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HOUSE BILL 11

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SPECIAL SESSION, 2021

INTRODUCED BY

Dayan Hochman-Vigil and Doreen Y. Gallegos

AN ACT

RELATING TO MEDICAL MALPRACTICE; MODIFYING THE DEFINITION OF
"INDEPENDENT PROVIDER"; LIMITING THE APPLICABILITY OF LAWS
2021, CHAPTER 16, SECTION 3 FOR CERTAIN OUTPATIENT HEALTH CARE
FACILITIES; DECLARING AN EMERGENCY.

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. "fund" means the patient's compensation fund;

C. "health care provider" means a person,
corporation, organization, facility or institution licensed or

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1 certified by this state to provide health care or professional
2 services as a doctor of medicine, hospital, outpatient health
3 care facility, doctor of osteopathy, chiropractor, podiatrist,
4 nurse anesthetist, physician's assistant, certified nurse
5 practitioner, clinical nurse specialist or certified nurse-
6 midwife or a business entity that is organized, incorporated or
7 formed pursuant to the laws of New Mexico that provides health
8 care services primarily through natural persons identified in
9 this subsection;

10 D. "hospital" means a facility licensed as a
11 hospital in this state that offers in-patient services, nursing
12 or overnight care on a twenty-four-hour basis for diagnosing,
13 treating and providing medical, psychological or surgical care
14 for three or more separate persons who have a physical or
15 mental illness, disease, injury or a rehabilitative condition
16 or are pregnant and may offer emergency services. "Hospital"
17 includes a hospital's parent corporation, subsidiary
18 corporations or affiliates if incorporated or registered in New
19 Mexico; employees and locum tenens providing services at the
20 hospital; and agency nurses providing services at the hospital;

21 E. "independent provider" means a doctor of
22 medicine, doctor of osteopathy, chiropractor, podiatrist, nurse
23 anesthetist, physician's assistant, certified nurse
24 practitioner, clinical nurse specialist or certified nurse-
25 midwife who is not an employee [~~or not an agent~~] of a hospital

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1 or outpatient health care facility. "Independent provider"
2 includes a business entity that is not a hospital or outpatient
3 health care facility that employs or consists of members who
4 are licensed or certified as doctors of medicine, doctors of
5 osteopathy, chiropractors, podiatrists, nurse anesthetists,
6 physician's assistants, certified nurse practitioners, clinical
7 nurse specialists or certified nurse-midwives and the business
8 entity's employees;

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

12 G. "malpractice claim" includes any cause of action
13 arising in this state against a health care provider for
14 medical treatment, lack of medical treatment or other claimed
15 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 of
20 action arising out of the driving, flying or nonmedical acts
21 involved in the operation, use or maintenance of a vehicular or
22 aircraft ambulance;

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

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

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

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

14 K. "patient" means a natural person who received or
15 should have received health care from a health care provider
16 under a contract, express or implied; and

17 L. "superintendent" means the superintendent of
18 insurance."

19 SECTION 2. TEMPORARY PROVISION--OUTPATIENT HEALTH CARE
20 FACILITIES--LIMITATION ON RECOVERY.--From January 1, 2022 to
21 July 1, 2023, except for punitive damages and past and future
22 medical care and related benefits, the aggregate dollar amount
23 recoverable by all persons for or arising from an injury or
24 death to a patient as a result of malpractice shall not exceed
25 seven hundred fifty thousand dollars (\$750,000) per occurrence

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1 for claims brought against an outpatient health care facility,
2 not including outpatient health care facilities majority-owned
3 and -controlled by a hospital, if the injury occurred in that
4 time period. The aggregate dollar amount includes payment to a
5 person for any number of loss of consortium claims or other
6 claims per occurrence that arise solely because of the injuries
7 or death of the patient. In jury cases, the jury shall not be
8 given any instructions dealing with this limitation.

9 SECTION 3. APPLICABILITY.--The provisions of Laws 2021,
10 Chapter 16, Section 3 apply to outpatient health care
11 facilities described in Section 2 of this act on and after July
12 1, 2023.

13 SECTION 4. EMERGENCY.--It is necessary for the public
14 peace, health and safety that this act take effect immediately.