HOUSE BILL 267

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO MEDICAL MALPRACTICE; AMENDING THE MEDICAL MALPRACTICE ACT TO CHANGE THE NAME OF THE ACT, TO CLARIFY THAT BUSINESS ENTITIES PROVIDING HEALTH CARE SERVICES ARE HEALTH CARE PROVIDERS UNDER THE ACT, TO RAISE THE RECOVERABLE LIMITS, TO CREATE SPECIFIC LIABILITY AND RECOVERABLE LIMITS FOR HOSPITALS, TO CREATE THE HOSPITAL PATIENT'S COMPENSATION FUND AND TO PROHIBIT THE DISCLOSURE OF CERTAIN CONFIDENTIAL INFORMATION; MAKING AN APPROPRIATION.

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

SECTION 1. Section 41-5-1 NMSA 1978 (being Laws 1976, Chapter 2, Section 1, as amended) is amended to read:

"41-5-1. SHORT TITLE.--Chapter 41, Article 5 NMSA 1978 may be cited as the [~~"Medical Malpractice Act"~~] "New Mexico Medical Professional Liability Act"."

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

"41-5-2. PURPOSE OF ACT--PURPOSE OF AMENDMENT.--

A. The purpose of the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act is to promote the health and welfare of the people of New Mexico by making available professional liability insurance for health care providers in New Mexico.

B. The purpose of the 2011 amendment to the definition of "health care provider" in Section 41-5-3 NMSA 1978 is not intended to expand or alter the definition but is intended to clarify that "health care provider" includes business entities that provide health care services."

SECTION 3. 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~~] New Mexico Medical Professional Liability Act:

A. "business entity" means a corporation, including a professional corporation and a nonprofit corporation, a limited liability company, a limited liability partnership, a limited partnership or a general partnership organized or formed under the laws of New Mexico or qualified to conduct business in New Mexico as a foreign corporation, limited liability company, limited liability partnership or limited partnership;

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[~~A.~~] B. "health care provider" means:

(1) a natural person [~~corporation, organization, facility or institution licensed or certified by this state to provide health care or professional services as a doctor of medicine, hospital, outpatient health care facility, doctor of osteopathy, chiropractor, podiatrist, nurse anesthetist or physician's assistant~~] licensed to practice medicine or otherwise provide health care services pursuant to a professional or occupational license;

(2) a hospital;

(3) an outpatient health care facility;

(4) a business entity, other than a hospital or an outpatient health care facility, that provides health care services primarily through persons licensed to practice medicine or that otherwise provide health care services in New Mexico pursuant to a professional or occupational license; or

(5) an officer, employee or agent of a hospital, hospital affiliate, outpatient health care facility or business entity acting in the course and within the scope of the individual's office, employment or agency;

C. "controlled" or "control" means:

(1) with respect to a corporation, ownership of stock representing:

(a) more than fifty percent of the total combined voting power of all classes of stock entitled to vote;

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and

(b) more than fifty percent of all other classes of stock of the corporation; and

(2) with respect to another business entity, ownership of equity representing:

(a) more than fifty percent of the total combined voting power of all of the equity interests entitled to vote; and

(b) more than fifty percent of all other equity interests of the business entity;

D. "hospital" means a business entity licensed to operate a hospital by the department of health;

E. "hospital affiliate" means an outpatient health care facility or other business entity qualifying as a health care provider that is controlled by, or under common control with, a hospital;

[~~B.~~] F. "insurer" means an insurance company engaged in writing health care provider malpractice liability insurance in this state, except that "insurer" does not include an insurance company that is not covered under the provisions of the Property and Casualty Insurance Guaranty Law;

[~~C.~~] G. "malpractice claim" includes any cause of action arising in this state against a health care provider for medical treatment, lack of medical treatment, negligent hiring, supervision, training or credentialing or other claimed

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departure from accepted standards of health care [~~which~~] that proximately results in injury to the patient, whether the patient's claim or cause of action sounds in tort or contract, and includes but is not limited to actions based on battery or wrongful death; "malpractice claim" does not include a cause of action arising out of the driving, flying or nonmedical acts involved in the operation, use or maintenance of a vehicular or aircraft ambulance;

[~~D.~~] H. "medical care and related benefits" means all reasonable medical, surgical, physical rehabilitation and custodial services and includes drugs, prosthetic devices and other similar materials reasonably necessary in the provision of such services;

I. "outpatient health care facility" means a business entity licensed to operate an outpatient health care facility by the department of health;

[~~E.~~] J. "patient" means a natural person who received or should have received health care from a licensed health care provider, under a contract, express or implied; [~~and~~]

K. "personal information" means information that identifies an individual or a business entity, including the individual or business entity's name, address or telephone number;

L. "professional or occupational license" means a

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license to practice medicine or provide health care services pursuant to the Optometry Act; the Nursing Practice Act; the Chiropractic Physician Practice Act; the Medical Practice Act; the Podiatry Act; the Professional Psychologist Act; Chapter 61, Article 10 NMSA 1978; the Osteopathic Physicians' Assistants Act; the Occupational Therapy Act; the Physical Therapy Act; or the Dental Health Care Act; and

[~~F.~~] M. "superintendent" means the superintendent of insurance of this state."

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

"41-5-5. QUALIFICATIONS.--

A. To be qualified under the provisions of the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act, a health care provider, other than a hospital or hospital affiliate, shall:

(1) establish its financial responsibility by filing proof with the superintendent that the health care provider is insured by a policy of malpractice liability insurance issued by an authorized insurer in the amount of at least two hundred thousand dollars ($200,000) per occurrence [~~or for an individual health care provider, excluding hospitals and outpatient health care facilities, by having continuously on deposit the sum of six hundred thousand dollars ($600,000) in cash with the superintendent or such other like deposit as~~

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~~the superintendent may allow by rule or regulation; provided that 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~~]; and

(2) pay the surcharge assessed on health care providers by the superintendent pursuant to Section 41-5-25 NMSA 1978 for the patient's compensation fund.

[~~B. For hospitals or 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 outpatient health care facility, each hospital's or outpatient health care facility's base coverage or deposit and additional charges for the patient's compensation fund. The superintendent shall arrange for an actuarial study, as provided in Section 41-5-25 NMSA 1978.~~]

B. To be qualified under the provisions of the New Mexico Medical Professional Liability Act, a hospital affiliate shall:

(1) establish its financial responsibility by filing proof with the superintendent that the hospital affiliate is insured by a policy of malpractice liability insurance issued by an authorized insurer in the amount of at least two hundred thousand dollars ($200,000) per occurrence; and

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(2) pay the surcharge assessed on health care providers by the superintendent pursuant to Section 41-5-25.1 NMSA 1978 for the hospital patient's compensation fund.

C. To be qualified under the provisions of the New Mexico Medical Professional Liability Act, a hospital shall:

(1) establish its financial responsibility by filing proof with the superintendent that the hospital is insured by a policy of malpractice liability insurance issued by an authorized insurer in an amount equal to:

(a) at least two hundred thousand dollars ($200,000) per occurrence, in order to be qualified through December 31, 2011; and

(b) at least six hundred thousand dollars ($600,000) per occurrence, in order to be qualified on or after January 1, 2012; and

(2) pay the surcharge assessed on hospitals by the superintendent pursuant to Section 41-5-25.1 NMSA 1978 for the hospital patient's compensation fund.

[~~C.~~] D. A health care provider not qualifying under this section shall not have the benefit of any of the provisions of the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act in the event of a malpractice claim against [~~it~~] that provider."

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

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"41-5-6. LIMITATION OF RECOVERY--PROVIDERS OTHER THAN HOSPITALS.--

A. Except for punitive damages and medical care and related benefits, and except as provided for hospitals in Subsection A of Section 41-5-6.1 NMSA 1978, the aggregate dollar amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice shall not exceed [~~six hundred thousand dollars ($600,000) per occurrence~~] the following amounts:

(1) six hundred thousand dollars ($600,000) per occurrence for acts of malpractice occurring prior to January 1, 2012; and

(2) seven hundred thousand dollars ($700,000) per occurrence for acts of malpractice occurring on or after January 1, 2012.

B. In jury cases, the jury shall not be given any instructions dealing with [~~this limitation~~] limitations specified in Subsection A of this section.

[~~B.~~] C. The value of accrued medical care and related benefits shall not be subject to the [~~six hundred thousand dollar ($600,000) limitation~~] limitations specified in Subsection A of this section.

[~~C.~~] D. Monetary damages shall not be awarded for future medical expenses in malpractice claims.

[~~D. A health care provider's personal liability~~]

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E. Except as provided for hospitals pursuant to Subsection D of Section 41-5-6.1 NMSA 1978, the personal liability of a health care provider is limited to two hundred thousand dollars ($200,000) for monetary damages and medical care and related benefits [~~as provided in Section 41-5-7 NMSA 1978~~]. Any amount due from a judgment or settlement against a health care provider, other than a hospital affiliate, in excess of two hundred thousand dollars ($200,000) shall be paid from the patient's compensation fund, as provided in Section 41-5-25 NMSA 1978. Any amount due from a judgment or settlement against a hospital affiliate in excess of two hundred thousand dollars ($200,000) shall be paid from the hospital patient's compensation fund, as provided in Section 41-5-25.1 NMSA 1978.

[~~E. For the purposes of Subsections A and B of this section, the six hundred thousand dollar ($600,000) aggregate amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice shall apply only to malpractice occurring on or after April 1, 1995.~~]

F. Nothing in this section shall be deemed to create any new claims or causes of action of any kind or character whatsoever against hospitals or other business entities.

G. In the event of a judgment against a hospital, a hospital affiliate, an outpatient health care facility or

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another business entity for any injury or death to a patient as a result of the malpractice of an officer, agent or employee of the hospital, hospital affiliate, outpatient health care facility or other business entity acting in the course and within the scope of the individual's office, employment or agency:

(1) the total amount recoverable, excluding punitive damages and medical care and related benefits, shall not exceed the amount set forth in Subsection A of this section; and

(2) the total personal liability of the hospital, hospital affiliate, outpatient health care facility or other business entity and the officer, agent or employee of the hospital, hospital affiliate, outpatient health care facility or other business entity for monetary damages and medical care and related benefits shall not exceed the amount set forth in Subsection E of this section."

SECTION 6. A new section of the New Mexico Medical Professional Liability Act, Section 41-5-6.1 NMSA 1978, is enacted to read:

"41-5-6.1. [NEW MATERIAL] LIMITATION OF RECOVERY--HOSPITALS.--

A. Except for punitive damages and medical care and related benefits, the aggregate dollar amount recoverable by all persons from a hospital for or arising from injury or death

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to a patient as a result of malpractice, other than malpractice arising from the conduct of an officer, agent or employee of the hospital acting in the course and within the scope of the individual's office, employment or agency, shall not exceed one million five hundred thousand dollars ($1,500,000) per occurrence. In jury cases, the jury shall not be given any instructions dealing with this limitation.

B. The value of accrued medical care and related benefits shall not be subject to the limitation set forth in Subsection A of this section.

C. Monetary damages shall not be awarded for future medical expenses in malpractice claims.

D. The personal liability of a hospital for monetary damages and medical care and related benefits for acts of malpractice, other than malpractice arising from the conduct of an officer, agent or employee of the hospital acting in the course and within the scope of the individual's office, employment or agency, is limited to six hundred thousand dollars ($600,000). Any amount due from a judgment or settlement in excess of six hundred thousand dollars ($600,000) for acts of malpractice, other than malpractice arising from the conduct of an officer, agent or employee of the hospital acting in the course and within the scope of the individual's office, employment or agency, shall be paid from the hospital patient's compensation fund, as provided in Section 41-5-25.1

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NMSA 1978.

E. Nothing in this section shall be deemed to create any new claims or causes of action of any kind or character whatsoever against hospitals.

F. The limitations of this section shall apply only to an act of malpractice occurring on or after January 1, 2012. The limitations of Section 41-5-6 NMSA 1978 shall apply to an act of malpractice occurring prior to January 1, 2012."

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

"41-5-7. FUTURE MEDICAL EXPENSES--PUNITIVE DAMAGES.--

A. In all malpractice claims where liability is established, the jury shall be given a special interrogatory asking if the patient is in need of future medical care and related benefits. No inquiry shall be made concerning the value of future medical care and related benefits, and evidence relating to the value of future medical care shall not be admissible. In actions upon malpractice claims tried to the court, where liability is found, the court's findings shall include a recitation that the patient is or is not in need of future medical care and related benefits.

B. Except as provided in Section 41-5-10 NMSA 1978, once a judgment is entered in favor of a patient who is found to be in need of future medical care and related benefits or a settlement is reached between a patient and health care

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provider in which the provision of medical care and related benefits is agreed upon, and continuing as long as medical or surgical attention is reasonably necessary, the patient shall be furnished with all medical care and related benefits directly or indirectly made necessary by the health care provider's malpractice, subject to a semi-private room limitation in the event of hospitalization, unless the patient refuses to allow them to be so furnished.

C. Awards of future medical care and related benefits shall not be subject to the [~~six hundred thousand dollar ($600,000) limitation imposed in Section 41-5-6 NMSA 1978~~] applicable limitation imposed in Subsection A of Section 41-5-6 NMSA 1978 or in Subsection A of Section 41-5-6.1 NMSA 1978.

D. Payment for medical care and related benefits shall be made as expenses are incurred.

E. The health care provider shall be liable for all medical care and related benefit payments until the total payments made by or on behalf of [~~it~~] the health care provider for monetary damages and medical care and related benefits combined equals [~~two hundred thousand dollars ($200,000), after which the payments shall be made by the patient's compensation fund~~] the applicable maximum liability amount of Subsection E of Section 41-5-6 NMSA 1978 or Subsection D of Section 41-5-6.1 NMSA 1978. Amounts due for medical care and related benefits

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in excess of the maximum liability amount shall be paid from the patient's compensation fund or the hospital patient's compensation fund, as applicable.

F. This section shall not be construed to prevent a patient and a health care provider from entering into a settlement agreement whereby medical care and related benefits shall be provided for a limited period of time only or to a limited degree.

G. The court in a supplemental proceeding shall estimate the value of the future medical care and related benefits reasonably due the patient on the basis of evidence presented to it. That figure shall not be included in any award or judgment but shall be included in the record as a separate court finding.

H. In an action against a health care provider seeking recovery of punitive damages, the plaintiff must prove, by clear and convincing evidence, fraudulent, malicious or outrageous conduct by the health care provider. No award of punitive damages against a health care provider shall exceed the lesser of the following amounts, and, in jury cases, the jury shall not be given any instructions relating to the limitations of this subsection:

(1) an amount equal to twice the amount of any judgment against the health care provider for compensatory damages, excluding any award for medical care and related

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benefits; or

(2) an amount equal to twice the applicable limitation on recovery against the health care provider, as provided in Subsection E of Section 41-5-6 or Subsection D of Section 41-5-6.1 NMSA 1978.

[~~H.~~] I. A judgment of punitive damages against a health care provider shall be the personal liability of the health care provider. Punitive damages shall not be paid from the patient's compensation fund or the hospital patient's compensation fund or from the proceeds of the health care provider's insurance contract unless the contract expressly provides coverage. Nothing in Section 41-5-6 or 41-5-6.1 NMSA 1978 precludes the award of punitive damages to a patient. Nothing in this subsection authorizes the imposition of liability for punitive damages on a derivative basis where that imposition would not be otherwise authorized by law."

SECTION 8. Section 41-5-8 NMSA 1978 (being Laws 1976, Chapter 2, Section 8) is amended to read:

"41-5-8. MEDICAL BENEFITS PRIOR TO JUDGMENT.--A health care provider named as a defendant in a malpractice claim or named as a respondent in a proceeding before the New Mexico medical review commission [~~created in the Medical Malpractice Act~~] shall have the option of paying for the patient's medical care and related benefits at any time prior to the entry of a judgment. Except as provided in Section [~~11 of the Medical~~

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~~Malpractice Act~~] 41-5-11 NMSA 1978, evidence of a health care provider's payment for such benefits shall not be admissible in the trial of the malpractice claim brought against [~~it~~] the health care provider."

SECTION 9. Section 41-5-10 NMSA 1978 (being Laws 1976, Chapter 2, Section 10) is amended to read:

"41-5-10. PATIENT--FUTURE EXAMINATIONS AND HEARINGS.--

A. Any health care provider shall be entitled to have a physical examination of the patient by a physician of the health care provider's choice from time to time for the purpose of determining the patient's continued need of medical care and related benefits, subject to the following requirements:

(1) notice in writing shall be delivered to or served upon the patient specifying the time and place where it is intended to conduct the examination. Such notice [~~must~~] shall be given at least ten days prior to the time stated in the notice. Delivery by certified mail is permitted;

(2) [~~such~~] the examination shall be by a physician qualified to practice medicine under the law of this state or of the state or county [~~wherein~~] in which the patient resides;

(3) the place at which [~~such~~] the examination is to be conducted shall not involve an unreasonable amount of travel for the patient considering all the circumstances. It

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shall not be necessary for a patient who resides outside this state to come into this state for [~~such~~] an examination unless so ordered by the court;

(4) within thirty days after the examination, the patient shall be compensated by the party requesting the examination for all necessary and reasonable expenses incidental to submitting to the examination, including the reasonable cost of travel, meals, lodging, loss of pay or other like direct expense;

(5) examinations [~~may~~] shall not be required more frequently than at six-month intervals; except that upon application to the court having jurisdiction of the claim and after reasonable cause shown [~~therefor~~], an examination within a shorter interval may be ordered. In considering [~~such~~] the application, the court should exercise care to prevent harassment to the patient;

(6) the patient shall be entitled to have a physician or an attorney of [~~his own~~] choice, or both, present at [~~such~~] the examination. The patient shall pay such physician or attorney [~~himself~~]; and

(7) the patient shall be promptly furnished with a copy of the report of the physical examination made by the physician making the examination on behalf of the health care provider.

B. If a patient fails or refuses to submit to

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examination in accordance with the notice and if the requirements of Subsection A of this section have been satisfied, the court may forfeit all medical care and related benefits [~~which~~] that would accrue or become due to [~~him~~] the patient except for such failure or refusal to submit to examination during the period that [~~he~~] the patient willfully persists in such failure or refusal.

C. If any patient [~~shall persist~~] persists in any injurious practice [~~which~~] that imperils, retards or impairs [~~his~~] recovery or increases [~~his~~] injury or refuses to submit to such medical or surgical treatment as is reasonably essential to promote [~~his~~] recovery, the court may in its discretion reduce or suspend [~~his~~] medical care and related benefits until the injurious practice is discontinued.

D. Any physician selected by the health care provider and paid by the health care provider who [~~shall make or be~~] makes or is present at an examination of the patient conducted [~~in pursuance of~~] pursuant to this section may be required to testify as to the conduct [~~thereof~~] of the examination and the findings made. Communications made by the patient upon such examination to [~~such~~] the physician [~~or physicians~~] shall not be considered privileged.

E. The health care provider or the custodian of the patient's compensation fund or the hospital patient's compensation fund, as applicable, shall pay all reasonable

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legal fees, cost of medical examinations and the cost of the fees of medical expert witnesses in any proceeding in which the patient succeeds in raising [~~his~~] medical care and related benefits or in any unsuccessful proceeding brought by the health care provider or the [~~patient's compensation fund~~] custodian of the patient's compensation fund or the hospital patient's compensation fund to reduce medical care and related benefits."

SECTION 10. Section 41-5-11 NMSA 1978 (being Laws 1976, Chapter 2, Section 11) is amended to read:

"41-5-11. SET-OFF OF ADVANCE PAYMENTS.--

A. Evidence of an advance payment is not admissible until there is a final judgment in favor of the patient, in which event the court shall reduce the judgment to the patient to the extent of the advance payment. In jury cases where there is a factual dispute concerning an alleged advance payment, all questions of fact relating to such an advance payment shall be resolved by the jury after it has reached its verdict. The advance payment shall inure to the exclusive benefit of the health care provider or a party making the payment in its behalf. In the event the advance payment exceeds the liability of the defendant or the insurer making it, the court shall order any adjustment necessary to equitably apportion the amount [~~which~~] that each defendant is obligated to pay, exclusive of costs. In no case shall an advance

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payment in excess of an award be repayable by the person receiving it.

B. If a health care provider should elect to pay for medical care and related benefits at any time prior to the entry of a judgment, as provided in Section [~~8 of the Medical Malpractice Act~~] 41-5-8 NMSA 1978, and subsequently is found not to be liable, its legal and equitable right of recovery for all such payments shall not be foreclosed or prejudiced in any way."

SECTION 11. Section 41-5-12 NMSA 1978 (being Laws 1976, Chapter 2, Section 12) is amended to read:

"41-5-12. CLAIMS FOR COMPENSATION NOT ASSIGNABLE.--A patient's claim for compensation under the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act is not assignable."

SECTION 12. Section 41-5-13 NMSA 1978 (being Laws 1976, Chapter 2, Section 13) is amended to read:

"41-5-13. LIMITATIONS.--No claim for malpractice arising out of an act of malpractice [~~which occurred subsequent to the effective date of the Medical Malpractice Act~~] may be brought against a health care provider unless filed within three years after the date that the act of malpractice occurred, except that a minor under the full age of six years shall have until [~~his~~] the minor's ninth birthday in which to file. This [~~subsection~~] section applies to all persons regardless of

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minority or other legal disability."

SECTION 13. Section 41-5-14 NMSA 1978 (being Laws 1976, Chapter 2, Section 14) is amended to read:

"41-5-14. NEW MEXICO MEDICAL REVIEW COMMISSION.--

A. The "New Mexico medical review commission" is created. The function of the New Mexico medical review commission is to provide panels to review all malpractice claims against health care providers covered by the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act.

B. Those eligible to sit on a panel shall consist of health care providers licensed pursuant to New Mexico law and residing in New Mexico and [~~the~~] members of the state bar.

C. Cases [~~which~~] that a panel will consider include all cases involving any alleged act of malpractice occurring in New Mexico by health care providers qualified under the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act.

D. An attorney shall submit a case for the consideration of a panel, prior to filing a complaint in any district court or other court sitting in New Mexico, by addressing an application, in writing, signed by the patient or [~~his~~] the patient's attorney, to the director of the New Mexico medical review commission.

E. The director of the New Mexico medical review commission [~~will~~] shall be an attorney appointed by and serving

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at the pleasure of the chief justice of the New Mexico supreme court.

F. The chief justice shall set the director's salary and report the [~~same~~] salary to the superintendent in [~~his~~] the superintendent's capacity as custodian of the patient's compensation fund and the hospital patient's compensation fund."

SECTION 14. Section 41-5-20 NMSA 1978 (being Laws 1976, Chapter 2, Section 20) is amended to read:

"41-5-20. PANEL DELIBERATIONS AND DECISION.--

A. The deliberations of the panel shall be and remain confidential. Upon consideration of all the relevant material, the panel shall decide only two questions:

(1) whether there is substantial evidence that the acts complained of occurred and that they constitute malpractice; and

(2) whether there is a reasonable medical probability that the patient was injured [~~thereby~~] by the acts.

B. All votes of the panel on the two questions for decision shall be by secret ballot. The decision shall be by a majority vote of those voting members of the panel who have sat on the entire case. The decision shall be communicated in writing to the parties and attorneys concerned, and a copy [~~thereof~~] shall be retained in the permanent files of the New Mexico medical review commission.

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C. The decision shall in every case be signed for the panel by the [~~chairman~~] chair, who shall vote only in the event the other members of the panel are evenly divided, and shall contain only the conclusions reached by a majority of its members and the number of members, if any, dissenting [~~therefrom~~]; provided, however, that if the vote is not unanimous, the majority may briefly explain the reasoning and basis for their conclusion, and the dissenters may likewise explain the reasons for disagreement.

D. The report of the medical review panel shall not be admissible as evidence in any action subsequently brought in a court of law. A copy of the report shall be sent to the health care provider's professional licensing board.

E. Panelists and witnesses shall have absolute immunity from civil liability for all communications, findings, opinions and conclusions made in the course and scope of duties prescribed by the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act.

F. The panel's decisions shall be without administrative or judicial authority and shall not be binding on any party. The panel shall make no effort to settle or compromise any claim [~~nor~~] or express any opinion on the monetary value of any claim."

SECTION 15. Section 41-5-25 NMSA 1978 (being Laws 1992, Chapter 33, Section 9, as amended) is amended to read:

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"41-5-25. PATIENT'S COMPENSATION FUND.--

A. There is created in the state treasury a "patient's compensation fund" to be [~~collected and received~~] administered by the superintendent for exclusive use for the purposes stated in the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act. The fund and any income from it shall be held in trust, deposited in a segregated account and invested and reinvested by the superintendent with the prior approval of the state board of finance and shall not become a part of or revert to the general fund of this state. The fund and any income from the fund shall only be expended for the purposes of and to the extent provided in the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act. The superintendent shall have the authority to use fund money to purchase insurance for the fund and its obligations. The superintendent, as custodian of the patient's compensation fund, shall be notified by the health care provider or [~~his~~] the health care provider's insurer within thirty days of service on the health care provider of a complaint asserting a malpractice claim brought in a court in this state against the health care provider. The superintendent shall have the sole authority for making a determination to settle any claim against the patient's compensation fund.

B. To [~~create~~] finance the patient's compensation fund, an annual surcharge shall be levied on all health care

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providers qualifying under [~~Paragraph (1) of~~] Subsection A of Section 41-5-5 NMSA 1978 [~~in New Mexico~~]. The surcharge shall be determined by the superintendent based upon sound actuarial principles, using data obtained from New Mexico experience if available. The surcharge shall be collected on the same basis as premiums by each insurer from the health care provider.

C. The surcharge with accrued interest shall be due and payable within thirty days after the premiums for malpractice liability insurance have been received by the insurer from the health care provider in New Mexico.

D. If the annual premium surcharge is collected but not paid within the time limit specified in Subsection C of this section, the certificate of authority of the insurer may be suspended until the annual premium surcharge is paid.

E. All expenses of collecting, protecting and administering the patient's compensation fund or of purchasing insurance for the fund shall be paid from the fund.

F. Claims payable pursuant to Laws 1976, Chapter 2, Section 30 shall be paid in accordance with the payment schedule constructed by the court. If the patient's compensation fund would be exhausted by payment of all claims allowed during a particular calendar year, then the amounts paid to each patient and other parties obtaining judgments shall be prorated, with each such party receiving an amount equal to the percentage [~~his~~] the party's own payment schedule

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bears to the total of payment schedules outstanding and payable by the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following calendar years. However, payments for medical care and related benefits shall be made before any payment made under Laws 1976, Chapter 2, Section 30.

G. Upon receipt of one of the proofs of authenticity listed in this subsection, reflecting a judgment for damages rendered [~~pursuant to the Medical Malpractice Act~~] against a health care provider, other than a hospital or hospital affiliate, pursuant to the New Mexico Medical Professional Liability Act, the superintendent shall issue or have issued warrants in accordance with the payment schedule constructed by the court and made a part of its final judgment. The only claim against the patient's compensation fund shall be a voucher or other appropriate request by the superintendent after [~~he~~] the superintendent receives:

(1) a certified copy of a final judgment in excess of two hundred thousand dollars ($200,000) against [~~a~~] the health care provider;

(2) a certified copy of a court-approved settlement or certification of settlement made prior to initiating suit, signed by [~~both~~] all parties, including the superintendent, in excess of two hundred thousand dollars ($200,000) against [~~a~~] the health care provider; or

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(3) a certified copy of a final judgment less than two hundred thousand dollars ($200,000) and an affidavit of [~~a~~] the health care provider or its insurer attesting that payments made pursuant to Subsection E of Section 41-5-7 NMSA 1978, combined with the monetary recovery, exceed two hundred thousand dollars ($200,000).

H. The superintendent shall contract for an independent actuarial study of the patient's compensation fund to be performed not less than once every two years."

SECTION 16. A new section of the New Mexico Medical Professional Liability Act, Section 41-5-25.1 NMSA 1978, is enacted to read:

"41-5-25.1. [NEW MATERIAL] HOSPITAL PATIENT'S COMPENSATION FUND.--

A. There is created in the state treasury the "hospital patient's compensation fund" to be administered by the superintendent for exclusive use for the purposes stated in the New Mexico Medical Professional Liability Act. The fund and any income from it shall be held in trust, deposited in a segregated account and invested and reinvested by the superintendent with the prior approval of the state board of finance and shall not become a part of or revert to the general fund of this state. The fund and any income from the fund shall only be expended for the purposes of and to the extent provided in the New Mexico Medical Professional Liability Act.

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The superintendent shall have the authority to use fund money to purchase insurance for the fund and its obligations. The superintendent, as custodian of the hospital patient's compensation fund, shall be notified by the hospital or its insurer or the hospital affiliate or its insurer within thirty days of service on the hospital or hospital affiliate of a complaint asserting a malpractice claim brought in a court in this state against the hospital or hospital affiliate. The superintendent shall have the sole authority for making a determination to settle any claim against the hospital patient's compensation fund.

B. To finance the hospital patient's compensation fund, an annual surcharge shall be levied on all hospitals and hospital affiliates qualifying under Subsection B or C of Section 41-5-5 NMSA 1978. The surcharge shall be determined by the superintendent based upon sound actuarial principles that take into account the different classifications of the physicians and other health care providers of the hospital or hospital affiliate and that use data obtained from New Mexico experience if available. The surcharge shall be collected on the same basis as premiums by each insurer from the hospital.

C. The surcharge with accrued interest shall be due and payable within thirty days after the premiums for malpractice liability insurance have been received by the insurer from the hospital or hospital affiliate in New Mexico.

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D. If the annual premium surcharge is collected but not paid within the time limit specified in Subsection C of this section, the certificate of authority of the insurer may be suspended until the annual premium surcharge is paid.

E. All expenses of collecting, protecting and administering the hospital patient's compensation fund or of purchasing insurance for the fund shall be paid from the fund.

F. Claims payable pursuant to Laws 1976, Chapter 2, Section 30 shall be paid in accordance with the payment schedule constructed by the court. If the hospital patient's compensation fund would be exhausted by payment of all claims allowed during a particular calendar year, then the amounts paid to each patient and other parties obtaining judgments shall be prorated, with each such party receiving an amount equal to the percentage its own payment schedule bears to the total of payment schedules outstanding and payable by the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following calendar years. However, payments for medical care and related benefits shall be made before any payment made under Laws 1976, Chapter 2, Section 30.

G. Upon receipt of one of the proofs of authenticity listed in this subsection, reflecting a judgment for damages rendered against a hospital or hospital affiliate pursuant to the New Mexico Medical Professional Liability Act, the superintendent shall issue or have issued warrants in

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accordance with the payment schedule constructed by the court and made a part of its final judgment. The only claim against the hospital patient's compensation fund shall be a voucher or other appropriate request by the superintendent after the superintendent receives:

(1) in the case of a judgment against or settlement with a hospital or hospital affiliate for injury or death to a patient arising from or as a result of the malpractice of an officer, employee or agent of the hospital or hospital affiliate acting in the course and within the scope of the individual's office, employment or agency:

(a) a certified copy of a final judgment in excess of two hundred thousand dollars ($200,000) against the hospital or hospital affiliate;

(b) a certified copy of a court-approved settlement or certification of settlement made prior to initiating suit, signed by all parties, including the superintendent, under which the hospital or hospital affiliate is required to pay an amount in excess of two hundred thousand dollars ($200,000); or

(c) a certified copy of a final judgment against the hospital or hospital affiliate less than two hundred thousand dollars ($200,000) and an affidavit of the hospital or its insurer or the hospital affiliate or its insurer attesting that payments made pursuant to Subsection E

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of Section 41-5-7 NMSA 1978, combined with the monetary recovery, exceed two hundred thousand dollars ($200,000);

(2) in the case of a judgment against or settlement with a hospital affiliate, other than a judgment or settlement arising from or as a result of the malpractice of an officer, employee or agent of the hospital affiliate acting in the course and within the scope of the individual's office, employment or agency:

(a) a certified copy of a final judgment in excess of two hundred thousand dollars ($200,000) against the hospital affiliate;

(b) a certified copy of a court-approved settlement or certification of settlement made prior to initiating suit, signed by all parties, including the superintendent, under which the hospital affiliate is required to pay an amount in excess of two hundred thousand dollars ($200,000); or

(c) a certified copy of a final judgment against the hospital affiliate less than two hundred thousand dollars ($200,000) and an affidavit of the hospital affiliate or its insurer attesting that payments made pursuant to Subsection E of Section 41-5-7 NMSA 1978, combined with the monetary recovery, exceed two hundred thousand dollars ($200,000); or

(3) in the case of a judgment against or

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settlement with a hospital, other than a judgment or settlement arising from or as a result of the malpractice of an officer, employee or agent of the hospital acting in the course and within the scope of the individual's office, employment or agency:

(a) a certified copy of a final judgment against the hospital in excess of: 1) two hundred thousand dollars ($200,000) if the malpractice occurred prior to January 1, 2012; or 2) six hundred thousand dollars ($600,000) if the malpractice occurred on or after January 1, 2012;

(b) a certified copy of a court-approved settlement or certification of settlement made prior to initiating suit, signed by all parties, including the superintendent, under which the hospital is required to pay an amount in excess of: 1) two hundred thousand dollars ($200,000) if the malpractice occurred prior to January 1, 2012; or 2) six hundred thousand dollars ($600,000) if the malpractice occurred on or after January 1, 2012; or

(c) a certified copy of a final judgment less than the following amount and an affidavit of the hospital or its insurer attesting that payments made pursuant to Subsection E of Section 41-5-7 NMSA 1978, combined with the monetary recovery, exceed the following amount: 1) two hundred thousand dollars ($200,000) if the malpractice occurred prior to January 1, 2012; or 2) six hundred thousand dollars

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($600,000) if the malpractice occurred on or after January 1, 2012.

H. The superintendent shall contract for an independent actuarial study of the hospital patient's compensation fund to be performed not less than once every two years."

SECTION 17. Section 41-5-26 NMSA 1978 (being Laws 1976, Chapter 2, Section 26, as amended) is amended to read:

"41-5-26. MALPRACTICE COVERAGE.--

A. The filing of proof of financial responsibility with the superintendent, as provided in Section [~~58-33-5 NMSA 1953~~] 41-5-5 NMSA 1978, shall constitute a conclusive and unqualified acceptance of the provisions of the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act.

B. Any provision in a policy attempting to limit or modify the liability of the insurer contrary to the provisions of the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act is void.

C. Every policy issued under the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act is deemed to include the following provisions:

(1) the insurer assumes all obligations to pay an award imposed against its insured under the provisions of the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act; and

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(2) any termination of a policy by an insurer shall not be effective unless written notice of [~~such~~] termination has been mailed by certified mail to both the insured and the superintendent at least ninety days prior to the date the cancellation is to become effective, except that an insurer may terminate a policy if a billed premium payment is thirty days past due upon ten days' prior written notice mailed by certified mail to the insured of the failure of the insured to pay premiums, and an insured may terminate [~~his~~] the insured's policy by written request to the insurer, but the effective date of termination shall be not sooner than ten days after the receipt by the insurer of the written request to terminate. In all cases when a policy is terminated for failure of the insured to pay premiums or at the request of the insured, the insurer shall notify the superintendent in writing immediately of the effective date of termination of the policy. The insurer shall remain liable for all causes of action accruing prior to the effective date of the termination unless otherwise barred by the provisions of the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act."

SECTION 18. Section 41-5-27 NMSA 1978 (being Laws 1976, Chapter 2, Section 27) is amended to read:

"41-5-27. REPORT BY DISTRICT COURT CLERKS.--Within thirty days of entry of judgment, the clerk of the district court from which judgment issues shall forward the name of every health

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care provider against whom a judgment is rendered under the [~~Medical Malpractice Act~~] New Mexico Medical Professional Liability Act to the appropriate board of professional registration and examination for review of the fitness of the health care provider to practice [~~his~~] the health care provider's profession. In cases where judgments are entered against hospitals or other institutional health care providers on the basis of respondeat superior or some other derivative theory of recovery, the clerk of the district court shall forward the name of the individual health care provider whose negligence caused the injury to that health care provider's board of professional registration and examination for such review. Review of the health care provider's fitness to practice shall be conducted in accordance with law."

SECTION 19. Section 41-5-28 NMSA 1978 (being Laws 1976, Chapter 2, Section 29, as amended) is amended to read:

"41-5-28. PAYMENT OF MEDICAL REVIEW COMMISSION EXPENSES.--Unless otherwise provided by law, expenses incurred in carrying out the powers, duties and functions of the New Mexico medical review commission, including the salary of the director of the commission, shall be allocated equally between and paid by the patient's compensation fund and the hospital patient's compensation fund. The superintendent, in [~~his~~] the superintendent's capacity as custodian of the [~~fund~~] funds, shall disburse fund money to the director upon receipt of

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vouchers itemizing expenses incurred by the [~~New Mexico medical review~~] commission. The director shall supply the chief justice of the New Mexico supreme court with duplicates of all vouchers submitted to the superintendent. Expenses paid by the [~~fund~~] funds shall not exceed [~~three hundred fifty thousand dollars ($350,000)~~] five hundred thousand dollars ($500,000) in any single calendar year; provided, however, that expenses incurred in defending the commission shall not be subject to that maximum amount."

SECTION 20. Section 41-5-29 NMSA 1978 (being Laws 1992, Chapter 33, Section 10) is amended to read:

"41-5-29. REPORTS.--On January 31 of each year, the superintendent shall, upon request, provide a written report to all interested persons of the following information:

A. the beginning and ending calendar year balances in the patient's compensation fund and the hospital patient's compensation fund;

B. the total amount of contributions to the patient's compensation fund and the hospital patient's compensation fund; and

C. any other information regarding the patient's compensation fund or the hospital patient's compensation fund that the superintendent considers to be important."

SECTION 21. A new section of the New Mexico Medical Professional Liability Act is enacted to read:

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"[NEW MATERIAL] DISCLOSURE OF PERSONAL INFORMATION PROHIBITED.--It is unlawful for any employee or former employee of the state to disclose to any other person, other than an employee of the state in connection with that employee's official duties, any personal information about a health care provider that has settled a claim for malpractice covered by the New Mexico Medical Professional Liability Act."

SECTION 22. TEMPORARY PROVISION--TRANSFER--OBLIGATIONS--SAVING CLAUSE.--

A. On July 1, 2011, all money in the patient's compensation fund that, as determined by the superintendent of insurance, is attributable to or derived from surcharges paid by hospitals or hospital affiliates shall be transferred to the hospital patient's compensation fund.

B. On and after July 1, 2011, claims of hospitals or hospital affiliates that, prior to July 1, 2011, were or would be claims against the patient's compensation fund, shall be claims against, and paid from, the hospital patient's compensation fund.

C. The "New Mexico Medical Professional Liability Act" is merely a new name for the "Medical Malpractice Act" and is not a new act enacted by the legislature. All rights, obligations, qualifications, funds, payments, claims and protections arising under the Medical Malpractice Act shall continue under the New Mexico Medical Professional Liability

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Act.

SECTION 23. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.