

The Legislature  
of the  
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

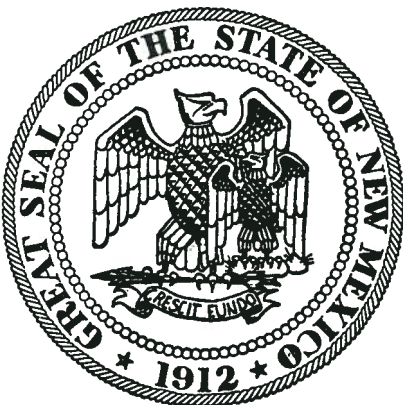
CHAPTER \_\_\_\_\_

HOUSE HEALTH AND GOVERNMENT AFFAIRS COMMITTEE

SUBSTITUTE FOR HOUSE BILL 267

Introduced by

**VETOED**



1 AN ACT  
2 RELATING TO MEDICAL MALPRACTICE; AMENDING THE MEDICAL  
3 MALPRACTICE ACT TO CLARIFY THAT BUSINESS ENTITIES PROVIDING  
4 HEALTH CARE SERVICES ARE HEALTH CARE PROVIDERS UNDER THE ACT,  
5 TO RAISE THE RECOVERABLE LIMITS AND TO PROHIBIT THE DISCLOSURE  
6 OF CERTAIN CONFIDENTIAL INFORMATION.  
7

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

9 SECTION 1. Section 41-5-3 NMSA 1978 (being Laws 1976,  
10 Chapter 2, Section 3, as amended) is amended to read:

11 "41-5-3. DEFINITIONS.--As used in the Medical  
12 Malpractice Act:

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

21 B. "health care provider" means:

22 (1) a natural person licensed to practice  
23 medicine or otherwise provide health care services pursuant to  
24 a professional or occupational license;

25 (2) a hospital;

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

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

9                   D. "insurer" means an insurance company engaged in  
10 writing health care provider malpractice liability insurance  
11 in this state;

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

23                  F. "medical care and related benefits" means all  
24 reasonable medical, surgical, physical rehabilitation and  
25 custodial services and includes drugs, prosthetic devices and

1 other similar materials reasonably necessary in the provision  
2 of such services;

3 G. "outpatient health care facility" means a  
4 business entity licensed to operate an outpatient health care  
5 facility by the department of health;

6 H. "patient" means a natural person who received  
7 or should have received health care from a licensed health  
8 care provider, under a contract, express or implied;

9 I. "personal information" means information that  
10 identifies an individual or a business entity, including the  
11 individual or business entity's name, address or telephone  
12 number;

13 J. "professional or occupational license" means a  
14 license to practice medicine or provide health care services  
15 pursuant to the Chiropractic Physician Practice Act; the  
16 Medical Practice Act; the Podiatry Act; Chapter 61, Article 10  
17 NMSA 1978; or the Osteopathic Physicians' Assistants Act. A  
18 professional or occupational license also includes a license  
19 to practice as a certified registered nurse anesthetist; and

20 K. "superintendent" means the superintendent of  
21 insurance of this state."

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

24 "41-5-5. QUALIFICATIONS.--

25 A. To be qualified under the provisions of the

1 Medical Malpractice Act, a health care provider shall:

2 (1) establish its financial responsibility  
3 by filing proof with the superintendent that the health care  
4 provider is insured by a policy of malpractice liability  
5 insurance issued by an authorized insurer in the amount of at  
6 least two hundred thousand dollars (\$200,000) per occurrence;  
7 provided that for an individual health care provider other  
8 than a hospital, outpatient health care facility or other  
9 business entity providing health care services, the policy  
10 shall provide coverage for not more than three separate  
11 occurrences; and

12 (2) pay the surcharge assessed on health  
13 care providers by the superintendent pursuant to Section  
14 41-5-25 NMSA 1978 for the patient's compensation fund.

15 B. For hospitals, outpatient health care  
16 facilities or other business entities electing to be covered  
17 under the Medical Malpractice Act, the superintendent shall  
18 determine, based on a risk assessment of each hospital,  
19 outpatient health care facility or other business entity, each  
20 hospital's, outpatient health care facility's or other  
21 business entity's base coverage and additional charges for the  
22 patient's compensation fund. The superintendent shall arrange  
23 for an actuarial study, as provided in Section 41-5-25 NMSA  
24 1978. The additional charge shall be determined by the  
25 superintendent based upon sound actuarial principles that take

1 into account the different classifications of the physicians  
2 and other health care providers of the hospital, outpatient  
3 care facility or other business entity and that use data  
4 obtained from New Mexico experience, if available.

5 C. A health care provider not qualifying under  
6 this section shall not have the benefit of any of the  
7 provisions of the Medical Malpractice Act in the event of a  
8 malpractice claim against that provider."

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

11 "41-5-6. LIMITATION OF RECOVERY.--

12 A. Except for punitive damages and medical care  
13 and related benefits, the aggregate dollar amount recoverable  
14 by all persons for or arising from any injury or death to a  
15 patient as a result of malpractice shall not exceed the  
16 following amounts:

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

20 (2) one million dollars (\$1,000,000) per  
21 occurrence for acts of malpractice occurring on or after  
22 January 1, 2012; provided that on July 1, 2014 and on July 1  
23 of each year thereafter, the superintendent shall adjust the  
24 maximum recoverable amount specified in this paragraph to  
25 correspond to the percentage change in the consumer price

1 index between the end of the penultimate calendar year and the  
2 end of the immediately preceding calendar year; provided  
3 further that such an adjustment shall not result in a  
4 percentage change in the maximum recoverable amount greater  
5 than three percent. As used in this paragraph, "consumer  
6 price index" means the consumer price index for all urban  
7 consumers, U.S. city average, as published by the United  
8 States department of labor.

9           B. In jury cases, the jury shall not be given any  
10 instructions dealing with limitations specified in Subsection  
11 A of this section.

12           C. The value of accrued medical care and related  
13 benefits shall not be subject to the limitations specified in  
14 Subsection A of this section.

15           D. Monetary damages shall not be awarded for  
16 future medical expenses in malpractice claims.

17           E. A health care provider's personal liability  
18 is limited to two hundred thousand dollars (\$200,000) for  
19 monetary damages and medical care and related benefits as  
20 provided in Section 41-5-7 NMSA 1978. Any amount due from a  
21 judgment or settlement against a health care provider in  
22 excess of two hundred thousand dollars (\$200,000) shall be  
23 paid from the patient's compensation fund, as provided in  
24 Section 41-5-25 NMSA 1978."

25           **SECTION 4.** Section 41-5-7 NMSA 1978 (being Laws 1992,

1 Chapter 33, Section 5, as amended) is amended to read:

2 "41-5-7. FUTURE MEDICAL EXPENSES.--

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

13 B. Except as provided in Section 41-5-10 NMSA  
14 1978, once a judgment is entered in favor of a patient who is  
15 found to be in need of future medical care and related  
16 benefits or a settlement is reached between a patient and  
17 health care provider in which the provision of medical care  
18 and related benefits is agreed upon, and continuing as long as  
19 medical or surgical attention is reasonably necessary, the  
20 patient shall be furnished with all medical care and related  
21 benefits directly or indirectly made necessary by the health  
22 care provider's malpractice, subject to a semi-private room  
23 limitation in the event of hospitalization, unless the patient  
24 refuses to allow them to be so furnished.

25 C. Awards of future medical care and related



1 benefits shall not be subject to the applicable limitation  
2 imposed in Subsection A of Section 41-5-6 NMSA 1978.

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

5 E. The health care provider shall be liable for  
6 all medical care and related benefit payments until the total  
7 payments made by or on behalf of the health care provider for  
8 monetary damages and medical care and related benefits  
9 combined equals two hundred thousand dollars (\$200,000), after  
10 which the payments shall be made by the patient's compensation  
11 fund.

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

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

23 H. A judgment of punitive damages against a health  
24 care provider shall be the personal liability of the health  
25 care provider. Punitive damages shall not be paid from the

1 patient's compensation fund or from the proceeds of the health  
2 care provider's insurance contract unless the contract  
3 expressly provides coverage. Nothing in Section 41-5-6 NMSA  
4 1978 precludes the award of punitive damages to a patient.  
5 Nothing in this subsection authorizes the imposition of  
6 liability for punitive damages on a derivative basis where  
7 that imposition would not be otherwise authorized by law."

8 SECTION 5. A new section of the Medical Malpractice Act  
9 is enacted to read:

10 "DISCLOSURE OF PERSONAL INFORMATION PROHIBITED.--It is  
11 unlawful for any employee or former employee of the state to  
12 disclose to any other person, other than an employee of the  
13 state in connection with that employee's official duties, any  
14 personal information about a health care provider that has  
15 settled a claim for malpractice covered by the Medical  
16 Malpractice Act."

17 SECTION 6. A new section of the Medical Malpractice Act  
18 is enacted to read:

19 "ADVISORY COMMITTEE--MEMBERS--DUTIES.--

20 A. The "Medical Malpractice Act advisory  
21 committee" is created. The committee shall consist of seven  
22 members as follows:

23 (1) three attorneys appointed by the New  
24 Mexico trial lawyers association;

25 (2) three physicians appointed by the New

1 Mexico medical society; and

2 (3) the superintendent, who shall be the  
3 chair of the committee.

4 B. The advisory committee shall meet at the call  
5 of the chair, but no less than semiannually.

6 C. The advisory committee shall review policies,  
7 administrative actions, statutes, court opinions and all other  
8 matters relating to the Medical Malpractice Act and, no later  
9 than December 1 of each year, report its findings and  
10 recommendations to the public regulation commission, the  
11 governor and the legislature.

12 D. Members of the committee shall not receive per  
13 diem and mileage."

14 SECTION 7. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2011. \_\_\_\_\_

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S/ BEN LUJAN  
BEN LUJAN, SPEAKER  
HOUSE OF REPRESENTATIVES

S/ STEPHEN R. ARIAS  
STEPHEN R. ARIAS, CHIEF CLERK  
HOUSE OF REPRESENTATIVES

S/ JOHN A. SANCHEZ  
JOHN A. SANCHEZ, PRESIDENT  
SENATE

S/ LENORE M. NARANJO  
LENORE M. NARANJO, CHIEF CLERK  
SENATE

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
SUSANA MARTINEZ, GOVERNOR  
STATE OF NEW MEXICO

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