

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 542

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Terry H. McMillan

AN ACT

RELATING TO PROFESSIONAL MALPRACTICE; ENACTING THE HEALTH CARE LIABILITY ACT; LIMITING AGGREGATE NONECONOMIC DAMAGES FOR CLAIMS AGAINST HEALTH CARE PROVIDERS THAT ARE NOT PARTICIPANTS IN THE STATE-SPONSORED EXCESS INSURANCE PROGRAM PURSUANT TO THE MEDICAL MALPRACTICE ACT TO THREE HUNDRED THOUSAND DOLLARS (\$300,000); LIMITING PUNITIVE DAMAGES TO THREE TIMES THE AGGREGATE AMOUNT OF COMPENSATORY DAMAGES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Health Care Liability Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Health Care Liability Act:

A. "aggregate amount" means the sum of damages arising from a single occurrence:

.200342.1

underscoring material = new
~~[bracketed material] = delete~~

underscoring material = new
~~[bracketed material] = delete~~

1 (1) regardless of the number of claimants or
2 claims, including derivative and independent claims; and

3 (2) regardless of the number of parties
4 against whom malpractice claims have been made;

5 B. "consumer price index" means the annual average
6 of the consumer price index for all urban consumers published
7 by the United States bureau of labor statistics;

8 C. "health care provider" means:

9 (1) a person licensed, registered or certified
10 pursuant to the provisions of the Nursing Practice Act;

11 (2) a person licensed or certified pursuant to
12 the provisions of the Chiropractic Physician Practice Act;

13 (3) a person licensed or certified pursuant to
14 the Dental Health Care Act;

15 (4) a person licensed pursuant to the
16 provisions of the Medical Practice Act;

17 (5) a person licensed pursuant to the
18 provisions of the Anesthesiologist Assistants Act;

19 (6) a person licensed pursuant to the
20 provisions of the Podiatry Act;

21 (7) a person licensed pursuant to the
22 provisions of the Polysomnography Practice Act;

23 (8) a person licensed pursuant to the
24 provisions of the Professional Psychologist Act;

25 (9) a person licensed or registered pursuant

underscoring material = new
~~[bracketed material] = delete~~

1 to the provisions of the Counseling and Therapy Practice Act;

2 (10) an osteopathic physician licensed
3 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978
4 or a person licensed pursuant to the provisions of the
5 Osteopathic Physicians' Assistants Act;

6 (11) a person licensed or registered pursuant
7 to the provisions of the Pharmacy Act;

8 (12) a person licensed, registered or
9 certified pursuant to the provisions of the Occupational
10 Therapy Act;

11 (13) a person licensed pursuant to the
12 provisions of the Respiratory Care Act;

13 (14) a person licensed pursuant to the
14 provisions of the Physical Therapy Act;

15 (15) a person licensed pursuant to the Speech-
16 Language Pathology, Audiology and Hearing Aid Dispensing
17 Practices Act;

18 (16) a person licensed, certified or
19 credentialed pursuant to the Medical Imaging and Radiation
20 Therapy Health and Safety Act;

21 (17) a person registered by the department of
22 health as a midwife;

23 (18) a person licensed pursuant to the
24 provisions of the Social Work Practice Act;

25 (19) a person licensed or certified pursuant

.200342.1

underscoring material = new
[bracketed material] = delete

1 to the provisions of the Emergency Medical Services Act;

2 (20) a clinical laboratory certified pursuant
3 to 42 U.S.C. Section 263a;

4 (21) a hospital, outpatient facility,
5 diagnostic treatment center, rehabilitation center, community
6 mental health center, residential treatment center, hospice or
7 home health agency licensed pursuant to the Public Health Act;

8 (22) a person that owns, operates or manages a
9 health care provider or group of health care providers; and

10 (23) the employees, officers, agents and
11 governing board members of a health care provider or group of
12 health care providers;

13 D. "malpractice claim" means a cause of action
14 against a health care provider for treatment, lack of treatment
15 or a departure from accepted professional standards that
16 proximately results in battery or injury to, or death of, a
17 patient or consumer, whether the claim sounds in tort or in
18 contract;

19 E. "noneconomic damages" means all recoverable
20 damages except:

- 21 (1) past and future medical expenses;
22 (2) funeral and burial expenses;
23 (3) past and future necessary nonmedical
24 expenses;
25 (4) loss of earning capacity;

.200342.1

underscored material = new
[bracketed material] = delete

- 1 (5) past and future lost earnings;
- 2 (6) loss of monetary benefits and financial
- 3 support;
- 4 (7) loss of services; and
- 5 (8) punitive damages;

6 F. "preceding calendar year" means the full
7 calendar year preceding the July 1 on which the cap on the
8 aggregate amount of noneconomic damages, as specified in
9 Subsection A of Section 3 of the Health Care Liability Act, is
10 adjusted; and

11 G. "qualified health care provider" means a health
12 care provider qualified and participating in the state-
13 sponsored excess insurance program pursuant to the Medical
14 Malpractice Act.

15 SECTION 3. [NEW MATERIAL] LIMITS ON NONECONOMIC DAMAGES
16 AND PUNITIVE DAMAGES.--

17 A. The aggregate amount of noneconomic damages
18 arising out of the individual or combined malpractice of health
19 care providers that are not participants in the state-sponsored
20 excess insurance program pursuant to the Medical Malpractice
21 Act shall not exceed three hundred thousand dollars (\$300,000),
22 except as adjusted pursuant to Subsection B of this section.

23 B. Beginning on July 1, 2016 and each July 1
24 thereafter, the cap on the aggregate amount of noneconomic
25 damages shall be adjusted by multiplying three hundred thousand

underscored material = new
[bracketed material] = delete

1 dollars (\$300,000) by a fraction, the numerator of which is the
2 consumer price index for the preceding calendar year and the
3 denominator of which is the consumer price index for the base
4 year 2013.

5 C. An award of punitive damages arising out of the
6 individual or combined malpractice of health care providers
7 that are not participants in the state-sponsored excess
8 insurance program pursuant to the Medical Malpractice Act shall
9 not exceed three times the aggregate amount of compensatory
10 damages.

11 D. The limit on the aggregate amount of noneconomic
12 damages, and the limit on the amount of punitive damages, under
13 the Health Care Liability Act shall not be disclosed to a jury
14 in any proceeding in which a malpractice claim is asserted
15 against a health care provider as specified in Subsection A or
16 C of this section.

17 SECTION 4. [NEW MATERIAL] LIABILITY OF A HEALTH CARE
18 PROVIDER BASED UPON VICARIOUS LIABILITY FOR ACTS OR OMISSIONS
19 OF INDEPENDENT CONTRACTOR.--

20 A. The provisions of Sections 41-5-13 and 41-5-22
21 NMSA 1978 regarding limitations and tolling shall apply to a
22 malpractice claim against a health care provider alleging
23 vicarious liability for the acts or omissions of an independent
24 contractor who is a qualified health care provider.

25 B. If a health care provider that is not a

.200342.1

underscored material = new
[bracketed material] = delete

1 participant in the state-sponsored excess insurance program
2 pursuant to the Medical Malpractice Act is adjudicated
3 vicariously liable for the acts or omissions of an independent
4 contractor who is a qualified health care provider, the
5 provisions of Section 41-5-6 NMSA 1978 shall control as to
6 damages allowed and limitations on the amount of damages
7 recoverable for that portion of comparative fault, if any,
8 attributable to such independent contractor.

9 SECTION 5. APPLICABILITY.--

10 A. Except as otherwise specified, the provisions of
11 the Health Care Liability Act shall not apply to claims against
12 qualified health care providers under the Medical Malpractice
13 Act or claims against public employees or governmental entities
14 that must be brought under the Tort Claims Act.

15 B. The provisions of the Health Care Liability Act
16 apply to malpractice claims made on or after July 1, 2016.