

MAR 8 2006
Place On Calendar

HOUSE FILE 2716
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 676)

Passed House, Date 3-22-06 Passed Senate, Date 4/25/06
Vote: Ayes 77 Nays 22 Vote: Ayes 49 Nays 0
Approved 5/24/06

*4/25/06
passed 92-0*

A BILL FOR

1 An Act relating to civil actions for personal injury or death,
2 including certain evidentiary, reporting, and procedural
3 requirements.

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

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HF 2716

1 Section 1. NEW SECTION. 147.140 CONFIDENTIALITY OF
2 RECORDS.

3 In an action for damages for personal injury against a
4 physician and surgeon, osteopath, osteopathic physician and
5 surgeon, dentist, podiatric physician, optometrist,
6 pharmacist, chiropractor, or nurse licensed to practice that
7 profession in this state, or against a hospital licensed for
8 operation in this state, based on the alleged negligence of
9 the practitioner in the practice of the profession or
10 occupation, or upon the alleged negligence of the hospital in
11 patient care, the entire court file of such action shall be
12 sealed by the clerk of the district court until such time as
13 both parties to the action file a disclosure of expert
14 witnesses pursuant to section 668.11 or until two hundred days
15 have elapsed from the filing of the petition in the action,
16 whichever is longer. The court record shall remain
17 confidential if the action is dismissed by the court prior to
18 the disclosure of expert witnesses.

19 Sec. 2. NEW SECTION. 147.141 INITIAL DISCLOSURE OF
20 INFORMATION.

21 1. Unless otherwise stipulated or directed by the court,
22 in a civil action in which the condition of the plaintiff is
23 an element or factor of the claim or defense of the adverse
24 party or of any party claiming through or under the adverse
25 party, the adverse party shall, without awaiting a discovery
26 request, provide all of the following information to the other
27 parties:

28 a. The name and, if known, the address and telephone
29 number of each individual likely to have discoverable
30 information that the disclosing party may use to support its
31 claims or defenses, unless solely for impeachment, identifying
32 the subjects of the information.

33 b. A copy of, or a description by category and location
34 of, all documents, data compilations, and tangible things that
35 are in the possession, custody, or control of the disclosing

1 party and that the disclosing party may use to support its
2 claims or defenses, unless solely for impeachment.

3 c. A computation of any category of damages claimed by the
4 disclosing party made available for inspection and copying
5 pursuant to Iowa rules of civil procedure 1.512 and 1.513.
6 Such information shall include documents or other evidentiary
7 material, not privileged or protected from disclosure, on
8 which such computation is based, including materials bearing
9 on the nature and extent of injuries suffered.

10 d. Any insurance agreement under which an insurer may be
11 liable to satisfy part or all of a judgment which may be
12 entered in the action or to indemnify or reimburse for
13 payments made to satisfy the judgment.

14 2. The disclosures made pursuant to this section shall be
15 made at or within fourteen days after the answer to the
16 petition is filed unless a different time is set by
17 stipulation or court order, or unless a party objects to the
18 initial disclosures. In ruling on the objection, the court
19 shall determine what disclosures, if any, shall be made, and
20 set the time for disclosure.

21 3. A disclosing party shall make its initial disclosure
22 pursuant to this section based on the information then
23 reasonably available and is not excused from making a
24 disclosure because the disclosing party has not fully
25 completed its investigation of the case, because of the
26 sufficiency of another party's disclosures, or because another
27 party has not made its disclosures.

28 4. Unless the court orders otherwise, a disclosure made
29 pursuant to this section shall be in writing, signed, and
30 served in accordance with the rules of civil procedure.

31 Sec. 3. NEW SECTION. 147.142 CERTIFICATE OF MERIT
32 REQUIREMENT.

33 1. Within forty-five days after an initial disclosure of
34 information made pursuant to section 147.141, a plaintiff
35 shall serve a certificate of merit upon the licensed health

1 care provider.

2 2. a. The certificate of merit shall be signed under oath
3 by an expert qualified pursuant to section 147.139.

4 b. The certificate of merit shall contain information
5 relating to all of the following:

6 (1) The expert's familiarity with the applicable standard
7 of care.

8 (2) The expert's qualifications.

9 (3) The expert's statement that the appropriate standard
10 of care was breached by the health care provider named in the
11 complaint.

12 (4) The expert's statement of the actions that the health
13 care provider could have taken or failed to take to have
14 complied with the standard of care.

15 (5) A statement of the manner in which the breach of the
16 standard of care could have caused the injury alleged in the
17 complaint.

18 c. A separate certificate of merit shall be completed for
19 each defendant.

20 3. Notwithstanding subsection 2, if a plaintiff believes
21 in good faith that a certificate of merit is not necessary
22 because the plaintiff's cause of action against a health care
23 provider is based upon a well-established legal theory of
24 liability which does not require expert testimony supporting a
25 breach of the applicable standard of care, the plaintiff shall
26 file a statement setting forth the basis for the alleged
27 liability of the health care provider in lieu of the
28 certificate of merit.

29 4. If the plaintiff fails to provide a certificate of
30 merit or a statement of the legal theory upon which the claim
31 is based, the claim shall be dismissed.

32 5. The provisions of this section requiring the provisions
33 of a certificate of merit or a statement of the legal theory
34 upon which a claim is based apply to a defendant asserting an
35 affirmative defense.

1 6. For purposes of this section, "health care provider"
2 means a physician or surgeon, osteopath, osteopathic physician
3 or surgeon, dentist, podiatric physician, optometrist,
4 pharmacist, chiropractor, or nurse licensed in this state, a
5 hospital licensed pursuant to chapter 135B, or a health care
6 facility licensed pursuant to chapter 135C.

7 Sec. 4. Section 515F.4, subsection 5, Code 2005, is
8 amended to read as follows:

9 5. The rates may contain a provision for contingencies and
10 an allowance permitting a reasonable profit. In determining
11 the reasonableness of the profit, consideration shall be given
12 to investment income attributable to unearned premium and loss
13 reserves. ~~Income from other sources shall not be considered.~~

14 Sec. 5. Section 614.1, subsection 9, Code 2005, is amended
15 to read as follows:

16 9. MALPRACTICE.

17 a. Except as provided in paragraph paragraphs "b" and "c",
18 those founded on injuries to the person or wrongful death
19 against any physician and surgeon, osteopath, osteopathic
20 physician and surgeon, dentist, podiatric physician,
21 optometrist, pharmacist, chiropractor, physician assistant, or
22 nurse, licensed under chapter 147, or a hospital licensed
23 under chapter 135B, arising out of patient care, within two
24 years after the date on which the claimant knew, or through
25 the use of reasonable diligence should have known, or received
26 notice in writing of the existence of, the injury or death for
27 which damages are sought in the action, whichever of the dates
28 occurs first, but in no event shall any action be brought more
29 than six years after the date on which occurred the act or
30 omission or occurrence alleged in the action to have been the
31 cause of the injury or death unless a foreign object
32 unintentionally left in the body caused the injury or death.

33 b. An action subject to paragraph "a" and brought on
34 behalf of a minor who was under the age of eight years when
35 the act, omission, or occurrence alleged in the action

1 occurred shall be commenced no later than the minor's tenth
2 birthday or as provided in paragraph "a", whichever is later.

3 c. The statutes of limitation specified in paragraphs "a"
4 and "b" may be tolled by written agreement of the parties.

5 Sec. 6. NEW SECTION. 622.31 EVIDENCE OF REGRET OR
6 APOLOGY.

7 In any civil action for personal injury or wrongful death
8 or in any arbitration proceeding relating to such a civil
9 action against a person in a profession represented by the
10 examining boards listed in section 272C.1 and any other
11 licensed profession recognized in this state based upon the
12 alleged negligence in the practice of that profession or
13 occupation, any statement, affirmation, gesture, or conduct
14 expressing apology, sympathy, commiseration, condolence,
15 compassion, or a general sense of benevolence that was made by
16 the person to the plaintiff, relative of the plaintiff, or
17 decision maker for the plaintiff that relates to the
18 discomfort, pain, suffering, injury, or death of the plaintiff
19 as a result of an alleged breach of the applicable standard of
20 care is inadmissible as evidence of an admission of liability
21 or as evidence of an admission against interest.

22 Sec. 7. CLOSED-CLAIM STUDY. The commissioner of insurance
23 shall conduct a closed-claim study on all medical malpractice
24 insurance closed claims reported by an insurer providing
25 medical malpractice insurance coverage to a health care
26 provider or a health care provider who maintains professional
27 liability insurance through a self-insurance plan during the
28 preceding calendar year. The study shall include but not be
29 limited to the number of claims filed by medical specialty and
30 the outcome of such claims, including whether such claims were
31 dismissed, settled, or tried in court. The study shall also
32 include information relating to the insurance rates charged
33 per medical specialty in relation to the number of closed
34 claims that occurred during the applicable payout period.

35 The commissioner shall report the findings of the study to

1 the general assembly and the chairpersons of the senate and
2 house of representatives committees on judiciary, commerce,
3 and commerce, regulation and labor no later than January 15,
4 2007. The commissioner's report shall be open to the public,
5 except that any identifying information shall remain
6 confidential.

7 EXPLANATION

8 This bill relates to civil actions for personal injury or
9 death, including certain evidentiary, reporting, and
10 procedural requirements.

11 CONFIDENTIALITY OF MEDICAL RECORDS. The bill provides that
12 in a civil action for damages for personal injury against a
13 physician and surgeon, osteopath, osteopathic physician and
14 surgeon, dentist, podiatric physician, optometrist,
15 pharmacist, chiropractor, or nurse licensed to practice in
16 this state, or against a hospital licensed for operation in
17 this state, the entire court file of the action shall be
18 sealed by the clerk of court until both parties to the action
19 have filed a disclosure of expert witnesses or until 200 days
20 have elapsed from the filing of the petition in the action,
21 whichever is longer. The court record shall remain
22 confidential if the action is dismissed by the court prior to
23 the disclosure of expert witnesses.

24 INITIAL DISCLOSURE OF INFORMATION. The bill provides that
25 in a civil action in which the condition of the plaintiff is
26 an element or factor of the claim or defense of the adverse
27 party, the adverse party shall, without awaiting a discovery
28 request, provide all of the following information to the other
29 parties at or within 14 days after the answer to the petition
30 is filed unless otherwise required by the court:

31 1. The name and, if known, address and telephone number of
32 each individual likely to have discoverable information that
33 the disclosing party may use to support its claims or
34 defenses, unless solely for impeachment, identifying the
35 subjects of the information.

1 2. A copy of, or a description by category and location
2 of, all documents, data compilations, and tangible things in
3 the possession, custody, or control of the disclosing party
4 that may be used to support the disclosing party's claims or
5 defenses, unless solely for impeachment.

6 3. A computation of any category of damages claimed by the
7 disclosing party to include documents or other evidentiary
8 material, not privileged or protected from disclosure, on
9 which such computation is based, including materials relating
10 to the nature and extent of the injuries suffered.

11 4. Any insurance agreement under which an insurer may be
12 liable.

13 A disclosure required under this bill shall be in writing,
14 signed, and served in accordance with the rules of civil
15 procedure.

16 CERTIFICATE OF MERIT. The bill provides that within 45
17 days after an initial disclosure of information pursuant to
18 the bill, a plaintiff shall serve a certificate of merit upon
19 a licensed health care provider in a personal injury action.
20 The certificate of merit shall be signed under oath by a
21 qualified expert pursuant to Code section 147.139 and shall
22 contain information relating to the expert's familiarity with
23 the applicable standard of care, the expert's qualifications,
24 the expert's statement that the applicable standard of care
25 was breached by the health care provider, the expert's
26 statement of the actions that the health care provider could
27 have taken or failed to take to have complied with the
28 standard of care, and a statement of the manner in which the
29 breach of the standard of care could have caused the injury
30 alleged in the complaint. The bill provides that if a
31 plaintiff believes in good faith that a certificate of merit
32 is not necessary because the plaintiff's case against the
33 health care provider is based upon a well-established theory
34 of liability which does not require expert testimony, the
35 plaintiff may file such a statement in lieu of the certificate

1 of merit. The bill provides that if a plaintiff fails to
2 provide a certificate of merit or a statement of the legal
3 theory upon which the claim is based, the claim shall be
4 dismissed. The provisions relating to a certificate of merit
5 or a statement of the legal theory upon which the claim is
6 based apply to a defendant asserting an affirmative defense.
7 "Health care provider" means a physician or surgeon,
8 osteopath, osteopathic physician or surgeon, dentist,
9 podiatric physician, optometrist, pharmacist, chiropractor, or
10 nurse licensed in this state, a hospital licensed pursuant to
11 Code chapter 125B, or a health care facility licensed pursuant
12 to Code chapter 135C.

13 INSURANCE RATEMAKING. The bill provides that in
14 determining what a reasonable profit is during the ratemaking
15 process, the commissioner of insurance may consider income
16 from sources other than investment income attributable to
17 unearned premium loss reserves.

18 STATUTES OF LIMITATION. Current law provides that a
19 medical malpractice lawsuit for either personal injury or
20 death may be brought within two years after the date on which
21 the claimant knew or should have known of the injury or death,
22 but not more than six years after the date upon which the act
23 occurred, unless the action involved a foreign object that was
24 retained in the body or the action involved a minor or
25 mentally ill person. The bill allows the parties in a medical
26 malpractice action to toll the applicable statute of
27 limitation by written agreement.

28 EVIDENCE OF REGRET OR APOLOGY. The bill provides that in
29 any action for personal injury or wrongful death or in any
30 arbitration proceeding relating to such a civil action against
31 a person in a profession represented by the examining boards
32 listed in Code section 272C.1 or any other licensed profession
33 in this state, any statement, affirmation, gesture, or conduct
34 expressing apology, sympathy, commiseration, condolence,
35 compassion, or a general sense of benevolence that was made by

1 the person to the plaintiff, relative of the plaintiff, or
2 decision maker for the plaintiff that relates to the
3 discomfort, pain, suffering, injury, or death of the plaintiff
4 as a result of the breach of the standard of care is
5 inadmissible as evidence of an admission of liability or as
6 evidence of an admission against interest.

7 CLOSED-CLAIM STUDY. The bill directs the commissioner of
8 insurance to conduct a closed-claim study on all medical
9 malpractice insurance closed claims reported by an insurer
10 providing medical malpractice insurance to a health care
11 provider or a health care provider who maintains professional
12 liability insurance through a self-insurance plan during the
13 preceding calendar year, and to report to the general assembly
14 and the chairpersons of the senate and house of
15 representatives committees on judiciary, commerce, and
16 commerce, regulation and labor no later than January 15, 2007.
17 The study shall include information on the number of claims
18 filed by medical specialty and the outcome of such claims,
19 including whether such claims were dismissed, settled, or
20 tried in court, and information relating to the insurance
21 rates charged per medical specialty in relation to the number
22 of closed claims that occurred during the applicable payout
23 period. The commissioner's report shall be open to the
24 public, except that any identifying information shall remain
25 confidential.

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HOUSE FILE 2716

H-8309

1 Amend House File 2716 as follows:

2 1. Page 4, by inserting after line 13 the
3 following:

4 "Sec. _____. Section 515F.5, Code 2005, is amended
5 by adding the following new subsection:

6 NEW SUBSECTION. 1A. The commissioner shall
7 provide written notice to the public, as provided in
8 rules adopted under chapter 17A, that an insurer has
9 made a rate filing pursuant to this section, including
10 the proposed effective date of the filing, and the
11 character and extent of the coverage contemplated."

12 2. Page 5, by inserting after line 4 the
13 following:

14 "Sec. _____. Section 622.10, subsection 3, paragraph
15 d, Code 2005, is amended to read as follows:

16 d. Any physician or surgeon, physician assistant,
17 advanced registered nurse practitioner, or mental
18 health professional who provides records or consults
19 with the counsel for the adverse party shall be
20 entitled to charge a reasonable fee for production of
21 the records, diagnostic imaging, and consultation.
22 Any party seeking consultation shall be responsible
23 for payment of all charges. ~~The fee for copies of any~~
24 ~~records shall be based upon actual cost of production.~~
25 Upon written request from a party or a party's
26 representative accompanied by a legally sufficient
27 patient's waiver, copies of the requested records or
28 diagnostic images shall be provided to the party or
29 the party's representative within thirty days of
30 receipt of the written request. A fee shall be
31 charged for the cost of producing such copies but the
32 fee shall not exceed the following:

33 (1) For printed or photocopied records, twelve
34 cents per single-sided page or seventeen cents per
35 double-sided page based upon a page measuring eight
36 and one-half inches by eleven inches or less.

37 (2) For X rays, diagnostic images, photographs, or
38 other graphic image records, the actual cost of
39 materials and supplies used to produce the copies of
40 such images or ten dollars per item, whichever is
41 less.

42 (3) For electronically scanned or produced
43 records, the actual cost of the materials and supplies
44 incurred in producing the records, or five dollars,
45 whichever is less.

46 (4) If applicable, reasonable and actual costs of
47 postage or delivery charges.

48 Fees charged pursuant to this subsection are not
49 subject to a sales or use tax. A physician or
50 surgeon, physician assistant, advanced registered

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1 nurse practitioner, or mental health professional may
2 require payment in advance if the copies are requested
3 in writing and fees are itemized."

4 3. Page 5, line 5, by striking the words "REGRET
5 OR" and inserting the following "REGRET."

6 4. Page 5, by striking line 6.

7 5. Page 5, line 13, by inserting after the word
8 "occupation," the following: "that portion of".

9 6. Page 5, line 14, by striking the word
10 "apology,".

11 7. By striking page 5, line 22, through page 6,
12 line 6, and inserting the following:

13 "Sec. ____ . CLOSED-CLAIM REPORT. An insurer
14 providing medical malpractice insurance coverage to a
15 health care provider or a health care provider who
16 maintains professional liability insurance coverage
17 through a self-insurance plan shall file annually with
18 the commissioner of insurance on or before March 15 a
19 report of all medical malpractice insurance closed
20 claims during the preceding calendar year. In
21 addition, any insurer who provided medical malpractice
22 insurance coverage to a health care provider or a
23 health care provider who maintained professional
24 liability coverage through a self-insurance plan
25 between January 1, 1991, and December 31, 2005, shall
26 file a report with the commissioner of all medical
27 malpractice closed claims during the period. The
28 commissioner shall prepare a comprehensive analysis of
29 the closed claim data for that period for submission
30 to the general assembly on or before January 15,
31 2007."

32 8. By renumbering as necessary.

By JOCHUM of Dubuque

HOUSE FILE 2716

H-8322

1 Amend House File 2716 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. Section 147.139, Code 2005, is amended
5 to read as follows:

6 147.139 EXPERT WITNESS STANDARDS.

7 If the standard of care given by a physician ~~and~~ or
8 surgeon licensed pursuant to chapter 148, or
9 osteopathic physician ~~and~~ or surgeon licensed pursuant
10 to chapter 150A, or a dentist licensed pursuant to
11 chapter 153, is at issue, the court shall only allow a
12 person to qualify as an expert witness and to testify
13 on the issue of the appropriate standard of care ~~if~~
14 ~~the person's medical or dental qualifications relate~~
15 ~~directly to the medical problem or problems at issue~~
16 ~~and the type of treatment administered in the case,~~
17 breach of the standard of care, or proximate cause if
18 all of the following qualifications are established:

19 1. The expert is licensed to practice medicine,
20 osteopathic medicine, or dentistry and in the three
21 years preceding the allegedly negligent act, engaged
22 in the active practice of medicine, osteopathic
23 medicine, or dentistry, or was a qualified instructor
24 at an accredited university of medicine and surgery,
25 osteopathic medicine and surgery, or dentistry.

26 2. The expert practices in the same or
27 substantially similar specialty as the defendant.

28 3. If the defendant is board certified in a
29 specialty, the expert is also certified in that
30 specialty by a board recognized by the American board
31 of medical specialties and is licensed and in good
32 standing in each state of licensure, and has not had
33 the expert's license revoked or suspended in the past
34 five years.

35 Sec. 2. NEW SECTION. 147.140 EVIDENCE OF REGRET
36 OR APOLOGY.

37 In any civil action for personal injury or wrongful
38 death or in any arbitration proceeding relating to
39 such a civil action against any physician or surgeon
40 licensed pursuant to chapter 148, osteopathic
41 physician or surgeon licensed pursuant to chapter
42 150A, or dentist licensed pursuant to chapter 153,
43 based upon the alleged negligence of the licensee in
44 the practice of that profession or occupation, any
45 statement, affirmation, gesture, or conduct expressing
46 apology, sympathy, commiseration, condolence,
47 compassion, or a general sense of benevolence that was
48 made by a physician and surgeon, osteopathic physician
49 and surgeon, or dentist to the patient, relative of
50 the patient, or decision maker for the patient that

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1 relates to the discomfort, pain, suffering, injury, or
2 death of the patient as a result of an unanticipated
3 outcome of medical care is inadmissible as evidence of
4 an admission of liability or as evidence of an
5 admission against interest.

6 Sec. 3. NEW SECTION. 147.141 NOTICE OF CLAIM AND
7 CERTIFICATE OF MERIT REQUIREMENT.

8 1. At least thirty days prior to filing a civil
9 action for personal injury or wrongful death against a
10 licensed health care provider, based upon the alleged
11 negligence of the licensed health care provider in the
12 practice of that profession, a plaintiff shall serve
13 by certified mail, return receipt requested, a notice
14 of claim upon the licensed health care provider. The
15 notice of claim shall include a statement of the
16 theory of liability upon which the cause of action is
17 based and include a list of all persons to whom
18 notices have been sent, together with a certificate of
19 merit, if necessary, as specified in subsection 2.

20 2. a. The certificate of merit shall be signed
21 under oath by an expert who, in the three years
22 preceding the allegedly negligent act, either
23 practiced or instructed in the same or substantially
24 similar field of medicine as the defendant.

25 b. The certificate of merit shall contain
26 information relating to all of the following:

27 (1) The expert's familiarity with the applicable
28 standard of care.

29 (2) The expert's qualifications.

30 (3) The expert's statement that the appropriate
31 standard of care was breached by the health care
32 provider named in the complaint.

33 (4) The expert's statement of the actions that the
34 health care provider should have taken or failed to
35 take to have complied with the standard of care.

36 (5) A statement of the manner in which the breach
37 of the standard of care was the cause of the injury
38 alleged in the complaint.

39 c. A separate certificate of merit shall be
40 completed for each defendant named in the notice of
41 claim.

42 d. If a plaintiff or plaintiff's counsel asserts
43 in good faith that the plaintiff has insufficient time
44 to obtain a certificate of merit prior to the
45 expiration of the period of limitation in subsection
46 1, the plaintiff shall provide notice of intent to
47 provide a certificate of merit to the defendant within
48 sixty days of the date the defendant receives the
49 notice of the claim.

50 3. Notwithstanding subsection 2, if a plaintiff

1 believes that a certificate of merit is not necessary
2 because the plaintiff's cause of action against a
3 health care provider is based upon a well-established
4 legal theory of liability which does not require
5 expert testimony supporting a breach of the applicable
6 standard of care, the plaintiff shall file a statement
7 setting forth the basis for the alleged liability of
8 the health care provider in lieu of the certificate of
9 merit.

10 4. Except as otherwise provided in this section,
11 the applicable statute of limitations in a civil cause
12 of action against a health care provider upon whom a
13 notice of claim is served pursuant to this section
14 shall be tolled from the date the notice of claim is
15 mailed.

16 5. If the plaintiff fails to provide a notice of
17 claim and a certificate of merit, or a statement of
18 the legal theory upon which the claim is based, the
19 claim shall be dismissed with prejudice.

20 6. For purposes of this section, "health care
21 provider" means a physician or surgeon, osteopath,
22 osteopathic physician or surgeon, dentist, podiatric
23 physician, optometrist, pharmacist, chiropractor, or
24 nurse licensed in this state, a hospital licensed
25 pursuant to chapter 135B, or a health care facility
26 licensed pursuant to chapter 135C."

27 2. Title page, by striking lines 1 through 3 and
28 inserting the following: "An Act relating to medical
29 malpractice actions."

30 3. By renumbering as necessary.

By UPMEYER of Hancock

H-8322 FILED MARCH 20, 2006

HOUSE FILE 2716

H-8320

1 Amend House File 2716 as follows:

2 1. By striking page 4, line 14, through
3 page 5, line 14.

4 2. By renumbering as necessary.

By PAULSEN of Linn

H-8320 FILED MARCH 20, 2006

HOUSE FILE 2716

H-8324

1 Amend House File 2716 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 147.140 EVIDENCE OF
5 REGRET OR APOLOGY.

6 In any civil action for personal injury or wrongful
7 death or in any arbitration proceeding relating to
8 such a civil action against any physician or surgeon
9 licensed pursuant to chapter 148, osteopathic
10 physician or surgeon licensed pursuant to chapter
11 150A, or dentist licensed pursuant to chapter 153,
12 based upon the alleged negligence of the licensee in
13 the practice of that profession or occupation, any
14 statement, affirmation, gesture, or conduct expressing
15 apology, sympathy, commiseration, condolence,
16 compassion, or a general sense of benevolence that was
17 made by a physician and surgeon, osteopathic physician
18 and surgeon, or dentist to the patient, relative of
19 the patient, or decision maker for the patient that
20 relates to the discomfort, pain, suffering, injury, or
21 death of the patient as a result of an unanticipated
22 outcome of medical care is inadmissible as evidence of
23 an admission of liability or as evidence of an
24 admission against interest.

25 Sec. 2. NEW SECTION. 147.141 NOTICE OF CLAIM AND
26 CERTIFICATE OF MERIT REQUIREMENT.

27 1. At least thirty days prior to filing a civil
28 action for personal injury or wrongful death against a
29 licensed health care provider, based upon the alleged
30 negligence of the licensed health care provider in the
31 practice of that profession, a plaintiff shall serve
32 by certified mail, return receipt requested, a notice
33 of claim upon the licensed health care provider. The
34 notice of claim shall include a statement of the
35 theory of liability upon which the cause of action is
36 based and include a list of all persons to whom
37 notices have been sent, together with a certificate of
38 merit, if necessary, as specified in subsection 2.

39 2. a. The certificate of merit shall be signed
40 under oath by an expert who meets the expert witness
41 standards in section 147.139.

42 b. The certificate of merit shall contain
43 information relating to all of the following:

44 (1) The expert's familiarity with the applicable
45 standard of care.

46 (2) The expert's qualifications.

47 (3) The expert's statement that the appropriate
48 standard of care was breached by the health care
49 provider named in the complaint.

50 (4) The expert's statement of the actions that the

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1 health care provider should have taken or failed to
2 take to have complied with the standard of care.

3 (5) A statement of the manner in which the breach
4 of the standard of care was the cause of the injury
5 alleged in the complaint.

6 c. A separate certificate of merit shall be
7 completed for each defendant named in the notice of
8 claim.

9 d. If a plaintiff or plaintiff's counsel asserts
10 in good faith that the plaintiff has insufficient time
11 to obtain a certificate of merit prior to the
12 expiration of the period of limitation in subsection
13 1, the plaintiff shall provide notice of intent to
14 provide a certificate of merit to the defendant within
15 sixty days of the date the defendant receives the
16 notice of the claim.

17 3. Notwithstanding subsection 2, if a plaintiff
18 believes that a certificate of merit is not necessary
19 because the plaintiff's cause of action against a
20 health care provider is based upon a well-established
21 legal theory of liability which does not require
22 expert testimony supporting a breach of the applicable
23 standard of care, the plaintiff shall file a
24 declaration setting forth the basis for the alleged
25 liability of the health care provider in lieu of the
26 certificate of merit.

27 4. Except as otherwise provided in this section,
28 the applicable statute of limitations in a civil cause
29 of action against a health care provider upon whom a
30 notice of claim is served pursuant to this section
31 shall be tolled from the date the notice of claim is
32 mailed.

33 5. If the plaintiff fails to provide a notice of
34 claim and a certificate of merit, or a declaration of
35 the legal theory upon which the claim is based
36 pursuant to subsection 3, the claim shall be dismissed
37 with prejudice. A failure to provide a notice of
38 claim and certificate of merit or a declaration of the
39 legal theory upon which the claim is based shall be
40 the only basis for dismissal under this subsection.
41 The insufficiency of such items shall not provide a
42 basis for objection, a bar to expansion of the claim,
43 or a limitation on the scope of discovery.

44 6. For purposes of this section, "health care
45 provider" means a physician or surgeon, osteopath,
46 osteopathic physician or surgeon, dentist, podiatric
47 physician, optometrist, pharmacist, chiropractor, or
48 nurse licensed in this state, a hospital licensed
49 pursuant to chapter 135B, or a health care facility
50 licensed pursuant to chapter 135C."

H-8324

Page 3

- 1 2. Title page, line 2, by striking the words
- 2 "evidentiary, reporting," and inserting the following:
- 3 "evidentiary".
- 4 3. By renumbering as necessary.

By UPMEYER of Hancock

H-8324 FILED MARCH 20, 2006

HOUSE FILE 2716

H-8325

1 Amend House File 2716 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. Section 147.139, Code 2005, is amended
5 to read as follows:

6 147.139 EXPERT WITNESS STANDARDS.

7 If the standard of care given by a physician ~~and or~~
8 surgeon licensed pursuant to chapter 148, or
9 osteopathic physician ~~and or~~ surgeon licensed pursuant
10 to chapter 150A, or a dentist licensed pursuant to
11 chapter 153, is at issue, the court shall only allow a
12 person to qualify as an expert witness and to testify
13 on the issue of the appropriate standard of care ~~if~~
14 ~~the person's medical or dental qualifications relate~~
15 ~~directly to the medical problem or problems at issue~~
16 ~~and the type of treatment administered in the case,~~
17 breach of the standard of care, or proximate cause if
18 all of the following qualifications are established:

19 1. The expert is licensed to practice medicine,
20 osteopathic medicine, or dentistry and in the three
21 years preceding the allegedly negligent act, engaged
22 in the active practice of medicine, osteopathic
23 medicine, or dentistry, or was a qualified instructor
24 at an accredited university of medicine and surgery,
25 osteopathic medicine and surgery, or dentistry.

26 2. The expert practices in the same or
27 substantially similar specialty as the defendant.

28 3. If the defendant is board certified in a
29 specialty, the expert is also certified in that
30 specialty by a board recognized by the American board
31 of medical specialties and is licensed and in good
32 standing in each state of licensure, and has not had
33 the expert's license revoked or suspended in the past
34 five years.

35 Sec. 2. NEW SECTION. 147.140 EVIDENCE OF REGRET
36 OR APOLOGY.

37 In any civil action for personal injury or wrongful
38 death or in any arbitration proceeding relating to
39 such a civil action against any physician or surgeon
40 licensed pursuant to chapter 148, osteopathic
41 physician or surgeon licensed pursuant to chapter
42 150A, or dentist licensed pursuant to chapter 153,
43 based upon the alleged negligence of the licensee in
44 the practice of that profession or occupation, any
45 statement, affirmation, gesture, or conduct expressing
46 apology, sympathy, commiseration, condolence,
47 compassion, or a general sense of benevolence that was
48 made by a physician and surgeon, osteopathic physician
49 and surgeon, or dentist to the patient, relative of
50 the patient, or decision maker for the patient that

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1 relates to the discomfort, pain, suffering, injury, or
2 death of the patient as a result of an unanticipated
3 outcome of medical care is inadmissible as evidence of
4 an admission of liability or as evidence of an
5 admission against interest."

6 2. Page 1, by striking line 1 and inserting the
7 following:

8 "Sec. 3. NEW SECTION. 147.141 CONFIDENTIALITY
9 OF".

10 3. Page 1, by striking line 19 and inserting the
11 following:

12 "Sec. 4. NEW SECTION. 147.142 INITIAL DISCLOSURE
13 OF".

14 4. By striking page 2, line 31, through page 4,
15 line 6, and inserting the following:

16 "Sec. . NEW SECTION. 147.143 NOTICE OF CLAIM
17 AND CERTIFICATE OF MERIT REQUIREMENT.

18 1. At least thirty days prior to filing a civil
19 action for personal injury or wrongful death against a
20 licensed health care provider, based upon the alleged
21 negligence of the licensed health care provider in the
22 practice of that profession, a plaintiff shall serve
23 by certified mail, return receipt requested, a notice
24 of claim upon the licensed health care provider. The
25 notice of claim shall include a statement of the
26 theory of liability upon which the cause of action is
27 based and include a list of all persons to whom
28 notices have been sent, together with a certificate of
29 merit, if necessary, as specified in subsection 2.

30 2. a. The certificate of merit shall be signed
31 under oath by an expert who, in the three years
32 preceding the allegedly negligent act, either
33 practiced or instructed in the same or substantially
34 similar field of medicine as the defendant.

35 b. The certificate of merit shall contain
36 information relating to all of the following:

37 (1) The expert's familiarity with the applicable
38 standard of care.

39 (2) The expert's qualifications.

40 (3) The expert's statement that the appropriate
41 standard of care was breached by the health care
42 provider named in the complaint.

43 (4) The expert's statement of the actions that the
44 health care provider should have taken or failed to
45 take to have complied with the standard of care.

46 (5) A statement of the manner in which the breach
47 of the standard of care was the cause of the injury
48 alleged in the complaint.

49 c. A separate certificate of merit shall be
50 completed for each defendant named in the notice of

1 claim.

2 d. If a plaintiff or plaintiff's counsel asserts
3 in good faith that the plaintiff has insufficient time
4 to obtain a certificate of merit prior to the
5 expiration of the period of limitation in subsection
6 1, the plaintiff shall provide notice of intent to
7 provide a certificate of merit to the defendant within
8 sixty days of the date the defendant receives the
9 notice of the claim.

10 3. Notwithstanding subsection 2, if a plaintiff
11 believes that a certificate of merit is not necessary
12 because the plaintiff's cause of action against a
13 health care provider is based upon a well-established
14 legal theory of liability which does not require
15 expert testimony supporting a breach of the applicable
16 standard of care, the plaintiff shall file a statement
17 setting forth the basis for the alleged liability of
18 the health care provider in lieu of the certificate of
19 merit.

20 4. Except as otherwise provided in this section,
21 the applicable statute of limitations in a civil cause
22 of action against a health care provider upon whom a
23 notice of claim is served pursuant to this section
24 shall be tolled from the date the notice of claim is
25 mailed.

26 5. If the plaintiff fails to provide a notice of
27 claim and a certificate of merit, or a statement of
28 the legal theory upon which the claim is based, the
29 claim shall be dismissed with prejudice.

30 6. For purposes of this section, "health care
31 provider" means a physician or surgeon, osteopath,
32 osteopathic physician or surgeon, dentist, podiatric
33 physician, optometrist, pharmacist, chiropractor, or
34 nurse licensed in this state, a hospital licensed
35 pursuant to chapter 135B, or a health care facility
36 licensed pursuant to chapter 135C."

37 5. Page 5, by striking lines 5 through 21.

38 6. By renumbering as necessary.

By UPMEYER of Hancock

HOUSE FILE 2716

H-8331

1 Amend the amendment, H-8320, to House File 2716 as
2 follows:

3 1. Page 1, by striking lines 2 and 3 and
4 inserting the following:

5 "____. By striking page 1, line 1, through page 5,
6 line 4.

7 _____. Page 5, by striking lines 7 through 11 and
8 inserting the following:

9 "In any civil action for professional negligence,
10 personal injury, or wrongful death or in any
11 arbitration proceeding for professional negligence,
12 personal injury, or wrongful death against a person in
13 a profession represented by the examining boards
14 listed in section 272C.1 and any other licensed
15 profession recognized in this state, a hospital
16 licensed pursuant to chapter 135B, or a health care
17 facility licensed pursuant to chapter 135C, based upon
18 the".

19 _____. Page 5, by striking lines 13 and 14 and
20 inserting the following: "occupation, any portion of
21 a statement, affirmation, gesture, or conduct
22 expressing sorrow, sympathy, commiseration,
23 condolence,".

24 _____. Page 5, by striking lines 22 and 23 and
25 inserting the following:

26 "Sec. _____. NEW SECTION. 519.14 ACTUARIAL STUDY.
27 The commissioner of insurance shall conduct an
28 actuarial study on all medical malpractice".

29 _____. Page 6, by striking lines 3 and 4 and
30 inserting the following: "and commerce, regulation
31 and labor annually no later than January 15. The
32 commissioner's report shall be open to the public,".

33 _____. Title page, by striking lines 2 and 3 and
34 inserting the following: "including certain
35 evidentiary and reporting requirements.""

36 2. By renumbering as necessary.

By PAULSEN of Linn
UPMEYER of Hancock

H-8331 FILED MARCH 21, 2006

HOUSE FILE 2716

H-8335

1 Amend the amendment, H-8309, to House File 2716, as
2 follows:

3 1. Page 1, by inserting after line 1 the
4 following:

5 "____". Page 1, by inserting before line 1 the
6 following:

7 "Section 1. NEW SECTION. 135N.1 TITLE.

8 This chapter shall be known and may be cited as the
9 "Patient Safety and Quality Assurance Act".

10 Sec. 2. NEW SECTION. 135N.2 DEFINITIONS.

11 As used in this chapter:

12 1. "Action plan" means a written plan prepared
13 after a root cause analysis that identifies strategies
14 that a health care provider intends to implement to
15 reduce the risk and reoccurrence of actual and
16 potential risks to patient safety. The plan shall
17 address health care provider responsibility for
18 implementation, oversight, pilot testing as
19 appropriate, timelines, and strategies for measuring
20 the effectiveness of the actions.

21 2. "Health care provider" means a physician or
22 surgeon, osteopath, osteopathic physician or surgeon,
23 dentist, podiatric physician, optometrist, pharmacist,
24 chiropractor, or nurse licensed in this state, a
25 hospital licensed pursuant to chapter 135B, or a
26 health care facility licensed pursuant to chapter
27 135C.

28 3. "Health care provider leaders" means a health
29 care provider, executive, physician as defined in
30 section 135C.1, registered or licensed practical nurse
31 or nurse practitioner, or health care provider
32 administrator.

33 4. "Quality assessment and assurance activities"
34 means the procedure by which a quality assessment and
35 assurance committee monitors, evaluates, recommends,
36 and implements actions to improve and assure the
37 delivery and quality of services and patient safety
38 through identification, correction, and prevention of
39 sentinel events.

40 5. "Quality assessment and assurance committee"
41 means a committee of a health care provider consisting
42 of individuals responsible for the identification of
43 sentinel events that may adversely impact the health
44 and safety of patients, and for the development of
45 root cause analyses, action plans, and other plans to
46 correct identified quality of care issues. The
47 quality assessment and assurance committee shall
48 include health care provider leaders, including but
49 not limited to the health care provider administrator
50 and the director of nursing.

H-8335

1 6. "Quality assessment and assurance committee
2 records" means complaint files, investigation files,
3 reports, and other investigative information relating
4 to licensee discipline or professional competence in
5 the possession of a quality assessment and assurance
6 committee or an employee of the committee.

7 7. "Risk of death or serious injury" means any
8 variation in a process related to quality of care or
9 patient safety which may result in a serious adverse
10 outcome.

11 8. "Root cause analysis" means the process for
12 identifying causal factors that relate to any
13 variation in the delivery and quality of services and
14 patient safety, including the occurrence or possible
15 occurrence of a sentinel event. A root cause analysis
16 focuses primarily on systems and processes, and not on
17 individual performances.

18 9. "Sentinel event" means an unexpected occurrence
19 resulting in the death or serious physical or
20 psychological injury of a patient of a health care
21 provider, or a risk of death or serious physical or
22 psychological injury to a patient of a health care
23 provider.

24 10. "Unanticipated outcome" means a result that
25 differs significantly from what was anticipated to be
26 the result of a treatment or procedure, including an
27 outcome caused by an error of an employee of a health
28 care provider or an independent practitioner who
29 provides medical services at a health care provider's
30 facility.

31 Sec. 3. NEW SECTION. 135N.3 ACCOUNTABILITY OF
32 HEALTH CARE PROVIDER LEADERS.

33 The health care provider leaders, including the
34 health care provider administrator and director of
35 nursing, and the quality assessment and assurance
36 committee, are responsible for all of the following:

37 1. Assuring the implementation of an integrated
38 patient safety program throughout the health care
39 provider facility. The patient safety program shall
40 include, at a minimum, all of the following:

41 a. A designation of one or more qualified
42 individuals or an interdisciplinary group to manage
43 the health care provider safety program.

44 b. A definition of the scope of the program
45 activities, including the types of occurrences to be
46 addressed.

47 c. A procedure for immediate response to medical
48 or health care errors or patient abuse, including care
49 of an affected patient, containment of risk to others,
50 and the preservation of factual information for

- 1 subsequent analysis.
- 2 d. A system for internal and external reporting of
- 3 information relating to medical and health care errors
- 4 or patient abuse.
- 5 e. A defined mechanism for support of staff
- 6 involved in a sentinel event.
- 7 f. An annual report to the department of
- 8 inspections and appeals concerning medical or health
- 9 care errors and patient neglect or abuse, and actions
- 10 taken to improve patient safety, both proactively and
- 11 in response to actual occurrences.
- 12 2. Defining and implementing processes for
- 13 identifying and managing sentinel events, including
- 14 establishing processes for the identification,
- 15 reporting, analysis, and prevention of sentinel events
- 16 and assuring the consistent and effective
- 17 implementation of a mechanism to accomplish those
- 18 activities.
- 19 3. Establishing a continuous proactive program for
- 20 identifying risks to patient safety and reducing
- 21 medical and health care errors and patient neglect or
- 22 abuse.
- 23 4. Allocating adequate resources for measuring,
- 24 assessing, and improving patient safety.
- 25 5. Assigning personnel to participate in
- 26 activities to improve patient safety and providing
- 27 adequate time for personnel to participate in such
- 28 activities.
- 29 6. Providing staff training on the improvement of
- 30 patient safety.
- 31 7. Allocating physical and financial resources to
- 32 support safety improvement.
- 33 8. Analyzing undesirable patterns or trends in
- 34 staff performance and sentinel events.
- 35 9. Assuring the health care provider identifies
- 36 changes for improved patient safety.
- 37 Sec. 4. NEW SECTION. 135N.4 PATIENT RIGHTS AND
- 38 DUTY OF DISCLOSURE.
- 39 1. Patients and their immediate families have a
- 40 right to know about the quality of care outcomes
- 41 involved in patient care, including unanticipated
- 42 outcomes and sentinel events.
- 43 2. The health care provider leaders shall fully
- 44 disclose all of the facts and circumstances relating
- 45 to a sentinel event or an unanticipated outcome.
- 46 Sec. 5. NEW SECTION. 135N.5 SENTINEL EVENT
- 47 REPORTING.
- 48 1. A health care provider involved in a sentinel
- 49 event shall submit a root cause analysis and an action
- 50 plan that describes the health care provider's risk

1 reduction strategy and a strategy for evaluating the
2 effectiveness of the risk reduction strategy to the
3 department of inspections and appeals.

4 2. A root cause analysis shall contain an analysis
5 focusing primarily on systems and processes involved
6 in quality of care and patient safety which includes
7 changes that may be made to such systems and
8 processes, and shall be thorough, credible, and
9 acceptable as defined by industry standards.

10 Sec. 6. NEW SECTION. 135N.6 CONFIDENTIALITY OF
11 RECORDS.

12 1. Quality assessment and assurance committee
13 records shall be confidential and privileged and shall
14 not be subject to discovery or subpoena.

15 2. Information or documents discoverable from
16 sources other than a quality assessment and assurance
17 committee, a health care provider, or the department
18 of inspections and appeals do not become
19 nondiscoverable from the other sources because they
20 are subject to a claim of confidentiality under this
21 section.""

22 2. By renumbering as necessary.

By R. OLSON of Polk

HOUSE FILE 2716

H-8343

1 Amend House File 2716 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. NEW SECTION. 135N.1 TITLE.

5 This chapter shall be known and may be cited as the
6 "Patient Safety and Quality Assurance Act".

7 Sec. 2. NEW SECTION. 135N.2 DEFINITIONS.

8 As used in this chapter:

9 1. "Action plan" means a written plan prepared
10 after a root cause analysis that identifies strategies
11 that a health care provider intends to implement to
12 reduce the risk and reoccurrence of actual and
13 potential risks to patient safety. The plan shall
14 address health care provider responsibility for
15 implementation, oversight, pilot testing as
16 appropriate, timelines, and strategies for measuring
17 the effectiveness of the actions.

18 2. "Health care provider" means a physician or
19 surgeon, osteopath, osteopathic physician or surgeon,
20 dentist, podiatric physician, optometrist, pharmacist,
21 chiropractor, or nurse licensed in this state, a
22 hospital licensed pursuant to chapter 135B, or a
23 health care facility licensed pursuant to chapter
24 135C.

25 3. "Health care provider leaders" means a health
26 care provider, executive, physician as defined in
27 section 135C.1, registered or licensed practical nurse
28 or nurse practitioner, or health care provider
29 administrator.

30 4. "Quality assessment and assurance activities"
31 means the procedure by which a quality assessment and
32 assurance committee monitors, evaluates, recommends,
33 and implements actions to improve and assure the
34 delivery and quality of services and patient safety
35 through identification, correction, and prevention of
36 sentinel events.

37 5. "Quality assessment and assurance committee"
38 means a committee of a health care provider consisting
39 of individuals responsible for the identification of
40 sentinel events that may adversely impact the health
41 and safety of patients, and for the development of
42 root cause analyses, action plans, and other plans to
43 correct identified quality of care issues. The
44 quality assessment and assurance committee shall
45 include health care provider leaders, including but
46 not limited to the health care provider administrator
47 and the director of nursing.

48 6. "Quality assessment and assurance committee
49 records" means complaint files, investigation files,
50 reports, and other investigative information relating

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1 to licensee discipline or professional competence in
2 the possession of a quality assessment and assurance
3 committee or an employee of the committee.

4 7. "Risk of death or serious injury" means any
5 variation in a process related to quality of care or
6 patient safety which may result in a serious adverse
7 outcome.

8 8. "Root cause analysis" means the process for
9 identifying causal factors that relate to any
10 variation in the delivery and quality of services and
11 patient safety, including the occurrence or possible
12 occurrence of a sentinel event. A root cause analysis
13 focuses primarily on systems and processes, and not on
14 individual performances.

15 9. "Sentinel event" means an unexpected occurrence
16 resulting in the death or serious physical or
17 psychological injury of a patient of a health care
18 provider, or a risk of death or serious physical or
19 psychological injury to a patient of a health care
20 provider.

21 10. "Unanticipated outcome" means a result that
22 differs significantly from what was anticipated to be
23 the result of a treatment or procedure, including an
24 outcome caused by an error of an employee of a health
25 care provider or an independent practitioner who
26 provides medical services at a health care provider's
27 facility.

28 Sec. 3. NEW SECTION. 135N.3 ACCOUNTABILITY OF
29 HEALTH CARE PROVIDER LEADERS.

30 The health care provider leaders, including the
31 health care provider administrator and director of
32 nursing, and the quality assessment and assurance
33 committee, are responsible for all of the following:

34 1. Assuring the implementation of an integrated
35 patient safety program throughout the health care
36 provider facility. The patient safety program shall
37 include, at a minimum, all of the following:

38 a. A designation of one or more qualified
39 individuals or an interdisciplinary group to manage
40 the health care provider safety program.

41 b. A definition of the scope of the program
42 activities, including the types of occurrences to be
43 addressed.

44 c. A procedure for immediate response to medical
45 or health care errors or patient abuse, including care
46 of an affected patient, containment of risk to others,
47 and the preservation of factual information for
48 subsequent analysis.

49 d. A system for internal and external reporting of
50 information relating to medical and health care errors

- 1 or patient abuse.
- 2 e. A defined mechanism for support of staff
- 3 involved in a sentinel event.
- 4 f. An annual report to the department of
- 5 inspections and appeals concerning medical or health
- 6 care errors and patient neglect or abuse, and actions
- 7 taken to improve patient safety, both proactively and
- 8 in response to actual occurrences.
- 9 2. Defining and implementing processes for
- 10 identifying and managing sentinel events, including
- 11 establishing processes for the identification,
- 12 reporting, analysis, and prevention of sentinel events
- 13 and assuring the consistent and effective
- 14 implementation of a mechanism to accomplish those
- 15 activities.
- 16 3. Establishing a continuous proactive program for
- 17 identifying risks to patient safety and reducing
- 18 medical and health care errors and patient neglect or
- 19 abuse.
- 20 4. Allocating adequate resources for measuring,
- 21 assessing, and improving patient safety.
- 22 5. Assigning personnel to participate in
- 23 activities to improve patient safety and providing
- 24 adequate time for personnel to participate in such
- 25 activities.
- 26 6. Providing staff training on the improvement of
- 27 patient safety.
- 28 7. Allocating physical and financial resources to
- 29 support safety improvement.
- 30 8. Analyzing undesirable patterns or trends in
- 31 staff performance and sentinel events.
- 32 9. Assuring the health care provider identifies
- 33 changes for improved patient safety.
- 34 Sec. 4. NEW SECTION. 135N.4 PATIENT RIGHTS AND
- 35 DUTY OF DISCLOSURE.
- 36 1. Patients and their immediate families have a
- 37 right to know about the quality of care outcomes
- 38 involved in patient care, including unanticipated
- 39 outcomes and sentinel events.
- 40 2. The health care provider leaders shall fully
- 41 disclose all of the facts and circumstances relating
- 42 to a sentinel event or an unanticipated outcome.
- 43 Sec. 5. NEW SECTION. 135N.5 SENTINEL EVENT
- 44 REPORTING.
- 45 1. A health care provider involved in a sentinel
- 46 event shall submit a root cause analysis and an action
- 47 plan that describes the health care provider's risk
- 48 reduction strategy and a strategy for evaluating the
- 49 effectiveness of the risk reduction strategy to the
- 50 department of inspections and appeals.

1 2. A root cause analysis shall contain an analysis
2 focusing primarily on systems and processes involved
3 in quality of care and patient safety which includes
4 changes that may be made to such systems and
5 processes, and shall be thorough, credible, and
6 acceptable as defined by industry standards.

7 Sec. 6. NEW SECTION. 135N.6 CONFIDENTIALITY OF
8 RECORDS.

9 1. Quality assessment and assurance committee
10 records shall be confidential and privileged and shall
11 not be subject to discovery or subpoena.

12 2. Information or documents discoverable from
13 sources other than a quality assessment and assurance
14 committee, a health care provider, or the department
15 of inspections and appeals do not become
16 nondiscoverable from the other sources because they
17 are subject to a claim of confidentiality under this
18 section."

19 2. Page 4, by inserting after line 13 the
20 following:

21 "Sec. ____ . Section 515F.5, Code 2005, is amended
22 by adding the following new subsection:

23 NEW SUBSECTION. 1A. The commissioner shall
24 provide written notice to the public, as provided in
25 rules adopted under chapter 17A, that an insurer has
26 made a rate filing pursuant to this section, including
27 the proposed effective date of the filing, and the
28 character and extent of the coverage contemplated."

29 3. Page 5, by inserting after line 4 the
30 following:

31 "Sec. ____ . Section 622.10, subsection 3, paragraph
32 d, Code 2005, is amended to read as follows:

33 d. Any physician or surgeon, physician assistant,
34 advanced registered nurse practitioner, or mental
35 health professional who provides records or consults
36 with the counsel for the adverse party shall be
37 entitled to charge a reasonable fee for production of
38 the records, diagnostic imaging, and consultation.
39 Any party seeking consultation shall be responsible
40 for payment of all charges. ~~The fee for copies of any~~
41 ~~records shall be based upon actual cost of production.~~
42 Upon written request from a party or a party's
43 representative accompanied by a legally sufficient
44 patient's waiver, copies of the requested records or
45 diagnostic images shall be provided to the party or
46 the party's representative within thirty days of
47 receipt of the written request. A fee shall be
48 charged for the cost of producing such copies but the
49 fee shall not exceed the following:

50 (1) For printed or photocopied records, twelve

1 cents per single-sided page or seventeen cents per
2 double-sided page based upon a page measuring eight
3 and one-half inches by eleven inches or less.

4 (2) For X rays, diagnostic images, photographs, or
5 other graphic image records, the actual cost of
6 materials and supplies used to produce the copies of
7 such images or ten dollars per item, whichever is
8 less.

9 (3) For electronically scanned or produced
10 records, the actual cost of the materials and supplies
11 incurred in producing the records, or five dollars,
12 whichever is less.

13 (4) If applicable, reasonable and actual costs of
14 postage or delivery charges.

15 Fees charged pursuant to this subsection are not
16 subject to a sales or use tax. A physician or
17 surgeon, physician assistant, advanced registered
18 nurse practitioner, or mental health professional may
19 require payment in advance if the copies are requested
20 in writing and fees are itemized."

21 4. Page 5, line 5, by striking the words "REGRET
22 OR" and inserting the following: "REGRET."

23 5. Page 5, by striking line 6.

24 6. Page 5, line 13, by inserting after the word
25 "occupation," the following: "that portion of".

26 7. Page 5, line 14, by striking the word
27 "apology,".

28 8. By striking page 5, line 22, through page 6,
29 line 6, and inserting the following:

30 "Sec. ____ . CLOSED-CLAIM REPORT. An insurer
31 providing medical malpractice insurance coverage to a
32 health care provider or a health care provider who
33 maintains professional liability insurance coverage
34 through a self-insurance plan shall file annually with
35 the commissioner of insurance on or before March 15 a
36 report of all medical malpractice insurance closed
37 claims during the preceding calendar year. In
38 addition, any insurer who provided medical malpractice
39 insurance coverage to a health care provider or a
40 health care provider who maintained professional
41 liability coverage through a self-insurance plan
42 between January 1, 1991, and December 31, 2005, shall
43 file a report with the commissioner of all medical
44 malpractice closed claims during the period. The
45 commissioner shall prepare a comprehensive analysis of
46 the closed claim data for that period for submission
47 to the general assembly on or before January 15,
48 2007."

49 9. By renumbering as necessary.

By JOCHUM of Dubuque
R. OLSON of Polk

HOUSE FILE 2716

H-8354

1 Amend the amendment, H-8320, to House File 2716 as
2 follows:

3 1. Page 1, by striking lines 2 and 3 and
4 inserting the following:

5 "____. By striking page 1, line 1, through page 5,
6 line 4.

7 _____. Page 5, by striking lines 5 through 11 and
8 inserting the following:

9 "Sec. _____. NEW SECTION. 622.31 EVIDENCE OF
10 REGRET OR SORROW.

11 In any civil action for professional negligence,
12 personal injury, or wrongful death or in any
13 arbitration proceeding for professional negligence,
14 personal injury, or wrongful death against a person in
15 a profession represented by the examining boards
16 listed in section 272C.1 and any other licensed
17 profession recognized in this state, a hospital
18 licensed pursuant to chapter 135B, or a health care
19 facility licensed pursuant to chapter 135C, based upon
20 the".

21 _____. Page 5, by striking lines 13 and 14 and
22 inserting the following: "occupation, any portion of
23 a statement, affirmation, gesture, or conduct
24 expressing sorrow, sympathy, commiseration,
25 condolence,".

26 _____. By striking page 5, line 22, through page 6,
27 line 6.

28 _____. Title page, by striking lines 2 and 3 and
29 inserting the following: "including certain
30 evidentiary requirements.""

31 2. By renumbering as necessary.

By UPMEYER of Hancock

H-8354 FILED MARCH 22, 2006

ADOPTED

HOUSE FILE 2716
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 676)

(As Amended and Passed by the House March 22, 2006)

Re- Passed House, Date 4-25-06 Passed Senate, Date 4-25-06
Vote: Ayes 92 Nays 0 Vote: Ayes 49 Nays 0
Approved _____

A BILL FOR

1 An Act relating to civil actions for personal injury or death,
2 including certain evidentiary requirements.

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

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Deleted Language *
House Amendments _____

*1 Section 1. NEW SECTION. 622.31 EVIDENCE OF REGRET OR
2 SORROW.
3 In any civil action for professional negligence, personal
4 injury, or wrongful death or in any arbitration proceeding for
5 professional negligence, personal injury, or wrongful death
6 against a person in a profession represented by the examining
7 boards listed in section 272C.1 and any other licensed
8 profession recognized in this state, a hospital licensed
9 pursuant to chapter 135B, or a health care facility licensed
10 pursuant to chapter 135C, based upon the alleged negligence in
11 the practice of that profession or occupation, any portion of
12 a statement, affirmation, gesture, or conduct expressing
13 sorrow, sympathy, commiseration, condolence, compassion, or a
14 general sense of benevolence that was made by the person to
15 the plaintiff, relative of the plaintiff, or decision maker
16 for the plaintiff that relates to the discomfort, pain,
17 suffering, injury, or death of the plaintiff as a result of an
18 alleged breach of the applicable standard of care is
19 inadmissible as evidence of an admission of liability or as
20 evidence of an admission against interest.

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HOUSE FILE 2716

S-5215

1 Amend House File 2716, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. Section 135.40, Code 2005, is amended
6 to read as follows:

7 135.40 COLLECTION AND DISTRIBUTION OF INFORMATION.

8 Any person, hospital, sanatorium, nursing or rest
9 home or other organization may provide information,
10 interviews, reports, statements, memoranda, or other
11 data relating to the condition and treatment of any
12 person to the department, the Iowa medical society or
13 any of its allied medical societies, ~~or~~ the Iowa
14 osteopathic medical association, ~~or~~ any in-hospital
15 staff committee, or the Iowa healthcare collaborative,
16 to be used in the course of any study for the purpose
17 of reducing morbidity or mortality, and no liability
18 of any kind or character for damages or other relief
19 shall arise or be enforced against any person or
20 organization that has acted reasonably and in good
21 faith, by reason of having provided such information
22 or material, or by reason of having released or
23 published the findings and conclusions of such groups
24 to advance medical research and medical education, or
25 by reason of having released or published generally a
26 summary of such studies.

27 For the purposes of this section, and section
28 135.41, the "Iowa healthcare collaborative" means an
29 organization which is exempt from federal income
30 taxation under section 501(c)(3) of the Internal
31 Revenue Code and which is established to provide
32 direction to promote quality, safety, and value
33 improvement collaborative efforts by hospitals and
34 physicians.

35 Sec. 2. Section 135.41, Code 2005, is amended to
36 read as follows:

37 135.41 PUBLICATION.

38 The department, the Iowa medical society or any of
39 its allied medical societies, ~~or~~ the Iowa osteopathic
40 medical association, ~~or~~ any in-hospital staff
41 committee, or the Iowa healthcare collaborative shall
42 use or publish said material only for the purpose of
43 advancing medical research or medical education in the
44 interest of reducing morbidity or mortality, except
45 that a summary of such studies may be released by any
46 such group for general publication. In all events the
47 identity of any person whose condition or treatment
48 has been studied shall be confidential and shall not
49 be revealed under any circumstances. A violation of
50 this section shall constitute a simple misdemeanor."

S-5215

1 2. Page 1, by striking lines 6 through 8 and
2 inserting the following: "against a health care
3 provider as defined in section 135.61, a hospital
4 licensed".

5 3. Page 1, line 11, by striking the word "any"
6 and inserting the following: "that".

7 4. Page 1, by striking lines 19 and 20 and
8 inserting the following: "inadmissible as evidence.
9 Any response by the plaintiff, relative of the
10 plaintiff, or decision maker for the plaintiff to such
11 statement, affirmation, gesture, or conduct is
12 similarly inadmissible as evidence.

13 Sec. ____ . NEW SECTION. 505.27 MEDICAL
14 MALPRACTICE INSURANCE -- REPORTS REQUIRED.

15 1. An insurer providing medical malpractice
16 insurance coverage to Iowa health care providers shall
17 file annually on or before June 1 with the
18 commissioner a report of all medical malpractice
19 insurance claims, both open claims and closed claims
20 filed during the reporting period, against any such
21 Iowa insureds during the preceding calendar year.

22 2. The report shall be in writing and contain all
23 of the following information aggregated by specialty
24 area and paid loss and paid expense categories
25 established by the commissioner:

26 a. The total number of claims in the reporting
27 period and the nature and substance of such claims.

28 b. The total amounts paid within six months after
29 final disposition of the claims.

30 c. The total amount reserved for the payment of
31 claims incurred and reported but not disposed.

32 d. The expenses, as set forth by rule, related to
33 the claims.

34 e. Any other additional information as required by
35 the commissioner by rule.

36 3. The commissioner shall compile annually the
37 data included in reports filed by insurers pursuant to
38 this section into an aggregate form by insurer, except
39 that such data shall not include information that
40 directly or indirectly identifies any individual,
41 including a patient, an insured, or a health care
42 provider. The commissioner shall submit a written
43 report summarizing such data along with any
44 recommendations to the general assembly and the
45 governor by December 1, 2007, with subsequent reports
46 submitted to the general assembly and the governor
47 annually thereafter.

48 4. A report prepared pursuant to subsection 1 or 3
49 shall be open to the public and shall be made
50 available to a requesting party by the commissioner at

S-5215

Page 3

1 no charge, except that any identifying information of
2 any individual, including a patient, an insured, or
3 health care provider, shall remain confidential.

4 5. For purposes of this section, "health care
5 provider" means the same as defined in section 135.61,
6 a hospital licensed pursuant to chapter 135B, or a
7 health care facility licensed pursuant to chapter
8 135C, and "insurer" means an insurance company
9 authorized to transact insurance business in this
10 state. "Insurer" does not include a health care
11 provider who maintains professional liability
12 insurance coverage through a self-insurance plan, an
13 unauthorized insurance company transacting business
14 with an insured person in this state, or a person not
15 authorized to transact insurance business in this
16 state."

17 5. Title page, line 2, by inserting after the
18 word "evidentiary" the following: ", reporting, and
19 study information".

20 6. By renumbering as necessary.

By BOB BRUNKHORST
KEITH A. KREIMAN

S-5215 FILED APRIL 24, 2006

S-5222

1 Amend House File 2716, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. Section 135.40, Code 2005, is amended
6 to read as follows:

7 135.40 COLLECTION AND DISTRIBUTION OF INFORMATION.

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9 home or other organization may provide information,
10 interviews, reports, statements, memoranda, or other
11 data relating to the condition and treatment of any
12 person to the department, the Iowa medical society or
13 any of its allied medical societies, ~~or~~ the Iowa
14 osteopathic medical association, ~~or~~ any in-hospital
15 staff committee, or the Iowa healthcare collaborative,
16 to be used in the course of any study for the purpose
17 of reducing morbidity or mortality, and no liability
18 of any kind or character for damages or other relief
19 shall arise or be enforced against any person or
20 organization that has acted reasonably and in good
21 faith, by reason of having provided such information
22 or material, or by reason of having released or
23 published the findings and conclusions of such groups
24 to advance medical research and medical education, or
25 by reason of having released or published generally a
26 summary of such studies.

27 For the purposes of this section, and section
28 135.41, the "Iowa healthcare collaborative" means an
29 organization which is exempt from federal income
30 taxation under section 501(c)(3) of the Internal
31 Revenue Code and which is established to provide
32 direction to promote quality, safety, and value
33 improvement collaborative efforts by hospitals and
34 physicians.

35 Sec. 2. Section 135.41, Code 2005, is amended to
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40 medical association, ~~or~~ any in-hospital staff
41 committee, or the Iowa healthcare collaborative shall
42 use or publish said material only for the purpose of
43 advancing medical research or medical education in the
44 interest of reducing morbidity or mortality, except
45 that a summary of such studies may be released by any
46 such group for general publication. In all events the
47 identity of any person whose condition or treatment
48 has been studied shall be confidential and shall not
49 be revealed under any circumstances. A violation of
50 this section shall constitute a simple misdemeanor."

S-5222

1 2. Page 1, line 11, by striking the word "any"
2 and inserting the following: "that".

3 3. Page 1, by striking lines 19 and 20 and
4 inserting the following: "inadmissible as evidence.
5 Any response by the plaintiff, relative of the
6 plaintiff, or decision maker for the plaintiff to such
7 statement, affirmation, gesture, or conduct is
8 similarly inadmissible as evidence.

9 Sec. ____ . NEW SECTION. 505.27 MEDICAL
10 MALPRACTICE INSURANCE -- REPORTS REQUIRED.

11 1. An insurer providing medical malpractice
12 insurance coverage to Iowa health care providers shall
13 file annually on or before June 1 with the
14 commissioner a report of all medical malpractice
15 insurance claims, both open claims and closed claims
16 filed during the reporting period, against any such
17 Iowa insureds during the preceding calendar year.

18 2. The report shall be in writing and contain all
19 of the following information aggregated by specialty
20 area and paid loss and paid expense categories
21 established by the commissioner:

22 a. The total number of claims in the reporting
23 period and the nature and substance of such claims.

24 b. The total amounts paid within six months after
25 final disposition of the claims.

26 c. The total amount reserved for the payment of
27 claims incurred and reported but not disposed.

28 d. The expenses, as set forth by rule, related to
29 the claims.

30 e. Any other additional information as required by
31 the commissioner by rule.

32 3. The commissioner shall compile annually the
33 data included in reports filed by insurers pursuant to
34 this section into an aggregate form by insurer, except
35 that such data shall not include information that
36 directly or indirectly identifies any individual,
37 including a patient, an insured, or a health care
38 provider. The commissioner shall submit a written
39 report summarizing such data along with any
40 recommendations to the general assembly and the
41 governor by December 1, 2007, with subsequent reports
42 submitted to the general assembly and the governor
43 annually thereafter.

44 4. A report prepared pursuant to subsection 1 or 3
45 shall be open to the public and shall be made
46 available to a requesting party by the commissioner at
47 no charge, except that any identifying information of
48 any individual, including a patient, an insured, or
49 health care provider, shall remain confidential.

50 5. For purposes of this section, "health care

1 provider" means the same as defined in section 135.61,
2 a hospital licensed pursuant to chapter 135B, or a
3 health care facility licensed pursuant to chapter
4 135C, and "insurer" means an insurance company
5 authorized to transact insurance business in this
6 state. "Insurer" does not include a health care
7 provider who maintains professional liability
8 insurance coverage through a self-insurance plan, an
9 unauthorized insurance company transacting business
10 with an insured person in this state, or a person not
11 authorized to transact insurance business in this
12 state."

13 4. Title page, line 2, by inserting after the
14 word "evidentiary" the following: ", reporting, and
15 study information".

16 5. By renumbering as necessary.

By BOB BRUNKHORST
KEITH A. KREIMAN

S-5222 FILED APRIL 25, 2006

ADOPTED

**SENATE AMENDMENT TO
HOUSE FILE 2716**

H-8577

1 Amend House File 2716, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. Section 135.40, Code 2005, is amended
6 to read as follows:

7 135.40 COLLECTION AND DISTRIBUTION OF INFORMATION.

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12 person to the department, the Iowa medical society or
13 any of its allied medical societies, ~~or~~ the Iowa
14 osteopathic medical association, ~~or~~ any in-hospital
15 staff committee, or the Iowa healthcare collaborative,
16 to be used in the course of any study for the purpose
17 of reducing morbidity or mortality, and no liability
18 of any kind or character for damages or other relief
19 shall arise or be enforced against any person or
20 organization that has acted reasonably and in good
21 faith, by reason of having provided such information
22 or material, or by reason of having released or
23 published the findings and conclusions of such groups
24 to advance medical research and medical education, or
25 by reason of having released or published generally a
26 summary of such studies.

27 For the purposes of this section, and section
28 135.41, the "Iowa healthcare collaborative" means an
29 organization which is exempt from federal income
30 taxation under section 501(c)(3) of the Internal
31 Revenue Code and which is established to provide
32 direction to promote quality, safety, and value
33 improvement collaborative efforts by hospitals and
34 physicians.

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37 135.41 PUBLICATION.

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40 medical association, ~~or~~ any in-hospital staff
41 committee, or the Iowa healthcare collaborative shall
42 use or publish said material only for the purpose of
43 advancing medical research or medical education in the
44 interest of reducing morbidity or mortality, except
45 that a summary of such studies may be released by any
46 such group for general publication. In all events the
47 identity of any person whose condition or treatment
48 has been studied shall be confidential and shall not
49 be revealed under any circumstances. A violation of
50 this section shall constitute a simple misdemeanor."

H-8577

1 2. Page 1, line 11, by striking the word "any"
2 and inserting the following: "that".

3 3. Page 1, by striking lines 19 and 20 and
4 inserting the following: "inadmissible as evidence.
5 Any response by the plaintiff, relative of the
6 plaintiff, or decision maker for the plaintiff to such
7 statement, affirmation, gesture, or conduct is
8 similarly inadmissible as evidence.

9 Sec. ____ . NEW SECTION. 505.27 MEDICAL
10 MALPRACTICE INSURANCE -- REPORTS REQUIRED.

11 1. An insurer providing medical malpractice
12 insurance coverage to Iowa health care providers shall
13 file annually on or before June 1 with the
14 commissioner a report of all medical malpractice
15 insurance claims, both open claims and closed claims
16 filed during the reporting period, against any such
17 Iowa insureds during the preceding calendar year.

18 2. The report shall be in writing and contain all
19 of the following information aggregated by specialty
20 area and paid loss and paid expense categories
21 established by the commissioner:

22 a. The total number of claims in the reporting
23 period and the nature and substance of such claims.

24 b. The total amounts paid within six months after
25 final disposition of the claims.

26 c. The total amount reserved for the payment of
27 claims incurred and reported but not disposed.

28 d. The expenses, as set forth by rule, related to
29 the claims.

30 e. Any other additional information as required by
31 the commissioner by rule.

32 3. The commissioner shall compile annually the
33 data included in reports filed by insurers pursuant to
34 this section into an aggregate form by insurer, except
35 that such data shall not include information that
36 directly or indirectly identifies any individual,
37 including a patient, an insured, or a health care
38 provider. The commissioner shall submit a written
39 report summarizing such data along with any
40 recommendations to the general assembly and the
41 governor by December 1, 2007, with subsequent reports
42 submitted to the general assembly and the governor
43 annually thereafter.

44 4. A report prepared pursuant to subsection 1 or 3
45 shall be open to the public and shall be made
46 available to a requesting party by the commissioner at
47 no charge, except that any identifying information of
48 any individual, including a patient, an insured, or
49 health care provider, shall remain confidential.

50 5. For purposes of this section, "health care

H-8577

Page 3

1 provider" means the same as defined in section 135.61,
2 a hospital licensed pursuant to chapter 135B, or a
3 health care facility licensed pursuant to chapter
4 135C, and "insurer" means an insurance company
5 authorized to transact insurance business in this
6 state. "Insurer" does not include a health care
7 provider who maintains professional liability
8 insurance coverage through a self-insurance plan, an
9 unauthorized insurance company transacting business
10 with an insured person in this state, or a person not
11 authorized to transact insurance business in this
12 state."

13 4. Title page, line 2, by inserting after the
14 word "evidentiary" the following: ", reporting, and
15 study information".

16 5. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-8577 FILED APRIL 25, 2006

CONCURRED

Paulsen - ch

Tyner,
Hutter
Johnson
Olson, R.

Succeeded
SF/HF 2716

HSB 676

JUDICIARY

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON PAULSEN)

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

A BILL FOR

1 An Act relating to medical malpractice, including insurance and
2 tax-related matters, and providing a retroactive applicability
3 provision.

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

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TLSB 5732YC 81

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1 Section 1. NEW SECTION. 135.11B ADVERSE HEALTH EVENT
2 REPORTING SYSTEM.

3 1. The director shall adopt rules which establish and
4 administer an adverse health event reporting system designed
5 to facilitate quality improvement in the health care system.
6 The reporting system shall not be designed to punish errors by
7 a health care practitioner or health care facility or hospital
8 employee.

9 2. The reporting system shall consist of all of the
10 following:

11 a. Mandatory reporting by a hospital or health care
12 facility of adverse health care events specified by rule.

13 b. Mandatory completion of a root cause analysis and a
14 corrective action plan by the hospital or health care facility
15 and a reporting of the findings of the analysis and the plan
16 to the director or reporting of reasons for not taking
17 corrective action.

18 c. An analysis of reported information received by the
19 director to determine patterns of systemic failure in the
20 health care system and successful methods to correct these
21 failures.

22 d. Sanctions against a hospital or health care facility
23 for failure to comply with reporting system requirements.

24 e. Communication from the director to a hospital or health
25 care facility to maximize the use of the reporting system to
26 improve health care quality.

27 3. For purposes of this section:

28 a. "Adverse health care event" means an injury that was
29 caused by or is associated with medical management and that
30 results in death or measurable disability.

31 b. "Corrective action plan" means a plan that implements
32 strategies that reduce the risk of similar adverse health care
33 on events occurring in the future.

34 c. "Health care facility" means the same as defined in
35 section 135C.1.

1 d. "Hospital" means the same as defined in section 135B.1.

2 e. "Root cause analysis" means an examination or
3 investigation of an occurrence, event, or incident to
4 determine if a preventable medical error took place or the
5 standard of care was not followed and to identify the causal
6 factors that led to such occurrence, event, or incident.

7 Sec. 2. Section 147.3, Code 2005, is amended to read as
8 follows:

9 147.3 QUALIFICATIONS -- CRIMINAL HISTORY CHECK.

10 1. An applicant for a license to practice a profession
11 under this subtitle is not ineligible because of age,
12 citizenship, sex, race, religion, marital status or national
13 origin, although the application form may require citizenship
14 information. A-board-may-consider-the-past-felony-record-of
15 an-applicant-only-if-the-felony-conviction-relates-directly-to
16 the-practice-of-the-profession-for-which-the-applicant
17 requests-to-be-licensed.--Character-references-may-be
18 required,-but-shall-not-be-obtained-from-licensed-members-of
19 the-profession-

20 2. An applicant for a license to practice a profession
21 under this subtitle shall be subject to a national criminal
22 history check through the federal bureau of investigation.
23 The appropriate licensing board shall request the criminal
24 history check and shall provide the applicant's fingerprints
25 to the department of public safety for submission through the
26 state criminal history repository to the federal bureau of
27 investigation. The applicant shall authorize release of the
28 results of the criminal history check to the appropriate
29 board. The results of a criminal history check conducted
30 pursuant to this subsection shall not be considered a public
31 record under chapter 22.

32 3. The appropriate licensing board may consider the past
33 felony record of an applicant only if the felony conviction
34 relates directly to the practice of the profession for which
35 the applicant requests to be licensed. Character references

1 may be required, but shall not be obtained from licensed
2 members of the profession.

3 Sec. 3. Section 147.139, Code 2005, is amended to read as
4 follows:

5 147.139 EXPERT WITNESS STANDARDS.

6 If the standard of care given by a ~~physician-and-surgeon~~
7 ~~licensed-pursuant-to-chapter-148, or-osteopathic-physician-and~~
8 ~~surgeon-licensed-pursuant-to-chapter-150A, or-a-dentist~~
9 ~~licensed-pursuant-to-chapter-153,~~ health care provider as
10 defined in subsection 2 is at issue, the court shall only
11 allow a person to qualify as an expert witness and to testify
12 on the issue of the appropriate standard of care if the
13 ~~person's-medical-or-dental-qualifications-relate-directly-to~~
14 ~~the-medical-problem-or-problems-at-issue-and-the-type-of~~
15 ~~treatment-administered-in-the-case~~ person is licensed as a
16 health care provider in this state and the person meets the
17 following criteria:

18 1. If the party against whom or on whose behalf the
19 testimony is offered is a specialist, the expert witness
20 shall:

21 a. Be a specialist in the same specialty as the health
22 care provider against whom or on whose behalf the testimony is
23 offered or a specialist in a similar specialty that includes
24 the evaluation, diagnosis, or treatment of the medical
25 condition that is the subject of the claim and have prior
26 experience treating similar patients.

27 b. Have devoted professional time during the three years
28 immediately preceding the date of the occurrence that is the
29 basis for the action to any of the following:

30 (1) The active clinical practice of, or consulting with
31 respect to, the same or similar specialty that includes the
32 evaluation, diagnosis, or treatment of the medical condition
33 that is the subject of the claim and have prior experience
34 treating similar patients.

35 (2) Instruction of students in an accredited health

1 professional school or accredited residency or clinical
2 research program in the same or similar specialty.

3 (3) A clinical research program that is affiliated with an
4 accredited health professional school or accredited residency
5 or clinical research program in the same or similar specialty.

6 2. If the health care provider against whom or on whose
7 behalf the testimony is offered is a general practitioner, the
8 expert witness must have devoted professional time during the
9 five years immediately preceding the date of the occurrence
10 that is the basis for the action to any of the following:

11 a. The active clinical practice or consultation as a
12 general practitioner.

13 b. The instruction of students in an accredited health
14 professional school or accredited residency program in the
15 general practice of medicine.

16 c. A clinical research program that is affiliated with an
17 accredited medical school or teaching hospital and that is in
18 the general practice of medicine.

19 3. If the health care provider against whom or on whose
20 behalf the testimony is offered is a health care provider
21 other than a specialist or a general practitioner, the expert
22 witness must have devoted professional time during the three
23 years immediately preceding the date of the occurrence that is
24 the basis for the action to any of the following:

25 a. The active clinical practice of, or consulting with
26 respect to, the same or similar health profession as the
27 health care provider against whom or on whose behalf the
28 testimony is offered.

29 b. The instruction of students in an accredited health
30 professional school or accredited residency program in the
31 same or similar health profession in which the health care
32 provider against whom or on whose behalf the testimony is
33 offered.

34 c. A clinical research program that is affiliated with an
35 accredited medical school or teaching hospital and that is in

1 the same or similar health profession as the health care
2 provider against whom or on whose behalf the testimony is
3 offered.

4 4. For purposes of this section, "health care provider"
5 means a physician or surgeon licensed pursuant to chapter 148,
6 an osteopathic physician or surgeon licensed pursuant to
7 chapter 150A, or a dentist licensed pursuant to chapter 153.

8 Sec. 4. NEW SECTION. 147.140 EVIDENCE OF REGRET OR
9 APOLOGY.

10 In any civil action for personal injury or wrongful death
11 against any physician or surgeon licensed pursuant to chapter
12 148, osteopathic physician or surgeon licensed pursuant to
13 chapter 150A, or dentist licensed pursuant to chapter 153,
14 based upon the alleged negligence of the licensee in the
15 practice of that profession or occupation, any statement,
16 affirmation, gesture, or conduct expressing apology,
17 responsibility, liability, sympathy, consideration,
18 condolence, or a general sense of benevolence that was made by
19 a physician or surgeon, osteopathic physician or surgeon, or
20 dentist to the patient, relative of the patient, or decision
21 maker for the patient that relates to the discomfort, pain,
22 suffering, injury, or death of the patient as a result of an
23 unanticipated outcome of medical care is inadmissible as
24 evidence of an admission of liability or as evidence of an
25 admission against interest.

26 Sec. 5. NEW SECTION. 147.141 CERTIFICATE OF MERIT.

27 1. In an action for damages for personal injury against a
28 health care provider licensed to practice or operate in this
29 state, based on the alleged negligence of the licensee in the
30 practice of the profession or occupation, or upon the alleged
31 negligence of the hospital in patient care, the plaintiff
32 shall file, simultaneous with the filing of the complaint, a
33 certificate of merit attesting to the following:

34 a. The plaintiff or plaintiff's attorney has consulted and
35 reviewed the facts of the case with an expert who the

1 plaintiff or the plaintiff's attorney reasonably believes
2 meets the following requirements:

3 (1) The expert is knowledgeable regarding the relevant
4 issues involved in the particular action.

5 (2) The expert is qualified by knowledge, skill,
6 experience, training, or education to testify as an expert in
7 the field of the alleged malpractice pursuant to section
8 147.139.

9 (3) The expert has no financial or personal interest in
10 the outcome of the case under review.

11 b. The expert has determined in a written report that a
12 reasonable and meritorious case exists for the filing of such
13 action.

14 2. The written report from the expert shall be attached to
15 the certificate of merit and shall contain all of the
16 following:

17 a. The name and address of the expert and sufficient facts
18 to support the conclusion that the expert is qualified by
19 knowledge, skill, experience, training, or education to
20 testify as an expert against the health care provider.

21 b. A statement that the expert's determination is based
22 upon an examination of the plaintiff, or an independent and
23 thorough review of all of the applicable medical records and,
24 if reasonably available, a physical examination of the
25 plaintiff.

26 c. A description of the appropriate standard of care that
27 is expected of a reasonably competent health care provider in
28 the same class to which the health care provider belongs,
29 acting in the same or similar circumstances.

30 d. In the opinion of the expert, expressed with a
31 reasonable degree of medical certainty, that the appropriate
32 standard of care was breached by the health care provider
33 named in the complaint.

34 e. The factual basis for the expert's opinion.

35 f. A statement of the actions that the health care

1 provider should have taken or failed to take to have complied
2 with the standard of care.

3 g. A statement of the manner in which the breach of the
4 standard of care was the cause of the injury alleged in the
5 complaint.

6 3. If a certificate of merit is required pursuant to this
7 section, a separate certificate and expert report shall be
8 filed as to each defendant named in the complaint and shall be
9 filed as to each defendant named at a later time.

10 4. The contemporaneous filing requirement of subsection 1
11 shall not apply to a personal injury case, for which the
12 period of limitation will expire or where there is a good
13 faith basis to believe the period of limitation will expire,
14 within ten days of the date of filing of the complaint and the
15 plaintiff asserts in good faith that because of such time
16 constraints compliance with the requirements was not possible.
17 In such cases, the plaintiff shall have forty-five days after
18 the filing of the complaint to supplement the pleadings with
19 the certificate of merit and expert report.

20 5. If a certificate of merit is not filed within the
21 period specified in this section, the complaint is subject to
22 dismissal for failure to state a claim upon which relief can
23 be granted.

24 6. If the plaintiff or the plaintiff's counsel files a
25 certificate of merit that does not meet the requirements of
26 subsection 1 or a report that does not meet the requirements
27 of subsection 2, the defendant to whom such certificate
28 pertains may file a motion to dismiss which shall specify the
29 grounds or basis by which the certificate or the report does
30 not meet the requirements of this section.

31 7. For the purposes of this section, "health care
32 provider" means a physician or surgeon, osteopath, osteopathic
33 physician or surgeon, dentist, podiatric physician,
34 optometrist, pharmacist, chiropractor, or nurse licensed to
35 practice that profession in this state, or a hospital licensed

1 for operation in this state.

2 Sec. 6. NEW SECTION. 422.11M OBSTETRICS-GYNECOLOGY TAX
3 CREDIT.

4 1. The taxes imposed under this division, less the amounts
5 of nonrefundable credits allowed under this division, shall be
6 reduced by an obstetrics-gynecology tax credit. To qualify
7 for the tax credit, the taxpayer shall have practiced
8 obstetrics and gynecology during the tax year from an office
9 or clinic located in a city or cities each with a population
10 of less than fifteen thousand. The maximum amount of the tax
11 credit equals five thousand dollars for the first tax year and
12 ten thousand dollars for the second tax year. The tax credits
13 shall be computed over two consecutive tax years as selected
14 by the taxpayer.

15 In determining the amount of tax credit only the months in
16 the tax year in which the majority of the taxpayer's practice
17 is performed in cities with less than fifteen thousand
18 residents shall be counted. The amount of the tax credit
19 equals the maximum credit allowable for the tax year
20 multiplied by the fraction of the tax year in which the
21 taxpayer's practice is performed in cities with less than
22 fifteen thousand residents. This amount shall be rounded to
23 the nearest amount divisible by fifty.

24 2. Any credit in excess of the taxpayer's tax liability
25 shall be refunded. In lieu of claiming a refund, the taxpayer
26 may elect to have the overpayment shown on the taxpayer's
27 final, completed return credited to the tax liability for the
28 following tax year.

29 3. This section is repealed January 1, 2016, for tax years
30 beginning on or after that date.

31 Sec. 7. Section 515F.4, subsection 5, Code 2005, is
32 amended to read as follows:

33 5. The rates may contain a provision for contingencies and
34 an allowance permitting a reasonable profit. In determining
35 the reasonableness of the profit, consideration shall be given

1 to investment income attributable to unearned premium and loss
2 reserves. ~~Income from other sources shall not be considered.~~

3 Sec. 8. Section 614.1, subsection 9, Code 2005, is amended
4 to read as follows:

5 9. MALPRACTICE.

6 a. Except as provided in paragraph paragraphs "b" and "c",
7 those founded on injuries to the person or wrongful death
8 against any physician and surgeon, osteopath, osteopathic
9 physician and surgeon, dentist, podiatric physician,
10 optometrist, pharmacist, chiropractor, physician assistant, or
11 nurse, licensed under chapter 147, or a hospital licensed
12 under chapter 135B, arising out of patient care, within two
13 years after the date on which the claimant knew, or through
14 the use of reasonable diligence should have known, or received
15 notice in writing of the existence of, the injury or death for
16 which damages are sought in the action, whichever of the dates
17 occurs first, but in no event shall any action be brought more
18 than six years after the date on which occurred the act or
19 omission or occurrence alleged in the action to have been the
20 cause of the injury or death unless a foreign object
21 unintentionally left in the body caused the injury or death.

22 b. An action subject to paragraph "a" and brought on
23 behalf of a minor who was under the age of eight years when
24 the act, omission, or occurrence alleged in the action
25 occurred shall be commenced no later than the minor's tenth
26 birthday or as provided in paragraph "a", whichever is later.

27 c. The statutes of limitation specified in paragraphs "a"
28 and "b" may be tolled by written agreement of the parties.

29 Sec. 9. STUDY.

30 1. The Iowa department of public health shall conduct a
31 study to determine the effectiveness of the provisions of this
32 Act in reducing the number of medical malpractice lawsuits and
33 the costs associated with medical care, including medical
34 liability insurance premiums, and shall annually submit a
35 report of its findings to the general assembly not later than

1 January 1 during the period beginning January 1, 2007, and
2 ending January 1, 2010.

3 2. This section is repealed January 1, 2010.

4 Sec. 10. RETROACTIVE APPLICABILITY. Section 6 of this Act
5 relating to a tax credit for obstetricians and gynecologists
6 applies retroactively to January 1, 2006, for tax years
7 beginning on or after that date.

8 EXPLANATION

9 This bill relates to medical malpractice including
10 insurance and tax-related matters, and provides a retroactive
11 applicability date.

12 ADVERSE HEALTH EVENT REPORTING SYSTEM. The bill provides
13 that the director of public health shall adopt rules which
14 establish and administer an adverse health event reporting
15 system designed to facilitate quality improvement in the
16 health care system. The reporting system shall not be
17 designed to punish errors by a health care practitioner or
18 health care facility or hospital employee. The reporting
19 system shall consist of mandatory reporting by a hospital or
20 health care facility of adverse health care events specified
21 by rule, mandatory completion of a root cause analysis and a
22 corrective action plan by the hospital or health care facility
23 and a reporting of the findings of the analysis and the plan
24 to the director or reporting of reasons for not taking
25 corrective action, an analysis of reported information
26 received by the director to determine patterns of systemic
27 failure in the health care system and successful methods to
28 correct these failures, sanctions against a hospital or health
29 care facility for failure to comply with reporting system
30 requirements, and communication from the director to a
31 hospital or health care facility to maximize the use of the
32 reporting system to improve health care quality. For purposes
33 of the bill, "adverse health care event" means an injury that
34 was caused by or is associated with medical management and
35 that results in death or measurable disability, "corrective

1 action plan" means a plan that implements strategies that
2 reduce the risk of similar events occurring in the future,
3 "health care facility" means the same as defined in section
4 135C.1, "hospital" means the same as defined in section
5 135B.1, and "root cause analysis" means an examination or
6 investigation of an occurrence, event, or incident to
7 determine if a preventable medical error took place or the
8 standard of care was not followed and to identify the causal
9 factors that led to such occurrence, event, or incident.

10 EXPERT WITNESS STANDARDS. The bill provides that if the
11 standard of care given by a health care provider defined as a
12 physician or surgeon licensed pursuant to Code chapter 148, an
13 osteopathic physician or surgeon licensed pursuant to Code
14 chapter 150A, or a dentist licensed pursuant to Code chapter
15 153 is at issue in a medical malpractice case, the court shall
16 only allow a health care provider who is licensed in this
17 state to qualify as an expert witness and to testify on the
18 issue of the appropriate standard of care if the health care
19 provider meets certain professional practice and educational
20 criteria including instructional criteria, depending upon
21 whether the party against whom or on whose behalf the
22 testimony is offered is a specialist, a general practitioner,
23 or a health care professional other than a specialist or a
24 general practitioner. Current law relating to expert witness
25 standards in a medical malpractice action allows a person to
26 testify as an expert witness and to testify on the appropriate
27 standard of care if the person's medical or dental
28 qualifications relate directly to the medical problem at issue
29 and the type of treatment provided.

30 EVIDENCE OF REGRET OR APOLOGY. The bill relates to
31 evidence of regret or apology made by a physician or surgeon,
32 osteopathic physician or surgeon, or dentist in any civil
33 action for personal injury or death. The bill provides that
34 in such a case, any statement, affirmation, gesture, or
35 conduct expressing apology, responsibility, liability,

1 sympathy, consideration, condolence, or a general sense of
2 benevolence that was made by such a licensee, to the patient,
3 relative of the patient, or decision maker for the patient
4 that relates to the discomfort, pain, suffering, injury, or
5 death of the patient as a result of an unanticipated outcome
6 of medical care is inadmissible as evidence of an admission of
7 liability or as evidence of an admission against interest.

8 CERTIFICATE OF MERIT. The bill provides that in an action
9 for damages for personal injury against a health care
10 provider, defined as a physician or surgeon, osteopath,
11 osteopathic physician or surgeon, dentist, podiatric
12 physician, optometrist, pharmacist, chiropractor, or nurse
13 licensed to practice that profession in this state, or a
14 hospital licensed for operation in this state, based on the
15 alleged negligence of the licensee in the practice of the
16 profession or occupation, or upon the alleged negligence of
17 the hospital in patient care, the plaintiff shall file,
18 simultaneous with the filing of the complaint, a certificate
19 of merit. The certificate of merit shall state that the
20 plaintiff or plaintiff's attorney has consulted and reviewed
21 the facts of the case with an expert who the plaintiff or the
22 plaintiff's attorney reasonably believes is knowledgeable
23 regarding the relevant issues involved in the particular
24 action; that the expert is qualified by knowledge, skill,
25 experience, training, or education to testify as an expert;
26 and that the expert has no financial or personal interest in
27 the outcome of the case under review.

28 The bill further provides that the certificate of merit
29 shall be submitted with a written report from the expert and
30 that a separate certificate and expert report shall be filed
31 as to each defendant named in the complaint, and allows for
32 certain exemptions for filing a certificate of merit within
33 the period of limitation.

34 The bill provides that if a certificate of merit is not
35 filed within the period specified in the bill, the complaint

1 is subject to dismissal for failure to state a claim upon
2 which relief can be granted.

3 The bill provides that if the plaintiff files a certificate
4 of merit or an accompanying report that does not meet the
5 requirements of the bill, the defendant to whom such
6 certificate pertains may file a motion to dismiss which shall
7 specify the grounds or basis by which the certificate does not
8 meet the requirements of this section.

9 CRIMINAL HISTORY CHECK. The bill provides that an
10 applicant for a license to practice a profession under Code
11 chapter 147 shall be subject to a national criminal history
12 check through the federal bureau of investigation. The
13 appropriate licensing board shall request the criminal history
14 check and shall provide the applicant's fingerprints to the
15 department of public safety for submission through the state
16 criminal history repository to the federal bureau of
17 investigation. The applicant shall authorize release of the
18 results of the criminal history check to the appropriate
19 board. The results of a criminal history check conducted
20 pursuant to the bill shall not be considered a public record
21 under Code chapter 22.

22 TAX CREDIT. The bill provides a refundable obstetrics-
23 gynecology tax credit under the individual income tax for
24 taxpayers who practice obstetrics and gynecology from an
25 office or clinic located in cities with populations of less
26 than 15,000. The amount of the tax credit equals \$5,000 for
27 the first year and \$10,000 for the subsequent year. Only the
28 months during which the majority of the practice occurs in
29 cities of less than 15,000 count toward the maximum yearly tax
30 credit. The taxpayer may select the tax years for determining
31 the tax credits. However, the two years must be consecutive.
32 The tax credit is repealed beginning with the 2016 tax year.
33 The tax credit applies retroactively to January 1, 2006, for
34 tax years beginning on or after that date.

35 INSURANCE RATEMAKING. The bill provides that in

1 determining what a reasonable profit is during the ratemaking
2 process, the commissioner of insurance may consider income
3 from sources other than investment income attributable to
4 unearned premium loss reserves.

5 STATUTES OF LIMITATION. Current law provides that a
6 medical malpractice lawsuit for either personal injury or
7 death may be brought within two years after the date on which
8 the claimant knew or should have known of the injury or death,
9 but not more than six years after the date upon which the act
10 occurred, unless the action involved a foreign object that was
11 retained in the body. If the action involved a minor or a
12 mentally ill person, the limitation period is extended to one
13 year from the date the disability is removed. The bill allows
14 the parties in a medical malpractice action to toll the
15 applicable statute of limitation by written agreement.

16 STUDY. The bill provides that the Iowa department of
17 public health shall conduct a study to determine the
18 effectiveness of the provisions of the bill in reducing the
19 number of medical malpractice lawsuits and the costs
20 associated with medical care, including medical liability
21 insurance premiums, and shall submit a report of its findings
22 to the general assembly not later than January 1 beginning
23 January 1, 2007, through January 1, 2010.

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HOUSE FILE 2716

AN ACT

RELATING TO CIVIL ACTIONS FOR PERSONAL INJURY OR DEATH,
INCLUDING CERTAIN EVIDENTIARY, REPORTING, AND STUDY
INFORMATION REQUIREMENTS.

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

Section 1. Section 135.40, Code 2005, is amended to read
as follows:

135.40 COLLECTION AND DISTRIBUTION OF INFORMATION.

Any person, hospital, sanatorium, nursing or rest home or
other organization may provide information, interviews,
reports, statements, memoranda, or other data relating to the
condition and treatment of any person to the department, the
Iowa medical society or any of its allied medical societies,

or the Iowa osteopathic medical association, or any in-
hospital staff committee, or the Iowa healthcare
collaborative, to be used in the course of any study for the
purpose of reducing morbidity or mortality, and no liability
of any kind or character for damages or other relief shall
arise or be enforced against any person or organization that
has acted reasonably and in good faith, by reason of having
provided such information or material, or by reason of having
released or published the findings and conclusions of such
groups to advance medical research and medical education, or
by reason of having released or published generally a summary
of such studies.

For the purposes of this section, and section 135.41, the
"Iowa healthcare collaborative" means an organization which is
exempt from federal income taxation under section 501(c)(3) of
the Internal Revenue Code and which is established to provide
direction to promote quality, safety, and value improvement
collaborative efforts by hospitals and physicians.

Sec. 2. Section 135.41, Code 2005, is amended to read as
follows:

135.41 PUBLICATION.

The department, the Iowa medical society or any of its
allied medical societies, or the Iowa osteopathic medical
association, or any in-hospital staff committee, or the Iowa
healthcare collaborative shall use or publish said material
only for the purpose of advancing medical research or medical
education in the interest of reducing morbidity or mortality,
except that a summary of such studies may be released by any
such group for general publication. In all events the
identity of any person whose condition or treatment has been
studied shall be confidential and shall not be revealed under
any circumstances. A violation of this section shall
constitute a simple misdemeanor.

Sec. 3. NEW SECTION. 505.27 MEDICAL MALPRACTICE INSURANCE -- REPORTS REQUIRED.

1. An insurer providing medical malpractice insurance coverage to Iowa health care providers shall file annually on or before June 1 with the commissioner a report of all medical malpractice insurance claims, both open claims and closed claims filed during the reporting period, against any such Iowa insureds during the preceding calendar year.

2. The report shall be in writing and contain all of the following information aggregated by specialty area and paid loss and paid expense categories established by the commissioner:

a. The total number of claims in the reporting period and the nature and substance of such claims.

b. The total amounts paid within six months after final disposition of the claims.

c. The total amount reserved for the payment of claims incurred and reported but not disposed.

d. The expenses, as set forth by rule, related to the claims.

e. Any other additional information as required by the commissioner by rule.

3. The commissioner shall compile annually the data included in reports filed by insurers pursuant to this section into an aggregate form by insurer, except that such data shall not include information that directly or indirectly identifies any individual, including a patient, an insured, or a health care provider. The commissioner shall submit a written report summarizing such data along with any recommendations to the general assembly and the governor by December 1, 2007, with subsequent reports submitted to the general assembly and the governor annually thereafter.

4. A report prepared pursuant to subsection 1 or 3 shall be open to the public and shall be made available to a

requesting party by the commissioner at no charge, except that any identifying information of any individual, including a patient, an insured, or health care provider, shall remain confidential.

5. For purposes of this section, "health care provider" means the same as defined in section 135.61, a hospital licensed pursuant to chapter 135B, or a health care facility licensed pursuant to chapter 135C, and "insurer" means an insurance company authorized to transact insurance business in this state. "Insurer" does not include a health care provider who maintains professional liability insurance coverage through a self-insurance plan, an unauthorized insurance company transacting business with an insured person in this state, or a person not authorized to transact insurance business in this state.

Sec. 4. NEW SECTION. 622.31 EVIDENCE OF REGRET OR SORROW.

In any civil action for professional negligence, personal injury, or wrongful death or in any arbitration proceeding for professional negligence, personal injury, or wrongful death against a person in a profession represented by the examining boards listed in section 272C.1 and any other licensed profession recognized in this state, a hospital licensed pursuant to chapter 135B, or a health care facility licensed pursuant to chapter 135C, based upon the alleged negligence in the practice of that profession or occupation, that portion of a statement, affirmation, gesture, or conduct expressing sorrow, sympathy, commiseration, condolence, compassion, or a general sense of benevolence that was made by the person to the plaintiff, relative of the plaintiff, or decision maker for the plaintiff that relates to the discomfort, pain, suffering, injury, or death of the plaintiff as a result of an alleged breach of the applicable standard of care is inadmissible as evidence. Any response by the plaintiff,

relative of the plaintiff, or decision maker for the plaintiff to such statement, affirmation, gesture, or conduct is similarly inadmissible as evidence.

CHRISTOPHER C. RANTS
Speaker of the House

JEFFREY M. LAMBERTI
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2716, Eighty-first General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved 5/24, 2006

THOMAS J. VILSACK
Governor