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HOUSE BILL 75

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Daymon Ely

AN ACT

RELATING TO MEDICAL MALPRACTICE; REMOVING HOSPITALS FROM THE  
DEFINITION OF "HEALTH CARE PROVIDER" IN THE MEDICAL MALPRACTICE  
ACT.

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. "health care provider" means a person,  
corporation, organization, facility or institution licensed or  
certified by this state to provide health care or professional  
services as a doctor of medicine, [~~hospital~~] outpatient health  
care facility, doctor of osteopathy, chiropractor, podiatrist,  
nurse anesthetist or physician's assistant;

underscoring material = new  
~~[bracketed material] = delete~~

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1           B. "insurer" means an insurance company engaged in  
2 writing health care provider malpractice liability insurance in  
3 this state;

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

15           D. "medical care and related benefits" means all  
16 reasonable medical, surgical, physical rehabilitation and  
17 custodial services and includes drugs, prosthetic devices and  
18 other similar materials reasonably necessary in the provision  
19 of such services;

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

23           F. "superintendent" means the superintendent of  
24 insurance ~~[of this state]~~."

25           SECTION 2. Section 41-5-5 NMSA 1978 (being Laws 1992,

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1 Chapter 33, Section 2) is amended to read:

2 "41-5-5. QUALIFICATIONS.--

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

5 (1) establish its financial responsibility by  
6 filing proof with the superintendent that the health care  
7 provider is insured by a policy of malpractice liability  
8 insurance issued by an authorized insurer in the amount of at  
9 least two hundred thousand dollars (\$200,000) per occurrence or  
10 for an individual health care provider, excluding [~~hospitals~~  
11 ~~and~~] outpatient health care facilities, by having continuously  
12 on deposit the sum of six hundred thousand dollars (\$600,000)  
13 in cash with the superintendent or such other like deposit as  
14 the superintendent may allow by rule or regulation; provided  
15 that in the absence of an additional deposit or policy as  
16 required by this subsection, the deposit or policy shall  
17 provide coverage for not more than three separate occurrences;  
18 and

19 (2) pay the surcharge assessed on health care  
20 providers by the superintendent pursuant to Section 41-5-25  
21 NMSA 1978.

22 B. For [~~hospitals or~~] outpatient health care  
23 facilities electing to be covered under the Medical Malpractice  
24 Act, the superintendent shall determine, based on a risk  
25 assessment of each [~~hospital or~~] outpatient health care

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1 facility, each ~~[hospital's or]~~ outpatient health care  
2 facility's base coverage or deposit and additional charges for  
3 the patient's compensation fund. The superintendent shall  
4 arrange for an actuarial study, as provided in Section 41-5-25  
5 NMSA 1978.

6 C. A health care provider not qualifying under this  
7 section shall not have the benefit of any of the provisions of  
8 the Medical Malpractice Act in the event of a malpractice claim  
9 against it."