

HOUSE HEALTH AND GOVERNMENT AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 267

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

AN ACT

RELATING TO MEDICAL MALPRACTICE; AMENDING THE MEDICAL
MALPRACTICE ACT TO CLARIFY THAT BUSINESS ENTITIES PROVIDING
HEALTH CARE SERVICES ARE HEALTH CARE PROVIDERS UNDER THE ACT,
TO RAISE THE RECOVERABLE LIMITS AND TO PROHIBIT THE DISCLOSURE
OF CERTAIN CONFIDENTIAL INFORMATION.

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. "business entity" means a corporation,
including a professional corporation and a nonprofit
corporation, a limited liability company, a limited liability
partnership, a limited partnership or a general partnership

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underscored material = new
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1 organized or formed under the laws of New Mexico or qualified
2 to conduct business in New Mexico as a foreign corporation,
3 limited liability company, limited liability partnership or
4 limited partnership;

5 [A.] B. "health care provider" means:

6 (1) a natural person [~~corporation,~~
7 ~~organization, facility or institution licensed or certified by~~
8 ~~this state to provide health care or professional services as a~~
9 ~~doctor of medicine, hospital, outpatient health care facility,~~
10 ~~doctor of osteopathy, chiropractor, podiatrist, nurse~~
11 ~~anesthetist or physician's assistant~~] licensed to practice
12 medicine or otherwise provide health care services pursuant to
13 a professional or occupational license;

14 (2) a hospital;

15 (3) an outpatient health care facility; or

16 (4) a business entity, other than a hospital
17 or an outpatient health care facility, that provides health
18 care services primarily through persons licensed to practice
19 medicine or that otherwise provide health care services in New
20 Mexico pursuant to a professional or occupational license;

21 C. "hospital" means a business entity licensed to
22 operate a hospital by the department of health;

23 [B.] D. "insurer" means an insurance company
24 engaged in writing health care provider malpractice liability
25 insurance in this state;

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

12 ~~[D.]~~ F. "medical care and related benefits" means
13 all reasonable medical, surgical, physical rehabilitation and
14 custodial services and includes drugs, prosthetic devices and
15 other similar materials reasonably necessary in the provision
16 of such services;

17 G. "outpatient health care facility" means a
18 business entity licensed to operate an outpatient health care
19 facility by the department of health;

20 ~~[E.]~~ H. "patient" means a natural person who
21 received or should have received health care from a licensed
22 health care provider, under a contract, express or implied;
23 [and]

24 I. "personal information" means information that
25 identifies an individual or a business entity, including the

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1 individual or business entity's name, address or telephone
2 number;

3 J. "professional or occupational license" means a
4 license to practice medicine or provide health care services
5 pursuant to the Chiropractic Physician Practice Act; the
6 Medical Practice Act; the Podiatry Act; Chapter 61, Article 10
7 NMSA 1978; or the Osteopathic Physicians' Assistants Act. A
8 professional or occupational license also includes a license to
9 practice as a certified registered nurse anesthetist; and

10 ~~[F-]~~ K. "superintendent" means the superintendent
11 of insurance of this state."

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

14 "41-5-5. QUALIFICATIONS.--

15 A. To be qualified under the provisions of the
16 Medical Malpractice Act, a health care provider shall:

17 (1) establish its financial responsibility by
18 filing proof with the superintendent that the health care
19 provider is insured by a policy of malpractice liability
20 insurance issued by an authorized insurer in the amount of at
21 least two hundred thousand dollars (\$200,000) per occurrence;
22 ~~[or for an individual health care provider, excluding hospitals~~
23 ~~and outpatient health care facilities, by having continuously~~
24 ~~on deposit the sum of six hundred thousand dollars (\$600,000)~~
25 ~~in cash with the superintendent or such other like deposit as~~

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1 ~~the superintendent may allow by rule or regulation; provided~~
 2 ~~that in the absence of an additional deposit or policy as~~
 3 ~~required by this subsection, the deposit or] provided that for~~
 4 an individual health care provider other than a hospital,
 5 outpatient health care facility or other business entity
 6 providing health care services, the policy shall provide
 7 coverage for not more than three separate occurrences; and

8 (2) pay the surcharge assessed on health care
 9 providers by the superintendent pursuant to Section 41-5-25
 10 NMSA 1978 for the patient's compensation fund.

11 B. For hospitals, [~~or~~] outpatient health care
 12 facilities or other business entities electing to be covered
 13 under the Medical Malpractice Act, the superintendent shall
 14 determine, based on a risk assessment of each hospital, [~~or~~]
 15 outpatient health care facility or other business entity, each
 16 hospital's, [~~or~~] outpatient health care facility's or other
 17 business entity's base coverage [~~or deposit~~] and additional
 18 charges for the patient's compensation fund. The
 19 superintendent shall arrange for an actuarial study, as
 20 provided in Section 41-5-25 NMSA 1978. The additional charge
 21 shall be determined by the superintendent based upon sound
 22 actuarial principles that take into account the different
 23 classifications of the physicians and other health care
 24 providers of the hospital, outpatient care facility or other
 25 business entity and that use data obtained from New Mexico

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1 experience, if available.

2 C. A health care provider not qualifying under this
3 section shall not have the benefit of any of the provisions of
4 the Medical Malpractice Act in the event of a malpractice claim
5 against ~~[it]~~ that provider."

6 SECTION 3. Section 41-5-6 NMSA 1978 (being Laws 1992,
7 Chapter 33, Section 4) is amended to read:

8 "41-5-6. LIMITATION OF RECOVERY.--

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

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

18 (2) one million dollars (\$1,000,000) per
19 occurrence for acts of malpractice occurring on or after
20 January 1, 2012; provided that on July 1, 2014 and on July 1 of
21 each year thereafter, the superintendent shall adjust the
22 maximum recoverable amount specified in this paragraph to
23 correspond to the percentage change in the consumer price index
24 between the end of the penultimate calendar year and the end of
25 the immediately preceding calendar year; provided further that

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1 such an adjustment shall not result in a percentage change in
 2 the maximum recoverable amount greater than three percent. As
 3 used in this paragraph, "consumer price index" means the
 4 consumer price index for all urban consumers, U.S. city
 5 average, as published by the United States department of labor.

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

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

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

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

23 ~~[E. For the purposes of Subsections A and B of this~~
 24 ~~section, the six hundred thousand dollar (\$600,000) aggregate~~
 25 ~~amount recoverable by all persons for or arising from any~~

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1 ~~injury or death to a patient as a result of malpractice shall~~
2 ~~apply only to malpractice occurring on or after April 1,~~
3 ~~1995.]"~~

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

6 "41-5-7. FUTURE MEDICAL EXPENSES.--

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

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

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1 provider's malpractice, subject to a semi-private room
 2 limitation in the event of hospitalization, unless the patient
 3 refuses to allow them to be so furnished.

4 C. Awards of future medical care and related
 5 benefits shall not be subject to the [~~six hundred thousand~~
 6 ~~dollar (\$600,000) limitation imposed in Section 41-5-6 NMSA~~
 7 ~~1978]~~ applicable limitation imposed in Subsection A of Section
 8 41-5-6 NMSA 1978.

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

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

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

23 G. The court in a supplemental proceeding shall
 24 estimate the value of the future medical care and related
 25 benefits reasonably due the patient on the basis of evidence

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1 presented to it. That figure shall not be included in any
2 award or judgment but shall be included in the record as a
3 separate court finding.

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

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

16 "[NEW MATERIAL] DISCLOSURE OF PERSONAL INFORMATION
17 PROHIBITED.--It is unlawful for any employee or former employee
18 of the state to disclose to any other person, other than an
19 employee of the state in connection with that employee's
20 official duties, any personal information about a health care
21 provider that has settled a claim for malpractice covered by
22 the Medical Malpractice Act."

23 SECTION 6. A new section of the Medical Malpractice Act
24 is enacted to read:

25 "[NEW MATERIAL] ADVISORY COMMITTEE--MEMBERS--DUTIES.--

1 A. The "Medical Malpractice Act advisory committee"
2 is created. The committee shall consist of seven members as
3 follows:

4 (1) three attorneys appointed by the New
5 Mexico trial lawyers association;

6 (2) three physicians appointed by the New
7 Mexico medical society; and

8 (3) the superintendent, who shall be the chair
9 of the committee.

10 B. The advisory committee shall meet at the call of
11 the chair, but no less than semiannually.

12 C. The advisory committee shall review policies,
13 administrative actions, statutes, court opinions and all other
14 matters relating to the Medical Malpractice Act and, no later
15 than December 1 of each year, report its findings and
16 recommendations to the public regulation commission, the
17 governor and the legislature.

18 D. Members of the committee shall not receive per
19 diem and mileage."

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