to a patient as a
12 result of malpractice, except for punitive damages and past
13 and future medical care and related benefits, shall not
14 exceed the following amounts for claims brought against a
15 hospital or an outpatient health care facility that is
16 majority-owned and -controlled by a hospital:

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

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

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

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

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

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

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

17 F. In jury cases, the jury shall not be given any
18 instructions dealing with the limitations provided in this
19 section.

20 G. The value of accrued medical care and related
21 benefits shall not be subject to any limitation.

22 H. A health care provider's personal liability is
23 limited to two hundred fifty thousand dollars (\$250,000) for
24 monetary damages and medical care and related benefits as
25 provided in Section 41-5-7 NMSA 1978. Any amount due from a

1 judgment or settlement in excess of two hundred fifty
2 thousand dollars (\$250,000) shall be paid from the fund,
3 except as provided in Subsection I of this section.

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

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

22 SECTION 3. REPEAL.--Laws 2021, Chapter 16, Sections 1
23 and 3 are repealed.

24 SECTION 4. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is January 1, 2022.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SECTION 5. EMERGENCY.--It is necessary for the public
peace, health and safety that this act take effect
immediately.
