

Independent Health Care Provider Liability Act

1. The purpose of the Independent Health Care Provider Liability Act is to promote the health and welfare of the people of New Mexico, and to assist health care providers providing care in New Mexico in the control of health care costs.
2. An independent health care provider, for the purposes of this act, is defined as any health care provider as set out below who has not applied for, or who has not for any reason obtained, qualified status as that term is defined in Section 41-5-5 NMSA 1978 and includes any person, corporation, organization, hospital, facility or institution licensed or certified by this State to provide health care or health care related professional services and any employee of any such independent health care provider working within the scope and course of any such employment, or a person, corporation, parent corporation, organization, hospital, facility or institution and/or its board of directors and trustees which provides health care or health care related professional services through any New Mexico licensed or certified health care provider and any employee of any such independent health care provider working within the scope and course of any such employment.
3. Non-economic damages are defined as all recoverable damages with the exception of past and future medical expenses, past and future loss of income and earning capacity, and punitive damages.
4. In any action for personal injury or death against any independent health care provider as defined in this Act, based on a malpractice claim, as that term is defined by Section 41-5-3 (C) NMSA 1978, there shall be a limitation on damages recoverable for all non-economic damages awarded, in an amount not to exceed \$600,000. This limitation of \$600,000 shall cover any and all claims of all individuals who are claiming damages as a consequence of all personal injuries or death related to the malpractice claims at issue, regardless of whether the claims belong to another person other than the patient, such as bystander recovery or loss of consortium. This limitation of \$600,000 shall apply regardless of the number of independent health care providers found to be liable or the number of separate causes of action on which the claim is based. However, in any action where a final judgment against both independent and qualified health care providers is rendered, then the limitation on damages in this act will apply only to the independent health care providers, and the limitation on damages for qualified health care providers as defined in Section 41-5-6 NMSA 1978 will apply only to the qualified providers. Nothing in this act will amend or revoke the law of comparative fault as established by statute or case law.
5. When there is an increase or decrease in the consumer price index as published by the Bureau of Labor Statistics of the United States Department of Labor, that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone (CPI-W: Seasonally Adjusted U.S. City Average-All

Items), between the effective date of this act, and the time at which damages subject to the limits under this act are awarded by final judgment, then the limitations on damages of this act will be increased or decreased, as applicable, by a sum equal to the amount of the limit under this Act multiplied by the percentage increase or decrease in the consumer price index as of the date of the final judgment.

6. In any action against an independent health care provider, against whom a claim is made based on ostensible agency, apparent agency, or vicarious liability, for a malpractice claim arising out of the conduct of a qualified health care provider, the independent health care provider shall have the benefit of the limitation on recovery provided in Section 41-5-6 NMSA 1978, and the tolling of statute of limitations provided in Section 41-5-22 NMSA 1978, for the comparative fault portion of the malpractice claim caused by the conduct of the qualified health care provider. If the independent health care provider is found liable for only its vicarious liability for a qualified provider or providers, then the limits of liability under the Medical Malpractice Act shall govern. If the independent health care provider is found liable for both vicarious liability for the conduct of an independent provider or providers, as well as for its own non-vicarious liability, then the limits and provisions of the Independent Health Care Provider Liability Act will be the sole limit for all recovery against the independent health care provider. Nothing in this Act will revoke or amend any right of indemnification that an independent health care provider may have against a qualified provider for payment of a vicarious award against the independent health care provider for the conduct of any other health care provider.
7. The limits of liability provided under this Act will not be disclosed to any jury hearing a medical malpractice claim.
8. In any case in which punitive damages are awarded against an independent health care provider, the amount of punitive damages awarded may not exceed the amount of the limitation on damages set out in paragraph 4 above, as increased or decreased by the consumer price index set out in paragraph 5 above, and then multiplied by three.
9. This Act will not apply to health care providers who are governmental entities or public employees pursuant to the New Mexico Tort Claims Act, Section 41-4-1 et seq.