

SENATE COMMITTEE AMENDMENTS

2018 Regular Session

Amendments proposed by Senate Committee on Judiciary A to Original Senate Bill No. 503 by Senator Ward

1 AMENDMENT NO. 1

2 On page 1, delete lines 2 through 6 and insert

3

4 "To amend and reenact R.S. 40:1231.1(A)(4), 1231.2(B)(1) and (2), (D)(5) and
5 (E)(1), 1231.3(D), and 1231.4(B), (C)(5)(d) and (e) and (E), relative to medical
6 malpractice; to provide relative to certain limitations of liability; to provide relative
7 to certain procedures, terms, definitions, conditions, and requirements; and to
8 provide for related matters."

9 AMENDMENT NO. 2

10 On page 1, line 8, after "Section 1." delete the remainder of the line and lines 9 and 10 and
11 insert

12 "R.S. 40:1231.1(A)(4), 1231.2(B)(1) and (2), (D)(5) and (E)(1), 1231.3(D), and
13 1231.4(B), (C)(5)(d) and (e) and (E) are hereby amended and reenacted to read as
14 follows:"

15 AMENDMENT NO. 3

16 On page 1, between lines 10 and 11, insert

17 "§1231.1. Definitions and general applications

18 A. As used in this Part:

19 * * *

20 (4) "Claimant" means a patient or representative or any person, including a
21 decedent's estate, seeking or who has sought recovery of damages or future medical
22 care and related benefits under this Part. ~~All persons claiming to have sustained~~
23 ~~damages as a result of injuries to or death of any one patient are considered a single~~
24 ~~claimant.~~

25 * * *"

26 AMENDMENT NO. 4

27 On page 1, delete lines 13 through 17 and insert

28

29 "B.(1) The total amount recoverable **per claimant** for all malpractice claims
30 for injuries to or death of a patient, exclusive of **all economic losses, including loss**
31 **of earnings, loss of earning capacity and loss of support and services, and** future
32 medical care and related benefits as provided in R.S. 40:1231.3, shall not exceed **five**
33 **hundred seven hundred fifty** thousand dollars plus interest and **cost costs**. **The total**
34 **amount recoverable for all malpractice claims under this Section may increase**
35 **with inflation.**"

36 AMENDMENT NO. 5

37 On page 2, delete lines 15 through 29 and insert

38

39 "D.(1)

40 * * *

41 (5) In the event that a partial settlement is executed between the defendant
42 and/or his insurer with a plaintiff for the sum of ~~one hundred fifty~~ thousand dollars
43 or less, written notice of such settlement shall be sent to the board. Such settlement
44 shall not bar the continuation of the action against the patient's compensation fund

1 for excess sums in which event the court shall reduce any judgment to the plaintiff
2 in the amount of malpractice liability insurance in force as provided for in R.S.
3 40:1231.2(B)(2).

4 E.(1) Financial responsibility of a health care provider under this Section may
5 be established only by filing with the board proof that the health care provider is
6 insured by a policy of malpractice liability insurance in the amount of at least ~~one~~
7 ~~hundred~~ **fifty** thousand dollars per claim with qualification under this Section taking
8 effect and following the same form as the policy of malpractice liability insurance
9 of the health care provider, or in the event the health care provider is self-insured,
10 proof of financial responsibility by depositing with the board ~~one hundred twenty-~~
11 ~~five thousand~~ **sixty-two thousand five hundred** dollars in money or represented by
12 irrevocable letters of credit, federally insured certificates of deposit, bonds,
13 securities, cash values of insurance, or any other security approved by the board. In
14 the event any portion of said amount is seized pursuant to the judicial process, the
15 self-insured health care provider shall have five days to deposit with the board the
16 amounts so seized. The health care provider's failure to timely post said amounts
17 with the board shall terminate his enrollment in the Patient's Compensation Fund.

18 * * *

19 §1231.3. Future medical care and related benefits

20 * * *

21 D. Payments for medical care and related benefits shall be paid by the
22 patient's compensation fund without regard to the ~~five hundred~~ **seven hundred fifty**
23 thousand dollar limitation imposed in R.S. 40:1231.2.

24 * * *

25 §1231.4. Patient's Compensation Fund

26 * * *

27 B.(1) Subject to the other provisions of this Section, the board shall issue
28 payment in the amount of each claim submitted to and approved by it, or prorated
29 payment, as the case may be, against the fund within thirty days of receipt of a
30 certified copy of the settlement, judgment, or arbitration award except that payment
31 for claims made pursuant to Subparagraph (2)(d) or (e) of this Subsection or both,
32 shall be made upon receipt of such certified copy.

33 (2) The only claim against the fund shall be a voucher or other appropriate
34 request by the board after it receives:

35 (a) A certified copy of a final judgment in excess of ~~one hundred~~ **fifty**
36 thousand dollars against a health care provider.

37 (b) A certified copy of a court approved settlement in excess of ~~one hundred~~
38 **fifty** thousand dollars against a health care provider.

39 (c) A certified copy of a final award in excess of ~~one hundred~~ **fifty** thousand
40 dollars in an arbitration proceeding against a health care provider.

41 (d) A certified copy of a judgment awarding medical care and related benefits
42 rendered pursuant to R.S. 40:1231.3.

43 (e) A voucher drawn by the board through the patient's compensation fund
44 defense counsel pursuant to a judgment reciting that a patient is in need of future
45 medical care and related benefits under the provisions of R.S. 40:1231.3.

46 **(3)(a) The limitations of Paragraph (1) of this Subsection shall be**
47 **adjusted annually based upon the United States Consumer Price Index, but no**
48 **adjustment shall be increased or decreased by more than four percent. This**
49 **provision shall become effective on January 1, 2020, and be adjusted on**
50 **January first of every subsequent year. This adjustment shall be carried out in**
51 **the following manner:**

52 **(b) On October first of each year, the commissioner of financial**
53 **institutions shall determine the percentage increase or decrease in the**
54 **Consumer Price Index-U for the previous twelve month period. The limits of**
55 **liability as provided in Paragraph (1) of this Subsection shall be increased or**
56 **decreased, as applicable, by a percentage equal to the percentage change in the**
57 **Consumer Price Index-U during the preceding twelve-month period. The limit**
58 **of liability for the calendar year following the calculation date shall be posted**
59 **on the Division of Administration, Patient's Compensation Fund website, and**
60 **published in the December issue of the Louisiana Bar Journal, the December**
61 **issue of the Louisiana Register, and in one daily newspaper of general**

1 circulation in each of the cities of Alexandria, Baton Rouge, Lake Charles,
2 Lafayette, Monroe, New Orleans, and Shreveport. The notice in the daily
3 newspapers shall be published on two separate occasions, with at least one week
4 between publications, during the month of December. The publication in the
5 Louisiana Register shall not be considered rulemaking, within the intent of the
6 Administrative Procedure Act, R.S. 49:950 et seq., and particularly R.S. 49:953.

7 (4) The limitation of recovery per claimant provided for in this Section
8 shall be governed by the limitation in effect on the date a medical review panel
9 is requested in accordance with R.S. 40:1231.7(A)(2)(b).

10 C. If the insurer of a health care provider or a self-insured health care
11 provider has agreed to settle its liability on a claim against its insured and claimant
12 is demanding an amount in excess thereof from the patient's compensation fund for
13 a complete and final release, then the following procedure must be followed:

14 * * *

15 (5)(a)

16 * * *

17 (d) Except where the sum of ~~one hundred~~ **fifty** thousand dollars has been paid
18 by, in the name of, or on behalf of the qualified health care provider whose
19 percentage of fault the board seeks to allocate, in any case in which the board is
20 entitled pursuant to the provisions of Civil Code Article 2323 or 2324, or both, to
21 assert a credit or offset for the allocated percentage of negligence or fault of a
22 qualified health care provider, the board shall have the burden of proving the
23 negligence or fault of the qualified health care provider whose percentage of fault the
24 board seeks to allocate.

25 (e) In approving a settlement or determining the amount, if any, to be paid
26 from the patient's compensation fund, the trier of fact shall consider the liability of
27 the health care provider as admitted and established where the insurer has paid its
28 policy limits of ~~one hundred~~ **fifty** thousand dollars, or where the self-insured health
29 care provider has paid ~~one hundred~~ **fifty** thousand dollars.

30 * * *"

31 AMENDMENT NO. 6

32 Delete page 3 and insert

33 "E. In any instance in which a complaint for bodily injuries to or death of a
34 patient on account of malpractice has been filed in court and the parties enter into a
35 stipulation prior to trial as to the amount of past medical expenses and related
36 benefits and the amount exceeds ~~one hundred~~ **fifty** thousand dollars, the parties shall
37 also stipulate to the admissibility of the documents supporting the stipulated amount
38 and shall introduce these documents into evidence at the trial for which the
39 stipulation was entered into.

40 * * *"