

HOUSE BILL 107

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

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AN ACT

RELATING TO HEALTH CARE; AMENDING DEFINITIONS IN THE MEDICAL MALPRACTICE ACT; LIMITING THE AMOUNT OF DAMAGES THAT CAN BE AWARDED DUE TO A MEDICAL MALPRACTICE CLAIM; REQUIRING PAYMENTS FROM THE PATIENT'S COMPENSATION FUND TO BE MADE AS EXPENSES ARE INCURRED; LIMITING THE AVAILABILITY OF PUNITIVE DAMAGES IN MEDICAL MALPRACTICE CLAIMS; LIMITING ATTORNEY FEES IN MALPRACTICE CLAIMS.

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;

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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 that business entity;

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

D. "health care provider" means a person, a

corporation, an organization, a facility or an institution licensed or certified by this state to provide health care or professional services as a doctor of medicine, a hospital, an outpatient health care facility, a doctor of osteopathy, a chiropractor, [pediatrician] a podiatric physician, a nurse anesthetist, a physician's assistant, a certified nurse-practitioner, a clinical nurse specialist or a certified nurse-midwife or a business entity that is organized, incorporated or formed pursuant to the laws of New Mexico that provides health care services primarily through natural persons identified in this subsection. "Health care provider" does not mean a person or entity protected pursuant to the Tort Claims Act or the Federal Tort Claims Act;

E. "hospital" means a facility licensed as a hospital in this state that offers ~~in-patient~~ inpatient services, nursing or overnight care on a twenty-four-hour basis for diagnosing, treating and providing medical, psychological

1 or surgical care for three or more separate persons who have a
2 physical or mental illness, disease, injury or rehabilitative
3 condition or are pregnant and may offer emergency services.
4 "Hospital" includes a hospital's parent corporation, subsidiary
5 corporations or affiliates if incorporated or registered in New
6 Mexico; employees and locum tenens providing services at the
7 hospital; and agency nurses providing services at the hospital.
8 "Hospital" does not mean a person or an entity protected
9 pursuant to the Tort Claims Act or the Federal Tort Claims Act;

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

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

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

5 (1) a health care facility that is:

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

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

10 (c) not hospital-controlled; and

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

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

14 "41-5-6. LIMITATION OF RECOVERY.--

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

24 B. Except for punitive damages and past and future
25 medical care and related benefits, the aggregate dollar amount

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1 recoverable by all persons for or arising from any injury or
2 death to a patient as a result of malpractice shall not exceed
3 seven hundred fifty thousand dollars (\$750,000) per occurrence
4 for malpractice claims against independent providers; provided
5 that, beginning January 1, 2023, the per occurrence limit on
6 recovery shall be adjusted annually by the consumer price index
7 for all urban consumers.

8 C. The aggregate dollar amount recoverable by all
9 persons for or arising from any injury or death to a patient as
10 a result of malpractice, except for punitive damages and past
11 and future medical care and related benefits, shall not exceed
12 seven hundred fifty thousand dollars (\$750,000) for claims
13 brought against an independent outpatient health care facility
14 for an injury or death that occurred in calendar years 2022 and
15 2023.

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

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

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(2) for an injury or death that occurred in calendar year 2025 and thereafter, the amount provided in Paragraph (1) of this subsection, adjusted annually by the prior three-year average consumer price index for all urban consumers, per occurrence.

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

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

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

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

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

(5) for an injury or death that occurred in

1 calendar year 2026, six million dollars (\$6,000,000) per
2 occurrence; and

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

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

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

16 [H.] C. Except as provided in Section 41-5-7 NMSA
17 1978, the value of accrued medical care and related benefits
18 shall not be subject to any limitation.

19 [I. Except for an independent outpatient health
20 care facility] D. A health care provider's personal liability
21 is limited to [two hundred fifty thousand dollars (\$250,000)]
22 two hundred thousand dollars (\$200,000) for monetary damages
23 and medical care and related benefits as provided in Section
24 41-5-7 NMSA 1978. Any amount due from a judgment or settlement
25 in excess of [two hundred fifty thousand dollars (\$250,000)]

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1 two hundred thousand dollars (\$200,000) shall be paid from the
2 fund ~~[except as provided in Subsections J and K of this~~
3 section.

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

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

20 L. ~~The term "occurrence" shall not be construed in~~
21 ~~such a way as to limit recovery to only one maximum statutory~~
22 ~~payment if separate acts or omissions cause additional or~~
23 ~~enhanced injury or harm as a result of the separate acts or~~
24 ~~omissions. A patient who suffers two or more distinct injuries~~
25 ~~as a result of two or more different acts or omissions that~~

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1 ~~occur at different times by one or more health care providers~~
2 ~~is entitled to up to the maximum statutory recovery for each~~
3 ~~injury].~~"

4 SECTION 3. Section 41-5-7 NMSA 1978 (being Laws 1992,
5 Chapter 33, Section 5, as amended) is amended to read:

6 "41-5-7. MEDICAL EXPENSES AND PUNITIVE DAMAGES.--

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

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

17 C. ~~[Beginning January 1, 2027, any amounts due from~~
18 ~~a judgment or settlement against a hospital or outpatient~~
19 ~~health care facility shall not be paid from the fund if the~~
20 ~~injury or death occurred after December 31, 2026]~~ Payments made
21 from the fund for medical care and related benefits shall be
22 made as expenses are incurred.

23 D. This section shall not be construed to prevent a
24 patient and a health care provider from entering into a
25 settlement agreement whereby medical care and related benefits

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1 shall be provided for a limited period of time only or to a
2 limited degree.

3 E. A judgment of punitive damages against a health
4 care provider shall be the personal liability of the health
5 care provider. Punitive damages may only be awarded if the
6 prevailing party demonstrates beyond a reasonable doubt that
7 the health care provider acted with malice, willful intent to
8 harm or wanton disregard for the rights or safety of others.
9 Punitive damages shall not be paid from the fund or from the
10 proceeds of the health care provider's insurance contract
11 unless the contract expressly provides coverage. Nothing in
12 Section 41-5-6 NMSA 1978 precludes the award of punitive
13 damages to a patient. Nothing in this subsection authorizes
14 the imposition of liability for punitive damages where that
15 imposition would not be otherwise authorized by law.

16 F. A punitive damage award against:

17 (1) a hospital or a hospital-controlled
18 outpatient health care facility shall not be in an amount that
19 exceeds three times the applicable limitation on compensatory
20 damages provided in Section 41-5-6 NMSA 1978; or

21 (2) any other health care provider shall not
22 be in an amount that exceeds the applicable limitation on
23 compensatory damages provided in Section 41-5-6 NMSA 1978."

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

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1 "[NEW MATERIAL] LIMITING ATTORNEY FEES.--

2 A. An attorney shall not contract for or collect a
3 contingency fee for representing a person seeking damages in a
4 malpractice claim in an amount that exceeds:

5 (1) thirty percent of the first two hundred
6 fifty thousand dollars (\$250,000) recovered pursuant to a
7 settlement agreement, an arbitration award or a judgment;

8 (2) twenty-five percent of the portion
9 recovered pursuant to a settlement agreement, an arbitration
10 award or a judgment that is more than two hundred fifty
11 thousand dollars (\$250,000) but not more than five hundred
12 thousand dollars (\$500,000) in value;

13 (3) twenty percent of the portion recovered
14 pursuant to a settlement agreement, an arbitration award or a
15 judgment that is more than five hundred thousand dollars
16 (\$500,000) but not more than one million dollars (\$1,000,000)
17 in value; and

18 (4) fifteen percent of the portion recovered
19 pursuant to a settlement agreement, an arbitration award or a
20 judgment that is more than one million dollars (\$1,000,000) in
21 value.

22 B. Any amount recovered pursuant to a settlement
23 agreement, an arbitration award or a judgment for a malpractice
24 claim that is covered by the fund shall not contribute to an
25 attorney's contingency fee."

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1 **SECTION 5. APPLICABILITY.--**The provisions of this act
2 apply to all claims for medical malpractice that arise on or
3 after the effective date of this act.

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