

1 SENATE BILL 8  
2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2025**

3 INTRODUCED BY  
4 Anthony L. Thornton and Jay C. Block and Joshua A. Sanchez and  
5 Crystal Brantley and David M. Gallegos  
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10 AN ACT  
11 RELATING TO LITIGATION; AMENDING REQUIREMENTS FOR VENUE  
12 DETERMINATION; PROVIDING REQUIREMENTS FOR DETERMINING VENUE IN  
13 CASES INVOLVING MEDICAL MALPRACTICE; AMENDING THE MEDICAL  
14 MALPRACTICE ACT; LIMITING RECOVERY FROM THE PATIENT'S  
15 COMPENSATION FUND; REQUIRING PAYMENTS FROM THE PATIENT'S  
16 COMPENSATION FUND TO BE MADE AS EXPENSES ARE INCURRED; LIMITING  
17 ATTORNEY FEES IN MALPRACTICE CLAIMS; REQUIRING THE  
18 SUPERINTENDENT OF INSURANCE TO APPROVE PROPOSED SETTLEMENTS  
19 PAID FROM THE PATIENT'S COMPENSATION FUND; REMOVING A  
20 REQUIREMENT FOR SURCHARGES TO BE SET WITH THE INTENT OF  
21 BRINGING THE FUND TO SOLVENCY; CREATING THE PATIENT SAFETY  
22 IMPROVEMENT FUND; MAKING AN APPROPRIATION.  
23

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

25 SECTION 1. Section 38-3-1 NMSA 1978 (being Laws 1875-  
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1 1876, Chapter 2, Section 1, as amended) is amended to read:

2 "38-3-1. COUNTY IN WHICH CIVIL ACTION IN DISTRICT COURT  
3 MAY BE COMMENCED.--All civil actions commenced in the district  
4 courts shall be brought and shall be commenced in counties as  
5 follows and not otherwise.

6 A. First, except as provided in Subsection F of  
7 this section relating to foreign corporations, all transitory  
8 actions shall be brought in the county where either the  
9 plaintiff or defendant, or any one of them in case there is  
10 more than one of either, resides; or second, in the county  
11 where the contract sued on was made or is to be performed or  
12 where the cause of action originated or indebtedness sued on  
13 was incurred; or third, in any county in which the defendant or  
14 either of them may be found in the judicial district where the  
15 defendant resides.

16 B. When the defendant [~~has rendered himself~~] is  
17 liable to a civil action by any criminal act, suit may be  
18 instituted against the defendant in the county in which the  
19 offense was committed or in which the defendant may be found or  
20 in the county where the plaintiff resides.

21 C. When suit is brought for the recovery of  
22 personal property other than money, it may be brought as  
23 provided in this section or in the county where the property  
24 may be found.

25 D. [~~(+)~~] When lands or any interest in lands [~~are~~]

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1 is the object of any suit in whole or in part, the suit shall  
2 be brought in the county where the land or any portion of the  
3 land is situate; [~~(2)~~] provided that [~~where~~] if such lands are  
4 located in more than one county and are contiguous, [~~that~~] the  
5 suit may be brought as to all of the lands in any county in  
6 which a portion of the lands is situate, with the same force  
7 and effect as though the suit had been prosecuted in each  
8 county in which any of the lands are situate. In all such  
9 cases in which suit is prosecuted in one county as to  
10 contiguous lands in more than one county, notice of lis pendens  
11 shall be filed pursuant to Sections 38-1-14 and 38-1-15 NMSA  
12 1978 in each county. For purposes of service of process  
13 pursuant to Rule [~~4~~] 1-004 of the Rules of Civil Procedure for  
14 the District Courts, any such suit involving contiguous lands  
15 located in more than one county shall be deemed pending in each  
16 county in which any portion of the land is located from the  
17 date of filing of the lis pendens notice.

18 E. Suits for trespass on land shall be brought as  
19 provided in Subsection A of this section or in the county where  
20 the land or any portion of the land is situate.

21 F. Except as provided in Subsection H of this  
22 section, suits may be brought against transient persons or  
23 [~~non-residents~~] nonresidents in any county of this state,  
24 except that suits against foreign corporations admitted to do  
25 business and [~~which~~] that designate and maintain a statutory

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1 agent in this state upon whom service of process may be had  
2 shall only be brought in the county where the plaintiff, or any  
3 one of them in case there is more than one, resides or in the  
4 county where the contract sued on was made or is to be  
5 performed or where the cause of action originated or  
6 indebtedness sued on was incurred or in the county where the  
7 statutory agent designated by the foreign corporation resides.

8 G. Suits against any state officers as such shall  
9 be brought in the court of the county in which their offices  
10 are located, at the capital or in the county where a plaintiff,  
11 or any one of them in case there is more than one, resides,  
12 except that suits against the officers or employees of a state  
13 educational institution as defined in Article 12, Section 11 of  
14 the constitution of New Mexico, as such, shall be brought in  
15 the district court of the county in which the principal office  
16 of the state educational institution is located or the district  
17 court of the county where the plaintiff resides.

18 H. In a claim asserted by a personal representative  
19 pursuant to Section 41-2-3 NMSA 1978, a conservator, guardian  
20 or guardian ad litem appointed pursuant to Chapter 45, Article  
21 5 NMSA 1978 or a third person acting in any representative  
22 capacity, the residence of the person bringing the claim shall  
23 not be considered in determining venue in any civil action.

24 I. Subject to the provisions of Subsection H of  
25 this section, venue in a claim asserting medical malpractice

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1 shall be limited to the county in which the patient received  
2 the medical treatment that is the basis for the medical  
3 malpractice lawsuit. As used in this subsection:

4 (1) "medical malpractice lawsuit" means any  
5 legal proceeding alleging a cause of action arising in this  
6 state against a health care provider for medical treatment,  
7 lack of medical treatment or other claim of departure from  
8 accepted standards of health care that proximately results in  
9 injury to a patient, whether the patient's cause of action  
10 sounds in tort or contract, including actions based on battery,  
11 wrongful death, unfair trade practices or negligent hiring,  
12 supervision, training, retention or credentialing and excluding  
13 a cause of action arising out of nonmedical acts related to the  
14 operation, use or maintenance of a vehicular or aircraft  
15 ambulance; and

16 (2) "patient" means a natural person of any  
17 age who received or should have received health care from a  
18 health care provider."

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

21 "41-5-3. DEFINITIONS.--As used in the Medical Malpractice  
22 Act:

23 A. "advisory board" means the patient's  
24 compensation fund advisory board;

25 B. "control" means equity ownership in a business

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1 entity that:

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

4 (2) has a value of more than fifty percent of  
5 that business entity;

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

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

21 E. "hospital" means a facility licensed as a  
22 hospital in this state that offers ~~[in-patient]~~ inpatient  
23 services, nursing or overnight care on a twenty-four-hour basis  
24 for diagnosing, treating and providing medical, psychological  
25 or surgical care for three or more separate persons who have a

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1 physical or mental illness, disease, injury or rehabilitative  
2 condition or are pregnant and may offer emergency services.

3 "Hospital" includes a hospital's parent corporation, subsidiary  
4 corporations or affiliates if incorporated or registered in New  
5 Mexico; employees and locum tenens providing services at the  
6 hospital; and agency nurses providing services at the hospital.

7 "Hospital" does not mean a person or an entity protected  
8 pursuant to the Tort Claims Act or the Federal Tort Claims Act;

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

20 G. "independent provider" means a doctor of  
21 medicine, doctor of osteopathy, chiropractor, [~~podiatrist~~]  
22 podiatric physician, nurse anesthetist, physician's assistant,  
23 certified nurse practitioner, clinical nurse specialist or  
24 certified nurse-midwife who is not an employee of a hospital or  
25 an outpatient health care facility. "Independent provider"

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1 does not mean a person or an entity protected pursuant to the  
2 Tort Claims Act or the Federal Tort Claims Act. "Independent  
3 provider" includes:

4 (1) a health care facility that is:

5 (a) licensed pursuant to the [~~Public~~  
6 ~~Health Act~~] Health Care Code as an outpatient facility;

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

9 (c) not hospital-controlled; and

10 (2) a business entity that is not a hospital  
11 or an outpatient health care facility that employs or consists  
12 of members who are licensed or certified as doctors of  
13 medicine, doctors of osteopathy, chiropractors, [~~podiatrists~~]  
14 podiatric physicians, nurse anesthetists, physician's  
15 assistants, certified nurse practitioners, clinical nurse  
16 specialists or certified nurse-midwives and the business  
17 entity's employees;

18 H. "insurer" means an insurance company engaged in  
19 writing health care provider malpractice liability insurance in  
20 this state;

21 I. "malpractice claim" includes any cause of action  
22 arising in this state against a health care provider for  
23 medical treatment, lack of medical treatment or other claimed  
24 departure from accepted standards of health care that  
25 proximately results in injury to the patient, whether the

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1 patient's claim or cause of action sounds in tort or contract,  
2 and includes but is not limited to actions based on battery or  
3 wrongful death; "malpractice claim" does not include a cause of  
4 action arising out of the driving, flying or nonmedical acts  
5 involved in the operation, use or maintenance of a vehicular or  
6 aircraft ambulance;

7 J. "medical care and related benefits" means all  
8 reasonable medical, surgical, physical rehabilitation and  
9 custodial services and includes drugs, prosthetic devices and  
10 other similar materials reasonably necessary in the provision  
11 of such services;

12 K. "occurrence" means all ~~[injuries to a patient~~  
13 ~~caused by health care providers' successive acts or omissions~~  
14 ~~that combined concurrently to create a malpractice claim]~~  
15 claims for damages from all persons arising from harm to a  
16 single patient, no matter how many health care providers,  
17 errors or omissions contributed to the harm;

18 L. "outpatient health care facility" means an  
19 entity that is hospital-controlled and is licensed pursuant to  
20 the ~~[Public Health Act]~~ Health Care Code as an outpatient  
21 facility, including ambulatory surgical centers, free-standing  
22 emergency rooms, urgent care clinics, acute care centers and  
23 intermediate care facilities and includes a facility's  
24 employees, locum tenens providers and agency nurses providing  
25 services at the facility. "Outpatient health care facility"

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1 does not include:

- 2 (1) independent providers;
- 3 (2) independent outpatient health care
- 4 facilities; or
- 5 (3) individuals or entities protected pursuant
- 6 to the Tort Claims Act or the Federal Tort Claims Act;

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

8 should have received health care from a health care provider,

9 under a contract, express or implied; and

10 N. "superintendent" means the superintendent of

11 insurance."

12 SECTION 3. Section 41-5-4 NMSA 1978 (being Laws 1976,

13 Chapter 2, Section 4, as amended) is amended to read:

14 "41-5-4. AD DAMNUM CLAUSE--VENUE.--

15 A. A patient or ~~[his]~~ a patient's representative

16 having a malpractice claim for bodily injury or death may file

17 a complaint and demand right of trial by jury in ~~[any]~~ a court

18 of law having requisite jurisdiction and ~~[demand right of trial~~

19 ~~by jury]~~ where venue is proper.

20 B. Venue in a malpractice claim shall be proper

21 when the claim is filed in the county in which the patient

22 received the medical treatment that is the basis for the claim.

23 C. No dollar amount or figure shall be included in

24 the demand in ~~[any]~~ a complaint asserting a malpractice claim

25 and filed after the effective date of this section, but the

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1 request shall be for such damages as are reasonable. This  
2 section shall not prevent a patient or ~~[his]~~ the patient's  
3 representative from alleging a requisite jurisdictional amount  
4 in a malpractice claim filed in a court requiring such an  
5 allegation."

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

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

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

18 B. Except for punitive damages and past and future  
19 medical care and related benefits, the aggregate dollar amount  
20 recoverable by all persons for or arising from any injury or  
21 death to a patient as a result of malpractice shall not exceed  
22 seven hundred fifty thousand dollars (\$750,000) per occurrence  
23 for malpractice claims against independent providers; provided  
24 that ~~[beginning January 1, 2023]~~ on the first day of each  
25 calendar year, the per occurrence limit on recovery shall be

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1 adjusted [~~annually~~] by the prior three-year average consumer  
2 price index for all urban consumers; and provided further that  
3 an adjustment shall not result in a percentage increase in the  
4 per occurrence limit on recovery greater than three percent.

5 C. The aggregate dollar amount recoverable by all  
6 persons for or arising from any injury or death to a patient as  
7 a result of malpractice, except for punitive damages and past  
8 and future medical care and related benefits, shall not exceed  
9 seven hundred fifty thousand dollars (\$750,000) for claims  
10 brought against an independent outpatient health care facility  
11 for an injury or death that occurred in calendar years 2022 and  
12 2023.

13 D. In calendar year 2024 and subsequent years, the  
14 aggregate dollar amount recoverable by all persons for or  
15 arising from an injury or death to a patient as a result of  
16 malpractice, except for punitive damages and past and future  
17 medical care and related benefits, shall not exceed the  
18 following amounts for claims brought against an independent  
19 outpatient health care facility:

20 (1) for an injury or death that occurred in  
21 calendar year 2024, one million dollars (\$1,000,000) per  
22 occurrence; and

23 (2) for an injury or death that occurred in  
24 calendar year 2025 and thereafter, the amount provided in  
25 Paragraph (1) of this subsection, adjusted annually by the

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1 prior three-year average consumer price index for all urban  
2 consumers, per occurrence; provided that an adjustment shall  
3 not result in a percentage increase in the per occurrence limit  
4 on recovery greater than three percent.

5 E. In calendar year 2022 and subsequent calendar  
6 years, the aggregate dollar amount recoverable by all persons  
7 for or arising from any injury or death to a patient as a  
8 result of malpractice, except for punitive damages and past and  
9 future medical care and related benefits, shall not exceed the  
10 following amounts for claims brought against a hospital or a  
11 hospital-controlled outpatient health care facility:

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

15 (2) for an injury or death that occurred in  
16 calendar year 2023, four million five hundred thousand dollars  
17 (\$4,500,000) per occurrence;

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

21 (4) for an injury or death that occurred in  
22 calendar year 2025, five million five hundred thousand dollars  
23 (\$5,500,000) per occurrence;

24 (5) for an injury or death that occurred  
25 in calendar year 2026, six million dollars (\$6,000,000)

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1 per occurrence; and

2 (6) for an injury or death that occurred in  
3 calendar year 2027 and each calendar year thereafter, the  
4 amount provided in Paragraph (5) of this subsection, adjusted  
5 annually by the prior three-year average consumer price index  
6 for all urban consumers, per occurrence; provided that an  
7 adjustment shall not result in a percentage increase in the per  
8 occurrence limit on recovery greater than three percent.

9 F. The aggregate dollar amounts provided in  
10 Subsections B through E of this section include payment to any  
11 person for any number of loss of consortium claims or other  
12 claims per occurrence that arise solely because of the injuries  
13 or death of the patient.

14 G. In jury cases, the jury shall not be given any  
15 instructions dealing with the limitations provided in this  
16 section.

17 H. The value of accrued medical care and related  
18 benefits shall not be subject to any limitation.

19 I. Except for an independent outpatient health care  
20 facility, a health care provider's personal liability is  
21 limited to two hundred fifty thousand dollars (\$250,000) for  
22 monetary damages and medical care and related benefits as  
23 provided in Section 41-5-7 NMSA 1978. Any amount due from a  
24 judgment or settlement in excess of two hundred fifty thousand  
25 dollars (\$250,000) shall be paid from the fund, except as

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1 provided in Subsections J and K of this section.

2 J. An independent outpatient health care facility's  
3 personal liability is limited to five hundred thousand dollars  
4 (\$500,000) for monetary damages and medical care and related  
5 benefits as provided in Section 41-5-7 NMSA 1978. Any amount  
6 due from a judgment or settlement in excess of five hundred  
7 thousand dollars (\$500,000) shall be paid from the fund.

8 K. Until January 1, 2027, amounts due from a  
9 judgment or settlement against a hospital or hospital-  
10 controlled outpatient health care facility in excess of seven  
11 hundred fifty thousand dollars (\$750,000), excluding past and  
12 future medical expenses, shall be paid by the hospital or  
13 hospital-controlled outpatient health care facility and not by  
14 the fund. [~~Beginning January 1, 2027, amounts due from a~~  
15 ~~judgment or settlement against a hospital or hospital-~~  
16 ~~controlled outpatient health care facility shall not be paid~~  
17 ~~from the fund.~~

18 L. ~~The term "occurrence" shall not be construed in~~  
19 ~~such a way as to limit recovery to only one maximum statutory~~  
20 ~~payment if separate acts or omissions cause additional or~~  
21 ~~enhanced injury or harm as a result of the separate acts or~~  
22 ~~omissions. A patient who suffers two or more distinct injuries~~  
23 ~~as a result of two or more different acts or omissions that~~  
24 ~~occur at different times by one or more health care providers~~  
25 ~~is entitled to up to the maximum statutory recovery for each~~

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1 ~~injury.]~~

2 L. As used in this section, "consumer price index"  
3 means the consumer price index for all urban consumers, United  
4 States city average, as published by the United States  
5 department of labor, between the end of December of the  
6 penultimate calendar year and the end of December of the  
7 immediately preceding calendar year."

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

10 "41-5-7. MEDICAL EXPENSES AND PUNITIVE DAMAGES.--

11 A. Awards of past and future medical care and  
12 related benefits shall not be subject to the limitations of  
13 recovery imposed in Section 41-5-6 NMSA 1978.

14 B. The health care provider shall be liable for all  
15 medical care and related benefit payments until the total  
16 payments made by or on behalf of it for monetary damages and  
17 medical care and related benefits combined equals the health  
18 care provider's personal liability limit as provided in  
19 Subsection I of Section 41-5-6 NMSA 1978, after which the  
20 payments shall be made by the fund.

21 C. Awards of past or future medical care and  
22 related benefits shall not be paid from the fund unless the  
23 amount of the award was actually paid by or on behalf of an  
24 injured person and accepted by a health care provider as  
25 payment for services rendered.

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1                   D. Awards of future medical care and related  
2 benefits shall only be paid from the fund as the expenses are  
3 incurred. Payments from the fund for future medical care and  
4 related benefits shall not be paid in a lump-sum payment.

5                   ~~[G.]~~ E. Beginning January 1, 2027, any amounts due  
6 from a judgment or settlement against a hospital or an  
7 outpatient health care facility shall not be paid from the fund  
8 if the injury or death occurred after December 31, 2026.

9                   ~~[D.]~~ F. This section shall not be construed to  
10 prevent a patient and a health care provider from entering into  
11 a settlement agreement whereby medical care and related  
12 benefits shall be provided for a limited period of time only or  
13 to a limited degree.

14                   ~~[E.]~~ G. A judgment of punitive damages against a  
15 health care provider shall be the personal liability of the  
16 health care provider. Punitive damages may only be awarded if  
17 the prevailing party provides clear and convincing evidence  
18 demonstrating that the acts of the health care provider were  
19 made with deliberate disregard for the rights or safety of  
20 others. Punitive damages shall not be paid from the fund or  
21 from the proceeds of the health care provider's insurance  
22 contract unless the contract expressly provides coverage.  
23 Nothing in Section 41-5-6 NMSA 1978 precludes the award of  
24 punitive damages to a patient. Nothing in this subsection  
25 authorizes the imposition of liability for punitive damages

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1 where that imposition would not be otherwise authorized by law.

2 H. A punitive damage award shall not exceed an  
3 amount greater than three times the compensatory damage award."

4 SECTION 6. Section 41-5-25 NMSA 1978 (being Laws 1992,  
5 Chapter 33, Section 9, as amended) is amended to read:

6 "41-5-25. PATIENT'S COMPENSATION FUND--THIRD-PARTY  
7 ADMINISTRATOR--ACTUARIAL STUDIES--SURCHARGES--CLAIMS--  
8 PRORATION--PROOFS OF AUTHENTICITY.--

9 A. The "patient's compensation fund" is created as  
10 a nonreverting fund in the state treasury. The fund consists  
11 of money from surcharges, income from investment of the fund  
12 and any other money deposited to the credit of the fund. The  
13 fund shall be held in trust, deposited in a segregated account  
14 in the state treasury and invested by the state investment  
15 office and shall not become a part of or revert to the general  
16 fund or any other fund of the state. Money from the fund shall  
17 be expended only for the purposes of and to the extent provided  
18 in the Medical Malpractice Act. All approved expenses of  
19 collecting, protecting and administering the fund, including  
20 purchasing insurance for the fund, shall be paid from the fund.

21 B. The superintendent shall contract for the  
22 administration and operation of the fund with a qualified,  
23 licensed third-party administrator, selected in consultation  
24 with the advisory board, no later than January 1, 2022. The  
25 third-party administrator shall provide an annual audit of the

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1 fund to the superintendent.

2 C. The superintendent, as custodian of the fund,  
3 and the third-party administrator shall be notified by the  
4 health care provider or the health care provider's insurer  
5 within thirty days of service on the health care provider of a  
6 complaint asserting a malpractice claim brought in a court in  
7 this state against the health care provider.

8 D. The superintendent, as custodian of the fund, or  
9 the superintendent's designee, shall evaluate and approve a  
10 proposed settlement if any amount of the proposed settlement is  
11 to be paid from the fund.

12 ~~[D-]~~ E. The superintendent shall levy an annual  
13 surcharge on all New Mexico health care providers qualifying  
14 under Section 41-5-5 NMSA 1978. The surcharge shall be  
15 determined by the superintendent with the advice of the  
16 advisory board and based on the annual independent actuarial  
17 study of the fund. The surcharges for health care providers,  
18 including hospitals and outpatient health care facilities whose  
19 qualifications for the fund end on January 1, 2027, shall be  
20 based on sound actuarial principles, using data obtained from  
21 New Mexico claims and loss experience. A hospital or  
22 outpatient health care facility seeking participation in the  
23 fund during the remaining qualifying years shall provide, at a  
24 minimum, the hospital's or outpatient health care facility's  
25 direct and indirect cost information as reported to the federal

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1 centers for medicare and medicaid services for all self-insured  
2 malpractice claims, including claims and paid loss detail, and  
3 the claims and paid loss detail from any professional liability  
4 insurance carriers for each hospital or outpatient health care  
5 facility and each employed health care provider for the past  
6 eight years to the third-party actuary. The same information  
7 shall be available to the advisory board for review, including  
8 financial information and data, and excluding individually  
9 identifying case information, which information shall not be  
10 subject to the Inspection of Public Records Act. The  
11 superintendent, the third-party actuary or the advisory board  
12 shall not use or disclose the information for any purpose other  
13 than to fulfill the duties pursuant to this subsection.

14 ~~[E.]~~ F. The surcharge shall be collected on the  
15 same basis as premiums by each insurer from the health care  
16 provider. The surcharge shall be due and payable within thirty  
17 days after the premiums for malpractice liability insurance  
18 have been received by the insurer from the health care provider  
19 in New Mexico. If the surcharge is collected but not paid  
20 timely, the superintendent may suspend the certificate of  
21 authority of the insurer until the annual premium surcharge is  
22 paid.

23 ~~[F.]~~ G. Surcharges shall be set by October 31 of  
24 each year for the next calendar year. ~~[Beginning in 2021, the~~  
25 ~~surcharges shall be set with the intention of bringing the fund~~

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1 ~~to solvency with no projected deficit by December 31, 2026.]~~

2 All qualified and participating hospitals and outpatient health  
3 care facilities shall cure any fund deficit attributable to  
4 hospitals and outpatient health care facilities by December 31,  
5 2026.

6 ~~[G.]~~ H. If the fund would be exhausted by payment  
7 of all claims allowed during a particular calendar year, then  
8 the amounts paid to each patient and other parties obtaining  
9 judgments shall be prorated, with each such party receiving an  
10 amount equal to the percentage the party's own payment schedule  
11 bears to the total of payment schedules outstanding and payable  
12 by the fund. Any amounts due and unpaid as a result of such  
13 proration shall be paid in the following calendar years.

14 ~~[H.]~~ I. Upon receipt of one of the proofs of  
15 authenticity listed in this subsection, reflecting a judgment  
16 for damages rendered pursuant to the Medical Malpractice Act,  
17 the superintendent shall issue or have issued warrants in  
18 accordance with the payment schedule constructed by the court  
19 and made a part of its final judgment. The only claim against  
20 the fund shall be a voucher or other appropriate request by the  
21 superintendent after the superintendent receives:

22 (1) until January 1, 2022, a certified copy of  
23 a final judgment in excess of two hundred thousand dollars  
24 (\$200,000) against a health care provider;

25 (2) until January 1, 2022, a certified copy of

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underscored material = new  
[bracketed material] = delete

1 a court-approved settlement or certification of settlement made  
2 prior to initiating suit, signed by both parties, in excess of  
3 two hundred thousand dollars (\$200,000) against a health care  
4 provider; or

5 (3) until January 1, 2022, a certified copy of  
6 a final judgment less than two hundred thousand dollars  
7 (\$200,000) and an affidavit of a health care provider or its  
8 insurer attesting that payments made pursuant to Subsection B  
9 of Section 41-5-7 NMSA 1978, combined with the monetary  
10 recovery, exceed two hundred thousand dollars (\$200,000).

11 [~~F~~] J. On or after January 1, 2022, the amounts  
12 specified in Paragraphs (1) through (3) of Subsection [~~H~~] I of  
13 this section shall be two hundred fifty thousand dollars  
14 (\$250,000)."

15 SECTION 7. A new section of the Medical Malpractice Act  
16 is enacted to read:

17 "[NEW MATERIAL] LIMITING ATTORNEY FEES.--An attorney shall  
18 not contract for or collect a contingency fee for representing  
19 a person seeking damages in a malpractice claim in an amount  
20 that exceeds:

21 A. twenty-five percent of the dollar amount  
22 recovered, if the recovery is pursuant to a settlement  
23 agreement and release of all claims executed by all parties  
24 prior to the start of a trial or an arbitration proceeding; or

25 B. thirty-three percent of the dollar amount

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

1 recovered, if the recovery is pursuant to settlement,  
2 arbitration or judgment that occurs after a trial or  
3 arbitration proceeding begins."

4 SECTION 8. A new section of the Medical Malpractice Act  
5 is enacted to read:

6 "[NEW MATERIAL] PATIENT SAFETY IMPROVEMENT FUND--  
7 CREATED.--

8 A. The "patient safety improvement fund" is created  
9 in the state treasury and shall be administered by the  
10 department of health. The patient safety improvement fund  
11 consists of distributions, appropriations, gifts, grants and  
12 donations. Money in the patient safety improvement fund shall  
13 be invested by the state treasurer, and income from investment  
14 of the patient safety improvement fund shall be credited to the  
15 patient safety improvement fund. Money in the patient safety  
16 improvement fund shall be expended only as provided in this  
17 section.

18 B. Money in the patient safety improvement fund is  
19 subject to appropriation by the legislature to the department  
20 of health for the purposes of improving patient safety and  
21 health care outcomes. All payments made from the patient  
22 safety improvement fund shall be made by warrant of the  
23 secretary of finance and administration pursuant to vouchers  
24 signed by the secretary of health or the secretary's authorized  
25 representative. Any unexpended or unencumbered balance

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

1 remaining in the patient safety improvement fund at the end of  
2 a fiscal year shall not revert but shall remain to the credit  
3 of the patient safety improvement fund."

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