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AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AMENDING THE MEDICAL MALPRACTICE ACT TO CHANGE THE LIMITATION
OF RECOVERY FOR CERTAIN CLAIMS AGAINST FACILITIES THAT ARE
NOT HOSPITAL-CONTROLLED; UPDATING REPORTING REQUIREMENTS.

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;

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,
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,

1 chiropractor, podiatrist, nurse anesthetist, physician's
2 assistant, certified nurse practitioner, clinical nurse
3 specialist or certified nurse-midwife or a business entity
4 that is organized, incorporated or formed pursuant to the
5 laws of New Mexico that provides health care services
6 primarily through natural persons identified in this
7 subsection. "Health care provider" does not mean a person or
8 entity protected pursuant to the Tort Claims Act or the
9 Federal Tort Claims Act;

10 E. "hospital" means a facility licensed as a
11 hospital in this state that offers in-patient services,
12 nursing or overnight care on a twenty-four-hour basis for
13 diagnosing, treating and providing medical, psychological or
14 surgical care for three or more separate persons who have a
15 physical or mental illness, disease, injury or rehabilitative
16 condition or are pregnant and may offer emergency services.
17 "Hospital" includes a hospital's parent corporation,
18 subsidiary corporations or affiliates if incorporated or
19 registered in New Mexico; employees and locum tenens
20 providing services at the hospital; and agency nurses
21 providing services at the hospital. "Hospital" does not mean
22 a person or entity protected pursuant to the Tort Claims Act
23 or the Federal Tort Claims Act;

24 F. "independent outpatient health care facility"
25 means a health care facility that is an ambulatory surgical

1 center, urgent care facility or free-standing emergency room
2 that is not, directly or indirectly through one or more
3 intermediaries, controlled or under common control with a
4 hospital. "Independent outpatient health care facility"
5 includes a facility's employees, locum tenens providers and
6 agency nurses providing services at the facility.

7 "Independent outpatient health care facility" does not mean a
8 person or entity protected pursuant to the Tort Claims Act or
9 the Federal Tort Claims Act;

10 G. "independent provider" means a doctor of
11 medicine, doctor of osteopathy, chiropractor, podiatrist,
12 nurse anesthetist, physician's assistant, certified nurse
13 practitioner, clinical nurse specialist or certified
14 nurse-midwife who is not an employee of a hospital or
15 outpatient health care facility. "Independent provider"
16 does not mean a person or entity protected pursuant to
17 the Tort Claims Act or the Federal Tort Claims Act.

18 "Independent provider" includes:

19 (1) a health care facility that is:

- 20 (a) licensed pursuant to the
21 Public Health Act as an outpatient facility;
22 (b) not an ambulatory surgical center,
23 urgent care facility or free-standing emergency room; and
24 (c) not hospital-controlled; and

25 (2) a business entity that is not a hospital

1 or outpatient health care facility that employs or consists
2 of members who are licensed or certified as doctors of
3 medicine, doctors of osteopathy, chiropractors, podiatrists,
4 nurse anesthetists, physician's assistants, certified nurse
5 practitioners, clinical nurse specialists or certified
6 nurse-midwives and the business entity's employees;

7 H. "insurer" means an insurance company engaged in
8 writing health care provider malpractice liability insurance
9 in this state;

10 I. "malpractice claim" includes any cause of
11 action arising in this state against a health care provider
12 for medical treatment, lack of medical treatment or other
13 claimed departure from accepted standards of health care that
14 proximately results in injury to the patient, whether the
15 patient's claim or cause of action sounds in tort or
16 contract, and includes but is not limited to actions based on
17 battery or wrongful death; "malpractice claim" does not
18 include a cause of action arising out of the driving, flying
19 or nonmedical acts involved in the operation, use or
20 maintenance of a vehicular or aircraft ambulance;

21 J. "medical care and related benefits" means all
22 reasonable medical, surgical, physical rehabilitation and
23 custodial services and includes drugs, prosthetic devices and
24 other similar materials reasonably necessary in the provision
25 of such services;

1 K. "occurrence" means all injuries to a patient
2 caused by health care providers' successive acts or omissions
3 that combined concurrently to create a malpractice claim;

4 L. "outpatient health care facility" means an
5 entity that is hospital-controlled and is licensed pursuant
6 to the Public Health Act as an outpatient facility, including
7 ambulatory surgical centers, free-standing emergency rooms,
8 urgent care clinics, acute care centers and intermediate care
9 facilities and includes a facility's employees, locum tenens
10 providers and agency nurses providing services at the
11 facility. "Outpatient health care facility" does not
12 include:

13 (1) independent providers;

14 (2) independent outpatient health care
15 facilities; or

16 (3) individuals or entities protected
17 pursuant to the Tort Claims Act or the Federal Tort
18 Claims Act;

19 M. "patient" means a natural person who received
20 or should have received health care from a health care
21 provider, under a contract, express or implied; and

22 N. "superintendent" means the superintendent of
23 insurance."

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

1 "41-5-5. QUALIFICATIONS.--

2 A. To be qualified under the provisions of the
3 Medical Malpractice Act, a health care provider, except an
4 independent outpatient health care facility, shall:

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

22 (2) pay the surcharge assessed on
23 health care providers by the superintendent pursuant to
24 Section 41-5-25 NMSA 1978.

25 B. To be qualified under the provisions of the

1 Medical Malpractice Act, an independent outpatient health
2 care facility shall:

3 (1) establish its financial responsibility
4 by filing proof with the superintendent that the health care
5 provider is insured by a policy of malpractice liability
6 insurance issued by an authorized insurer in the amount of at
7 least five hundred thousand dollars (\$500,000) per occurrence
8 or by having continuously on deposit the sum of one million
9 five hundred thousand dollars (\$1,500,000) in cash with the
10 superintendent or other like deposit as the superintendent
11 may allow by rule; provided that for independent outpatient
12 health care facilities, in the absence of an additional
13 deposit or policy as required by this subsection, the deposit
14 or policy shall provide coverage for not more than three
15 separate occurrences; and

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

19 C. For hospitals or hospital-controlled outpatient
20 health care facilities electing to be covered under the
21 Medical Malpractice Act, the superintendent shall determine,
22 based on a risk assessment of each hospital or
23 hospital-controlled outpatient health care facility, each
24 hospital's or hospital-controlled outpatient health care
25 facility's base coverage or deposit and additional charges

1 for the fund. The superintendent shall arrange for an
2 actuarial study before determining base coverage or deposit
3 and surcharges.

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

14 SECTION 3. Section 41-5-6 NMSA 1978 (being Laws 1992,
15 Chapter 33, Section 4, as amended) is amended to read:

16 "41-5-6. LIMITATION OF RECOVERY.--

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

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

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

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

25 (1) for an injury or death that occurred in

1 calendar year 2024, one million dollars (\$1,000,000) per
2 occurrence; and

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

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

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

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

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

25 (4) for an injury or death that occurred in

1 calendar year 2025, five million five hundred thousand
2 dollars (\$5,500,000) per occurrence;

3 (5) for an injury or death that occurred
4 in calendar year 2026, six million dollars (\$6,000,000)
5 per occurrence; and

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

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

16 G. In jury cases, the jury shall not be given any
17 instructions dealing with the limitations provided in this
18 section.

19 H. The value of accrued medical care and related
20 benefits shall not be subject to any limitation.

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

1 judgment or settlement in excess of two hundred fifty
2 thousand dollars (\$250,000) shall be paid from the fund,
3 except as provided in Subsections J and K of this section.

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

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

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

1 injuries as a result of two or more different acts or
2 omissions that occur at different times by one or more health
3 care providers is entitled to up to the maximum statutory
4 recovery for each injury."

5 SECTION 4. Section 41-5-29 NMSA 1978 (being Laws 1992,
6 Chapter 33, Section 10, as amended) is amended to read:

7 "41-5-29. FUND REPORTS.--

8 A. On January 31 of each year, the superintendent
9 shall, upon request, provide a written report to all
10 interested persons of the following information:

11 (1) the beginning and ending calendar year
12 balances in the fund;

13 (2) an itemized accounting of the total
14 amount of contributions to the fund;

15 (3) all information regarding closed claims
16 files, including an itemized accounting of all payments paid
17 out; and

18 (4) any other information regarding the fund
19 that the superintendent or the legislature considers to be
20 important.

21 B. The superintendent or the superintendent's
22 designee shall track and make publicly available the
23 following information regarding independent outpatient health
24 care facilities:

25 (1) the total number of claims filed against

1 independent outpatient health care facilities by year;

2 (2) the total number of settlements paid out
3 on behalf of independent outpatient health care facilities by
4 year; and

5 (3) the dollar amounts of settlements paid
6 out by the fund on behalf of independent outpatient health
7 care facilities by year."

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