

1 SENATE BILL 53

2 56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

3 INTRODUCED BY

4 Pat Woods

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10 AN ACT

11 RELATING TO HEALTH CARE; AMENDING THE MEDICAL MALPRACTICE ACT
12 TO CHANGE THE LIMITATION OF RECOVERY FOR CERTAIN CLAIMS AGAINST
13 HOSPITALS AND OUTPATIENT HEALTH CARE FACILITIES THAT ARE
14 HOSPITAL-CONTROLLED.

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

17 SECTION 1. Section 41-5-6 NMSA 1978 (being Laws 1992,
18 Chapter 33, Section 4, as amended) is amended to read:

19 "41-5-6. LIMITATION OF RECOVERY.--

20 A. Except for punitive damages and past and future
21 medical care and related benefits, the aggregate dollar amount
22 recoverable by all persons for or arising from any injury or
23 death to a patient as a result of malpractice shall not exceed
24 six hundred thousand dollars (\$600,000) per occurrence for
25 malpractice claims brought against health care providers if the

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1 injury or death occurred prior to January 1, 2022. In jury
2 cases, the jury shall not be given any instructions dealing
3 with this limitation.

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

13 C. The aggregate dollar amount recoverable by all
14 persons for or arising from any injury or death to a patient as
15 a result of malpractice, except for punitive damages and past
16 and future medical care and related benefits, shall not exceed
17 seven hundred fifty thousand dollars (\$750,000) for claims
18 brought against an independent outpatient health care facility
19 for an injury or death that occurred in calendar years 2022 and
20 2023.

21 D. In calendar year 2024 and subsequent calendar
22 years, the aggregate dollar amount recoverable by all persons
23 for or arising from an injury or death to a patient as a result
24 of malpractice, except for punitive damages and past and future
25 medical care and related benefits, shall not exceed the

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1 following amounts for claims brought against an independent
2 outpatient health care facility:

3 (1) for an injury or death that occurred in
4 calendar year 2024, one million dollars (\$1,000,000) per
5 occurrence; and

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

11 E. In calendar year [~~2022~~] 2025 and subsequent
12 calendar years, the aggregate dollar amount recoverable by all
13 persons for or arising from any injury or death to a patient as
14 a result of malpractice, except for punitive damages and past
15 and future medical care and related benefits, shall not exceed
16 the following amounts for claims brought against a hospital or
17 a hospital-controlled outpatient health care facility:

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

21 ~~(2) for an injury or death that occurred in~~
22 ~~calendar year 2023, four million five hundred thousand dollars~~
23 ~~(\$4,500,000) per occurrence;~~

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

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1 occurrence;

2 ~~(4) for an injury or death that occurred in~~
3 ~~calendar year 2025, five million five hundred thousand dollars~~
4 ~~(\$5,500,000) per occurrence;~~

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

8 ~~(6) for an injury or death that occurred in~~
9 ~~calendar year 2027 and each calendar year thereafter, the~~
10 ~~amount provided in Paragraph (5) of this subsection, adjusted~~
11 ~~annually by the consumer price index for all urban consumers,~~
12 ~~per occurrence] 2025, one million dollars (\$1,000,000) per~~
13 ~~occurrence; and~~

14 (2) for an injury or death that occurred in
15 calendar year 2026 and thereafter, the amount provided in
16 Paragraph (1) of this subsection, adjusted annually by the
17 prior three-year average consumer price index for all urban
18 consumers, per occurrence.

19 F. The aggregate dollar amounts provided in
20 Subsections B through E of this section include payment to any
21 person for any number of loss of consortium claims or other
22 claims per occurrence that arise solely because of the injuries
23 or death of the patient.

24 G. In jury cases, the jury shall not be given any
25 instructions dealing with the limitations provided in this

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1 section.

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

4 I. Except for an independent outpatient health care
5 facility, a health care provider's personal liability is
6 limited to two hundred fifty thousand dollars (\$250,000) for
7 monetary damages and medical care and related benefits as
8 provided in Section 41-5-7 NMSA 1978. Any amount due from a
9 judgment or settlement in excess of two hundred fifty thousand
10 dollars (\$250,000) shall be paid from the fund, except as
11 provided in Subsections J and K of this section.

12 J. An independent outpatient health care facility's
13 personal liability is limited to five hundred thousand dollars
14 (\$500,000) for monetary damages and medical care and related
15 benefits as provided in Section 41-5-7 NMSA 1978. Any amount
16 due from a judgment or settlement in excess of five hundred
17 thousand dollars (\$500,000) shall be paid from the fund.

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

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1 controlled outpatient health care facility shall not be paid
2 from the fund.

3 L. The term "occurrence" shall not be construed in
4 such a way as to limit recovery to only one maximum statutory
5 payment if separate acts or omissions cause additional or
6 enhanced injury or harm as a result of the separate acts or
7 omissions. A patient who suffers two or more distinct injuries
8 as a result of two or more different acts or omissions that
9 occur at different times by one or more health care providers
10 is entitled to up to the maximum statutory recovery for each
11 injury."

12 SECTION 2. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is January 1, 2025.