

Judiciary

SENATE FILE 2158
BY HALL and VANDE HOEF

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to compensation of persons suffering loss as a
2 result of medical malpractice, providing for confidential peer
3 review and required reporting, establishing attorney fee
4 standards, modifying the basic requirements for malicious
5 prosecution actions, eliminating certain exemplary or punitive
6 damages, providing a remedy for certain false statements,
7 establishing a required form for verdicts, establishing expert
8 witness standards and requiring expert certification of claims
9 by affidavit, providing for preliminary dismissal in certain
10 circumstances, establishing a limitation on damages, affecting
11 the statute of limitations for malpractice claims brought by
12 minors and mentally ill persons, and providing for payment of
13 judgments in malpractice actions.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2158

1 Section 1. Section 147.1, subsection 6, Code Supplement
2 1985, is amended by adding the following new lettered
3 paragraph:

4 NEW LETTERED PARAGRAPH. e. A health maintenance organiza-
5 tion established under chapter 514B.

6 Sec. 2. Section 147.1, Code Supplement 1985, is amended by
7 adding the following new subsections:

8 NEW SUBSECTION. 7. "Health care practitioner" means a
9 health care provider other than a hospital.

10 NEW SUBSECTION. 8. "Health care provider" means a physi-
11 cian and surgeon licensed pursuant to chapter 148, an osteo-
12 path licensed pursuant to chapter 150, an osteopathic physi-
13 cian and surgeon licensed pursuant to chapter 150A, a dentist
14 licensed pursuant to chapter 153, a podiatrist licensed pur-
15 suant to chapter 149, an optometrist licensed pursuant to
16 chapter 154, a pharmacist licensed pursuant to chapter 155, a
17 chiropractor licensed pursuant to chapter 151, a nurse li-
18 censed pursuant to chapter 152, a physical therapist licensed
19 pursuant to chapter 148A, and a hospital licensed pursuant to
20 chapter 135B.

21 NEW SUBSECTION. 9. "Hospital" means a hospital licensed
22 pursuant to chapter 135B.

23 NEW SUBSECTION. 10. "Medical malpractice" means an act or
24 omission of a health care practitioner in the practice of the
25 practitioner's profession or occupation, or of a hospital
26 inpatient treatment or care, on which an action for damages
27 for personal injury or death is based.

28 NEW SUBSECTION. 11. "Noneconomic loss" means loss of
29 consortium and all nonpecuniary harm for which damages are
30 recoverable, including, but not limited to, damages for pain
31 and suffering, emotional distress, inconvenience, disfigure-
32 ment, and physical impairment.

33 Sec. 3. Section 147.135, Code 1985, is amended by adding
34 the following new unnumbered paragraphs:

35 NEW UNNUMBERED PARAGRAPH. The proceedings and records of a

1 peer review committee are confidential and are not
2 discoverable or admissible in evidence in any civil action. A
3 person present at a meeting of a peer review committee shall
4 not be permitted to testify in any civil action as to the
5 findings, recommendations, evaluations, or opinions of the
6 peer review committee. Information or documents discoverable
7 from sources other than the peer review committee do not
8 become nondiscoverable from the other sources merely because
9 they are made available to a peer review committee.

10 NEW UNNUMBERED PARAGRAPH. The hospital administrator or
11 chief of the medical staff shall make a full and confidential
12 report to the board of medical examiners concerning final
13 hospital disciplinary action approved by the hospital board of
14 trustees, within ten days of the action, if the action results
15 in a limitation, suspension, or revocation of a physician's
16 privilege to practice for reasons relating to the physician's
17 professional competence or concerning any voluntary surrender
18 or limitation of privileges for reasons relating to
19 professional competence. The board of medical examiners shall
20 investigate the report and take appropriate action. The
21 reports are not discoverable or admissible in evidence in any
22 civil action. Persons making these reports and persons
23 participating in proceedings related to these reports are
24 immune from civil or criminal liability with respect to the
25 making of the report or participation in the related
26 proceedings. However, the immunity does not apply to an act,
27 omission, or decision made with malice.

28 Sec. 4. Section 147.138, Code 1985, is amended by adding
29 the following new unnumbered paragraph:

30 NEW UNNUMBERED PARAGRAPH. In determining the reasonable-
31 ness of a contingent fee under this section, the court shall
32 not approve a fee which exceeds thirty-five percent of the
33 first one hundred thousand dollars of the sum recovered,
34 twenty-five percent of the next one hundred thousand dollars
35 of the sum recovered, and ten percent of any sum recovered

1 over two hundred thousand dollars.

2 Sec. 5. NEW SECTION. 147.139 MALICIOUS PROSECUTION --
3 MEDICAL MALPRACTICE.

4 In an action for malicious prosecution arising out of
5 proceedings which seek damages for injuries or death by reason
6 of medical malpractice, the plaintiff need not plead or prove
7 special injury or malice to sustain the cause of action. In
8 an action alleging malicious prosecution arising out of a
9 medical malpractice proceeding, exemplary or punitive damages
10 shall not be allowed.

11 Sec. 6. NEW SECTION. 147.140 EXEMPLARY DAMAGES -- MEDI-
12 CAL MALPRACTICE.

13 In an action seeking damages for injuries or death by rea-
14 son of medical malpractice, exemplary or punitive damages
15 shall not be allowed.

16 Sec. 7. NEW SECTION. 147.141 UNTRUE STATEMENTS IN MEDI-
17 CAL MALPRACTICE ACTIONS.

18 In an action seeking damages for injuries or death by rea-
19 son of medical malpractice, allegations made without reason-
20 able cause and found to be untrue, subject the party pleading
21 the allegations or the party's attorney, or both, to the
22 payment of reasonable expenses actually incurred by the other
23 party by reason of the untrue pleading, together with
24 reasonable attorneys' fees, to be summarily taxed by the court
25 upon motion made within thirty days of the entering of the
26 judgment in the action or the dismissal of the action.

27 Sec. 8. NEW SECTION. 147.142 MEDICAL MALPRACTICE CASES -
28 - ITEMIZED VERDICT FORM -- ITEMIZED DAMAGES.

29 In a medical malpractice action if damages for injury to
30 the person are assessed by the jury, the verdict shall be
31 itemized to distribute the monetary damages among economic
32 loss and noneconomic loss, if any, past and future. The
33 itemization of economic loss by category shall include the
34 following, if applicable:

35 1. Amounts intended to compensate for reasonable expenses

1 which have been incurred, or which will be incurred, for
2 necessary medical, surgical, X-ray, dental, other health or
3 rehabilitative services, drugs, and therapy.

4 2. Amounts intended to compensate for lost wages or loss
5 of earning capacity.

6 3. All other economic losses for which an award of damages
7 is sought.

8 Each category of damages sought shall be further itemized
9 into amounts intended to compensate for losses incurred prior
10 to the verdict and amounts intended to compensate for future
11 losses. In a trial to the court, the court shall itemize its
12 verdict in accordance with this section.

13 Sec. 9. NEW SECTION. 147.143 EXPERT WITNESS STANDARDS.

14 If the standard of care given by a physican and surgeon li-
15 censed pursuant to chapter 148, or osteopathic physican and
16 surgeon licensed pursuant to chapter 150A is at issue, the
17 court shall only allow a person to qualify as an expert wit-
18 ness and to testify on the issue of the appropriate standard
19 of care if the person meets all of the following qualifica-
20 tions:

21 1. The person's medical specialities relate directly to
22 the medical problem or problems at issue and the type of
23 treatment administered in the case.

24 2. The person has devoted at least three-fourths of the
25 person's professional time to the practice of medicine,
26 teaching, or university-based research related to the medical
27 care and type of treatment which gave rise to the medical
28 problem of which the plaintiff complains.

29 3. The person has been licensed as a physician and surgeon
30 or osteopathic physician and surgeon in Iowa or a contiguous
31 state for at least five years.

32 Sec. 10. NEW SECTION. 147.144 AFFIDAVITS OF MERITORIOUS
33 MALPRACTICE CLAIMS.

34 1. In an action in which the plaintiff seeks damages
35 against a physician and surgeon licensed pursuant to chapter

1 148, osteopath licensed pursuant to chapter 150, or osteo-
2 pathic physician and surgeon licensed pursuant to chapter 150A
3 for injuries or death by reason of medical malpractice, the
4 plaintiff's attorney or the plaintiff, if the plaintiff is
5 proceeding pro se, shall sign an affidavit, attached to the
6 original and all copies of the complaint or petition,
7 declaring one of the following:

8 a. That the affiant has consulted and reviewed the facts
9 of the case with a physician and surgeon or osteopathic physi-
10 cian and surgeon who the affiant reasonably believes is
11 knowledgeable in the relevant issues involved in the
12 particular action, who practices in the same specialty as the
13 defendant if the defendant is a specialist, and who meets the
14 expert witness standards contained in section 147.143; that
15 the consulting physician has determined in a written report,
16 after a review of the medical record and other relevant ma-
17 terial involved in the particular action, that a reasonable
18 and meritorious cause exists for the filing of such action;
19 and that the affiant has concluded on the basis of the
20 physician's consultation and review that a reasonable and
21 meritorious cause exists for the filing of such action. A
22 copy of the written report, clearly identifying the plaintiff
23 and the reasons for the consulting physician's determination
24 that a reasonable and meritorious cause for the filing of the
25 action exists, shall be attached to the affidavit.

26 b. That the affiant was unable to obtain a consultation
27 required by paragraph "a" because a statute of limitations
28 would impair the action and the consultation required could
29 not be obtained before the expiration of the statute of
30 limitations.

31 c. That a request has been made by the plaintiff or the
32 plaintiff's attorney for examination and copying of records
33 and the party having custody of the records has failed to
34 produce the records within sixty days of the receipt of the
35 request.

1 2. If an affidavit is executed pursuant to subsection 1,
2 paragraph "b" or "c", the affidavit and written report re-
3 quired by paragraph "a" shall be filed within ninety days fol-
4 lowing the filing of the complaint or petition or following
5 receipt of the requested records. All defendants, except
6 those whose failure to produce records is the basis for the
7 signing of an affidavit under subsection 1, paragraph "a",
8 shall be excused from answering or otherwise pleading until
9 thirty days after being served with the affidavit required by
10 paragraph "a".

11 3. If an affidavit and written report are required pur-
12 suant to this section, a separate affidavit and written report
13 shall be served on each defendant named in the complaint or
14 petition and each defendant named at a later time.

15 4. If a plaintiff intends to rely on the doctrine of res
16 ipsa loquitur, the affidavit and written report must state
17 that, in the opinion of the consulting physician, negligence
18 has occurred in the course of medical treatment. The affiant
19 shall certify upon filing of the complaint or petition that
20 the affiant is relying on the doctrine of res ipsa loquitur.

21 5. If a plaintiff intends to rely on the doctrine of
22 failure of informed consent, the attorney for the plaintiff
23 shall certify upon the filing of the complaint or petition
24 that the consulting physician has, after reviewing the medical
25 record and other relevant materials involved in the particular
26 action, concluded that a reasonable physician would have in-
27 formed the patient of the consequences of the procedure.

28 6. Allegations and denials in an affidavit signed pursuant
29 to this section, which are made without reasonable cause and
30 found to be untrue, subject the party pleading them or the
31 party's attorney, or both, to the payment of reasonable
32 expenses actually incurred by another party by reason of the
33 untrue pleading, together with reasonable attorneys' fees to
34 be summarily taxed by the court upon motion made within thirty
35 days of the judgment or dismissal. The award for attorneys'

1 fees and expenses shall not exceed those actually paid by or
2 on behalf of the moving party. In a proceeding under this
3 subsection, the moving party may depose and examine any and
4 all consulting physicians who prepared reports used in
5 conjunction with an affidavit required by this section.

6 7. A consulting physician who in good faith prepares a
7 report used in conjunction with an affidavit required by this
8 section is not civilly liable as a result of the preparation
9 of the report.

10 8. The failure to file an affidavit required by this
11 section is grounds for dismissal of the medical malpractice
12 action.

13 Sec. 11. NEW SECTION. 147.145 AFFIDAVIT OF NONINVOLVE-
14 MENT.

15 1. In an action, whether in tort, contract, or otherwise,
16 in which the plaintiff seeks damages for injuries or death by
17 reason of medical malpractice, a party, in lieu of answering
18 or otherwise pleading, may file an affidavit certifying that
19 the party was not directly or indirectly involved in the oc-
20 currence or occurrences alleged in the action. If such an
21 affidavit is filed, the court shall order the dismissal of the
22 claim against the certifying party, except as provided in
23 subsection 2.

24 2. A party may oppose the dismissal or move to vacate the
25 order of dismissal and reinstate the certifying party, pro-
26 vided the party shows that the certifying party was directly
27 or indirectly involved in the occurrence or occurrences al-
28 leged in the action. After the filing of an affidavit under
29 this section, the party opposing the dismissal may use dis-
30 covery with respect to the involvement or noninvolvement of
31 the party filing the affidavit, provided the discovery is
32 completed within sixty days of the filing of the affidavit.

33 Sec. 12. NEW SECTION. 147.146 LIMITATION ON NONECONOMIC
34 DAMAGES.

35 In an action for damages for personal injury or death

1 against a health care provider, based on medical malpractice
2 in which liability is admitted or established, the present
3 value of the damages awarded for noneconomic losses incurred
4 or to be incurred in the future by the plaintiff by reason of
5 the personal injury or death, shall not exceed two hundred
6 thousand dollars, adjusted annually by an inflation factor
7 calculated as provided in section 422.4, subsection 17, para-
8 graph "a".

9 Sec. 13. NEW SECTION. 147.147 LIMITATION ON DAMAGES.

10 In an action for damages for personal injury or death
11 against a health care provider, based on medical malpractice
12 in which liability is admitted or established, the present
13 value of the damages awarded for losses incurred or to be
14 incurred in the future by the plaintiff by reason of the per-
15 sonal injury, exclusive of future medical care, shall not ex-
16 ceed five hundred thousand dollars, adjusted annually by an
17 inflation factor calculated as provided in section 422.4, sub-
18 section 17, paragraph "a". For the purpose of this section,
19 "future medical care" means reasonable medical, surgical,
20 hospitalization, physical rehabilitation, and custodial ser-
21 vices, and includes drugs, prosthetic devices, and similar
22 materials reasonably necessary in the provision of such ser-
23 vices, but does not include nonessential specialty items or
24 devices of convenience.

25 Sec. 14. Section 258A.4, Code 1985, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. 3. For the purpose of providing the vari-
28 ous licensing boards for health care providers with
29 information on medical malpractice claims paid by insurers or
30 self-insurers on behalf of health care providers in this
31 state, the commissioner of insurance shall by rule require an
32 insurer of a health care provider, and a health care provider
33 in this state who is not an insured under a policy of
34 insurance providing coverage for medical malpractice, within
35 thirty days of the date of payment of a medical malpractice

1 claim, to provide a written report to the appropriate
2 licensing board of this state. The report shall contain all
3 of the following:

4 a. The name and address of the health care provider.

5 b. A brief description of the acts or omissions which gave
6 rise or allegedly gave rise to the claim, and the date of the
7 acts or omissions.

8 c. The name of the claimant and the injury which resulted
9 or allegedly resulted from the acts or omissions.

10 d. The amount paid in settlement or discharge of the
11 claim, whether paid by compromise, by payment of judgment, by
12 payment of an arbitration award, or otherwise.

13 e. If a judicial opinion has been rendered with regard to
14 a claim, a copy of the opinion, attached to the report.

15 However, a report shall not be required for a compromise
16 settlement of a claim if the amount paid is one thousand
17 dollars or less, unless the payment was made in satisfaction
18 or compromise of a court judgment or of an arbitration award.

19 Sec. 15. Section 614.8, Code 1985, is amended to read as
20 follows:

21 614.8 MINORS AND MENTALLY ILL PERSONS.

22 The Other than actions by minors and mentally ill persons
23 brought for medical malpractice, the times limited for actions
24 herein, except those brought for penalties and forfeitures,
25 shall be extended in favor of minors and mentally ill persons,
26 so that they shall have one year from and after the
27 termination of such the disability within which to commence
28 said an action. The times limited for actions brought for
29 medical malpractice shall be extended in favor of minors less
30 than six years of age so that they shall have until their
31 eighth birthday to commence an action.

32 Sec. 16. NEW SECTION. 624.39 JUDGMENTS IN MEDICAL MAL-
33 PRACTICE ACTIONS.

34 1. As used in this section, unless the context requires
35 otherwise:

1 a. "Health care practitioner" means health care practi-
2 tioner as defined in section 147.1.

3 b. "Health care provider" means health care provider as
4 defined in section 147.1.

5 c. "Hospital" means a hospital licensed pursuant to chap-
6 ter 135B.

7 d. "Medical malpractice" means medical malpractice as de-
8 fined in section 147.1.

9 e. "Future injuries" means all legal harm relating to an
10 injury which the trier of fact determines will be incurred by
11 the injured party subsequent to the entry of judgment.

12 f. "Injured person" means the person during whose medical
13 treatment or care the acts or omissions of medical malpractice
14 are determined to have occurred.

15 g. "Injured party" means a party plaintiff to a medical
16 malpractice action, and includes the injured person if that
17 person is a party to the action.

18 h. "Injury" means every legal harm for which damages are
19 recoverable.

20 2. The trier of fact in a medical malpractice action shall
21 find as separate facts with respect to each injured party the
22 total amount to be awarded as damages for past injuries, if
23 any, and the specific amounts to be awarded as damages for
24 future injuries, if any. The award for future injuries shall
25 be expressed in three elements, to the extent that each of the
26 elements is found to be present: loss of future income,
27 future expenses for care and treatment, and future noneconomic
28 harm to be incurred by the party.

29 3. The court, in a medical malpractice action in which a
30 damage award for future injuries to a party exceeds one
31 hundred thousand dollars, shall enter a judgment ordering the
32 award to the party to be paid in installments, subject to the
33 limitations contained in this section. The court shall make a
34 specific finding as to the dollar amount of regular install-
35 ments which will be required to compensate the party

1 periodically for loss of future income and future noneconomic
2 harm, based upon the life expectancy of the party and the
3 damages awarded. The judgment shall specify the recipient of
4 the periodic payments, the dollar amount of each payment, the
5 interval between payments, and the number of payments required
6 to be made. The judgment shall specify the amount of and the
7 purposes for which the balance of the judgment awarded for the
8 future care and treatment of the party may be used.

9 4. Attorney fees of the party receiving an award, if
10 payable out of the judgment, shall be assessed by the court
11 and applied pro rata against amounts awarded for past injuries
12 and for future injuries. The amount determined by the court
13 to be payable out of damages for future injuries shall be
14 deducted by the court from the amount to be ordered paid into
15 trust as provided in subsection 5, and shall be deducted pro
16 rata from those amounts awarded, if any, for loss of future
17 income, future expenses for care and treatment, and future
18 noneconomic harm. The amount of attorney fees attributable to
19 the award for future injuries shall be payable upon entry of
20 judgment.

21 5. If a judgment has been entered ordering periodic pay-
22 ments pursuant to this section, the amount awarded, less the
23 deductions provided for in this section, shall be ordered paid
24 into trust for the benefit of the party to whom the award was
25 made. A trustee shall be named by agreement of the parties to
26 the action, or if the parties cannot agree, a trustee shall be
27 named by the court. A person shall not qualify to act as
28 trustee unless that person is authorized to exercise the
29 powers of a fiduciary under either chapter 524 or the laws of
30 the United States.

31 6. The trustee shall receive the amount ordered to be paid
32 into trust, shall administer the trust, and shall assure that
33 payments from trust are made only to or on behalf of the named
34 recipient and only for the purposes which are specified in the
35 order of the court. Funds which are specified to be used for

1 one purpose shall not be paid by the trustee for use for other
2 purposes. The trustee shall receive annually out of the
3 corpus of the trust as compensation for administering the
4 trust one-half of one percent of the average of the fair
5 market value of the trust assets contained in the trust during
6 the year, and shall be reimbursed for any costs advanced at
7 the time those costs are incurred. If extraordinary services
8 are performed by the trustee, upon application of the trustee
9 and notice to the trust beneficiaries, the court may award
10 additional compensation to be paid out of the trust. All
11 payments to the trustee shall be deducted pro rata from each
12 of the funds in the trust.

13 7. If the beneficiary dies, amounts remaining in the trust
14 revert to the judgment debtor or to the person who actually
15 paid those funds into the trust on behalf of the judgment
16 debtor, except that the remaining assets specified to be paid
17 for loss of future income are payable to those persons to whom
18 the injured person owed a duty of support. If the beneficiary
19 dies prior to depletion of those amounts held in the trust for
20 other than loss of future income, the judgment is satisfied
21 upon the payment out of trust of all obligations incurred up
22 to the time of death and of the expenses of final illness and
23 reasonable burial expenses.

24 8. Except with respect to amounts representing loss of
25 future income, a judgment for future injuries is a contingent
26 award, and the right to payment vests only at such times and
27 in such amounts as accrue pursuant to the order specifying the
28 amount of periodic payments and the interval of those
29 payments.

30 9. The district court shall retain jurisdiction of a
31 medical malpractice action in which the judgment in the action
32 orders periodic payments, and upon the death of the recipient
33 of installment payments, the dependents of the decedent in the
34 case of an award for loss of future income, or the trustee in
35 the case of all other amounts held in the trust, or any other

1 interested party to the action or a representative of an
2 interested party, may petition the court for a modification of
3 the judgment and of the trust and for a redesignation of the
4 recipient of trust funds, in accordance with the rights of
5 persons as established by this section. Unless otherwise
6 ordered, the redesignated recipients of an award for loss of
7 future income shall be paid in those amounts and at those
8 intervals specified in the original judgment. Payments shall
9 continue until the remaining amounts designated for that
10 purpose have been depleted, or until the death of those
11 dependents, whichever occurs first. If the last surviving
12 dependent dies prior to depletion of the amount specified for
13 loss of future income, the judgment is deemed satisfied upon
14 payment of amounts accrued up to the time of death, and any
15 amounts remaining revert as provided in subsection 7.

16 10. If a person paying funds into the trust on behalf of a
17 judgment debtor is a person who contracted to insure the
18 judgment debtor against liability arising from medical
19 malpractice actions, any amount which reverts to the person
20 pursuant to this section and which is repaid to the person by
21 the trustee shall be applied by the person as an offset
22 against claims loss experience. The commissioner of insurance
23 shall adopt rules to assure compliance with this subsection.

24 Sec. 17. Sections 10 and 11 of this Act apply only to
25 those medical malpractice actions filed on or after the
26 effective date of this Act.

27 EXPLANATION

28 This bill is a comprehensive reform of tort law affecting
29 physicians, dentists, podiatrists, optometrists, pharmacists,
30 chiropractors, nurses, and physical therapists, as well as
31 hospitals.

32 Section 1 of this Act adds peer reviews conducted by a
33 health maintenance organization to the definition of peer
34 review committee.

35 Section 2 defines the following terms: health care

1 practitioner, health care provider, hospital, medical mal-
2 practice, and noneconomic loss.

3 Section 3 makes peer review committee records and pro-
4 ceedings confidential and requires hospital administrators and
5 chiefs of medical staffs to report any final hospital
6 disciplinary actions taken to the state licensing board of the
7 affected health care provider.

8 Section 4 provides the court with a sliding schedule of
9 reasonable contingent attorney fees in medical malpractice
10 actions and requires the court to disapprove attorney fees
11 above the schedule.

12 Section 5 allows defendants of medical malpractice cases,
13 who establish that the cases were without merit, to sue
14 plaintiffs and plaintiffs' attorneys without the existing bur-
15 den of establishing malice and special damages. The section
16 eliminates awards of punitive or exemplary damages in
17 malicious prosecution cases.

18 Section 6 eliminates awards of punitive or exemplary
19 damages in medical malpractice actions.

20 Section 7 provides a remedy in medical malpractice actions
21 for plaintiffs or defendants who are put to the expense of
22 proving or disproving the allegations of opposing parties
23 which, when made, were untrue and made without reasonable
24 cause.

25 Section 8 requires the itemization of damages awarded in
26 medical malpractice cases.

27 Section 9 adopts standards for qualifying expert witnesses
28 to testify concerning the appropriate standard of care in
29 medical malpractice cases.

30 Section 10 requires a plaintiff or the plaintiff's attorney
31 to sign an affidavit, to be attached to a lawsuit brought for
32 medical malpractice, stating that an expert has reviewed the
33 plaintiff's claim and has determined that it is a reasonable
34 and meritorious claim. Exceptions are granted in
35 circumstances where compliance is not possible due to timing

1 or the failure of a defendant in control of records to make
2 those records available prior to suit.

3 Section 11 allows a defendant in a medical malpractice
4 action who is not directly or indirectly involved in the
5 alleged occurrence of medical malpractice to file an affidavit
6 of noninvolvement which could lead to dismissal of that
7 defendant by the court at a preliminary stage of the lawsuit,
8 thus eliminating expense to that defendant.

9 Section 12 places a limitation of \$200,000 on noneconomic
10 damages such as pain and suffering and emotional distress.
11 Provision is also made for an inflation adjustment to the
12 limitation.

13 Section 13 provides for an overall limitation of \$500,000
14 on future damages, exclusive of future medical care, awarded
15 in medical malpractice actions. An inflation adjustment ap-
16 plies to the limitation.

17 Section 14 requires medical malpractice insurers to report
18 payments made on behalf of their insureds to the insureds'
19 licensing boards.

20 Section 15 eliminates the extension of the statute of
21 limitations applicable to medical malpractice actions for
22 minors and mentally ill persons. However, minors injured
23 before age six could still bring suit until their eighth
24 birthday.

25 Section 16 establishes a provision for structured payments
26 of judgments in cases where an award for future damages to a
27 party exceeds \$100,000.

28 Section 17 provides that the provisions of the bill re-
29 lating to the filing of affidavits of merit and affidavits of
30 noninvolvement are effective only for those medical mal-
31 practice actions filed on or after the effective date of the
32 bill.

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