

1 SENATE BILL 447

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

3 INTRODUCED BY

4 Gregg Schmedes and Mark Moores

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10 AN ACT

11 RELATING TO MEDICAL MALPRACTICE; DIRECTING ADJUSTMENT OF  
12 RECOVERY AMOUNTS BASED ON INCREASES IN THE CONSUMER PRICE  
13 INDEX.

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

16 SECTION 1. Section 41-5-6 NMSA 1978 (being Laws 1992,  
17 Chapter 33, Section 4, as amended) is amended to read:

18 "41-5-6. LIMITATION OF RECOVERY.--

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

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1 cases, the jury shall not be given any instructions dealing  
2 with this limitation.

3 B. Except for punitive damages and past and future  
4 medical care and related benefits, the aggregate dollar amount  
5 recoverable by all persons for or arising from any injury or  
6 death to a patient as a result of malpractice shall not exceed  
7 seven hundred fifty thousand dollars (\$750,000) per occurrence  
8 for malpractice claims against independent providers; provided  
9 that ~~[beginning January 1, 2023, the per occurrence limit on~~  
10 ~~recovery shall be adjusted annually by the consumer price index~~  
11 ~~for all urban consumers]~~ on the first day of the calendar year  
12 after three consecutive annual actuarial studies have found  
13 that the fund is solvent, the per occurrence limit on recovery  
14 shall be adjusted annually to correspond to the percentage  
15 change in the consumer price index; and provided further that  
16 an adjustment shall not result in a percentage increase in the  
17 maximum recoverable amount greater than two percent.

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

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

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

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

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

13 (5) for an injury or death that occurred in  
14 calendar year 2027 and each calendar year thereafter, the  
15 amount provided in Paragraph (4) of this subsection [~~adjusted~~  
16 ~~annually by the consumer price index for all urban consumers,~~  
17 ~~per occurrence~~] shall be adjusted annually to correspond to the  
18 percentage change in the consumer price index; provided that an  
19 adjustment shall not result in a percentage increase in the  
20 maximum recoverable amount greater than two percent.

21 D. In calendar year 2022 and subsequent calendar  
22 years, the aggregate dollar amount recoverable by all persons  
23 for or arising from any injury or death to a patient as a  
24 result of malpractice, except for punitive damages and past and  
25 future medical care and related benefits, shall not exceed the

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1 following amounts for claims brought against a hospital or an  
2 outpatient health care facility that is majority-owned and  
3 -controlled by a hospital:

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

7 (2) for an injury or death that occurred in  
8 calendar year 2023, four million five hundred thousand dollars  
9 (\$4,500,000) per occurrence;

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

13 (4) for an injury or death that occurred in  
14 calendar year 2025, five million five hundred thousand dollars  
15 (\$5,500,000) per occurrence;

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

19 (6) for an injury or death that occurred in  
20 calendar year 2027 and each calendar year thereafter, the  
21 amount provided in Paragraph (5) of this subsection [~~adjusted~~  
22 ~~annually by the consumer price index for all urban consumers,~~  
23 ~~per occurrence]~~ shall be adjusted annually to correspond to the  
24 percentage change in the consumer price index; provided that an  
25 adjustment shall not result in a percentage increase in the

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1 maximum recoverable amount greater than two percent.

2 E. The aggregate dollar amounts provided in  
3 Subsections B through D of this section include payment to any  
4 person for any number of loss of consortium claims or other  
5 claims per occurrence that arise solely because of the injuries  
6 or death of the patient.

7 F. In jury cases, the jury shall not be given any  
8 instructions dealing with the limitations provided in this  
9 section.

10 G. The value of accrued medical care and related  
11 benefits shall not be subject to any limitation.

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

19 I. Until January 1, 2027, amounts due from a  
20 judgment or settlement against a hospital or outpatient health  
21 care facility in excess of seven hundred fifty thousand dollars  
22 (\$750,000), excluding past and future medical expenses, shall  
23 be paid by the hospital or outpatient health care facility and  
24 not by the fund. Beginning January 1, 2027, amounts due from a  
25 judgment or settlement against a hospital or outpatient health

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1 care facility shall not be paid from the fund.

2 J. The term "occurrence" shall not be construed in  
3 such a way as to limit recovery to only one maximum statutory  
4 payment if separate acts or omissions cause additional or  
5 enhanced injury or harm as a result of the separate acts or  
6 omissions. A patient who suffers two or more distinct injuries  
7 as a result of two or more different acts or omissions that  
8 occur at different times by one or more health care providers  
9 is entitled to up to the maximum statutory recovery for each  
10 injury.

11 K. As used in this section, "percentage change in  
12 the consumer price index" means the percentage change in the  
13 consumer price index for all urban consumers, United States  
14 city average, as published by the United States department of  
15 labor between the month ending December of the penultimate  
16 calendar year and the month ending December of the immediately  
17 preceding calendar year."