

1 SENATE BILL 173

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

3 INTRODUCED BY

4 Rex Wilson

10 AN ACT

11 RELATING TO INSURANCE; EXPANDING THE TYPES OF MEDICAL
12 MALPRACTICE LIABILITY INSURANCE THAT HEALTH CARE PROVIDERS CAN
13 OBTAIN TO QUALIFY WITHIN THE MEDICAL MALPRACTICE ACT.

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

16 **SECTION 1.** Section 41-5-5 NMSA 1978 (being Laws 1992,
17 Chapter 33, Section 2, as amended) is amended to read:

18 "41-5-5. QUALIFICATIONS.--

19 A. Unless otherwise provided in this section, to be
20 qualified under the provisions of the Medical Malpractice Act,
21 a health care provider ~~[except an independent outpatient health~~
22 ~~care facility]~~ shall:

23 (1) establish its financial responsibility by
24 filing proof with the superintendent that the health care
25 provider is insured by a policy of malpractice liability

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1 insurance issued by an authorized insurer in the amount of at
2 least two hundred fifty thousand dollars (\$250,000) per
3 [occurrence] malpractice claim or by having continuously on
4 deposit the sum of seven hundred fifty thousand dollars
5 (\$750,000) in cash with the superintendent or such other like
6 deposit as the superintendent may allow by rule; provided that
7 [hospitals and hospital-controlled outpatient health care
8 facilities that establish financial responsibility through a
9 policy of malpractice liability insurance may use any form of
10 malpractice insurance; and provided further that] for
11 independent providers, in the absence of an additional deposit
12 or policy as required by this subsection, the deposit or policy
13 shall provide coverage for not more than three separate
14 [occurrences] malpractice claims; and

15 (2) pay the surcharge assessed on health care
16 providers by the superintendent pursuant to Section 41-5-25
17 NMSA 1978.

18 B. To be qualified under the provisions of the
19 Medical Malpractice Act, an independent outpatient health care
20 facility shall:

21 (1) establish its financial responsibility by
22 filing proof with the superintendent that the health care
23 provider is insured by a policy of malpractice liability
24 insurance issued by an authorized insurer in the amount of at
25 least five hundred thousand dollars (\$500,000) per [occurrence]

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malpractice claim or by having continuously on deposit the sum of one million five hundred thousand dollars (\$1,500,000) in cash with the superintendent or other like deposit as the superintendent may allow by rule; provided that for independent outpatient health care facilities, in the absence of an additional deposit or policy as required by this subsection, the deposit or policy shall provide coverage for not more than three separate [occurrences] malpractice claims; and

(2) pay the surcharge assessed on independent outpatient health care facilities by the superintendent pursuant to Section 41-5-25 NMSA 1978.

C. For hospitals or hospital-controlled outpatient health care facilities electing to be covered under the Medical Malpractice Act, the superintendent shall determine, based on a risk assessment of each hospital or hospital-controlled outpatient health care facility, each hospital's or hospital-controlled outpatient health care facility's base coverage or deposit and additional charges for the fund. The superintendent shall arrange for an actuarial study before determining base coverage or deposit and surcharges.

D. A health care provider that establishes financial responsibility through a policy of malpractice liability insurance may use claims-made or occurrence-based malpractice insurance; provided that a health care provider covered by claims-made malpractice insurance shall obtain tail

1 coverage whenever the claims-made malpractice insurance policy
2 is terminated.

3 [D-] E. A health care provider not qualifying under
4 this section shall not have the benefit of any of the
5 provisions of the Medical Malpractice Act in the event of a
6 malpractice claim against it; provided that beginning July 1,
7 2021, hospitals and hospital-controlled outpatient health care
8 facilities shall not participate in the medical review process,
9 and beginning January 1, 2027, hospitals and hospital-
10 controlled outpatient health care facilities shall have the
11 benefits of the other provisions of the Medical Malpractice Act
12 except participation in the fund.

13 F. For the purposes of this section:

14 (1) "claims-made malpractice insurance" means
15 a medical malpractice liability insurance policy that provides
16 coverage only if the policy is active both when the alleged
17 malpractice occurred and when the malpractice claim is filed;

18 (2) "occurrence-based malpractice insurance"
19 means a medical malpractice liability insurance policy that
20 provides coverage for any alleged malpractice that occurred
21 while the policy was active, regardless of when a malpractice
22 claim is filed; and

23 (3) "tail coverage" means a medical
24 malpractice liability insurance policy that is purchased by a
25 health care provider when a claims-made malpractice insurance

1 policy is terminated to provide coverage for future malpractice
2 claims arising from alleged malpractice that occurred while the
3 claims-made malpractice insurance policy was active."

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