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SENATE BILL 191

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

TIMOTHY Z. JENNINGS

AN ACT

RELATING TO INSURANCE; LIMITING THE USE OF THE PATIENT'S
COMPENSATION FUND.

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

Section 1. Section 41-5-25 NMSA 1978 (being Laws 1992,
Chapter 33, Section 9) is amended to read:

"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 by
the superintendent for exclusive use for the purposes stated in
the Medical Malpractice Act. The fund and any income from it
shall be held in trust, deposited in a segregated account,
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

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1 and any income from the fund shall only be expended for the
2 purposes of and to the extent provided in the Medical
3 Malpractice Act. The superintendent shall have the authority to
4 use fund money to purchase insurance for the fund and its
5 obligations. The superintendent, as custodian of the patient's
6 compensation fund, shall be notified by the health care provider
7 or his insurer within thirty days of service on the health care
8 provider of a complaint asserting a malpractice claim brought in
9 a court in this state against the health care provider.

10 B. To create the patient's compensation fund, an
11 annual surcharge shall be levied on all health care providers
12 qualifying under Paragraph (1) of Subsection A of Section 41-5-5
13 NMSA 1978 in New Mexico. The surcharge shall be determined by
14 the superintendent based upon sound actuarial principles, using
15 data obtained from New Mexico experience if available. The
16 surcharge shall be collected on the same basis as premiums by
17 each insurer from the health care provider.

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

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

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

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

17 G. Upon receipt of one of the proofs of authenticity
18 listed in this subsection, reflecting a judgment for damages
19 rendered pursuant to the Medical Malpractice Act, the
20 superintendent shall issue or have issued warrants in accordance
21 with the payment schedule constructed by the court and made a
22 part of its final judgment. The only claim against the
23 patient's compensation fund shall be a voucher or other
24 appropriate request by the superintendent after he receives:

- 25 (1) a certified copy of a final judgment in

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1 excess of two hundred thousand dollars (\$200,000) against a
2 health care provider;

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

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

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

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
3
4

5 February 24, 1997
6

7 Mr. President:
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9 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
10 referred

11
12 SENATE BILL 191
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, and thence referred to the
16 CORPORATIONS & TRANSPORTATION COMMITTEE.

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18 Respectfully submitted,
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22 _____
23 Shannon Robinson, Chairman
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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: None

Excused: Adair, Vernon, Smith, Garcia

Absent: None

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1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
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5 March 4, 1997
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7 Mr. President:
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9 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
10 whom has been referred
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12 SENATE BILL 191
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS.
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17 Respectfully submitted,
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22 Roman M. Maes, III, Chairman
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25 Adopted _____ Not Adopted _____

(Chief Clerk)

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Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Fidel, McKibben, Robinson

Absent: None

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