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HOUSE BILL 317

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Thomas C. Taylor

AN ACT

RELATING TO MEDICAL MALPRACTICE; ENACTING THE HOSPITAL  
LIABILITY ACT; PROVIDING LIABILITY LIMITS FOR CERTAIN  
MALPRACTICE CLAIMS AGAINST HOSPITALS, HOSPITAL SYSTEMS AND  
AMBULANCE SERVICE PROVIDERS.

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

**SECTION 1. SHORT TITLE.**--This act may be cited as the  
"Hospital Liability Act".

**SECTION 2. PURPOSE.**--The purpose of the Hospital  
Liability Act is to promote the health and welfare of the  
people of New Mexico and to assist hospitals, hospital systems  
and ambulance service systems providing care in New Mexico in  
the control of health care costs by establishing maximum  
monetary limits for malpractice liability for non-economic and  
punitive damages.

1           SECTION 3. DEFINITIONS.--As used in the Hospital

2 Liability Act:

3           A. "ambulance service" means a specialized carrier  
4 based within the state authorized under provisions and subject  
5 to limitations as provided in individual carrier certificates  
6 issued by the public regulation commission to transport persons  
7 alive, dead or dying;

8           B. "hospital health care provider" means any of the  
9 following:

10                   (1) a person that is licensed, certified,  
11 registered or chartered in New Mexico to provide health care or  
12 health care services as a hospital, but not including a health  
13 care provider that is a qualified health care provider pursuant  
14 to the Medical Malpractice Act;

15                   (2) a person, including a parent or subsidiary  
16 entity to that person, that owns, operates or manages a  
17 hospital licensed, certified, registered or chartered in New  
18 Mexico, including an outpatient clinic or other health-care-  
19 related services, but not including a health care provider that  
20 is a qualified health care provider pursuant to the Medical  
21 Malpractice Act;

22                   (3) a person that owns, operates or manages an  
23 ambulance service that is licensed or operated under the laws  
24 of New Mexico, but not including a health care provider that is  
25 a qualified health care provider pursuant to the Medical

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1 Malpractice Act; or

2 (4) an employee, officer, manager or agent of  
3 a person described in Paragraph (1), (2) or (3) of this  
4 subsection, including a doctor, nurse, technologist or other  
5 health care provider in the course of providing health care or  
6 health care-related services, or a member of a board of  
7 directors, board of trustees, board of managers, corporate  
8 owners, shareholders or other similar governing or ownership  
9 entity, but not including a health care provider that is a  
10 qualified health care provider pursuant to the Medical  
11 Malpractice Act;

12 C. "malpractice claim" means a cause of action  
13 arising in New Mexico against a hospital health care provider  
14 for:

15 (1) medical treatment; lack of medical  
16 treatment; the provision of medical care; negligent  
17 credentialing, hiring, training or supervision; or another  
18 claimed departure from accepted standards of health care that  
19 proximately results in injury to a patient, whether the claim  
20 or cause of action sounds in tort or contract;

21 (2) battery or wrongful death;

22 (3) unfair trade practices, unfair competition  
23 or false advertising;

24 (4) third-party claims resulting from a  
25 claimed departure from the standard of care to a patient,

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1 including bystander recovery and loss of consortium; and

2 (5) the operation of a hospital health care  
3 provider that is a vehicular or aircraft ambulance service  
4 while being used for the intended purpose of an ambulance  
5 service, but not for the driving, flying or non-medical use of  
6 a vehicular or aircraft ambulance;

7 D. "non-economic damages" means all recoverable  
8 damages in a cause of action except:

- 9 (1) past and future medical expenses;  
10 (2) past and future loss of income and earning  
11 capacity; and  
12 (3) punitive damages; and

13 E. "qualified health care provider" means a health  
14 care provider that is qualified under the provisions of the  
15 Medical Malpractice Act.

16 SECTION 4. MALPRACTICE CLAIMS--LIMITATION ON LIABILITY.--

17 A. Except as provided in Section 5 of the Hospital  
18 Liability Act, in a malpractice claim for personal injury or  
19 death to a patient against a hospital health care provider:

20 (1) the maximum aggregate dollar amount  
21 recoverable by all persons for all non-economic damages, except  
22 punitive damages, shall not exceed five hundred thousand  
23 dollars (\$500,000); and

24 (2) the maximum aggregate dollar amount  
25 recoverable by all persons for all punitive damages shall not

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1 exceed two million dollars (\$2,000,000).

2 B. The limitation of Subsection A of this section  
3 applies collectively to all claims for or arising from personal  
4 injury or death to a patient as a result of the same assertion  
5 of malpractice, regardless of whether the claims are made by a  
6 person other than the patient suffering the malpractice,  
7 including claims for bystander recovery or loss of consortium.

8 C. The limitation of Subsection A of this section  
9 shall apply regardless of the number of hospital health care  
10 providers found to be liable or the number of separate  
11 malpractice claims made; provided, however, that in an action  
12 where a final judgment is rendered against both a hospital  
13 health care provider and a qualified health care provider, the  
14 limitations of this section shall apply only to the hospital  
15 health care provider, and the judgment against the qualified  
16 health care provider shall be governed by the provisions of the  
17 Medical Malpractice Act.

18 SECTION 5. CLAIMS BASED ON APPARENT OR OSTENSIBLE AGENCY  
19 OR VICARIOUS LIABILITY.--

20 A. In a malpractice claim against a hospital health  
21 care provider based on apparent or ostensible agency or  
22 vicarious liability arising out of the conduct of a qualified  
23 health care provider, the limitation of recovery provided in  
24 Section 41-5-6 NMSA 1978 and the tolling of the statute of  
25 limitations provided in Section 41-5-22 NMSA 1978 shall apply

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1 to the malpractice claim against the hospital health care  
2 provider.

3 B. If a hospital health care provider is only found  
4 vicariously liable for an injury or death to a patient caused  
5 by a qualified health care provider, the aggregate dollar  
6 amount recoverable by all persons from the hospital health care  
7 provider and the qualified health care provider shall not  
8 exceed the limitations described in Subsection A of this  
9 section.

10 C. If a hospital health care provider is found both  
11 vicariously liable for the conduct of a qualified health care  
12 provider and also liable for its own direct conduct:

13 (1) the recovery limits of the Hospital  
14 Liability Act shall apply to the hospital health care provider  
15 for all claims by all persons in the aggregate based on its own  
16 direct liability; and

17 (2) the recovery limits of Subsection A of  
18 this section shall apply to the hospital health care provider  
19 for all claims by all persons in the aggregate based on its  
20 vicarious liability for the conduct of the qualified health  
21 care provider.

22 D. If an initial hospital health care provider is  
23 found vicariously liable for another health care provider that  
24 is not a qualified health care provider, or both vicariously  
25 liable for another health care provider that is not a qualified

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1 health care provider and for its own direct liability, the  
2 aggregate dollar amount of recovery by all persons for all  
3 claims against the initial hospital health care provider shall  
4 be subject solely to the limitations in the Hospital Liability  
5 Act.

6 E. Nothing in the Hospital Liability Act shall  
7 revoke or amend any right of indemnification that a hospital  
8 health care provider may have against a qualified health care  
9 provider for payment of a vicarious award against the hospital  
10 health care provider.

11 F. Nothing in this section shall be deemed to  
12 create a new claim or cause of action.

13 SECTION 6. LAW OF COMPARATIVE FAULT UNAFFECTED.--Nothing  
14 in the Hospital Liability Act shall be deemed to affect the  
15 comparative fault system in torts.

16 SECTION 7. DISCLOSURE OF LIMITS PROHIBITED.--The limits  
17 of liability in the Hospital Liability Act shall not be  
18 disclosed to a jury hearing a malpractice claim.

19 SECTION 8. APPLICABILITY OF TORT CLAIMS ACT.--The  
20 provisions of the Hospital Liability Act do not apply to a  
21 health care provider that is a governmental entity or public  
22 employee pursuant to the Tort Claims Act.

23 SECTION 9. EFFECTIVE DATE.--The effective date of the  
24 provisions of this act is July 1, 2012.