

FOR IMMEDIATE RELEASE

January 11, 2024

REPUBLICAN STATE REPRESENTATIVE WANTS TO RESCUE RURAL HOSPITALS

SANTA FE, NM—State Representative Jack Chatfield filed a bill to provide financial relief to hospitals from the astronomical medical malpractice costs that drive up prices for both medical providers and patients. Medical malpractice premiums have recently increased by more than 200%, and that’s assuming hospitals can find an insurance carrier, causing significant financial pressure.

The bill would apply the same medical malpractice caps adopted in the 2023 session for independent healthcare facilities, to also apply to all New Mexico Hospitals. “For too long, the fear of excessive litigation has hindered our healthcare providers, driving up the cost of healthcare and preventing it from reaching those who need it most”, said Rep. Chatfield.

In the 2023 legislative session, during a Legislative Finance Committee meeting, the President and CEO of the New Mexico Hospital Association said that two-thirds of New Mexico hospitals saw their expenses exceed revenues over the past 12 months. “When rural hospitals are affected by excessive litigation, they are less likely to provide quality care for patients and risk closing their doors”, Rep. Chatfield stated.

New Mexico’s rural communities rely on limited options for healthcare and this bill will provide these rural hospitals the deserved relief that was overlooked in the previous session.

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The letter to the Governor and the bill are attached to this press release.

HOUSE BILL **107**

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY
Jack Chatfield

AN ACT

RELATING TO HEALTH CARE; AMENDING THE MEDICAL MALPRACTICE ACT
TO CHANGE THE LIMITATION OF RECOVERY FOR CERTAIN CLAIMS AGAINST
HOSPITALS AND OUTPATIENT HEALTH CARE FACILITIES THAT ARE
HOSPITAL-CONTROLLED.

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

SECTION 1. Section 41-5-6 NMSA 1978 (being Laws 1992,
Chapter 33, Section 4, as amended) is amended to read:

"41-5-6. LIMITATION OF RECOVERY.--

A. Except for punitive damages and past and future
medical care and related benefits, the aggregate dollar amount
recoverable by all persons for or arising from any injury or
death to a patient as a result of malpractice shall not exceed
six hundred thousand dollars (\$600,000) per occurrence for
malpractice claims brought against health care providers if the

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1 injury or death occurred prior to January 1, 2022. In jury
2 cases, the jury shall not be given any instructions dealing
3 with this limitation.

4 B. Except for punitive damages and past and future
5 medical care and related benefits, the aggregate dollar amount
6 recoverable by all persons for or arising from any injury or
7 death to a patient as a result of malpractice shall not exceed
8 seven hundred fifty thousand dollars (\$750,000) per occurrence
9 for malpractice claims against independent providers; provided
10 that, beginning January 1, 2023, the per occurrence limit on
11 recovery shall be adjusted annually by the consumer price index
12 for all urban consumers.

13 C. The aggregate dollar amount recoverable by all
14 persons for or arising from any injury or death to a patient as
15 a result of malpractice, except for punitive damages and past
16 and future medical care and related benefits, shall not exceed
17 seven hundred fifty thousand dollars (\$750,000) for claims
18 brought against an independent outpatient health care facility
19 for an injury or death that occurred in calendar years 2022 and
20 2023.

21 D. In calendar year 2024 and subsequent calendar
22 years, the aggregate dollar amount recoverable by all persons
23 for or arising from an injury or death to a patient as a result
24 of malpractice, except for punitive damages and past and future
25 medical care and related benefits, shall not exceed the

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1 following amounts for claims brought against an independent
2 outpatient health care facility:

3 (1) for an injury or death that occurred in
4 calendar year 2024, one million dollars (\$1,000,000) per
5 occurrence; and

6 (2) for an injury or death that occurred in
7 calendar year 2025 and thereafter, the amount provided in
8 Paragraph (1) of this subsection, adjusted annually by the
9 prior three-year average consumer price index for all urban
10 consumers, per occurrence.

11 E. In calendar year [2022] 2025 and subsequent
12 calendar years, the aggregate dollar amount recoverable by all
13 persons for or arising from any injury or death to a patient as
14 a result of malpractice, except for punitive damages and past
15 and future medical care and related benefits, shall not exceed
16 the following amounts for claims brought against a hospital or
17 a hospital-controlled outpatient health care facility:

18 (1) for an injury or death that occurred
19 in calendar year [2022, ~~four million dollars (\$4,000,000)~~ per
20 occurrence;

21 ~~(2) for an injury or death that occurred in~~
22 ~~calendar year 2023, four million five hundred thousand dollars~~
23 ~~(\$4,500,000) per occurrence;~~

24 ~~(3) for an injury or death that occurred in~~
25 ~~calendar year 2024, five million dollars (\$5,000,000) per~~

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1 occurrence;

2 ~~(4) for an injury or death that occurred in~~
3 ~~calendar year 2025, five million five hundred thousand dollars~~
4 ~~(\$5,500,000) per occurrence;~~

5 ~~(5) for an injury or death that occurred in~~
6 ~~calendar year 2026, six million dollars (\$6,000,000) per~~
7 ~~occurrence; and~~

8 ~~(6) for an injury or death that occurred in~~
9 ~~calendar year 2027 and each calendar year thereafter, the~~
10 ~~amount provided in Paragraph (5) of this subsection, adjusted~~
11 ~~annually by the consumer price index for all urban consumers,~~
12 ~~per occurrence] 2025, one million dollars (\$1,000,000) per~~
13 ~~occurrence; and~~

14 (2) for an injury or death that occurred in
15 calendar year 2026 and thereafter, the amount provided in
16 Paragraph (1) of this subsection, adjusted annually by the
17 prior three-year average consumer price index for all urban
18 consumers, per occurrence.

19 F. The aggregate dollar amounts provided in
20 Subsections B through E of this section include payment to any
21 person for any number of loss of consortium claims or other
22 claims per occurrence that arise solely because of the injuries
23 or death of the patient.

24 G. In jury cases, the jury shall not be given any
25 instructions dealing with the limitations provided in this

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1 section.

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

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

12 J. An independent outpatient health care facility's
13 personal liability is limited to five hundred thousand dollars
14 (\$500,000) for monetary damages and medical care and related
15 benefits as provided in Section 41-5-7 NMSA 1978. Any amount
16 due from a judgment or settlement in excess of five hundred
17 thousand dollars (\$500,000) shall be paid from the fund.

18 K. Until January 1, 2027, amounts due from a
19 judgment or settlement against a hospital or hospital-
20 controlled outpatient health care facility in excess of seven
21 hundred fifty thousand dollars (\$750,000), excluding past and
22 future medical expenses, shall be paid by the hospital or
23 hospital-controlled outpatient health care facility and not by
24 the fund. Beginning January 1, 2027, amounts due from a
25 judgment or settlement against a hospital or hospital-

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1 controlled outpatient health care facility shall not be paid
2 from the fund.

3 L. The term "occurrence" shall not be construed in
4 such a way as to limit recovery to only one maximum statutory
5 payment if separate acts or omissions cause additional or
6 enhanced injury or harm as a result of the separate acts or
7 omissions. A patient who suffers two or more distinct injuries
8 as a result of two or more different acts or omissions that
9 occur at different times by one or more health care providers
10 is entitled to up to the maximum statutory recovery for each
11 injury."

12 SECTION 2. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is January 1, 2025.



State of New Mexico
House of Representatives
Santa Fe

JACK CHATFIELD

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January 11, 2024

COMMITTEES:
Education
Appropriations & Finance

INTERIM COMMITTEES:
Public School Capital Outlay Oversight Task Force

The Honorable Michelle Lujan Grisham
Governor, State of New Mexico
State Capitol, Room 400
480 Old Santa Fe Trail
Santa Fe, New Mexico 87501

Dear Governor:

I am writing to request a special message for the upcoming legislative session that would allow the Legislature to consider House Bill 107 that would apply the medical malpractice cap changes adopted during the 2023 session for independent healthcare facilities, such as urgent care and ambulatory surgical centers, to also apply to all New Mexico hospitals.

The current financial pressures facing New Mexico's urban and rural hospitals require the Legislature to consider HB 107 as this legislation would mirror the same malpractice insurance premium relief that was provided by Senate Bill 523 from the 2023 session. The need for some level of financial relief for rural hospitals is particularly acute as we understand numerous rural hospitals across the state are on the verge of closing or dramatically reducing medical services to their local communities. A significant aspect of these financial pressures is related to increased medical malpractice (med mal) costs and the availability of med mal insurance where premiums have recently increased by more than 200 percent if a rural hospital can even find an insurance carrier. Just as the rationale for making med mal changes during the 2023 session was necessary to correct the negative consequences associated with the adoption of House Bill 75 in the 2021 session for independent healthcare facilities, New Mexico's rural hospitals require now a similar fix in the upcoming session to provide some badly needed financial relief.

However, it is not just rural hospitals who are dealing with operating losses that will eventually negatively impact the level of care that will be provided to New Mexico residents; urban hospitals are also facing increasing deficits and debt. For example, at an August 2023 hearing of the Legislative Finance Committee, the president and CEO of the New Mexico Hospital Association stated that two-thirds of the hospitals in the state saw their expenses exceed their revenue over the last 12 months. Equally important, it is important to realize the financial condition of the rural and urban hospitals are interconnected. If a rural hospital closes its door, patients from that local community must be transferred to an urban hospital and those hospitals are already bursting at the seams.

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While restoring the financial health of our state's urban and rural hospitals will require a multi-faceted approach, I believe an excellent starting point to addressing this important issue is providing immediate med mal relief for all of New Mexico's hospitals. HB 107 provides this much needed help, and I encourage you to provide a special message to permit HB107 to be considered during the 30-day session.

Thank you for your consideration of my request.

Sincerely,

A handwritten signature in black ink that reads "Jack Chatfield". The signature is written in a cursive style with a large, sweeping initial "J".

Jack Chatfield
State Representative District 67