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HOUSE BILL 590

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Al Park

AN ACT

RELATING TO MEDICAL MALPRACTICE; AMENDING THE MEDICAL  
MALPRACTICE ACT TO RAISE THE RECOVERABLE LIMITS AND TO PROVIDE  
A RIGHT OF ACTION UNDER CERTAIN CIRCUMSTANCES FOR INJURED  
PERSONS AGAINST THE PATIENT'S COMPENSATION FUND AND INSURERS;  
INCLUDING INJURED PERSONS, THE PATIENT'S COMPENSATION FUND AND  
INSURERS UNDER THE MEDICAL MALPRACTICE ACT WITHIN THE SCOPE OF  
CHAPTER 59A, ARTICLE 16 NMSA 1978 AND THE UNFAIR PRACTICES ACT.

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

**SECTION 1.** Section 41-5-2 NMSA 1978 (being Laws 1976,  
Chapter 2, Section 2) is amended to read:

"41-5-2. PURPOSE OF ACT.--The purpose of the Medical  
Malpractice Act is to:

A. promote the health and welfare of the people of  
New Mexico by making available professional liability insurance

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1 for health care providers in New Mexico; and

2 B. advance the public policy of New Mexico by  
3 providing access to the courts for victims of medical  
4 malpractice to pursue meritorious claims of medical negligence  
5 and to promote the fair and expeditious settlement of claims in  
6 which liability has become reasonably clear."

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

9 "41-5-6. LIMITATION OF RECOVERY.--

10 A. Except for punitive damages and medical care and  
11 related benefits, the aggregate dollar amount recoverable by  
12 all persons for or arising from any injury or death to a  
13 patient as a result of malpractice shall not exceed [~~six~~  
14 ~~hundred thousand dollars (\$600,000) per occurrence~~] the  
15 following amounts:

16 (1) six hundred thousand dollars (\$600,000)  
17 per occurrence for acts of malpractice occurring prior to  
18 January 1, 2012; and

19 (2) one million five hundred thousand dollars  
20 (\$1,500,000) per occurrence for acts of malpractice occurring  
21 on or after January 1, 2012; provided that on July 1, 2013 and  
22 on July 1 of each year thereafter, the superintendent shall  
23 adjust the maximum recoverable amount specified in this  
24 paragraph to correspond to the percentage change in the  
25 consumer price index between the end of the penultimate

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1 calendar year and the end of the immediately preceding calendar  
2 year. As used in this paragraph, "consumer price index" means  
3 the consumer price index for all urban consumers, U.S. city  
4 average, as published by the United States department of labor.

5 B. In jury cases, the jury shall not be given any  
6 instructions dealing with ~~[this limitation]~~ limitations  
7 specified in Subsection A of this section.

8 ~~[B.]~~ C. The value of accrued medical care and  
9 related benefits shall not be subject to the ~~[six hundred~~  
10 ~~thousand dollar (\$600,000) limitation]~~ limitations specified in  
11 Subsection A of this section.

12 ~~[G.]~~ D. Monetary damages shall not be awarded for  
13 future medical expenses in malpractice claims.

14 ~~[D.]~~ E. A health care provider's personal liability  
15 is limited to two hundred thousand dollars (\$200,000) for  
16 monetary damages and medical care and related benefits as  
17 provided in Section 41-5-7 NMSA 1978. Any amount due from a  
18 judgment or settlement against a health care provider in excess  
19 of two hundred thousand dollars (\$200,000) shall be paid from  
20 the patient's compensation fund, as provided in Section 41-5-25  
21 NMSA 1978.

22 ~~[E. For the purposes of Subsections A and B of this~~  
23 ~~section, the six hundred thousand dollar (\$600,000) aggregate~~  
24 ~~amount recoverable by all persons for or arising from any~~  
25 ~~injury or death to a patient as a result of malpractice shall~~

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1 ~~apply only to malpractice occurring on or after April 1,~~  
2 ~~1995.]"~~

3 SECTION 3. Section 41-5-7 NMSA 1978 (being Laws 1992,  
4 Chapter 33, Section 5, as amended) is amended to read:

5 "41-5-7. FUTURE MEDICAL EXPENSES.--

6 A. In all malpractice claims where liability is  
7 established, the jury shall be given a special interrogatory  
8 asking if the patient is in need of future medical care and  
9 related benefits. No inquiry shall be made concerning the  
10 value of future medical care and related benefits, and evidence  
11 relating to the value of future medical care shall not be  
12 admissible. In actions upon malpractice claims tried to the  
13 court, where liability is found, the court's findings shall  
14 include a recitation that the patient is or is not in need of  
15 future medical care and related benefits.

16 B. Except as provided in Section 41-5-10 NMSA 1978,  
17 once a judgment is entered in favor of a patient who is found  
18 to be in need of future medical care and related benefits or a  
19 settlement is reached between a patient and health care  
20 provider in which the provision of medical care and related  
21 benefits is agreed upon, and continuing as long as medical or  
22 surgical attention is reasonably necessary, the patient shall  
23 be furnished with all medical care and related benefits  
24 directly or indirectly made necessary by the health care  
25 provider's malpractice, subject to a semi-private room

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1 limitation in the event of hospitalization, unless the patient  
2 refuses to allow them to be so furnished.

3 C. Awards of future medical care and related  
4 benefits shall not be subject to the [~~six hundred thousand~~  
5 ~~dollar (\$600,000) limitation imposed in Section 41-5-6 NMSA~~  
6 ~~1978~~] applicable limitation imposed in Subsection A of Section  
7 41-5-6 NMSA 1978.

8 D. Payment for medical care and related benefits  
9 shall be made as expenses are incurred.

10 E. The health care provider shall be liable for all  
11 medical care and related benefit payments until the total  
12 payments made by or on behalf of [~~±~~] the health care provider  
13 for monetary damages and medical care and related benefits  
14 combined equals two hundred thousand dollars (\$200,000), after  
15 which the payments shall be made by the patient's compensation  
16 fund.

17 F. This section shall not be construed to prevent a  
18 patient and a health care provider from entering into a  
19 settlement agreement whereby medical care and related benefits  
20 shall be provided for a limited period of time only or to a  
21 limited degree.

22 G. The court in a supplemental proceeding shall  
23 estimate the value of the future medical care and related  
24 benefits reasonably due the patient on the basis of evidence  
25 presented to it. That figure shall not be included in any

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1 award or judgment but shall be included in the record as a  
2 separate court finding.

3 H. A judgment of punitive damages against a health  
4 care provider shall be the personal liability of the health  
5 care provider. Punitive damages shall not be paid from the  
6 patient's compensation fund or from the proceeds of the health  
7 care provider's insurance contract unless the contract  
8 expressly provides coverage. Nothing in Section 41-5-6 NMSA  
9 1978 precludes the award of punitive damages to a patient.  
10 Nothing in this subsection authorizes the imposition of  
11 liability for punitive damages on a derivative basis where that  
12 imposition would not be otherwise authorized by law."

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

15 "[NEW MATERIAL] FAIR SETTLEMENT PRACTICES REQUIRED--RIGHT  
16 OF ACTION.--

17 A. The patient's compensation fund and insurers  
18 providing coverage under the Medical Malpractice Act have a  
19 duty to persons injured by the negligence of a health care  
20 provider to effectuate a prompt, fair and equitable settlement  
21 of the claims against the health care provider where liability  
22 has become reasonably clear.

23 B. A person injured by the negligence of a health  
24 care provider has the right to bring an action in district  
25 court to recover all damages allowed by New Mexico law against

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1 the patient's compensation fund and insurers providing coverage  
2 under the Medical Malpractice Act for the failure to attempt in  
3 good faith to effectuate a prompt, fair and equitable  
4 settlement of the claims against the health care provider where  
5 liability has become reasonably clear. In such an action, the  
6 person injured by the negligence of a health care provider is  
7 deemed to be an "insured" as that term is used in Chapter 59A,  
8 Article 16 NMSA 1978 and at common law.

9 C. The provisions of Chapter 59A, Article 16 NMSA  
10 1978 shall apply to the patient's compensation fund, insurers  
11 under the Medical Malpractice Act and persons injured by the  
12 negligence of health care providers within the scope of the  
13 Medical Malpractice Act."

14 SECTION 5. A new section of the Unfair Practices Act is  
15 enacted to read:

16 "[NEW MATERIAL] MEDICAL MALPRACTICE CLAIMS--FAILURE TO  
17 MAKE A GOOD FAITH ATTEMPT AT SETTLEMENT.--The failure of the  
18 patient's compensation fund or insurers providing coverage  
19 under the Medical Malpractice Act to attempt in good faith to  
20 effectuate a prompt, fair and equitable settlement of the  
21 claims against a health care provider where liability has  
22 become reasonably clear is an unlawful practice under the  
23 Unfair Practices Act."

24 SECTION 6. A new section of Chapter 59A, Article 16 NMSA  
25 1978 is enacted to read:

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1           "[NEW MATERIAL] MEDICAL MALPRACTICE CLAIMS.--

2           A. The provisions of Chapter 59A, Article 16 NMSA  
3 1978 shall apply to the patient's compensation fund, insurers  
4 under the Medical Malpractice Act and persons injured by the  
5 negligence of health care providers within the scope of the  
6 Medical Malpractice Act.

7           B. For purposes of Chapter 59A, Article 16 NMSA  
8 1978:

9                   (1) "insured" includes a person injured by the  
10 negligence of health care providers within the scope of the  
11 Medical Malpractice Act; and

12                   (2) "insurer" includes the patient's  
13 compensation fund and any insurer providing coverage under the  
14 Medical Malpractice Act."

15           SECTION 7. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2011.