

# House Study Bill 36 - Introduced

SENATE/HOUSE FILE \_\_\_\_\_

BY (PROPOSED GOVERNOR'S BILL)

## A BILL FOR

- 1 An Act relating to certificate of merit affidavits and
- 2 noneconomic damages in medical malpractice actions.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1. NEW SECTION. 147.140 Expert certificate of merit  
2 affidavit — health care providers — requirements.

3     1. For purposes of this section and section 147.141, “*health*  
4 *care provider*” means a physician and surgeon, osteopathic  
5 physician and surgeon, dentist, podiatric physician,  
6 optometrist, pharmacist, chiropractor, physician assistant, or  
7 nurse licensed pursuant to this chapter, a hospital licensed  
8 pursuant to chapter 135B, or a health care facility licensed  
9 pursuant to chapter 135C.

10    2. *a.* In any action for personal injury or wrongful  
11 death against any health care provider based upon the alleged  
12 negligence of the licensee in the practice of that profession  
13 or occupation, or upon the alleged negligence of the hospital  
14 or health care facility in patient care, which includes a cause  
15 of action for which expert testimony is necessary to establish  
16 a prima facie case, the plaintiff shall, within one hundred  
17 eighty days of the defendant’s answer, serve upon the defendant  
18 an expert’s certificate of merit affidavit for each expert  
19 listed pursuant to section 668.11 who will testify with respect  
20 to the issues of breach of standard of care or causation.

21    *b.* A certificate of merit affidavit must be signed by the  
22 expert. The affidavit must certify the purpose for calling the  
23 expert by providing under the oath of the expert all of the  
24 following:

25       (1) The expert’s statement of familiarity with the  
26 applicable standard of care.

27       (2) The expert’s statement that the standard of care was  
28 breached by the health care provider named in the petition.

29       (3) The expert’s statement of the actions that the health  
30 care provider failed to take or should have taken to comply  
31 with the standard of care.

32       (4) The expert’s statement of the manner by which the breach  
33 of the standard of care was the cause of the injury alleged in  
34 the petition.

35    *c.* A plaintiff shall serve a separate affidavit on each

1 defendant named in the petition.

2     *d.* Answers to interrogatories may serve as an expert's  
3 certificate of merit affidavit in lieu of a separately executed  
4 affidavit if the interrogatories satisfy the requirements of  
5 this subsection and are signed by the plaintiff's attorney and  
6 by each expert listed in the answers to interrogatories and  
7 served upon the defendant within one hundred eighty days of the  
8 defendant's answer.

9     3. The expert's certificate of merit affidavit does not  
10 preclude additional discovery and supplementation of the  
11 expert's opinions in accordance with the rules of civil  
12 procedure.

13     4. The parties by agreement or the court for good cause  
14 shown and in response to a motion filed prior to the expiration  
15 of the time limits specified in subsection 2 may provide  
16 for extensions of the time limits specified in subsection  
17 2. Good cause shall include the inability to timely obtain  
18 a plaintiff's medical records from medical providers when  
19 requested prior to filing the petition and not produced.

20     5. If the plaintiff is acting pro se, the plaintiff shall  
21 sign the affidavit or answers to interrogatories referred to  
22 in this section and shall be bound by those provisions as if  
23 represented by an attorney.

24     6. *a.* Failure to comply with subsection 2 shall result,  
25 upon motion, in dismissal with prejudice of each cause of  
26 action as to which expert testimony is necessary to establish a  
27 prima facie case.

28     *b.* A written notice of deficiency may be served upon the  
29 plaintiff for failure to comply with subsection 2 because of  
30 deficiencies in the affidavit or answers to interrogatories.  
31 The notice shall state with particularity each deficiency of  
32 the affidavit or answers to interrogatories. The plaintiff  
33 shall have twenty days to cure the deficiency. Failure to  
34 comply within the twenty days shall result, upon motion, in  
35 mandatory dismissal with prejudice of each action as to which

1 expert testimony is necessary to establish a prima facie case.  
2 A party resisting a motion for mandatory dismissal pursuant to  
3 this section shall have the right to request a hearing on the  
4 motion.

5     Sec. 2. NEW SECTION.   147.141   Limitation on noneconomic  
6 damages.

7     1. In any action for personal injury or wrongful death  
8 against any health care provider as defined in section 147.140,  
9 based upon the alleged negligence of the licensee in the  
10 practice of that profession or occupation, or upon the alleged  
11 negligence of the hospital or health care facility in patient  
12 care, in which liability is admitted or established, an award  
13 of noneconomic damages shall not exceed one million dollars.

14     2. For purposes of this section, "noneconomic damages"  
15 means nonpecuniary losses that would not have occurred but  
16 for the injury or death giving rise to the cause of action,  
17 including pain and suffering, inconvenience, physical  
18 impairment, mental anguish, loss of capacity for enjoyment of  
19 life, and any other nonpecuniary losses.

20                                   EXPLANATION

21     This bill relates to certificate of merit affidavits and  
22 noneconomic damages in medical malpractice actions.

23     CERTIFICATE OF MERIT AFFIDAVIT. The bill provides that  
24 in any action for personal injury or wrongful death against  
25 any health care provider (defined in the bill) based upon  
26 negligence, which includes a cause of action for which expert  
27 testimony is necessary to establish a prima facie case, the  
28 plaintiff is required, within 180 days of the defendant's  
29 answer, to serve the defendant with an expert's certificate  
30 of merit affidavit for each expert listed who is expected to  
31 testify with respect to the issues of breach of standard of  
32 care or causation.

33     The bill provides that each certificate of merit affidavit  
34 must be signed by the expert and include the expert's statement  
35 of familiarity with the applicable standard of care, the

1 expert's statement that the standard of care was breached by  
2 the health care provider named in the petition, the expert's  
3 statement of the actions that the health care provider should  
4 have taken or failed to take to have complied with the standard  
5 of care, and the expert's statement of the manner by which the  
6 breach of the standard of care was the cause of the injury  
7 alleged in the petition.

8     The bill provides that a plaintiff shall serve a separate  
9 affidavit on each defendant named in the petition and that  
10 answers to interrogatories may serve as an expert's certificate  
11 of merit affidavit in lieu of a separately executed affidavit  
12 if the interrogatories satisfy the requirements previously  
13 noted and are signed by the plaintiff's attorney and by each  
14 expert listed in the answers to interrogatories and served upon  
15 the defendant within 180 days of the defendant's answer.

16     The bill provides that a certificate of merit affidavit  
17 does not preclude additional discovery and that the parties by  
18 agreement or the court for good cause shown may provide for  
19 extensions of the time limits provided in the bill. If the  
20 plaintiff is acting pro se, the plaintiff is required to sign  
21 the affidavit or answers to interrogatories and shall be bound  
22 by those provisions as if represented by an attorney.

23     The bill provides that failure to comply with the  
24 requirements of the bill shall result, upon motion, in  
25 dismissal with prejudice of each cause of action as to which  
26 expert testimony is necessary to establish a prima facie case.  
27 A written notice of deficiency may be served upon the plaintiff  
28 for failure to comply with the requirements of the bill because  
29 of deficiencies in the affidavit or answers to interrogatories.  
30 The plaintiff shall have 20 days to cure the deficiency and  
31 failure to comply within the 20 days shall result, upon motion,  
32 in mandatory dismissal with prejudice of each action as to  
33 which expert testimony is necessary to establish a prima facie  
34 case. A party resisting a motion for mandatory dismissal under  
35 the bill has the right to request a hearing on the motion.

1     NONECONOMIC DAMAGES. The bill provides that an award of  
2 noneconomic damages in any action for personal injury or  
3 wrongful death against any health care provider (defined in  
4 the bill) based upon the alleged negligence of the licensee  
5 in the practice of that profession or occupation, or upon the  
6 alleged negligence of the hospital or health care facility in  
7 patient care, in which liability is admitted or established,  
8 shall not exceed \$1 million. "Noneconomic damages" is defined  
9 as nonpecuniary losses that would not have occurred but for the  
10 injury or death giving rise to the cause of action, including  
11 pain and suffering, inconvenience, physical impairment, mental  
12 anguish, loss of capacity for enjoyment of life, and any other  
13 nonpecuniary losses.

14     For purposes of the bill, "health care provider" means a  
15 physician and surgeon, osteopathic physician and surgeon,  
16 dentist, podiatric physician, optometrist, pharmacist,  
17 chiropractor, physician assistant, or nurse licensed pursuant  
18 to Code chapter 147, a hospital licensed pursuant to Code  
19 chapter 135B, or a health care facility licensed pursuant to  
20 Code chapter 135C.