

2017 Regular Session

HOUSE BILL NO. 526

BY REPRESENTATIVE REYNOLDS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MALPRACTICE/MEDICAL: Provides for time frames in the Louisiana Medical Malpractice Act

1 AN ACT

2 To amend and reenact R.S. 40:1231.2(B)(1), 1231.8(A)(2)(a), (B)(3), (C)(3)(j), (L),
3 (N)(1)(b)(iii), 1237.1(F)(introductory paragraph), (2), (3), (6), and (7), and
4 1237.2(A)(2)(a), (B)(3), and (C)(3)(f)(v), and R.S. 9:5628(A), relative to medical
5 malpractice; to provide relative to the maximum amount of damages recoverable; to
6 provide for deadlines in medical malpractice claims; to provide for membership on
7 a medical review panel; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 40:1231.2(B)(1), 1231.8(A)(2)(a), (B)(3), (C)(3)(j), (L),
10 (N)(1)(b)(iii), 1237.1(F)(introductory paragraph), (2), (3), (6), and (7), and 1237.2
11 (A)(2)(a), (B)(3), and (C)(3)(f)(v) are hereby amended and reenacted to read as follows:

12 §1231.2. Limitation of recovery

13 * * *

14 B.(1) The total amount recoverable for ~~all~~ non-economic damages from
15 malpractice claims for injuries to or death of a patient ~~exclusive of future medical~~
16 ~~care and related benefits as provided in R.S. 40:1231.3,~~ shall not exceed ~~five hundred~~
17 three hundred fifty thousand dollars plus interest and cost. The total amount
18 recoverable for economic damages from malpractice claims for injuries to or death
19 of a patient shall not exceed the actual cost of past and future medical care and
20 related benefits.

21 * * *

1 §1231.8. Medical review panel

2 A.

3 * * *

4 (2)(a) The filing of the request for a review of a claim shall suspend the time
5 within which suit must be instituted, in accordance with this Part, until ~~ninety days~~
6 six months following notification, by certified mail, as provided in Subsection J of
7 this Section, to the claimant or his attorney of the issuance of the opinion by the
8 medical review panel, in the case of those health care providers covered by this Part,
9 or in the case of a health care provider against whom a claim has been filed under the
10 provisions of this Part, but who has not qualified under this Part, until ~~ninety days~~
11 six months following notification by certified mail to the claimant or his attorney by
12 the board that the health care provider is not covered by this Part. The filing of a
13 request for review of a claim shall suspend the running of prescription against all
14 joint and solidary obligors, and all joint tortfeasors, including but not limited to
15 health care providers, both qualified and not qualified, to the same extent that
16 prescription is suspended against the party or parties that are the subject of the
17 request for review. Filing a request for review of a malpractice claim as required by
18 this Section with any agency or entity other than the division of administration shall
19 not suspend or interrupt the running of prescription. All requests for review of a
20 malpractice claim identifying additional health care providers shall also be filed with
21 the division of administration.

22 * * *

23 B.

24 * * *

25 (3) ~~Ninety days~~ Six months after the notification to all parties by certified
26 mail by the attorney chairman or the board of the dissolution of the medical review
27 panel or ninety days after the expiration of any court-ordered extension as authorized
28 by Paragraph (1) of this Subsection, the suspension of the running of prescription
29 with respect to a qualified health care provider shall cease.

1 C. The medical review panel shall consist of three health care providers who
 2 hold unlimited licenses to practice their profession in Louisiana and one attorney.
 3 The parties may agree on the attorney member of the medical review panel. If no
 4 attorney for or representative of any health care provider named in the complaint has
 5 made an appearance in the proceedings or made written contact with the attorney for
 6 the plaintiff within forty-five days of the date of receipt of the notification to the
 7 health care provider and the insurer that the required filing fee has been received by
 8 the patient's compensation board as required by R.S. 40:1231.8(A)(1)(c), the attorney
 9 for the plaintiff may appoint the attorney member of the medical review panel for the
 10 purpose of convening the panel. Such notice to the health care provider and the
 11 insurer shall be sent by registered or certified mail, return receipt requested. If no
 12 agreement can be reached, then the attorney member of the medical review panel
 13 shall be selected in the following manner:

14 * * *

15 (3)

16 * * *

17 (j) If there is only one party defendant which is not a hospital, community
 18 blood center, tissue bank, or ambulance service, ~~all panelists except the attorney~~ only
 19 one of the panelists shall be from the same class and specialty of practice of health
 20 care provider as the defendant. The attorney is not considered a panelist with a
 21 medical opinion. The other panelists should have no previous association with the
 22 physician in question, having not gone to school with, worked with, or live within
 23 a one hundred mile radius of the physician in question. If there is only one party
 24 defendant which is a hospital, community blood center, tissue bank, or ambulance
 25 service, all panelists except the attorney shall be physicians. If there are claims
 26 against multiple defendants, one or more of whom are health care providers other
 27 than a hospital, community blood center, tissue bank, or ambulance service, only one
 28 of the panelists selected in accordance with this Subsection may also be selected
 29 from health care providers who are from the same class and specialty of practice of

1 health care providers as are any of the defendants other than a hospital, community
2 blood center, tissue bank, or ambulance service.

3 * * *

4 L. Where the medical review panel issues its opinion required by this
5 Section, the suspension of the running of prescription shall not cease until ~~ninety~~
6 days six months following notification by certified mail to the claimant or his
7 attorney of the issuance of the opinion as required by Subsection J of this Section.

8 * * *

9 N.(1)

10 * * *

11 (b)

12 * * *

13 (iii) In accordance with R.S. 40:1231.8(B)(3), ~~ninety days~~ six months after
14 the notification to all parties by certified mail by the attorney chairman of the board
15 of the dissolution of the medical review panel, the suspension of the running of
16 prescription with respect to a qualified health care provider shall cease.

17 * * *

18 §1237.1. Definitions and general application

19 * * *

20 F. Notwithstanding any other provision of the law to the contrary, no
21 judgment for non-economic damages shall be rendered and no settlement or
22 compromise shall be entered into for the injury or death of any patient in any action
23 or claim for an alleged act of malpractice in excess of ~~five hundred thousand dollars~~
24 ~~plus interest and costs, exclusive of future medical care and related benefits valued~~
25 ~~in excess of such five hundred thousand dollars~~ three hundred fifty thousand dollars.
26 The total amount recoverable for economic damages from malpractice claims for
27 injuries to or death of a patient shall not exceed the actual cost of past and future

1 medical care and related benefits. In claims which may include future medical care
2 and related benefits, the following procedures shall apply:

3 * * *

4 (2) If the total amount of the value of the judgment or settlement or
5 compromise for economic damages is for ~~five hundred~~ three hundred fifty thousand
6 dollars, ~~plus interest and costs,~~ exclusive of the value of future medical care and
7 related benefits, all future medical care and related benefits shall be paid in
8 accordance herewith.

9 (3) If the total amount of recovery for non-economic and economic damages,
10 ~~excluding interest and costs but~~ including the amount of future medical care and
11 related benefits does not exceed ~~five hundred~~ three hundred fifty thousand dollars,
12 judgment may be rendered for the total amount and paid by the state as provided by
13 Subsection I of this Section.

14 * * *

15 (6) If the total amount of recovery awarded against the state, excluding
16 interest and costs but including the amount of future medical care and related
17 benefits, exceeds ~~five hundred~~ three hundred fifty thousand dollars, the claimant may
18 make a claim to the office of risk management for all future medical care and related
19 benefits.

20 (7) Payments for medical care and related benefits shall be paid by the office
21 of risk management pursuant to Subsection L, without regard to the ~~five hundred~~
22 three hundred fifty thousand dollar limitation imposed in this Subsection of this
23 Section.

24 * * *

25 §1237.2. State medical review panel

26 A.

27 * * *

28 (2)(a) The filing of the request for a review of a claim shall suspend the time
29 within which suit must be instituted, in accordance with this Part, until ~~ninety days~~

1 six months following notification, by certified mail, as provided in Subsection J of
2 this Section, to the claimant or his attorney of the issuance of the opinion by the state
3 medical review panel, in the case of the state or persons covered by this Part, or, in
4 the case of a health care provider against whom a claim has been filed under the
5 provisions of this Part who has not qualified under this Part, until ~~ninety days~~ six
6 months following notification by certified mail to the claimant or his attorney by the
7 commissioner that after requesting evidence of such qualifications under this Part
8 and waiting the passage of at least ninety days, the commissioner has not received
9 a certificate or other evidence sufficient to establish that the person is covered by this
10 Part. The filing of a request for review of a claim shall suspend the running of
11 prescription against all joint or solidary obligors, including but not limited to health
12 care providers, both qualified and not qualified, to the same extent that prescription
13 is suspended against the party or parties that are subject of the request for review.
14 Filing a request for review of a malpractice claim required by this Section with any
15 agency or entity other than the division of administration shall not suspend or
16 interrupt the running of prescription.

* * *

B.

* * *

20 (3) ~~Ninety days~~ Six months after the notification to all parties by certified
21 mail by the attorney chairman or the commissioner of the dissolution of the state
22 medical review panel or ninety days after the expiration of any court-ordered
23 extension as authorized by Paragraph (1) of this Subsection, the suspension of the
24 running of prescription with respect to the state or person shall cease.

C.(1)

* * *

27 (v) If there is only one party defendant or person charged with malpractice
28 other than a hospital, ~~all panelists except the attorney~~ only one of the panelists shall
29 be from the same class and speciality of practice of health care provider as the

1 defendant or person. The attorney is not considered a panelist with a medical
 2 opinion. The other panelists should have no previous association with the physician
 3 in question, having not gone to school with, worked with, or live within a one
 4 hundred mile radius of the physician in question. If there is only one party defendant
 5 which is a hospital, all panelists except the attorney shall be physicians whose
 6 specialty shall be the same as the specialty of the hospital department wherein the
 7 alleged malpractice occurred. If there are claims against multiple defendants, one
 8 or more of whom are health care providers other than a hospital, the panelists
 9 selected in accordance with this Subsection shall be selected from health care
 10 providers who are from the same class and speciality of practice of health care
 11 providers as are any of the defendants other than a hospital, except that when one of
 12 such defendants is a physician, the panelists shall have the minimum qualifications
 13 of also being physicians and when none of such defendants are a physician or a
 14 hospital but at least one of such defendants is a registered nurse, the panelists shall
 15 have the minimum qualifications of also being registered nurses.

* * *

17 Section 2. R.S. 9:5628(A) is hereby amended and reenacted to read as follows:

18 §5628. Actions for medical malpractice

19 A. No action for damages for injury or death against any physician,
 20 chiropractor, nurse, licensed midwife practitioner, dentist, psychologist, optometrist,
 21 hospital or nursing home duly licensed under the laws of this state, or community
 22 blood center or tissue bank as defined in R.S. 40:1231.1(A), whether based upon tort,
 23 or breach of contract, or otherwise, arising out of patient care shall be brought unless
 24 filed within ~~one year~~ eighteen months from the date of the alleged act, omission, or
 25 neglect, or within ~~one year~~ eighteen months from the date of discovery of the alleged
 26 act, omission, or neglect; however, even as to claims filed within ~~one year~~ eighteen
 27 months from the date of such discovery, in all events such claims shall be filed at the

1 latest within a period of ~~three~~ five years from the date of the alleged act, omission,
2 or neglect.

3 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 526 Original

2017 Regular Session

Reynolds

Abstract: Modifies deadlines and time periods included in the Medical Malpractice Act for both private and public services.

Present law requires that all medical malpractice claims be filed within three years from the date of the alleged act, omission, or neglect and within one year of the date of the alleged act, omission, or neglect, or within one year from the date of discovery of the alleged act, omission, or neglect.

Proposed law changes the time period within which any medical malpractice claim is filed from three years to five years, and extends the deadline from the act, omission, or neglect or the date of the discovery of the alleged act, omission, or neglect from 12 months to 18 months.

Present law allows a maximum of \$500,000 recovery plus interest and costs in medical malpractice claims, exclusive of future medical care and related benefits.

Proposed law separates economic and non-economic recoverable damages in medical malpractice claims with a \$350,000 cap on non-economic damages and economic damages limited to the actual cost of past and future medical care and related benefits.

Present law provides for a 90-day suspension of the prescriptive period to file a medical malpractice lawsuit from the date of notification after a request for review of a claim is filed.

Proposed law changes the suspension of the prescriptive period to file suit from 90 days to six months.

Present law requires that all of the medical review panelists, with the exception of the attorney, be individuals from the same class or specialty of practice as the defendant health care provider.

Proposed law changes the composition of the medical review panel to require that not more than one of the panelists be from the same class or specialty of practice as the defendant health care provider and that the other panelists have no previous association with the physician in question, including that they did not go to school with the defendant physician, have not worked with the defendant physician, and do not live within a 100 mile radius of the physician in question.

(Amends R.S. 40:1231.2(B)(1), 1231.8(A)(2)(a), (B)(3), (C)(3)(j), (L), (N)(1)(b)(iii), 1237.1(F)(intro. para.), (2), (3), (6), and (7), and 1237.2(A)(2)(a), (B)(3), and (C)(3)(f)(v), and R.S. 9:5628(A))