



Summary on Medical Malpractice Act Status/ HB 629

February 20, 2019

The New Mexico Medical Malpractice Act provides liability coverage for Medical, Osteopathic, Chiropractic, Podiatry, Physician Assistants, Certified Registered Nurse Anesthesia, Hospitals and out patient surgery centers. The Act provides \$600,000 limit of liability plus past and future medical care, Medical Legal Panel (screen cases before filing in court), and three-year statute of limitations for adults. The Act provides coverage for 25 hospitals, 57 outpatient surgery center and 2,500 health care providers who practice in New Mexico. The Act allows for affordable and available liability insurance for the majority of physicians who are not at VA, UNM Health Science Center, Indian Health Services etc.

HB 629, Amendments to the Medical Malpractice Act, was introduced by Representative Ely. HB 629 increases the limit of liability for health care providers to \$2,000,000, their corporations to \$25,000,000, and Hospitals and outpatient facilities \$25,000,000. The bill creates other problematic changes, all of which have significant implications for liability coverage.

The Patient Compensation Fund (PCF) provides payments for awards over \$200,000 up to \$600,000, plus past and future medical care to patients who have been awarded in a medical malpractice filing. The Office of the Superintendent of Insurance's actuarial study of November 6, 2018 found that the PCF is operating at a \$64.4 million deficit, with \$100,900,000 pending claims occurring prior to December 31, 2017.

Furthermore, District Court Judge David Thomson found in favor of Drs. McAneny, Liakos, Kwan and Ritchie vs. Superintendent of Insurance Franchini for not following the Administrative Procedures Act (APA) in his duties administering the Patient Compensation. This ruling is being appealed to the Court of Appeals. Judge Thomson ruled the SOI did not follow the APA and removed Presbyterian Hospital and all physicians insured after 2017 out from under the protection

of the Medical Malpractice Act and the PCF. As well, Judge Thomson's ruling requires the SOI to adopt rules for Hospital to be admitted under the fund.

New Mexico Medical Society and the covered providers under the Medical Malpractice Act believe no changes should be considered to the MMA until the McAneny, et al vs Franchini suit is resolved as well as a new actuarial study is commissioned to further study the Patient Compensation Fund. It must be determined how current health care providers' contributions to the PCF can be increased to achieve actuarial soundness.

Suffice to say, there are grave concerns about the solvency of the PCF and the ability to ensure health care providers have affordable and available insurance in this state. Health Care providers in New Mexico practices are financially marginal due to high Medicaid, Medicare and a small commercial market. Any changes to the MMA must be considered with an independent actuarial study, a blue- ribbon committee of experts, and thorough negotiations outside of the political arena.