

1 SENATE BILL 296

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Mark Moores and Martin Hickey

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10 AN ACT

11 RELATING TO TORTS; AMENDING THE MEDICAL MALPRACTICE ACT TO
12 CHANGE THE LIMITATION OF RECOVERY FOR CERTAIN CLAIMS AGAINST
13 FACILITIES THAT ARE NOT MAJORITY-OWNED AND -CONTROLLED BY A
14 HOSPITAL.

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

17 SECTION 1. Section 41-5-3 NMSA 1978 (being Laws 1976,
18 Chapter 2, Section 3, as amended) is amended to read:

19 "41-5-3. DEFINITIONS.--As used in the Medical Malpractice
20 Act:

21 A. "advisory board" means the patient's
22 compensation fund advisory board;

23 B. "fund" means the patient's compensation fund;

24 C. "health care provider" means a person,
25 corporation, organization, facility or institution licensed or

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1 certified by this state to provide health care or professional
2 services as a doctor of medicine, hospital, outpatient health
3 care facility, doctor of osteopathy, chiropractor, podiatrist,
4 nurse anesthetist, physician's assistant, certified nurse
5 practitioner, clinical nurse specialist or certified nurse-
6 midwife or a business entity that is organized, incorporated or
7 formed pursuant to the laws of New Mexico that provides health
8 care services primarily through natural persons identified in
9 this subsection;

10 D. "hospital" means a facility licensed as a
11 hospital in this state that offers in-patient services, nursing
12 or overnight care on a twenty-four-hour basis for diagnosing,
13 treating and providing medical, psychological or surgical care
14 for three or more separate persons who have a physical or
15 mental illness, disease, injury or rehabilitative condition or
16 are pregnant and may offer emergency services. "Hospital"
17 includes a hospital's parent corporation, subsidiary
18 corporations or affiliates if incorporated or registered in New
19 Mexico; employees and locum tenens providing services at the
20 hospital; and agency nurses providing services at the hospital;

21 E. "independent provider" means a doctor of
22 medicine, doctor of osteopathy, chiropractor, podiatrist, nurse
23 anesthetist, physician's assistant, certified nurse
24 practitioner, clinical nurse specialist or certified nurse-
25 midwife who is not an employee of a hospital or outpatient

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1 health care facility. "Independent provider" includes:

2 (1) a health care facility that is licensed
3 pursuant to the Public Health Act as an outpatient facility,
4 but is not majority-owned or -controlled by a hospital; and

5 (2) a business entity that is not a hospital
6 or outpatient health care facility that employs or consists of
7 members who are licensed or certified as doctors of medicine,
8 doctors of osteopathy, chiropractors, podiatrists, nurse
9 anesthetists, physician's assistants, certified nurse
10 practitioners, clinical nurse specialists or certified nurse-
11 midwives and the business entity's employees;

12 F. "insurer" means an insurance company engaged in
13 writing health care provider malpractice liability insurance in
14 this state;

15 G. "malpractice claim" includes any cause of action
16 arising in this state against a health care provider for
17 medical treatment, lack of medical treatment or other claimed
18 departure from accepted standards of health care that
19 proximately results in injury to the patient, whether the
20 patient's claim or cause of action sounds in tort or contract,
21 and includes but is not limited to actions based on battery or
22 wrongful death; "malpractice claim" does not include a cause of
23 action arising out of the driving, flying or nonmedical acts
24 involved in the operation, use or maintenance of a vehicular or
25 aircraft ambulance;

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1 H. "medical care and related benefits" means all
2 reasonable medical, surgical, physical rehabilitation and
3 custodial services and includes drugs, prosthetic devices and
4 other similar materials reasonably necessary in the provision
5 of such services;

6 I. "occurrence" means all injuries to a patient
7 caused by health care providers' successive acts or omissions
8 that combined concurrently to create a malpractice claim;

9 J. "outpatient health care facility" means an
10 entity that is majority-owned and -controlled by a hospital and
11 is licensed pursuant to the Public Health Act as an outpatient
12 facility, including ambulatory surgical centers, free-standing
13 emergency rooms, urgent care clinics, acute care centers and
14 intermediate care facilities and includes a facility's
15 employees, locum tenens providers and agency nurses providing
16 services at the facility. "Outpatient health care facility"
17 does not include independent providers;

18 K. "patient" means a natural person who received or
19 should have received health care from a health care provider,
20 under a contract, express or implied; and

21 L. "superintendent" means the superintendent of
22 insurance."

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

25 "41-5-6. LIMITATION OF RECOVERY.--

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1 A. Except for punitive damages and past and future
2 medical care and related benefits, the aggregate dollar amount
3 recoverable by all persons for or arising from any injury or
4 death to a patient as a result of malpractice shall not exceed
5 six hundred thousand dollars (\$600,000) per occurrence for
6 malpractice claims brought against health care providers if the
7 injury or death occurred prior to January 1, 2022. In jury
8 cases, the jury shall not be given any instructions dealing
9 with this limitation.

10 B. Except for punitive damages and past and future
11 medical care and related benefits, the aggregate dollar amount
12 recoverable by all persons for or arising from any injury or
13 death to a patient as a result of malpractice shall not exceed
14 seven hundred fifty thousand dollars (\$750,000) per occurrence
15 for malpractice claims against independent providers; provided
16 that, beginning January 1, 2023, the per occurrence limit on
17 recovery shall be adjusted annually by the consumer price index
18 for all urban consumers.

19 ~~[G. In calendar year 2022 and subsequent calendar~~
20 ~~years, the aggregate dollar amount recoverable by all persons~~
21 ~~for or arising from any injury or death to a patient as a~~
22 ~~result of malpractice, except for punitive damages and past and~~
23 ~~future medical care and related benefits, shall not exceed the~~
24 ~~following amounts for claims brought against an outpatient~~
25 ~~health care facility that is not majority-owned and -controlled~~

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1 by a hospital:

2 ~~(1) for an injury or death that occurred in~~
3 ~~calendar years 2022 and 2023, seven hundred fifty thousand~~
4 ~~dollars (\$750,000) per occurrence;~~

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

8 ~~(3) for an injury or death that occurred in~~
9 ~~calendar year 2025, five million five hundred thousand dollars~~
10 ~~(\$5,500,000) per occurrence;~~

11 ~~(4) for an injury or death that occurred in~~
12 ~~calendar year 2026, six million dollars (\$6,000,000) per~~
13 ~~occurrence; and~~

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

19 ~~D.]~~ C. In calendar year 2022 and subsequent
20 calendar years, the aggregate dollar amount recoverable by all
21 persons for or arising from any injury or death to a patient as
22 a result of malpractice, except for punitive damages and past
23 and future medical care and related benefits, shall not exceed
24 the following amounts for claims brought against a hospital or
25 an outpatient health care facility that is majority-owned and

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1 -controlled by a hospital:

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

5 (2) for an injury or death that occurred in
6 calendar year 2023, four million five hundred thousand dollars
7 (\$4,500,000) per occurrence;

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

11 (4) for an injury or death that occurred in
12 calendar year 2025, five million five hundred thousand dollars
13 (\$5,500,000) per occurrence;

14 (5) for an injury or death that occurred in
15 calendar year 2026, six million dollars (\$6,000,000) per
16 occurrence; and

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

22 [~~E.~~] D. The aggregate dollar amounts provided in
23 Subsections B [~~through D~~] and C of this section include payment
24 to any person for any number of loss of consortium claims or
25 other claims per occurrence that arise solely because of the

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1 injuries or death of the patient.

2 [~~F.~~] E. In jury cases, the jury shall not be given
3 any instructions dealing with the limitations provided in this
4 section.

5 [~~G.~~] F. The value of accrued medical care and
6 related benefits shall not be subject to any limitation.

7 [~~H.~~] G. A health care provider's personal liability
8 is limited to two hundred fifty thousand dollars (\$250,000) for
9 monetary damages and medical care and related benefits as
10 provided in Section 41-5-7 NMSA 1978. Any amount due from a
11 judgment or settlement in excess of two hundred fifty thousand
12 dollars (\$250,000) shall be paid from the fund, except as
13 provided in Subsection [~~F.~~] H. of this section.

14 [~~F.~~] H. Until January 1, 2027, amounts due from a
15 judgment or settlement against a hospital or outpatient health
16 care facility in excess of seven hundred fifty thousand dollars
17 (\$750,000), excluding past and future medical expenses, shall
18 be paid by the hospital or outpatient health care facility and
19 not by the fund. Beginning January 1, 2027, amounts due from a
20 judgment or settlement against a hospital or outpatient health
21 care facility shall not be paid from the fund.

22 [~~J.~~] I. The term "occurrence" shall not be
23 construed in such a way as to limit recovery to only one
24 maximum statutory payment if separate acts or omissions cause
25 additional or enhanced injury or harm as a result of the

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1 separate acts or omissions. A patient who suffers two or more
2 distinct injuries as a result of two or more different acts or
3 omissions that occur at different times by one or more health
4 care providers is entitled to up to the maximum statutory
5 recovery for each injury."

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