



The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER _____

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 333

Introduced by



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AN ACT

RELATING TO MEDICAL MALPRACTICE; AMENDING THE MEDICAL
MALPRACTICE ACT TO CLARIFY THAT BUSINESS ENTITIES PROVIDING
HEALTH CARE SERVICES ARE HEALTH CARE PROVIDERS UNDER THE ACT,
TO RAISE THE RECOVERABLE LIMITS AND TO PROHIBIT THE
DISCLOSURE OF CERTAIN CONFIDENTIAL INFORMATION.

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. "business entity" means a corporation,
including a professional corporation and a nonprofit
corporation, a limited liability company, a limited liability
partnership, a limited partnership or a general partnership
organized or formed under the laws of New Mexico or qualified
to conduct business in New Mexico as a foreign corporation,
limited liability company, limited liability partnership or
limited partnership;

B. "health care provider" means:

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

(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
6 New Mexico pursuant to a professional or occupational
7 license;

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

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

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

24 F. "medical care and related benefits" means all
25 reasonable medical, surgical, physical rehabilitation and

1 custodial services and includes drugs, prosthetic devices and
2 other similar materials reasonably necessary in the provision
3 of such services;

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

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

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

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

22 K. "superintendent" means the superintendent of
23 insurance of this state."

24 SECTION 2. Section 41-5-5 NMSA 1978 (being Laws 1992,
25 Chapter 33, Section 2) 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 shall:

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

14 (2) pay the surcharge assessed on health
15 care providers by the superintendent pursuant to Section
16 41-5-25 NMSA 1978 for the patient's compensation fund.

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

1 41-5-25 NMSA 1978. The additional charge shall be determined
2 by the superintendent based upon sound actuarial principles
3 that take into account the different classifications of the
4 physicians and other health care providers of the hospital,
5 outpatient care facility or other business entity and that
6 use data obtained from New Mexico experience, if available.

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

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

13 "41-5-6. LIMITATION OF RECOVERY.--

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

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

22 (2) one million dollars (\$1,000,000) per
23 occurrence for acts of malpractice occurring on or after
24 January 1, 2012; provided that on July 1, 2014 and on July 1
25 of each year thereafter, the superintendent shall adjust the

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

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

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

17 D. Monetary damages shall not be awarded for
18 future medical expenses in malpractice claims.

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

1 Section 41-5-25 NMSA 1978."

2 SECTION 4. Section 41-5-7 NMSA 1978 (being Laws 1992,
3 Chapter 33, Section 5, as amended) is amended to read:

4 "41-5-7. FUTURE MEDICAL EXPENSES.--

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

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

1 patient refuses to allow them to be so furnished.

2 C. Awards of future medical care and related
3 benefits shall not be subject to the applicable limitation
4 imposed in Subsection A of Section 41-5-6 NMSA 1978.

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

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

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

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

25 H. A judgment of punitive damages against a health

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

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

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

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

21 "ADVISORY COMMITTEE--MEMBERS--DUTIES.--

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

25 (1) three attorneys appointed by the New

1 Mexico trial lawyers association;

2 (2) three physicians appointed by the New
3 Mexico medical society; and

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

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

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

14 D. Members of the committee shall not receive per
15 diem and mileage."

16 SECTION 7. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2011. _____

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OUR OFFICE
JUL 13 2011 10:32
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JUL 13 2011 10:32
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s/John A. Sanchez
John A. Sanchez, President
Senate

s/Lenore M. Naranjo
Lenore M. Naranjo, Chief Clerk
Senate

s/Ben Lujan
Ben Lujan, Speaker
House of Representatives

s/Stephen R. Arias
Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this _____ day of _____, 2011

s/Governor Susana Martinez
Governor Susana Martinez
State of New Mexico

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