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SENATE FILE **238**  
BY JENSEN, HAGERLA 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, by establishing a limitation on  
3 noneconomic damages, requiring expert certification of claims  
4 by affidavit, affecting the statute of limitations for claims  
5 brought by minors and mentally ill persons, and providing for  
6 periodic payment of certain judgments for future injuries.

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

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SF 238

1 Section 1. Section 147.1, Code 1989, is amended by adding  
2 the following new subsections:

3 NEW SUBSECTION. 12. "Health care practitioner" means a  
4 health care provider other than a hospital.

5 NEW SUBSECTION. 13. "Health care provider" means a  
6 physician and surgeon licensed pursuant to chapter 148, an  
7 osteopath licensed pursuant to chapter 150, an osteopathic  
8 physician and surgeon licensed pursuant to chapter 150A, a  
9 nurse licensed pursuant to chapter 152, and a hospital.

10 NEW SUBSECTION. 14. "Hospital" means a hospital licensed  
11 pursuant to chapter 135B.

12 NEW SUBSECTION. 15. "Medical malpractice action" means an  
13 action for damages for personal injury or death against a  
14 health care provider based upon alleged acts or omissions of a  
15 health care practitioner in the practice of the practitioner's  
16 profession or occupation, or based upon alleged acts or  
17 omissions of a hospital inpatient treatment or care.

18 NEW SUBSECTION. 16. "Noneconomic loss" means loss of  
19 consortium and all nonpecuniary harm for which damages are  
20 recoverable, including but not limited to damages for pain and  
21 suffering, emotional distress, inconvenience, disfigurement,  
22 loss of chance, and physical impairment.

23 Sec. 2. NEW SECTION. 147.144 AFFIDAVITS OF MERITORIOUS  
24 MALPRACTICE CLAIMS.

25 1. In an action in which the plaintiff seeks damages  
26 against a physician and surgeon licensed pursuant to chapter  
27 148, osteopath licensed pursuant to chapter 150, osteopathic  
28 physician and surgeon licensed pursuant to chapter 150A, nurse  
29 licensed pursuant to chapter 152, or a hospital licensed  
30 pursuant to chapter 135B for injuries or death by reason of  
31 medical malpractice, the plaintiff's attorney or the  
32 plaintiff, if the plaintiff is proceeding pro se, shall sign  
33 an affidavit, attached to the original and all copies of the  
34 complaint or petition, declaring one of the following.

35 a. That the affiant has considered and reviewed the facts

1 of the case with a physician and surgeon, osteopathic physi-  
2 cian and surgeon, nurse, or hospital administrator who the  
3 affiant reasonably believes is knowledgeable in the relevant  
4 issues involved in the particular action, who practices in the  
5 same specialty as the defendant if the defendant is a  
6 specialist, and who meets the expert witness standards  
7 contained in section 147.139, if applicable; that the  
8 consulting physician, nurse, or hospital administrator has  
9 determined in a written report, after a review of the medical  
10 record and other relevant material involved in the particular  
11 action, that a reasonable and meritorious cause exists for the  
12 filing of such action; and that the affiant has concluded on  
13 the basis of the consultation and review that a reasonable and  
14 meritorious cause exists for the filing of such action. A  
15 copy of the written report, clearly identifying the plaintiff  
16 and the reasons for the consultant's determination that a  
17 reasonable and meritorious cause for the filing of the action  
18 exists, shall be attached to the affidavit.

19 b. That the affiant was unable to obtain a consultation  
20 required by paragraph "a" because a statute of limitations  
21 would impair the action and the consultation required could  
22 not be obtained before the expiration of the statute of  
23 limitations.

24 c. That a request has been made by the plaintiff or the  
25 plaintiff's attorney for examination and copying of records  
26 and the party having custody of the records has failed to  
27 produce the records within sixty days of the receipt of the  
28 request.

29 2. If an affidavit is executed pursuant to subsection 1,  
30 paragraph "b" or "c", the affidavit and written report re-  
31 quired by paragraph "a" shall be filed within ninety days fol-  
32 lowing the filing of the complaint or petition or following  
33 receipt of the requested records. All defendants, except  
34 those whose failure to produce records is the basis for the  
35 signing of an affidavit under subsection 1, paragraph "c",

1 shall be excused from answering or otherwise pleading until  
2 thirty days after being served with the affidavit required by  
3 paragraph "a".

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

8 4. If a plaintiff intends to rely on the doctrine of res  
9 ipsa loquitur, the affidavit and written report must state  
10 that, in the opinion of the consulting physician, nurse, or  
11 hospital administrator, negligence has occurred in the course  
12 of medical treatment. The affiant shall certify upon filing  
13 of the complaint or petition that the affiant is relying on  
14 the doctrine of res ipsa loquitur.

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

22 6. Allegations and denials in an affidavit signed pursuant  
23 to this section, which are made without reasonable cause and  
24 found to be untrue, subject the party pleading them or the  
25 party's attorney, or both, to the payment of reasonable  
26 expenses actually incurred by another party by reason of the  
27 untrue pleading, together with reasonable attorneys' fees to  
28 be summarily taxed by the court upon motion made within thirty  
29 days of the judgment or dismissal. The award for attorneys'  
30 fees and expenses shall not exceed those actually paid by or  
31 on behalf of the moving party. In a proceeding under this  
32 subsection, the moving party may depose and examine any and  
33 all consulting physicians, nurses, or hospital administrators  
34 who prepared reports used in conjunction with an affidavit  
35 required by this section.

1 7. A consulting physician, nurse, or hospital  
2 administrator who in good faith prepares a report used in  
3 conjunction with an affidavit required by this section is not  
4 civilly liable as a result of the preparation of the report.

5 8. The failure to file an affidavit required by this  
6 section is grounds for dismissal of the medical malpractice  
7 action.

8 Sec. 3. NEW SECTION. 147.145 LIMITATION ON NONECONOMIC  
9 DAMAGES.

10 In a medical malpractice action in which liability is  
11 admitted or established, the present value of the damages  
12 awarded for noneconomic losses incurred or to be incurred in  
13 the future by the plaintiff by reason of the personal injury  
14 or death shall not exceed two hundred fifty thousand dollars,  
15 adjusted annually by an inflation factor calculated as  
16 provided in section 422.4, subsection 17, paragraph "a".

17 Sec. 4. NEW SECTION. 147.146 STRUCTURED JUDGMENTS.

18 1. In a medical malpractice action against a health care  
19 provider, the verdict shall be itemized to distribute the  
20 monetary damages, if any, between past loss and future loss.  
21 In a trial to the court, the court shall itemize its findings  
22 in accordance with this section.

23 2. The court, in a medical malpractice action in which a  
24 damage award for future injuries to a party exceeds two  
25 hundred fifty thousand dollars and upon application of one of  
26 the parties, shall enter a judgment ordering the portion of  
27 the award for future injuries to the party in excess of two  
28 hundred fifty thousand dollars to be paid in periodic  
29 payments, subject to the limitations contained in this  
30 section. The court shall make a specific finding as to the  
31 dollar amount of regular payments which will be required to  
32 compensate the party periodically for loss of future income  
33 and future noneconomic harm, based upon the life expectancy of  
34 the party and the damages awarded. The periodic payments  
35 shall reflect interest in accordance with annuity principles.

1 The judgment shall specify the recipient of the periodic  
2 payments, the dollar amount of each payment, the interval  
3 between payments, and the number of payments required to be  
4 made. The judgment shall specify the amount of and the  
5 purposes for which the balance of the judgment awarded for the  
6 future care and treatment of the party may be used.

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

18 Sec. 5. Section 614.8, Code 1989, is amended to read as  
19 follows:

20 614.8 MINORS AND MENTALLY ILL PERSONS.

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

31 EXPLANATION

32 This bill affects medical malpractice actions against  
33 physicians, nurses, and hospitals.

34 Section 1 defines the following terms: health care  
35 practitioner, health care provider, hospital, medical

1 malpractice, and noneconomic loss.

2 Section 2 requires a plaintiff or the plaintiff's attorney  
3 to sign an affidavit, to be attached to certain lawsuits  
4 brought for medical malpractice, stating that an expert has  
5 reviewed the plaintiff's claim and has determined that it is a  
6 reasonable and meritorious claim. Exceptions are granted in  
7 circumstances where compliance is not possible due to timing  
8 or the failure of a defendant in control of records to make  
9 those records available prior to suit.

10 Section 3 places a limitation of \$250,000 on noneconomic  
11 damages such as pain and suffering and emotional distress.  
12 Provision is also made for an inflation adjustment to the  
13 limitation.

14 Section 4 establishes periodic payments of judgments in  
15 cases where a medical malpractice award for damages for future  
16 injuries to a party exceeds \$250,000.

17 Section 5 eliminates, for medical malpractice actions, the  
18 extension of the statute of limitations applicable to minors  
19 and mentally ill persons. However, minors injured before age  
20 six could still bring medical malpractice actions until their  
21 eighth birthdays.

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