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HOUSE BILL 552

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

INTRODUCED BY

Thomas C. Taylor

AN ACT

RELATING TO MEDICAL MALPRACTICE; ENACTING THE HOSPITAL
LIABILITY ACT; PROVIDING LIABILITY LIMITS FOR CERTAIN
MALPRACTICE CLAIMS AGAINST HOSPITALS, HOSPITAL SYSTEMS AND
AMBULANCE SERVICE PROVIDERS.

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

SECTION 1. SHORT TITLE.--This act may be cited as the
"Hospital Liability Act".

SECTION 2. PURPOSE.--The purpose of the Hospital
Liability Act is to promote the health and welfare of the
people of New Mexico and to assist hospitals, hospital systems
and ambulance service systems providing care in New Mexico in
the control of health care costs.

SECTION 3. DEFINITIONS.--As used in the Hospital
Liability Act:

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1 A. "hospital health care provider" means any of the
2 following, or an employee, officer or agent of the following,
3 in the course of providing health care or health-care-related
4 services, or a member of a board of directors, board of
5 trustees or any similar body of the following:

6 (1) a person who is licensed, certified,
7 registered or chartered in this state to provide health care or
8 health care services as a hospital;

9 (2) a business entity qualified to do business
10 in New Mexico that owns, operates or manages a hospital or
11 hospitals licensed, certified, registered or chartered in New
12 Mexico; or

13 (3) a person or entity that owns, operates or
14 manages an ambulance service that is licensed or operated under
15 the laws of New Mexico; but "hospital health care provider"
16 does not mean a health care provider who is a qualified health
17 care provider pursuant to the Medical Malpractice Act;

18 B. "malpractice claim" means any cause of action
19 arising in this state against a hospital health care provider
20 for medical treatment, lack of medical treatment, negligent
21 credentialing, hiring, training or supervision or any other
22 claimed departure from accepted standards of health care that
23 proximately results in injury to a patient, whether the claim
24 or cause of action sounds in tort or contract and includes
25 actions based on battery or wrongful death, as well as claims

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1 brought by others as a result of the claimed departure to the
2 patient, such as claims for bystander recovery or loss of
3 consortium; and "malpractice claim" includes medical
4 malpractice claims against an ambulance service, as well as a
5 cause of action arising out of the driving, flying or non-
6 medical acts involved in the operation, use or maintenance of a
7 vehicular or aircraft ambulance, while being used for or within
8 the intended purpose of the operation of an ambulance service;

9 C. "non-economic damages" means all recoverable
10 damages except:

- 11 (1) past and future medical expenses;
12 (2) past and future loss of income and earning
13 capacity; and
14 (3) punitive damages; and

15 D. "qualified health care provider" means a health
16 care provider who is qualified under the provisions of the
17 Medical Malpractice Act.

18 SECTION 4. MALPRACTICE CLAIMS--LIMITATION ON LIABILITY.--

19 A. Except as provided in Section 5 of the Hospital
20 Liability Act, in any action based on a malpractice claim for
21 personal injury or death against a hospital health care
22 provider:

- 23 (1) the maximum amount recoverable for all
24 non-economic damages shall equal five hundred thousand dollars
25 (\$500,000) as adjusted by the percentage increase or decrease

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1 in the consumer price index for all items and for all urban
2 consumers as published by the United States department of labor
3 between July 2011 and the month immediately preceding the date
4 that final judgment is entered for the damage award; and

5 (2) the maximum amount recoverable for all
6 punitive damages shall equal four times the maximum amount
7 specified in Paragraph (1) of this subsection.

8 B. The limitation of Subsection A of this section
9 shall cover any and all claims of all individuals who are
10 claiming damages as a consequence of all personal injuries and
11 death related to the malpractice claims at issue, regardless of
12 whether the claims belong to a person other than the patient,
13 including claims for bystander recovery or loss of consortium.

14 C. The limitation of Subsection A of this section
15 shall apply regardless of the number of hospital health care
16 providers found to be liable or the number of separate causes
17 of action on which the claim is based; provided, however, that
18 in an action where a final judgment is rendered against both a
19 hospital health care provider and a qualified health care
20 provider, the limitations of this section shall apply only to
21 the hospital health care provider and the judgment against the
22 qualified health care provider shall be governed by the
23 provisions of the Medical Malpractice Act.

24 SECTION 5. CLAIMS BASED ON APPARENT OR OSTENSIBLE AGENCY
25 OR VICARIOUS LIABILITY.--

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1 A. In an action against a hospital health care
2 provider against whom a claim is made based on apparent or
3 ostensible agency or vicarious liability, for a malpractice
4 claim arising out of the conduct of a qualified health care
5 provider:

6 (1) the limitation of recovery provided in
7 Section 41-5-6 NMSA 1978 and the tolling of the statute of
8 limitations provided in Section 41-5-22 NMSA 1978 shall apply
9 to the claim against the hospital health care provider for the
10 comparative fault portion of the malpractice claim alleged to
11 be caused by the conduct of the qualified health care provider;

12 (2) if the hospital health care provider is
13 found liable for only its vicarious liability for a qualified
14 health care provider, the limitations described in this
15 subsection pursuant to the Medical Malpractice Act shall apply;

16 (3) if the hospital health care provider is
17 found liable for both vicarious liability for the conduct of a
18 qualified health care provider as well as for its own non-
19 vicarious liability, then the limits of the Hospital Liability
20 Act shall be the sole limits for all recovery against the
21 hospital health care provider; and

22 (4) if the hospital health care provider is
23 found liable for only its vicarious liability for another
24 health care provider who is not a qualified health care
25 provider, or for both its vicarious liability for another

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1 health care provider who is not a qualified health care
2 provider and its own non-vicarious liability, then the limit of
3 recovery of the Hospital Liability Act shall be the sole limit
4 against the hospital health care provider.

5 B. Nothing in the Hospital Liability Act shall
6 revoke or amend any right of indemnification that a hospital
7 health care provider may have against a qualified health care
8 provider for payment of a vicarious award against the hospital
9 health care provider.

10 SECTION 6. LAW OF COMPARATIVE FAULT UNAFFECTED.--Nothing
11 in the Hospital Liability Act shall be deemed to revoke the law
12 of comparative fault.

13 SECTION 7. DISCLOSURE OF LIMITS PROHIBITED.--The limits
14 of liability provided under the Hospital Liability Act shall
15 not be disclosed to any jury hearing a malpractice claim.

16 SECTION 8. APPLICABILITY OF TORT CLAIMS ACT.--The
17 provisions of the Hospital Liability Act do not apply to health
18 care providers who are governmental entities or public
19 employees under the Tort Claims Act.

20 SECTION 9. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2011.