



**2016 Legislative Session**

**SB 121 & HB 270**

**Out-of-State Health Care Providers – Access to Care for New Mexicans**

Access to medical care for New Mexicans is at the heart of the Montañó v. Freeza case that will be heard by the NM Supreme Court, and the goal of SB 121 and HB 270 are to protect access to care by addressing the base question of the lawsuit. What is the jurisdiction of a liability claim? The residence of the patient or the place of practice of the provider? The place of treatment or the place where the “injury manifested”?

**Physician Shortage**

Like other states with large rural populations, New Mexico has a shortage of physicians. Without redistributing the current workforce, NM is below national benchmarks by 145 primary care providers, 43 OB/GYNS, 18 general surgeons, 109 psychiatrists, among other providers (NM Health Care Workforce Committee Report, 2015). Because of the chronic shortage of physicians and uneven geographic distribution of physicians, many patients depend on access to care in other states. The most heavily relied on state is Texas currently – and that happens to be the state involved in the Montano v. Frezza case.

**Treatment Across State Lines**

Reliance on Texas hospitals, to say nothing of primary care, is the cornerstone of medical access for more than one-third of New Mexico counties. Based on 2013 data from the New Mexico and Texas Departments of Health, thirteen counties in southern and eastern New Mexico send more than 22% of their hospitalized patients to Texas for care. Breaking it out by county is even more informative. By county, hospitalizations occur in Texas:

Chaves	8.77%	Lincoln	12.08%
Curry	26.87%	Luna	8.72%
De Baca	27.04%	Otero	13.37%
Dona Ana	24.78%	Quay	36.31%
Eddy	18.42%	Roosevelt	33.70%
Harding	26.15%	Union	37.99%
Lea	35.67%		

Of the 70,379 hospitalizations of New Mexicans from these 13 counties, 22% (15,534) were in Texas hospitals.

Reliance on hospitals across-state-lines is not restricted to eastern New Mexico and Texas. Four counties in western New Mexico send 14% of their patients to Arizona hospitals (1,447 of 10,594 total from Catron, Grant, Hidalgo, and McKinley) and four counties from northern New Mexico send 7.5% of their patients to Colorado hospitals (1,043 of 13,863 total from Colfax, Harding, San Juan, and Union).

Hospitalizations are not limited to emergency and critical care for patients from the more rural counties. The hospitalizations include patients from Bernalillo and Santa Fe counties receiving cancer care at MD Anderson in Houston, a hip replacement at the Mayo Clinic in Scottsdale, or treatment for COPD at National Jewish Health in Denver. The access to care issue cuts across counties and across medical conditions.

### **Liability Insurance**

Liability insurance is based on the state in which the provider practices. If a provider from another state can be sued by a NM patient in a NM court, doctors from out-of-state would have difficulty finding available and affordable liability insurance to cover their treatment of New Mexican patients; their options will be to pay excessive liability premiums, go “bare,” or to refuse to treat patients coming across state lines from New Mexico.

### **Provider Network Requirements**

New Mexico insurance regulations require that insurance carrier networks include a specific composition of provider types per geographic radius. The network standard radius is 30 miles in urban area, in rural areas it is 45 miles, and in frontier areas it is 60 miles. When one looks at the population spread on border counties, it is clear that to fulfill network requirements it is essential to include providers across the state border, be it TX, AZ, or CO.

### **Proposal**

SB121 and HB 270 are identical bills that would add a new section to Chapter 41 [Torts] of the 1978 New Mexico Statutes Annotated (NMSA) with the intent to clarify the jurisdiction of a liability claim.

Due to the geographic distribution of the population in general, and health care providers and specialty services in particular, some New Mexicans must access health care services in states other than New Mexico. In order to ensure those New Mexican will continue to have access to out-of-state health care providers, the goal of this bill is twofold:

- a) New Mexicans who access care across state lines and who believe they have been harmed are required to bring their claims in the jurisdiction where the services are rendered; and,
- b) Liability of an out-of state health care provider is not expanded beyond that provided by the laws of the state in which the services were rendered.

The bill specifies that a court would not have jurisdiction over a civil action against a health care provider for medical liability if:

- a) the health care provider is not licensed/ authorized to provide health care services in New Mexico; and,
- b) the acts or omissions that resulted in a liability claim did not occur in New Mexico; and,
- c) the claim was timely sought and effective relief could be secured in the state where the acts or omissions occurred.

The statute would be effective for acts or omissions occurring after July 1, 2016.

New Mexico Medical Society asks for your support of SB 121 and HB 270.

For more information please contact:

Randy Marshall, NMMS Executive Director at (505) 263-4912 or [rmarshall@nmms.org](mailto:rmarshall@nmms.org)