

2005 Minnesota Bill Capping Damages on Emergency and Obstetrical Care

H.F. No. 1464, 1st Engrossment: 84th Legislative Session (2005-2006) Posted on Mar 10, 2005

1.1 A bill for an act
1.2 relating to civil actions; regulating the liability
of
1.3 certain health care providers for malpractice, error,
1.4 mistake, or failure to cure; limiting certain fees
and
1.5 damages; requiring a medical malpractice insurance
1.6 report; proposing coding for new law in Minnesota
1.7 Statutes, chapter 604.
1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
1.9 Section 1. [604.111] [EMERGENCY HEALTH CARE AND OB/GYN
1.10 ACTIONS; LIMITS ON DAMAGES.]
1.11 Subdivision 1. [DEFINITIONS.] (a) For the purposes of this
1.12 section, the terms in paragraphs (b) to (d) have the meanings
1.13 given them.
1.14 (b) "Economic loss" means all harm for which damages are
1.15 recoverable, other than noneconomic losses.
1.16 (c) "Health care provider" has the meaning given in section
1.17 541.076, paragraph (a), except that health care provider also
1.18 includes a physician assistant registered under chapter 147A
and
1.19 ambulance services, medical directors, and personnel regulated
1.20 under chapter 144E.
1.21 (d) "Noneconomic loss" means all nonpecuniary harm for
1.22 which damages are recoverable, including, but not limited to,
1.23 pain, disability, disfigurement, embarrassment, emotional
1.24 distress, and loss of consortium.
1.25 Subd. 2. [LIMITATION.] (a) In an action for injury or
1.26 death against a health care provider alleging malpractice,
2.1 error, mistake, or failure to cure, whether based in contract
or
2.2 tort, in which the health care services at issue were provided
2.3 for:
2.4 (1) pregnancy or labor and delivery, including the
2.5 immediate postpartum period; or
2.6 (2) emergency care in the emergency room of a hospital;
2.7 the amount of damages awarded for noneconomic losses must not
2.8 exceed \$250,000, regardless of the number of parties against
2.9 whom the action is brought or the number of separate claims or
2.10 actions brought with respect to the same occurrence.
2.11 (b) The limitation imposed by this subdivision must not be
2.12 disclosed to the trier of fact by any person at trial.
2.13 Subd. 3. [FINDINGS.] (a) A court in an action tried
2.14 without a jury shall make a finding as to noneconomic loss
2.15 without regard to the limit under subdivision 2. If
noneconomic
2.16 loss in excess of the limit is found, the court shall make any
2.17 reduction required under this section and shall award as
damages
2.18 for noneconomic loss the lesser of the reduced amount or the

2.19 limit.
2.20 (b) If an action is before a jury, the jury shall make a
2.21 finding as to noneconomic loss without regard to the limit
under
2.22 subdivision 2. If the jury finds that noneconomic loss exceeds
2.23 the limit, the court shall make any reduction required under
2.24 this section and shall award as damages for noneconomic loss
the
2.25 lesser of the reduced amount or the limit.
2.26 Subd. 4. [PUNITIVE DAMAGES LIMITED.] Punitive, exemplary,
2.27 and similar damages recoverable against a health care provider
2.28 in a cause of action described in subdivision 2 must not exceed
2.29 \$250,000. The jury must not be informed of this limitation.
2.30 Subd. 5. [EXCESSIVE ATTORNEY FEES PROHIBITED.] (a)
2.31 Attorney fees payable by a plaintiff in any cause of action
2.32 referred to in subdivision 2 must not exceed the following
2.33 percentage of damages:
2.34 (1) 40 percent of the first \$50,000;
2.35 (2) 33-1/3 percent of the next \$50,000;
2.36 (3) 25 percent of the next \$500,000; plus
3.1 (4) 15 percent of that portion of damages that exceeds
3.2 \$600,000.
3.3 (b) This subdivision applies to the net damages actually
3.4 recovered by that plaintiff under the cause of action, whether
3.5 through settlement, alternative dispute resolution, court
3.6 judgment, or otherwise. "Net damages actually recovered" means
3.7 the net sum recovered after deducting any disbursements or
costs
3.8 incurred in connection with prosecution or settlement of the
3.9 claim, including all costs paid or advanced by any person.
3.10 Costs of health care incurred by the plaintiff and the
3.11 attorney's office overhead costs or charges for legal services
3.12 are not deductible disbursements of costs for such purpose.
3.13 (c) A fee agreement that violates this subdivision is void
3.14 and unenforceable, to the extent of the violation.
3.15 Subd. 6. [INTENTIONAL DISCRIMINATORY DENIAL OF TREATMENT.]
3.16 Except for the purposes of subdivision 5, an action described
in
3.17 subdivision 2 shall not be construed to include any claim in a
3.18 civil action that is based solely on intentional denial of
3.19 medical treatment that a patient is otherwise qualified to
3.20 receive, against the wishes of a patient, or, if the patient is
3.21 incompetent, against the wishes of the patient's guardian, on
3.22 the basis of the patient's present or predicted age,
disability,
3.23 degree of medical dependency, or quality of life.
3.24 Sec. 2. [MEDICAL MALPRACTICE INSURANCE REPORT.]
3.25 (a) The commissioner of commerce shall provide to the
3.26 legislature, no later than March 1 of each year, a brief
written
3.27 report on the status of the market for medical malpractice
3.28 insurance in Minnesota. The report must summarize, interpret,
3.29 explain, and analyze information on that subject available to
3.30 the commissioner, through annual statements filed by insurance
3.31 companies, information obtained under paragraph (c), and other
3.32 sources.
3.33 (b) The annual report must consider, to the extent

3.34 possible, Minnesota-specific data on market shares; premiums
3.35 received; amounts paid to settle claims that were not
litigated,
3.36 claims that were settled after litigation began, and claims
that
4.1 were litigated to court judgment; amounts spent on processing,
4.2 investigation, litigation, and otherwise handling claims; other
4.3 sales and administrative costs; and the loss ratios of the
4.4 insurers.
4.5 (c) Each insurance company that provides medical
4.6 malpractice insurance in this state shall, no later than
4.7 February 1 of each year, file with the commissioner of
commerce,
4.8 on a form prescribed by the commissioner, the Minnesota-
specific
4.9 data referenced in paragraph (b), other than market share, for
4.10 the previous calendar year for that insurance company, shown
4.11 separately for the categories of coverage provided to
hospitals,
4.12 medical clinics, nursing homes, emergency medicine physicians,
4.13 and obstetrician-gynecologists. An insurance company need not
4.14 comply with this paragraph if its direct premium written in the
4.15 state for the previous calendar year is less than \$2,000,000.
4.16 Sec. 3. [EFFECTIVE DATE.]
4.17 Section 1 is effective August 1, 2005, and applies to
4.18 causes of actions arising from incidents occurring on or after
4.19 that date.