

1 AN ACT

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

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

13 SECTION 1. Section 41-5-3 NMSA 1978 (being Laws 1976,
14 Chapter 2, Section 3, as amended) is amended to read:

15 "41-5-3. DEFINITIONS.--As used in the Medical
16 Malpractice Act:

17 A. "advisory board" means the patient's
18 compensation fund advisory board;

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

20 C. "health care provider" means a person,
21 corporation, organization, facility or institution licensed
22 or certified by this state to provide health care or
23 professional services as a doctor of medicine, hospital,
24 outpatient health care facility, doctor of osteopathy,
25 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

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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