

HOUSE BILL 374

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Gail Armstrong and Mark Duncan and Harlan Vincent
and Luis M. Terrazas

AN ACT

RELATING TO MEDICAL MALPRACTICE; AMENDING THE DEFINITION OF
"OCCURRENCE" 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. "advisory board" means the patient's
compensation fund advisory board;

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

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

(2) has a value of more than fifty percent of

.229885.2

underscoring material = new
[bracketed material] = delete

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

1 that business entity;

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

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

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

.229885.2

1 hospital; and agency nurses providing services at the hospital.
2 "Hospital" does not mean a person or entity protected pursuant
3 to the Tort Claims Act or the Federal Tort Claims Act;

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

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

24 (1) a health care facility that is:

25 (a) licensed pursuant to the Public

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

1 Health Act as an outpatient facility;

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

4 (c) not hospital-controlled; 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]~~ podiatric
9 physicians, nurse anesthetists, physician's assistants,
10 certified nurse practitioners, clinical nurse specialists or
11 certified nurse-midwives and the business entity's employees;

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

15 I. "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;

.229885.2

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

1 J. "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 K. "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 claims for damages from all persons arising from harm to a
10 single patient, no matter how many health care providers,
11 errors or omissions contributed to the harm;

12 L. "outpatient health care facility" means an
13 entity that is hospital-controlled and is licensed pursuant to
14 the Public Health Act as an outpatient facility, including
15 ambulatory surgical centers, free-standing emergency rooms,
16 urgent care clinics, acute care centers and intermediate care
17 facilities and includes a facility's employees, locum tenens
18 providers and agency nurses providing services at the facility.

19 "Outpatient health care facility" does not include:

- 20 (1) independent providers;
21 (2) independent outpatient health care
22 facilities; or
23 (3) individuals or entities protected pursuant
24 to the Tort Claims Act or the Federal Tort Claims Act;

25 M. "patient" means a natural person who received or

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

1 should have received health care from a health care provider,
2 under a contract, express or implied; and

3 N. "superintendent" means the superintendent of
4 insurance."

5 - 6 -
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25