

HOUSE BILL 107

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

## INTRODUCED BY

Jenifer Jones

## AN ACT

RELATING TO HEALTH CARE; AMENDING DEFINITIONS IN THE MEDICAL MALPRACTICE ACT; LIMITING THE AMOUNT OF DAMAGES THAT CAN BE AWARDED DUE TO A MEDICAL MALPRACTICE CLAIM; REQUIRING PAYMENTS FROM THE PATIENT'S COMPENSATION FUND TO BE MADE AS EXPENSES ARE INCURRED; LIMITING THE AVAILABILITY OF PUNITIVE DAMAGES IN MEDICAL MALPRACTICE CLAIMS; LIMITING ATTORNEY FEES IN MALPRACTICE CLAIMS.

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;

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

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

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

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

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

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

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1 or surgical care for three or more separate persons who have a  
2 physical or mental illness, disease, injury or rehabilitative  
3 condition or are pregnant and may offer emergency services.  
4 "Hospital" 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 an entity protected  
9 pursuant 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, an urgent care facility or a free-standing emergency  
13 room 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~~] Health Care Code as an outpatient facility;

8 (b) not an ambulatory surgical center,  
9 an urgent care facility or a 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] Health Care Code as an outpatient  
21 facility, including ambulatory surgical centers, free-standing  
22 emergency rooms, urgent care clinics, acute care centers and  
23 intermediate care facilities and includes a facility's  
24 employees, locum tenens providers and agency nurses providing  
25 services at the facility. "Outpatient health care facility"

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1 does not include:

2 (1) independent providers;

3 (2) independent outpatient health care

4 facilities; or

5 (3) individuals or entities protected pursuant  
6 to the Tort Claims Act or the Federal Tort Claims Act;

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

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

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

14 "41-5-6. LIMITATION OF RECOVERY.--

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

24 B. Except for punitive damages and past and future  
25 medical care and related benefits, the aggregate dollar amount

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

8 C. The aggregate dollar amount recoverable by all  
9 persons for or arising from any injury or death to a patient as  
10 a result of malpractice, except for punitive damages and past  
11 and future medical care and related benefits, shall not exceed  
12 seven hundred fifty thousand dollars (\$750,000) for claims  
13 brought against an independent outpatient health care facility  
14 for an injury or death that occurred in calendar years 2022 and  
15 2023.

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

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

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(2) for an injury or death that occurred in calendar year 2025 and thereafter, the amount provided in Paragraph (1) of this subsection, adjusted annually by the prior three-year average consumer price index for all urban consumers, per occurrence.

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

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

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

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

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

(5) for an injury or death that occurred in

1       calendar year 2026, six million dollars (\$6,000,000) per  
2       occurrence; and

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

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

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

16               [H.] C. Except as provided in Section 41-5-7 NMSA  
17       1978, the value of accrued medical care and related benefits  
18       shall not be subject to any limitation.

19               [I. Except for an independent outpatient health  
20       care facility] D. A health care provider's personal liability  
21       is limited to [two hundred fifty thousand dollars (\$250,000)]  
22       two hundred thousand dollars (\$200,000) for monetary damages  
23       and medical care and related benefits as provided in Section  
24       41-5-7 NMSA 1978. Any amount due from a judgment or settlement  
25       in excess of [two hundred fifty thousand dollars (\$250,000)]

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1       two hundred thousand dollars (\$200,000) shall be paid from the  
2       fund [except as provided in Subsections J and K of this  
3       section.]

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

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

20           L. The term "occurrence" shall not be construed in  
21       such a way as to limit recovery to only one maximum statutory  
22       payment if separate acts or omissions cause additional or  
23       enhanced injury or harm as a result of the separate acts or  
24       omissions. A patient who suffers two or more distinct injuries  
25       as a result of two or more different acts or omissions that

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1   ~~occur at different times by one or more health care providers~~  
2   ~~is entitled to up to the maximum statutory recovery for each~~  
3   ~~injury].~~"

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

6           "41-5-7. MEDICAL EXPENSES AND PUNITIVE DAMAGES.--

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

10          B. 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 it for monetary damages and  
13   medical care and related benefits combined equals the health  
14   care provider's personal liability limit as provided in  
15   Subsection [‡] D of Section 41-5-6 NMSA 1978, after which the  
16   payments shall be made by the fund.

17          C. ~~[Beginning January 1, 2027, any amounts due from~~  
18   ~~a judgment or settlement against a hospital or outpatient~~  
19   ~~health care facility shall not be paid from the fund if the~~  
20   ~~injury or death occurred after December 31, 2026]~~ Payments made  
21   from the fund for medical care and related benefits shall be  
22   made as expenses are incurred.

23          D. This section shall not be construed to prevent a  
24   patient and a health care provider from entering into a  
25   settlement agreement whereby medical care and related benefits

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1 shall be provided for a limited period of time only or to a  
2 limited degree.

3                   E. A judgment of punitive damages against a health  
4 care provider shall be the personal liability of the health  
5 care provider. Punitive damages may only be awarded if the  
6 prevailing party demonstrates beyond a reasonable doubt that  
7 the health care provider acted with malice, willful intent to  
8 harm or wanton disregard for the rights or safety of others.  
9 Punitive damages shall not be paid from the fund or from the  
10 proceeds of the health care provider's insurance contract  
11 unless the contract expressly provides coverage. Nothing in  
12 Section 41-5-6 NMSA 1978 precludes the award of punitive  
13 damages to a patient. Nothing in this subsection authorizes  
14 the imposition of liability for punitive damages where that  
15 imposition would not be otherwise authorized by law.

16                   F. A punitive damage award against:

17                   (1) a hospital or a hospital-controlled  
18 outpatient health care facility shall not be in an amount that  
19 exceeds three times the applicable limitation on compensatory  
20 damages provided in Section 41-5-6 NMSA 1978; or

21                   (2) any other health care provider shall not  
22 be in an amount that exceeds the applicable limitation on  
23 compensatory damages provided in Section 41-5-6 NMSA 1978."

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

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1               "[NEW MATERIAL] LIMITING ATTORNEY FEES.--

2               A. An attorney shall not contract for or collect a  
3               contingency fee for representing a person seeking damages in a  
4               malpractice claim in an amount that exceeds:

5                       (1) thirty percent of the first two hundred  
6               fifty thousand dollars (\$250,000) recovered pursuant to a  
7               settlement agreement, an arbitration award or a judgment;

8                       (2) twenty-five percent of the portion  
9               recovered pursuant to a settlement agreement, an arbitration  
10               award or a judgment that is more than two hundred fifty  
11               thousand dollars (\$250,000) but not more than five hundred  
12               thousand dollars (\$500,000) in value;

13                       (3) twenty percent of the portion recovered  
14               pursuant to a settlement agreement, an arbitration award or a  
15               judgment that is more than five hundred thousand dollars  
16               (\$500,000) but not more than one million dollars (\$1,000,000)  
17               in value; and

18                       (4) fifteen percent of the portion recovered  
19               pursuant to a settlement agreement, an arbitration award or a  
20               judgment that is more than one million dollars (\$1,000,000) in  
21               value.

22               B. Any amount recovered pursuant to a settlement  
23               agreement, an arbitration award or a judgment for a malpractice  
24               claim that is covered by the fund shall not contribute to an  
25               attorney's contingency fee."

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1                   **SECTION 5. APPLICABILITY.--**The provisions of this act  
2   apply to all claims for medical malpractice that arise on or  
3   after the effective date of this act.

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