

underscored material = new
[bracketed material] = delete

SENATE BILL 247

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

INTRODUCED BY

Pat Woods

AN ACT

RELATING TO MEDICAL MALPRACTICE; ALLOWING A REPORT OF A PANEL
OF THE NEW MEXICO MEDICAL REVIEW COMMISSION TO BE ADMITTED AS
EVIDENCE FOR THE PURPOSE OF DEFENDING AGAINST A PLAINTIFF'S
ACTION TO RECOVER PUNITIVE DAMAGES WHEN THE PANEL DETERMINES
THERE IS INSUFFICIENT EVIDENCE OF MEDICAL MALPRACTICE.

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

.233108.1

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

3 (2) has a value of more than fifty percent of
4 that business entity;

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

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

20 E. "hospital" means a facility licensed as a
21 hospital in this state that offers [~~in-patient~~] inpatient
22 services, nursing or overnight care on a twenty-four-hour basis
23 for diagnosing, treating and providing medical, psychological
24 or surgical care for three or more separate persons who have a
25 physical or mental illness, disease, injury or rehabilitative

.233108.1

1 condition or are pregnant and may offer emergency services.

2 "Hospital" includes a hospital's parent corporation, subsidiary
3 corporations or affiliates if incorporated or registered in New
4 Mexico; employees and locum tenens providing services at the
5 hospital; and agency nurses providing services at the hospital.

6 "Hospital" does not mean a person or an entity protected
7 pursuant to the Tort Claims Act or the Federal Tort Claims Act;

8 F. "independent outpatient health care facility"
9 means a health care facility that is an ambulatory surgical
10 center, an urgent care facility or a free-standing emergency
11 room that is not, directly or indirectly through one or more
12 intermediaries, controlled or under common control with a
13 hospital. "Independent outpatient health care facility"
14 includes a facility's employees, locum tenens providers and
15 agency nurses providing services at the facility. "Independent
16 outpatient health care facility" does not mean a person or an
17 entity protected pursuant to the Tort Claims Act or the Federal
18 Tort Claims Act;

19 G. "independent provider" means a doctor of
20 medicine, doctor of osteopathy, chiropractor, [~~podiatrist~~]
21 podiatric physician, nurse anesthetist, physician's assistant,
22 certified nurse practitioner, clinical nurse specialist or
23 certified nurse-midwife who is not an employee of a hospital or
24 an outpatient health care facility. "Independent provider"
25 does not mean a person or an entity protected pursuant to the

1 Tort Claims Act or the Federal Tort Claims Act. "Independent
2 provider" includes:

3 (1) a health care facility that is:

4 (a) licensed pursuant to the ~~[Public~~
5 ~~Health Act]~~ Health Care Code as an outpatient facility;

6 (b) not an ambulatory surgical center,
7 an urgent care facility or a free-standing emergency room; and

8 (c) not hospital-controlled; and

9 (2) a business entity that is not a hospital
10 or an outpatient health care facility that employs or consists
11 of members who are licensed or certified as doctors of
12 medicine, doctors of osteopathy, chiropractors, ~~[podiatrists]~~
13 podiatric physicians, nurse anesthetists, physician's
14 assistants, certified nurse practitioners, clinical nurse
15 specialists or certified nurse-midwives and the business
16 entity's employees;

17 H. "insurer" means an insurance company engaged in
18 writing health care provider malpractice liability insurance in
19 this state;

20 I. "malpractice claim" includes any cause of action
21 arising in this state against a health care provider for
22 medical treatment, lack of medical treatment or other claimed
23 departure from accepted standards of health care that
24 proximately results in injury to the patient, whether the
25 patient's claim or cause of action sounds in tort or contract,

.233108.1

1 and includes but is not limited to actions based on battery or
2 wrongful death; "malpractice claim" does not include a cause of
3 action arising out of the driving, flying or nonmedical acts
4 involved in the operation, use or maintenance of a vehicular or
5 aircraft ambulance;

6 J. "medical care and related benefits" means all
7 reasonable medical, surgical, physical rehabilitation and
8 custodial services and includes drugs, prosthetic devices and
9 other similar materials reasonably necessary in the provision
10 of such services;

11 K. "occurrence" means all injuries to a patient
12 caused by health care providers' successive acts or omissions
13 that combined concurrently to create a malpractice claim;

14 L. "outpatient health care facility" means an
15 entity that is hospital-controlled and is licensed pursuant to
16 the ~~[Public Health Act]~~ Health Care Code as an outpatient
17 facility, including ambulatory surgical centers, free-standing
18 emergency rooms, urgent care clinics, acute care centers and
19 intermediate care facilities and includes a facility's
20 employees, locum tenens providers and agency nurses providing
21 services at the facility. "Outpatient health care facility"
22 does not include:

- 23 (1) independent providers;
24 (2) independent outpatient health care
25 facilities; or

1 (3) individuals or entities protected pursuant
2 to the Tort Claims Act or the Federal Tort Claims Act;

3 M. "panel" means a medical review panel convened by
4 the New Mexico medical review commission;

5 [~~M.~~] N. "patient" means a natural person who
6 received or should have received health care from a health care
7 provider, under a contract, express or implied; and

8 [~~N.~~] O. "superintendent" means the superintendent
9 of insurance."

10 SECTION 2. Section 41-5-20 NMSA 1978 (being Laws 1976,
11 Chapter 2, Section 20) is amended to read:

12 "41-5-20. PANEL DELIBERATIONS AND DECISION.--

13 A. The deliberations of [~~the~~] a panel shall be and
14 remain confidential. Upon consideration of all the relevant
15 material, the panel shall decide only two questions:

16 (1) whether there is substantial evidence that
17 the acts complained of occurred and that they constitute
18 malpractice; and

19 (2) whether there is a reasonable medical
20 probability that the patient was injured [~~thereby~~] by the acts.

21 B. All votes of the panel on the two questions for
22 decision shall be by secret ballot. The decision shall be by a
23 majority vote of those voting members of the panel who have sat
24 on the entire case. The decision shall be communicated in
25 writing to the parties and attorneys concerned, and a copy

.233108.1

1 [thereof] shall be retained in the permanent files of the New
2 Mexico medical review commission.

3 C. The decision shall in every case be signed for
4 the panel by the ~~[chairman]~~ chair, who shall vote only in the
5 event the other members of the panel are evenly divided, and
6 shall contain only the conclusions reached by a majority of its
7 members and the number of members, if any, dissenting
8 ~~[therefrom]~~; provided, however, that if the vote is not
9 unanimous, the majority may briefly explain the reasoning and
10 basis for their conclusion, and the dissenters may likewise
11 explain the reasons for disagreement.

12 D. Except as provided in Subsection G of this
13 section, the report of the ~~[medical review]~~ panel shall not be
14 admissible as evidence in any action subsequently brought in a
15 court of law. A copy of the report shall be sent to the health
16 care provider's professional licensing board.

17 E. Panelists and witnesses shall have absolute
18 immunity from civil liability for all communications, findings,
19 opinions and conclusions made in the course and scope of duties
20 prescribed by the Medical Malpractice Act.

21 F. Except as provided in Subsection G of this
22 section, the panel's decisions shall be without administrative
23 or judicial authority and shall not be binding on any party.
24 The panel shall make no effort to settle or compromise any
25 claim ~~[nor]~~ or express any opinion on the monetary value of any

1 claim.

2 G. If a majority of the members of the panel vote
3 to answer either of the questions provided in Subsection A of
4 this section in the negative, and the patient or the patient's
5 representative chooses to continue with the malpractice claim,
6 the report of the panel shall be admissible as evidence in a
7 court of law for the purpose of defending against a plaintiff's
8 action to recover punitive damages."

9 - 8 -