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## State of New Mexico

Michelle Lujan Grisham  
Governor

April 1, 2021

### HOUSE EXECUTIVE MESSAGE NO. 7

The Honorable Brian Egolf, Jr., Speaker of the House and  
Members of the House of Representatives  
State Capitol Building  
Santa Fe, NM 87501

Honorable Speaker Egolf and Members of the House:

I have this day SIGNED:

HOUSE BILL 75, as amended with certificate of correction  
enacted by the Fifty-Fifth Legislature, First Session, 2021.

Respectfully yours,

  
Michelle Lujan Grisham  
Governor

RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: 4:39 a.m. (p.m.)  
Date: 4/1/2021 2021

By   
Secretary of State

Time: \_\_\_\_\_ a.m. p.m.  
Date: \_\_\_\_\_ 2021

By \_\_\_\_\_  
Chief Clerk of the House



# The Legislature of the State of New Mexico

55th **Legislature,** 1st **Session**

LAWS 2021

CHAPTER 16

HOUSE BILL 75, as amended

with certificate of correction

Introduced by

REPRESENTATIVE DAYMON ELY



State of New Mexico  
House of Representatives  
OFFICE of the CHIEF CLERK  
Santa Fe

LISA M. ORTIZ McCUTCHEON  
Chief Clerk

State Capitol, Room 100  
Santa Fe, NM 87501  
Business Phone: (505) 986-4751  
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FIFTY-FIFTH LEGISLATURE  
FIRST SESSION, 2021

March 26, 2021

CERTIFICATE OF CORRECTION

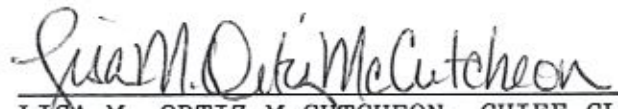
I certify that the following error was found in

HOUSE BILL 75, as amended

and has been corrected in enrolling and engrossing:

1. Senate Floor Amendment #1, Section 14, paragraph B: reads;  
"shall be consist of" and it should read "shall consist of".  
Correction is on page 25 line 5 and 6 of the enrolled and engrossed  
bill.

Respectfully submitted,



LISA M. ORTIZ McCUTCHEON, CHIEF CLERK  
HOUSE OF REPRESENTATIVES

6/26/21 10:00 AM

3/26/21 10:00 AM

6/26/21 10:00 AM

# CHAPTER 16

## AN ACT

RELATING TO MEDICAL MALPRACTICE; CLARIFYING AND MODERNIZING THE MEDICAL MALPRACTICE ACT; RAISING PERSONAL LIABILITY AND RECOVERY CAPS; LIMITING PARTICIPATION BY HOSPITALS AND OUTPATIENT HEALTH CARE FACILITIES; REQUIRING A THIRD-PARTY ADMINISTRATOR FOR THE PATIENT'S COMPENSATION FUND; REQUIRING ANNUAL FUND AUDITS; CREATING AN ADVISORY BOARD; REQUIRING ANNUAL ACTUARIAL STUDIES; REQUIRING SURCHARGES SUFFICIENT TO BRING THE FUND TO SOLVENCY BY DECEMBER 31, 2026; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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 certified by this state to provide health care or professional services as a doctor of medicine, hospital, outpatient health care facility, doctor of osteopathy, chiropractor, podiatrist, nurse anesthetist, physician's



1 assistant, certified nurse practitioner, clinical nurse  
2 specialist or certified nurse-midwife or a business entity  
3 that is organized, incorporated or formed pursuant to the  
4 laws of New Mexico that provides health care services  
5 primarily through natural persons identified in this  
6 subsection;

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

19 E. "independent provider" means a doctor of  
20 medicine, doctor of osteopathy, chiropractor, podiatrist,  
21 nurse anesthetist, physician's assistant, certified nurse  
22 practitioner, clinical nurse specialist or certified nurse-  
23 midwife who is not an employee or not an agent of a hospital  
24 or outpatient health care facility. "Independent provider"  
25 includes a business entity that is not a hospital or

1 outpatient health care facility that employs or consists of  
2 members who are licensed or certified as doctors of medicine,  
3 doctors of osteopathy, chiropractors, podiatrists, nurse  
4 anesthetists, physician's assistants, certified nurse  
5 practitioners, clinical nurse specialists or certified nurse-  
6 midwives and the business entity's employees;

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

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

21 H. "medical care and related benefits" means all  
22 reasonable medical, surgical, physical rehabilitation and  
23 custodial services and includes drugs, prosthetic devices and  
24 other similar materials reasonably necessary in the provision  
25 of such services;

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

4 J. "outpatient health care facility" means an  
5 entity that is licensed pursuant to the Public Health Act as  
6 an outpatient facility, including ambulatory surgical  
7 centers, free-standing emergency rooms, urgent care clinics,  
8 acute care centers and intermediate care facilities and  
9 includes a facility's employees, locum tenens providers and  
10 agency nurses providing services at the facility.

11 "Outpatient health care facility" does not include  
12 independent providers;

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

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

18 SECTION 2. Section 41-5-5 NMSA 1978 (being Laws 1992,  
19 Chapter 33, Section 2) is amended to read:

20 "41-5-5. QUALIFICATIONS.--

21 A. To be qualified under the provisions of the  
22 Medical Malpractice Act, a health care provider shall:

23 (1) establish its financial responsibility  
24 by filing proof with the superintendent that the health care  
25 provider is insured by a policy of malpractice liability



1 insurance issued by an authorized insurer in the amount of at  
2 least two hundred fifty thousand dollars (\$250,000) per  
3 occurrence or by having continuously on deposit the sum of  
4 seven hundred fifty thousand dollars (\$750,000) in cash with  
5 the superintendent or such other like deposit as the  
6 superintendent may allow by rule; provided that hospitals and  
7 outpatient health care facilities that establish financial  
8 responsibility through a policy of malpractice liability  
9 insurance may use any form of malpractice insurance; and  
10 provided further that for independent providers, in the  
11 absence of an additional deposit or policy as required by  
12 this subsection, the deposit or policy shall provide coverage  
13 for not more than three separate 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.

17 B. For hospitals or outpatient health care  
18 facilities electing to be covered under the Medical  
19 Malpractice Act, the superintendent shall determine, based on  
20 a risk assessment of each hospital or outpatient health care  
21 facility, each hospital's or outpatient health care  
22 facility's base coverage or deposit and additional charges  
23 for the fund. The superintendent shall arrange for an  
24 actuarial study before determining base coverage or deposit  
25 and surcharges.



1 C. A health care provider not qualifying under  
2 this section shall not have the benefit of any of the  
3 provisions of the Medical Malpractice Act in the event of a  
4 malpractice claim against it; provided that beginning July 1,  
5 2021, hospitals and outpatient health care facilities shall  
6 not participate in the medical review process, and beginning  
7 January 1, 2027, hospitals and outpatient health care  
8 facilities shall have the benefits of the other provisions of  
9 the Medical Malpractice Act except participation in the  
10 fund."

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 past and future  
15 medical care and related benefits, the aggregate dollar  
16 amount recoverable by all persons for or arising from any  
17 injury or death to a patient as a result of malpractice shall  
18 not exceed six hundred thousand dollars (\$600,000) per  
19 occurrence for malpractice claims brought against health care  
20 providers if the injury or death occurred prior to January 1,  
21 2022. In jury cases, the jury shall not be given any  
22 instructions dealing with this limitation.

23 B. Except for punitive damages and past and future  
24 medical care and related benefits, the aggregate dollar  
25 amount recoverable by all persons for or arising from any

1 injury or death to a patient as a result of malpractice shall  
2 not exceed seven hundred fifty thousand dollars (\$750,000)  
3 per occurrence for malpractice claims against independent  
4 providers. The aggregate dollar amount includes payment to  
5 any person for any number of loss of consortium claims or  
6 other claims per occurrence that arise solely because of the  
7 injuries or death of the patient. In jury cases, the jury  
8 shall not be given any instructions dealing with this  
9 limitation. Beginning January 1, 2023, the per occurrence  
10 limit on recovery shall be adjusted annually by the consumer  
11 price index for all urban consumers.

12 C. Except for punitive damages and past and future  
13 medical care and related benefits, the aggregate dollar  
14 amount recoverable by all persons for or arising from an  
15 injury or death to a patient as a result of malpractice shall  
16 not exceed four million dollars (\$4,000,000) per occurrence  
17 for claims brought against a hospital or outpatient health  
18 care facility if the injury or death occurred in calendar  
19 year 2022. The aggregate dollar amount includes payment to  
20 any person for any number of loss of consortium claims or  
21 other claims per occurrence that arise solely because of the  
22 injuries or death of the patient. In jury cases, the jury  
23 shall not be given any instructions dealing with this  
24 limitation.

25 D. Except for punitive damages and past and future

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1 medical care and related benefits, the aggregate dollar  
2 amount recoverable by all persons for or arising from an  
3 injury or death to a patient as a result of malpractice shall  
4 not exceed four million five hundred thousand dollars  
5 (\$4,500,000) per occurrence for claims brought against a  
6 hospital or outpatient health care facility if the injury or  
7 death occurred in calendar year 2023. The aggregate dollar  
8 amount includes payment to any person for any number of loss  
9 of consortium claims or other claims per occurrence that  
10 arise solely because of the injuries or death of the patient.  
11 In jury cases, the jury shall not be given any instructions  
12 dealing with this limitation.

13 E. Except for punitive damages and past and future  
14 medical care and related benefits, the aggregate dollar  
15 amount recoverable by all persons for or arising from an  
16 injury or death to a patient as a result of malpractice shall  
17 not exceed five million dollars (\$5,000,000) per occurrence  
18 for claims brought against a hospital or outpatient health  
19 care facility if the injury or death occurred in calendar  
20 year 2024. The aggregate dollar amount includes payment to  
21 any person for any number of loss of consortium claims or  
22 other claims per occurrence that arise solely because of the  
23 injuries or death of the patient. In jury cases, the jury  
24 shall not be given any instructions dealing with this  
25 limitation.



1           F. Except for punitive damages and past and future  
2 medical care and related benefits, the aggregate dollar  
3 amount recoverable by all persons for or arising from an  
4 injury or death to a patient as a result of malpractice shall  
5 not exceed five million five hundred thousand dollars  
6 (\$5,500,000) per occurrence for claims brought against a  
7 hospital or outpatient health care facility if the injury or  
8 death occurred in calendar year 2025. The aggregate dollar  
9 amount includes payment to any person for any number of loss  
10 of consortium claims or other claims per occurrence that  
11 arise solely because of the injuries or death of the patient.  
12 In jury cases, the jury shall not be given any instructions  
13 dealing with this limitation.

14           G. Except for punitive damages and past and future  
15 medical care and related benefits, the aggregate dollar  
16 amount recoverable by all persons for or arising from an  
17 injury or death to a patient as a result of malpractice shall  
18 not exceed six million dollars (\$6,000,000) per occurrence  
19 for claims brought against a hospital or outpatient health  
20 care facility if the injury or death occurred in 2026;  
21 provided that beginning January 1, 2027, the per occurrence  
22 limit shall be adjusted annually by the consumer price index  
23 for all urban consumers. The aggregate dollar amount  
24 includes payment to any person for any number of loss of  
25 consortium claims or other claims per occurrence that arise

1 solely because of the injuries or death of the patient. In  
2 jury cases, the jury shall not be given any instructions  
3 dealing with this limitation.

4 H. The value of accrued medical care and related  
5 benefits shall not be subject to any limitation.

6 I. A health care provider's personal liability is  
7 limited to two hundred fifty thousand dollars (\$250,000) for  
8 monetary damages and medical care and related benefits as  
9 provided in Section 41-5-7 NMSA 1978. Any amount due from a  
10 judgment or settlement in excess of two hundred fifty  
11 thousand dollars (\$250,000) shall be paid from the fund  
12 except as provided in Subsection K of this section.

13 J. The term "occurrence" shall not be construed in  
14 such a way as to limit recovery to only one maximum statutory  
15 payment if separate acts or omissions cause additional or  
16 enhanced injury or harm as a result of the separate acts or  
17 omissions. A patient who suffers two or more distinct  
18 injuries as a result of two or more different acts or  
19 omissions that occur at different times by one or more health  
20 care providers is entitled to up to the maximum statutory  
21 recovery for each injury.

22 K. Until January 1, 2027, amounts due from a  
23 judgment or settlement against a hospital or outpatient  
24 health care facility in excess of seven hundred fifty  
25 thousand dollars (\$750,000), excluding past and future

1 medical expenses, shall be paid by the hospital or  
2 outpatient health care facility and not by the fund.  
3 Beginning January 1, 2027, amounts due from a judgment or  
4 settlement against a hospital or outpatient health care  
5 facility shall not be paid from the fund."

6 SECTION 4. Section 41-5-7 NMSA 1978 (being Laws 1992,  
7 Chapter 33, Section 5, as amended by Laws 1992, Chapter 33,  
8 Section 6) is amended to read:

9 "41-5-7. MEDICAL EXPENSES AND PUNITIVE DAMAGES.--

10 A. Awards of past and future medical care and  
11 related benefits shall not be subject to the limitations of  
12 recovery imposed in Section 41-5-6 NMSA 1978.

13 B. The health care provider shall be liable for  
14 all medical care and related benefit payments until the total  
15 payments made by or on behalf of it for monetary damages and  
16 medical care and related benefits combined equals the health  
17 care provider's personal liability limit as provided in  
18 Subsection I of Section 41-5-6 NMSA 1978, after which the  
19 payments shall be made by the fund.

20 C. Beginning January 1, 2027, any amounts due from  
21 a judgment or settlement against a hospital or outpatient  
22 health care facility shall not be paid from the fund if the  
23 injury or death occurred after December 31, 2026.

24 D. This section shall not be construed to prevent  
25 a patient and a health care provider from entering into a



1 settlement agreement whereby medical care and related  
2 benefits shall be provided for a limited period of time only  
3 or to a limited degree.

4 E. A judgment of punitive damages against a health  
5 care provider shall be the personal liability of the health  
6 care provider. Punitive damages shall not be paid from the  
7 fund or from the proceeds of the health care provider's  
8 insurance contract unless the contract expressly provides  
9 coverage. Nothing in Section 41-5-6 NMSA 1978 precludes the  
10 award of punitive damages to a patient. Nothing in this  
11 subsection authorizes the imposition of liability for  
12 punitive damages where that imposition would not be otherwise  
13 authorized by law."

14 SECTION 5. Section 41-5-9 NMSA 1978 (being Laws 1976,  
15 Chapter 2, Section 9) is amended to read:

16 "41-5-9. DISTRICT COURT--CONTINUING JURISDICTION.--The  
17 district court from which final judgment issued shall have  
18 continuing jurisdiction in cases where future medical care  
19 and related benefits were awarded pursuant to Section 41-5-7  
20 NMSA 1978 for malpractice claims arising from occurrences  
21 prior to July 1, 2021."

22 SECTION 6. Section 41-5-13 NMSA 1978 (being Laws 1976,  
23 Chapter 2, Section 13) is amended to read:

24 "41-5-13. LIMITATIONS.--No claim for malpractice may be  
25 brought against a health care provider unless filed within

1 three years after the date that the act of malpractice  
2 occurred, except that the times limited for the bringing of  
3 actions by minors and incapacitated persons shall be extended  
4 so that they shall have one year from and after the age of  
5 majority or termination of incapacity within which to  
6 commence the actions."

7 SECTION 7. Section 41-5-14 NMSA 1978 (being Laws 1976,  
8 Chapter 2, Section 14) is amended to read:

9 "41-5-14. MEDICAL REVIEW COMMISSION--INDEPENDENT  
10 PROVIDERS.--

11 A. The "New Mexico medical review commission" is  
12 created. The function of the New Mexico medical review  
13 commission is to provide panels to review all malpractice  
14 claims against independent providers who are natural persons  
15 covered by the Medical Malpractice Act.

16 B. Those eligible to sit on a panel shall consist  
17 of health care providers licensed pursuant to New Mexico law  
18 and residing in New Mexico and members of the state bar.

19 C. The only cases that a panel will consider are  
20 cases involving an alleged act of malpractice occurring in  
21 New Mexico by an independent provider qualified under the  
22 Medical Malpractice Act. Beginning July 1, 2021, cases  
23 involving an alleged act of malpractice by a hospital or  
24 outpatient health care facility shall not be considered and  
25 such claims shall not be filed with the New Mexico medical

1 review commission.

2 D. An attorney shall submit a case for the  
3 consideration of a panel, prior to filing a complaint in any  
4 district court or other court sitting in New Mexico, by  
5 addressing an application, in writing, signed by the patient  
6 or the patient's attorney, to the director of the New Mexico  
7 medical review commission.

8 E. The director of the New Mexico medical review  
9 commission shall be an attorney appointed by and serving at  
10 the pleasure of the chief justice of the New Mexico supreme  
11 court.

12 F. The chief justice shall set the director's  
13 salary and report the salary to the superintendent in the  
14 superintendent's capacity as custodian of the fund."

15 SECTION 8. Section 41-5-15 NMSA 1978 (being Laws 1976,  
16 Chapter 2, Section 15) is amended to read:

17 "41-5-15. COMMISSION DECISION REQUIRED--APPLICATION.--

18 A. No malpractice action may be filed in any court  
19 against a qualifying independent provider or the independent  
20 provider's employer, master or principal based on a theory of  
21 respondeat superior or any other derivative theory of  
22 recovery before application is made to the New Mexico medical  
23 review commission and its decision is rendered; provided,  
24 however, that an independent provider and the patient may  
25 stipulate to forego the panel process.



1           B. This application shall contain the following:

2                 (1) the name of the health care provider  
3 against which the claims are asserted;

4                 (2) a short and plain statement of the  
5 grounds as to why the New Mexico medical review commission  
6 has jurisdiction over the claims being asserted;

7                 (3) the specific date or date range when the  
8 malpractice allegedly occurred;

9                 (4) so far as known, a brief statement of  
10 the facts supporting the patient's malpractice claim; and

11                 (5) a statement authorizing the panel to  
12 obtain access to all medical and hospital records and  
13 information pertaining to the matter giving rise to the  
14 application and, for the purposes of its consideration of the  
15 matter only, waiving any claim of privilege as to the  
16 contents of those records. Nothing in that statement shall  
17 in any way be construed as waiving that privilege for any  
18 other purpose or in any other context, in or out of court."

19           **SECTION 9.** Section 41-5-16 NMSA 1978 (being Laws 1976,  
20 Chapter 2, Section 16) is amended to read:

21                 "41-5-16. APPLICATION PROCEDURE.--

22                 A. Upon receipt of an application for review, the  
23 New Mexico medical review commission's director or the  
24 director's designee shall cause to be served a true copy of  
25 the application on the independent providers against which

1 claims are asserted. Service shall be effected pursuant to  
2 New Mexico law. If the independent provider involved chooses  
3 to retain legal counsel, the independent provider's attorney  
4 shall informally enter an appearance with the director.

5 B. The independent provider shall answer the  
6 application for review and in addition shall submit a  
7 statement authorizing the panel to obtain access to all  
8 medical and hospital records and information pertaining to  
9 the matter giving rise to the application and, for the  
10 purposes of its consideration of the matter only, waiving any  
11 claim of privilege as to the contents of those records.  
12 Nothing in that statement shall in any way be construed as  
13 waiving that privilege for any other purpose or in any other  
14 context, in or out of court.

15 C. In instances where applications are received  
16 employing the theory of respondeat superior or some other  
17 derivative theory of recovery, the director shall forward  
18 such applications to the state professional societies,  
19 associations or licensing boards of both the individual  
20 independent provider whose alleged malpractice caused the  
21 application to be filed and the independent provider named a  
22 respondent as employer, master or principal."

23 SECTION 10. Section 41-5-17 NMSA 1978 (being Laws 1976,  
24 Chapter 2, Section 17) is amended to read:

25 "41-5-17. PANEL SELECTION.--

1           A. Applications for review shall be promptly  
2 transmitted by the director of the New Mexico medical review  
3 commission to the directors of the independent provider's  
4 state professional society or association and the state bar  
5 association, who shall each select three panelists within  
6 thirty days from the date of transmittal of the application.

7           B. If no state professional society or association  
8 exists or if the independent provider does not belong to a  
9 society or association, the director shall transmit the  
10 application to the independent provider's state licensing  
11 board, which shall in turn select three persons from the  
12 independent provider's profession and, where applicable, two  
13 persons specializing in the same field or discipline as the  
14 independent provider.

15           C. In cases where there are multiple defendants, a  
16 single combined panel shall review the claims against all  
17 party defendants. At the discretion of the panel chair, a  
18 hearing involving multiple defendants may include fewer than  
19 three panelists from the independent provider's profession  
20 and fewer than three lawyer panel members per defendant.

21           D. Except for cases involving multiple defendants,  
22 three panel members from the independent provider's  
23 profession and three panel members from the state bar  
24 association shall sit in review in each case.

25           E. The director of the medical review commission



1 or the director's delegate, who shall be an attorney, shall  
2 sit on each panel and serve as chair.

3 F. A member shall disqualify the member's self  
4 from consideration of a case in which, by virtue of  
5 circumstances, the member feels the member's presence on the  
6 panel would be inappropriate, considering the purpose of the  
7 panel. The director may excuse a proposed panelist from  
8 serving.

9 G. Whenever a party makes and files an affidavit  
10 that a panel member selected pursuant to this section cannot,  
11 according to the belief of the party making the affidavit,  
12 sit in review of the application with impartiality, that  
13 panel member shall proceed no further. Another panel member  
14 shall be selected by the independent provider's professional  
15 association, state licensing board or the state bar  
16 association, as the case may be. A party may not disqualify  
17 more than three proposed panel members in this manner in any  
18 single malpractice claim."

19 SECTION 11. Section 41-5-18 NMSA 1978 (being Laws 1976,  
20 Chapter 2, Section 18) is amended to read:

21 "41-5-18. TIME AND PLACE OF HEARING.--A date, time and  
22 place for hearing shall be fixed by the director of the New  
23 Mexico medical review commission and prompt notice of the  
24 hearing shall be given to the parties involved, their  
25 attorneys and the members of the panel. In no instance shall

1 the date set be more than sixty days after the transmittal by  
2 the director of the application for review, unless good cause  
3 exists for extending the period. Hearings may be held  
4 anywhere in the state, and the director shall give due regard  
5 to the convenience of the parties in determining the place of  
6 hearing. Upon the request of one party, within ten days of  
7 the answer filed by the respondent, the hearing shall be  
8 conducted via video conference, including attorneys,  
9 witnesses and panel members appearing remotely."

10 SECTION 12. Section 41-5-19 NMSA 1978 (being Laws 1976,  
11 Chapter 2, Section 19) is amended to read:

12 "41-5-19. HEARING PROCEDURES.--

13 A. At the time set for hearing, the attorney  
14 submitting the case for review shall be present and shall  
15 make a brief introduction of the case, including a resume of  
16 the facts constituting alleged professional malpractice. The  
17 independent provider against whom the claim is brought and  
18 the independent provider's attorney may be present and may  
19 make an introductory statement of the independent provider's  
20 case.

21 B. Both parties may call witnesses to testify  
22 before the panel, which witnesses shall be sworn. Medical  
23 texts, journals, studies and other documentary evidence  
24 relied upon by either party may be offered and admitted if  
25 relevant. Written statements of fact of treating independent

1 providers may be reviewed. The monetary damages in any case  
2 shall not be a subject of inquiry or discussion.

3 C. The hearing shall be informal, and no official  
4 transcript shall be made. Nothing contained in this  
5 subsection shall preclude the recording or transcribing of  
6 the testimony by the parties at their own expense.

7 D. At the conclusion of the hearing, the panel  
8 shall deliberate and reach a decision."

9 SECTION 13. Section 41-5-25 NMSA 1978 (being Laws 1992,  
10 Chapter 33, Section 9, as amended) is amended to read:

11 "41-5-25. PATIENT'S COMPENSATION FUND--THIRD-PARTY  
12 ADMINISTRATOR--ACTUARIAL STUDIES--SURCHARGES--CLAIMS--  
13 PRORATION--PROOFS OF AUTHENTICITY.--

14 A. The "patient's compensation fund" is created as  
15 a nonreverting fund in the state treasury. The fund consists  
16 of money from surcharges, income from investment of the fund  
17 and any other money deposited to the credit of the fund. The  
18 fund shall be held in trust, deposited in a segregated  
19 account in the state treasury and invested by the state  
20 investment office and shall not become a part of or revert to  
21 the general fund or any other fund of the state. Money from  
22 the fund shall be expended only for the purposes of and to  
23 the extent provided in the Medical Malpractice Act. All  
24 approved expenses of collecting, protecting and administering  
25 the fund, including purchasing insurance for the fund, shall



1 be paid from the fund.

2 B. The superintendent shall contract for the  
3 administration and operation of the fund with a qualified,  
4 licensed third-party administrator, selected in consultation  
5 with the advisory board, no later than January 1, 2022. The  
6 third-party administrator shall provide an annual audit of  
7 the fund to the superintendent.

8 C. The superintendent, as custodian of the fund,  
9 and the third-party administrator shall be notified by the  
10 health care provider or the health care provider's insurer  
11 within thirty days of service on the health care provider of  
12 a complaint asserting a malpractice claim brought in a court  
13 in this state against the health care provider.

14 D. The superintendent shall levy an annual  
15 surcharge on all New Mexico health care providers qualifying  
16 under Section 41-5-5 NMSA 1978. The surcharge shall be  
17 determined by the superintendent with the advice of the  
18 advisory board and based on the annual independent actuarial  
19 study of the fund. The surcharges for health care providers,  
20 including hospitals and outpatient health care facilities  
21 whose qualifications for the fund end on January 1, 2027,  
22 shall be based on sound actuarial principles, using data  
23 obtained from New Mexico claims and loss experience. A  
24 hospital or outpatient health care facility seeking  
25 participation in the fund during the remaining qualifying

1 years shall provide, at a minimum, the hospital's or  
2 outpatient health care facility's direct and indirect cost  
3 information as reported to the federal centers for medicare  
4 and medicaid services for all self-insured malpractice  
5 claims, including claims and paid loss detail, and the claims  
6 and paid loss detail from any professional liability  
7 insurance carriers for each hospital or outpatient health  
8 care facility and each employed health care provider for the  
9 past eight years to the third-party actuary. The same  
10 information shall be available to the advisory board for  
11 review, including financial information and data, and  
12 excluding individually identifying case information, which  
13 information shall not be subject to the Inspection of Public  
14 Records Act. The superintendent, the third-party actuary or  
15 the advisory board shall not use or disclose the information  
16 for any purpose other than to fulfill the duties pursuant to  
17 this subsection.

18 E. The surcharge shall be collected on the same  
19 basis as premiums by each insurer from the health care  
20 provider. The surcharge shall be due and payable within  
21 thirty days after the premiums for malpractice liability  
22 insurance have been received by the insurer from the health  
23 care provider in New Mexico. If the surcharge is collected  
24 but not paid timely, the superintendent may suspend the  
25 certificate of authority of the insurer until the annual

1 premium surcharge is paid.

2 F. Surcharges shall be set by October 31 of each  
3 year for the next calendar year. Beginning in 2021, the  
4 surcharges shall be set with the intention of bringing the  
5 fund to solvency with no projected deficit by December 31,  
6 2026. All qualified and participating hospitals and  
7 outpatient health care facilities shall cure any fund deficit  
8 attributable to hospitals and outpatient health care  
9 facilities by December 31, 2026.

10 G. If the fund would be exhausted by payment of  
11 all claims allowed during a particular calendar year, then  
12 the amounts paid to each patient and other parties obtaining  
13 judgments shall be prorated, with each such party receiving  
14 an amount equal to the percentage the party's own payment  
15 schedule bears to the total of payment schedules outstanding  
16 and payable by the fund. Any amounts due and unpaid as a  
17 result of such proration shall be paid in the following  
18 calendar years.

19 H. Upon receipt of one of the proofs of  
20 authenticity listed in this subsection, reflecting a judgment  
21 for damages rendered pursuant to the Medical Malpractice Act,  
22 the superintendent shall issue or have issued warrants in  
23 accordance with the payment schedule constructed by the court  
24 and made a part of its final judgment. The only claim  
25 against the fund shall be a voucher or other appropriate



1 request by the superintendent after the superintendent  
2 receives:

3 (1) until January 1, 2022, a certified copy  
4 of a final judgment in excess of two hundred thousand dollars  
5 (\$200,000) against a health care provider;

6 (2) until January 1, 2022, a certified copy  
7 of a court-approved settlement or certification of settlement  
8 made prior to initiating suit, signed by both parties, in  
9 excess of two hundred thousand dollars (\$200,000) against a  
10 health care provider; or

11 (3) until January 1, 2022, a certified copy  
12 of a final judgment less than two hundred thousand dollars  
13 (\$200,000) and an affidavit of a health care provider or its  
14 insurer attesting that payments made pursuant to Subsection B  
15 of Section 41-5-7 NMSA 1978, combined with the monetary  
16 recovery, exceed two hundred thousand dollars (\$200,000).

17 I. On or after January 1, 2022, the amounts  
18 specified in Paragraphs (1) through (3) of Subsection H of  
19 this section shall be two hundred fifty thousand dollars  
20 (\$250,000)."

21 **SECTION 14.** A new section of the Medical Malpractice  
22 Act, Section 41-5-25.1 NMSA 1978, is enacted to read:

23 "41-5-25.1. PATIENT'S COMPENSATION FUND ADVISORY  
24 BOARD--CREATED--MEMBERSHIP--POWERS AND DUTIES.--

25 A. The "patient's compensation fund advisory

1 board" is created to advise the superintendent and the third-  
2 party administrator. The office of superintendent of  
3 insurance shall provide staff services to the advisory board.  
4 The advisory board shall be established by July 2, 2021.

5 B. The nine-member advisory board shall consist  
6 of:

7 (1) two representatives from the New Mexico  
8 trial lawyers association;

9 (2) two representatives of a statewide  
10 association representing hospitals;

11 (3) two representatives of a statewide  
12 association representing physicians;

13 (4) two patient or patient advocate  
14 representatives; and

15 (5) one representative of a statewide  
16 association representing certified nurse practitioners.

17 C. Members of the advisory board shall be chosen  
18 annually by their organizations, as applicable, and the  
19 patient or patient advocate representatives shall be chosen  
20 by the chief justice of the supreme court from nominations  
21 made by the New Mexico trial lawyers association. Members of  
22 the advisory board are entitled to receive per diem and  
23 mileage pursuant to the Per Diem and Mileage Act, but shall  
24 receive no other compensation, perquisite or allowance.

25 D. The advisory board shall elect a chair and a

1 vice chair. A majority of the members constitutes a quorum  
2 for the transaction of business. All decisions of the  
3 advisory board shall be by majority vote of the members  
4 present.

5 E. The advisory board shall convene at least twice  
6 a year or at the request of the superintendent to:

7 (1) review the process and data for the  
8 setting of the surcharges for all qualified health care  
9 providers pursuant to the Medical Malpractice Act;

10 (2) advise the superintendent concerning  
11 surcharge data accumulation and results;

12 (3) advise the superintendent on the  
13 surcharges to be set by the superintendent; and

14 (4) prepare an annual report to the  
15 legislature on the operations and financial condition of the  
16 fund no later than the first day of each year's legislative  
17 session."

18 SECTION 15. Section 41-5-28 NMSA 1978 (being Laws 1976,  
19 Chapter 2, Section 29, as amended) is amended to read:

20 "41-5-28. PAYMENT OF MEDICAL REVIEW COMMISSION  
21 EXPENSES.--Unless otherwise provided by law, expenses  
22 incurred in carrying out the powers, duties and functions of  
23 the New Mexico medical review commission, including the  
24 salary of the director of the commission, shall be paid by  
25 the fund. The superintendent, in the superintendent's



1 capacity as custodian of the fund, shall disburse fund money  
2 to the director upon receipt of vouchers itemizing expenses  
3 incurred by the commission. The director shall supply the  
4 chief justice of the New Mexico supreme court with duplicates  
5 of all vouchers submitted to the superintendent. Expenses of  
6 the commission paid by the fund shall not exceed five hundred  
7 thousand dollars (\$500,000) in any single calendar year;  
8 provided, however, that expenses incurred in defending the  
9 commission shall not be subject to that maximum amount."

10 SECTION 16. Section 41-5-29 NMSA 1978 (being Laws 1992,  
11 Chapter 33, Section 10) is amended to read:

12 "41-5-29. FUND REPORTS.--On January 31 of each year,  
13 the superintendent shall, upon request, provide a written  
14 report to all interested persons of the following  
15 information:

16 A. the beginning and ending calendar year balances  
17 in the fund;

18 B. an itemized accounting of the total amount of  
19 contributions to the fund;

20 C. all information regarding closed claims files,  
21 including an itemized accounting of all payments paid out;  
22 and

23 D. any other information regarding the fund that  
24 the superintendent or the legislature considers to be  
25 important."

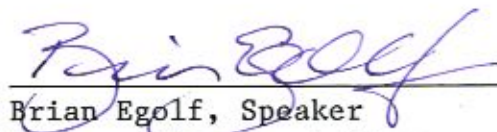
1           SECTION 17. REPEAL.--Sections 41-5-2 and 41-5-10 NMSA  
2 1978 (being Laws 1976, Chapter 2, Sections 2 and 10) are  
3 repealed.

4           SECTION 18. EFFECTIVE DATES.--

5           A. The effective date of the provisions of  
6 Sections 7, 13 and 14 of this act is July 1, 2021.

7           B. The effective date of the provisions of  
8 Sections 1 through 6, 8 through 12 and 15 through 17 of this  
9 act is January 1, 2022. \_\_\_\_\_

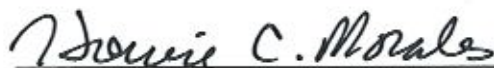
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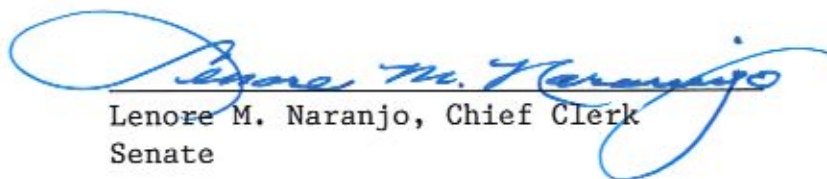
Brian Egolf, Speaker  
House of Representatives



Lisa M. Ortiz McCutcheon, Chief Clerk  
House of Representatives

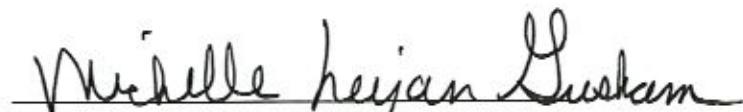


Howie C. Morales, President  
Senate



Lenore M. Naranjo, Chief Clerk  
Senate

Approved by me this 1st day of April, 2021



Michelle Lujan Grisham, Governor  
State of New Mexico