



Briefing Paper
February 15, 2011

Medical Malpractice Act Revision 2011 **Committee Substitute to HB 267 & SB 333**

There are five consolidated cases in the Court of Appeals questioning whether or not medical corporations qualify under the NM Medical Malpractice Act. This attack on the Act through the court system would, if successful, dramatically subvert the integrity of the Act. The Society must work with other health care providers to enact changes to the Act to insure that the 2011 legislature addresses the most pressing issues.

NMMS needs your immediate action. Please contact your legislators now and ask them to support [SB 333 and HB 267 committee substitutes](#) which amend the Act and address the most pressing issues. The amendments will:

1. Address the corporation issue which was raised by the Department of Insurance in October 2009. The DOI memorandum stated contributions to the patient compensation fund (PCF) would no longer be accepted on behalf of medical corporations. This decision essentially disqualified corporations from inclusion under the Act. In response, NMMS and American Physicians Assurance filed legal action. Currently, a restraining order is in place, corporations' contributions are being accepted by DOI, and corporations continue to qualify under the Act. This temporary reprieve is being contested in the Court of Appeals.
2. Expand the definition for Health Care Providers to include nurses, nurse practitioners, nurse mid-wives and other providers who work in a hospital setting.
3. Allow the DOI to access PCF contributions for physicians employed by hospitals and to assess an appropriate surcharge on hospitals to protect the solvency of the fund.
4. Protect the confidentiality of settlement agreements. Physicians already report to the national practitioner bank and licensing board and the public reporting of settlement amounts, as has been requested by some groups, is unwarranted.
5. Require that insurance companies that provide coverage under the Act must contribute to the guaranty fund. This would insure that if a company became insolvent, the guaranty fund would step in and provide coverage for the health care provider and patient.
6. Recognize medical inflation and modestly increase the limit of liability, which has not increased since 1992, to \$700,000 from current \$600,000 plus past and future medical care.



7. Allow cap flexibility by including a cost of living adjustment tied to Medicare.
8. Establish an advisory committee of doctors and lawyers to discuss policy and system changes. This committee of experts would assist in addressing controversial issues, like those resulting from the DOI memorandum, in a constructive format.

The trial bar will oppose the committee substitute. They have demanded the bill include \$1.5M limit of liability, an annual cost of living adjustment for the cap and bad faith provisions (allows plaintiff to sue the liability carrier if reasonable settlement isn't paid).

Please call and email your Senator and House representative today and ask them to support SB 333 and HB 267 committee substitutes. We need to avoid a medical liability crisis in New Mexico and make the needed changes to the Medical Malpractice Act.

To find your legislators and their contact information, please go to:
<http://www.nmlegis.gov/lcs/legislatorsearch.aspx> or call the NMMS office at (505) 828-0237.

For copy of the committee substitute, please “click here” or go to:
https://www.nmms.org/Pages/member_view/Briefing%20Papers or
<http://www.nmlegis.gov/lcs/BillFinder.aspx>.