
HOUSE BILL No. 1394

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-12-2-2.6; IC 27-1-3-7; IC 27-12.

Synopsis: Medical malpractice liability limits. Allows the insurance commissioner to dismiss medical malpractice claims lacking action for two years. Increases the minimum health care provider malpractice liability insurance policy amounts. Allows a claimant to bring a claim against a health care provider within two years of when the claimant discovered or should have discovered harm caused by the malpractice of the health care provider, or within two years after removal of legal disability if the harm was discovered or should have been discovered while the claimant was under a legal disability. Requires a court to withhold a final judgement in a civil action until a medical review panel has rendered an opinion. Requires that a defendant's identity be
(Continued next page)

Effective: January 1, 1999.

Steele

January 13, 1998, read first time and referred to Committee on Insurance, Corporations and Small Business.

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kept anonymous in a civil action until the medical review panel renders an opinion. Changes the exemption from medical review panel process for small cases to cases with damages less than \$75,000. Requires a health care provider's insurer to notify the insurance commissioner of any malpractice case upon which the insurer has placed a reserve of at least \$75,000. Increases the medical malpractice cap to \$1,250,000 for an act of malpractice occurring after December 31, 1998. Increases the liability of a health care provider to \$200,000 per occurrence for an occurrence of malpractice occurring after December 31, 1998. Increases the cost of a structured settlement to \$100,000 in causes of action accruing after December 31, 1998.

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Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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HOUSE BILL No. 1394



A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-12-2-2.6 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE
3 JANUARY 1, 1999]: **Sec. 2.6. "Accrues" means when a claimant**
4 **discovers or should have discovered the harm caused by the**
5 **malpractice of a health care provider.**

6 SECTION 2. IC 27-1-3-7 IS AMENDED TO READ AS FOLLOWS
7 [EFFECTIVE JANUARY 1, 1999]: Sec. 7. (a) The department may
8 promulgate rules and regulations for any of the following enumerated
9 purposes:

- 10 (1) For the conduct of the work of the department.
- 11 (2) Prescribing the methods and standards to be used in making
- 12 the examinations and prescribing the forms of reports of the
- 13 several insurance companies to which IC 27-1 is applicable.
- 14 (3) Defining what is a safe or an unsafe manner and a safe or an
- 15 unsafe condition for conducting business by any insurance



1 company to which IC 27-1 is applicable.

2 (4) For the establishment of safe and sound methods for the
3 transaction of business by such insurance companies and for the
4 purpose of safeguarding the interests of policyholders, creditors,
5 and shareholders respecting the withdrawal or payment of funds
6 by any life insurance company in times of emergency. Any rule or
7 regulation promulgated under this subdivision may apply to one
8 (1) or more insurance companies as the department may
9 determine.

10 (5) For the administration and termination of the affairs of any
11 such insurance company which is in involuntary liquidation or
12 whose business and property have been taken possession of by the
13 department for the purpose of rehabilitation, liquidation,
14 conservation, or dissolution under IC 27-1.

15 (6) For the regulation of the solicitation or use of proxies, in
16 general and as they concern consents or authorizations, in respect
17 of securities issued by any domestic stock company for the
18 purpose of protecting investors by prescribing the form of proxies,
19 including such consents or authorizations, and by requiring
20 adequate disclosure of information relevant to such proxies,
21 including such consents or authorizations, and relevant to the
22 business to be transacted at any meeting of shareholders with
23 respect to which such proxies, including such consents or
24 authorizations, may be used, which regulations may, in general,
25 conform to those prescribed by the National Association of
26 Insurance Commissioners.

27 (b) The department may adopt a rule under IC 4-22-2 to provide
28 reasonable simplification of the terms and coverage of individual and
29 group Medicare supplement accident and sickness insurance policies
30 and individual and group Medicare supplement subscriber contracts in
31 order to facilitate public understanding and comparison and to
32 eliminate provisions contained in those policies or contracts which may
33 be misleading or confusing in connection either with the purchase of
34 those coverages or with the settlement of claims and to provide for full
35 disclosure in the sale of those coverages.

36 **(c) For claims filed under IC 27-12 that have been pending with**
37 **the department of insurance for more than two (2) years without**
38 **action, the commissioner shall notify the parties that the claim will**
39 **be dismissed thirty (30) days after notice to the parties, unless**
40 **action is taken on the claim by either party or the plaintiff shows**
41 **sufficient cause why the claim should not be dismissed.**

42 SECTION 3. IC 27-12-4-1, AS AMENDED BY P.L.26-1994,



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1 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JANUARY 1, 1999]: Sec. 1. Financial responsibility of a health care
3 provider and the provider's officers, agents, and employees while acting
4 in the course and scope of their employment with the health care
5 provider may be established under subdivision (1), (2), or (3):

6 (1) By the health care provider's insurance carrier filing with the
7 commissioner proof that the health care provider is insured by a
8 policy of malpractice liability insurance in the amount of at least
9 ~~one hundred thousand dollars (\$100,000)~~ **two hundred thousand**
10 **dollars (\$200,000)** per occurrence and ~~three hundred thousand~~
11 ~~dollars (\$300,000)~~ **six hundred thousand dollars (\$600,000)** in
12 the annual aggregate, except for the following:

13 (A) If the health care provider is a hospital, as defined in this
14 article, the minimum annual aggregate insurance amount is as
15 follows:

16 (i) For hospitals of not more than one hundred (100) beds,
17 ~~two million dollars (\$2,000,000)~~ **four million dollars**
18 **(\$4,000,000)**.

19 (ii) For hospitals of more than one hundred (100) beds, ~~three~~
20 ~~million dollars (\$3,000,000)~~ **six million dollars**
21 **(\$6,000,000)**.

22 (B) If the health care provider is a health maintenance
23 organization (as defined in IC 27-13-1-19) or a limited service
24 health maintenance organization (as defined in
25 IC 27-13-34-4), the minimum annual aggregate insurance
26 amount is ~~seven hundred thousand dollars (\$700,000)~~ **one**
27 **million four hundred thousand dollars (\$1,400,000)**.

28 (C) If the health care provider is a health facility, the minimum
29 annual aggregate insurance amount is as follows:

30 (i) For health facilities with not more than one hundred
31 (100) beds, ~~three hundred thousand dollars (\$300,000)~~ **six**
32 **hundred thousand dollars (\$600,000)**.

33 (ii) For health facilities with more than one hundred (100)
34 beds, ~~five hundred thousand dollars (\$500,000)~~ **one million**
35 **dollars (\$1,000,000)**.

36 (2) By filing and maintaining with the commissioner cash or
37 surety bond approved by the commissioner in the amounts set
38 forth in subdivision (1).

39 (3) If the health care provider is a hospital or a psychiatric
40 hospital, by submitting annually a verified financial statement
41 that, in the discretion of the commissioner, adequately
42 demonstrates that the current and future financial responsibility

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1 of the health care provider is sufficient to satisfy all potential
 2 malpractice claims incurred by the provider or the provider's
 3 officers, agents, and employees while acting in the course and
 4 scope of their employment up to a total of ~~one hundred thousand~~
 5 ~~dollars (\$100,000)~~ **two hundred thousand dollars (\$200,000)**
 6 per occurrence and annual aggregates as follows:

7 (A) For hospitals of not more than one hundred (100) beds,
 8 ~~two million dollars (\$2,000,000)~~: **four million dollars**
 9 **(\$4,000,000)**.

10 (B) For hospitals of more than one hundred (100) beds, ~~three~~
 11 ~~million dollars (\$3,000,000)~~: **six million dollars (\$6,000,000)**.

12 The commissioner may require the deposit of security to assure
 13 continued financial responsibility.

14 SECTION 4. IC 27-12-7-1 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 1. (a) This section
 16 applies to all persons regardless of minority or other legal disability,
 17 except as provided in subsection (c).

18 (b) A claim, whether in contract or tort, may not be brought against
 19 a health care provider based upon professional services or health care
 20 that was provided or that should have been provided unless the claim
 21 is filed within two (2) years after the date of the ~~alleged act, omission,~~
 22 ~~or neglect, except that a minor less than six (6) years of age has until~~
 23 ~~the minor's eighth birthday to file.~~ **the cause of action accrues, except**
 24 **that a person under a legal disability when the cause of action**
 25 **accrues may bring a cause of action within two (2) years after the**
 26 **disability is removed.**

27 (c) If a patient meets the criteria stated in IC 27-12-8-6(c), the
 28 applicable limitations period is equal to the period that would
 29 otherwise apply to the patient under subsection (b) plus one hundred
 30 eighty (180) days.

31 SECTION 5. IC 27-12-8-4 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 4. (a)
 33 Notwithstanding section 1 of this chapter, and except as provided in
 34 sections 5 and 6 of this chapter, ~~an action a court may not enter a~~
 35 **final judgment in a civil action filed under section 1 of this chapter**
 36 ~~against a health care provider may not be commenced in a court in~~
 37 ~~Indiana~~ before:

- 38 (1) the claimant's proposed complaint has been presented to a
 39 medical review panel established under IC 27-12-10; and
 40 (2) an opinion is given by the panel.

41 (b) **If a civil action is filed under section 1 of this chapter, the**
 42 **identity of a health care provider named as a defendant must**

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1 **remain anonymous until the medical review panel renders an**
 2 **opinion.**

3 SECTION 6. IC 27-12-8-6 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 6. (a)
 5 Notwithstanding section 4 of this chapter, a patient may commence an
 6 action against a health care provider for malpractice without submitting
 7 a proposed complaint to a medical review panel if the patient's
 8 pleadings include a declaration that the patient seeks damages from the
 9 health care provider in an amount not greater than ~~fifteen thousand~~
 10 ~~dollars (\$15,000)~~ **seventy-five thousand dollars (\$75,000)**. In an
 11 action commenced under this subsection, the patient is barred from
 12 recovering any amount greater than ~~fifteen thousand dollars (\$15,000)~~;
 13 **seventy-five thousand dollars (\$75,000)**, except as provided in
 14 subsection (b).

15 (b) A patient who:

16 (1) commences an action under subsection (a) in the reasonable
 17 belief that damages in an amount not greater than ~~fifteen thousand~~
 18 ~~dollars (\$15,000)~~ **seventy-five thousand dollars (\$75,000)** are
 19 adequate compensation for the bodily injury allegedly caused by
 20 the health care provider's malpractice; and

21 (2) later learns, during the pendency of the action, that the bodily
 22 injury is more serious than previously believed and that ~~fifteen~~
 23 ~~thousand dollars (\$15,000)~~ **seventy-five thousand dollars**
 24 **(\$75,000)** is insufficient compensation for the bodily injury;

25 may move that the action be dismissed without prejudice and, upon
 26 dismissal of the action, may file a proposed complaint subject to
 27 section 4 of this chapter based upon the same allegations of malpractice
 28 as were asserted in the action dismissed under this subsection. In a
 29 second action commenced in court following the medical review
 30 panel's proceeding on the proposed complaint, the patient may recover
 31 an amount greater than ~~fifteen thousand dollars (\$15,000)~~ **seventy-five**
 32 **thousand dollars (\$75,000)**. However, a patient may move for
 33 dismissal without prejudice and, if dismissal without prejudice is
 34 granted, may commence a second action under this subsection only if
 35 the patient's motion for dismissal is filed within two (2) years after
 36 commencement of the original action under subsection (a).

37 (c) If a patient:

38 (1) commences an action under subsection (a);

39 (2) moves under subsection (b) for dismissal of that action;

40 (3) files a proposed complaint subject to section 4 of this chapter
 41 based upon the same allegations of malpractice as were asserted
 42 in the action dismissed under subsection (b); and

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1 (4) commences a second action in court following the medical
 2 review panel proceeding on the proposed complaint;
 3 the timeliness of the second action is governed by IC 27-12-7-1(c).

4 (d) A medical liability insurer of a health care provider against
 5 whom an action has been filed under subsection (a) shall provide
 6 written notice to the state health commissioner as required under
 7 IC 27-12-9-2.

8 SECTION 7. IC 27-12-9-3 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 3. (a) A health
 10 care provider's insurer shall notify the commissioner of any malpractice
 11 case upon which the insurer has placed a reserve of at least ~~fifty~~
 12 ~~thousand dollars (\$50,000);~~ **seventy-five thousand dollars (\$75,000).**
 13 The insurer shall give notice to the commissioner under this subsection
 14 immediately after placing the reserve. The notice and all
 15 communications and correspondence relating to the notice are
 16 confidential and may not be made available to any person or any public
 17 or private agency.

18 (b) All malpractice claims settled or adjudicated to final judgment
 19 against a health care provider shall be reported to the commissioner by
 20 the plaintiff's attorney and by the health care provider or the health care
 21 provider's insurer or risk manager within sixty (60) days following final
 22 disposition of the claim. The report to the commissioner must state the
 23 following:

- 24 (1) The nature of the claim.
- 25 (2) The damages asserted and the alleged injury.
- 26 (3) The attorney's fees and expenses incurred in connection with
 27 the claim or defense.
- 28 (4) The amount of the settlement or judgment.

29 SECTION 8. IC 27-12-14-3 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 3. (a) The total
 31 amount recoverable for an injury or death of a patient may not exceed:

- 32 (1) five hundred thousand dollars (\$500,000) **for an act of**
 33 **malpractice occurring before January 1, 1990; except that, as**
 34 **to an act of malpractice that occurs on or after January 1, 1990;**
- 35 (2) the total amount recovered for an injury or death may not
 36 exceed seven hundred fifty thousand dollars (\$750,000) **for an**
 37 **act of malpractice occurring:**

38 (A) after December 31, 1989; and

39 (B) before January 1, 1999; and

- 40 (3) one million two hundred fifty thousand dollars
 41 (\$1,250,000) **for an act of malpractice occurring after**
 42 **December 31, 1998.**



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1 (b) A health care provider qualified under this article is not liable
2 for an amount in excess of:

3 (1) one hundred thousand dollars (\$100,000) for an occurrence of
4 malpractice **occurring before January 1, 1999; and**

5 (2) **two hundred thousand dollars (\$200,000) for an**
6 **occurrence of malpractice occurring after December 31, 1998.**

7 (c) Any amount due from a judgment or settlement that is in excess
8 of the total liability of all liable health care providers, subject to
9 subsections (a), (b), and (d), shall be paid from the patient's
10 compensation fund under IC 27-12-15.

11 (d) If a health care provider qualified under this article admits
12 liability or is adjudicated liable solely by reason of the conduct of
13 another health care provider who is an officer, agent, or employee of
14 the health care provider acting in the course and scope of employment
15 and qualified under this article, the total amount that shall be paid to
16 the claimant on behalf of the officer, agent, or employee and the health
17 care provider by the health care provider or its insurer is:

18 (1) one hundred thousand dollars (\$100,000) **for acts of**
19 **malpractice occurring before January 1, 1999; and**

20 (2) **two hundred thousand dollars (\$200,000) for acts of**
21 **malpractice occurring after December 31, 1998.**

22 The balance of an adjudicated amount to which the claimant is entitled
23 shall be paid by other liable health care providers or the patient's
24 compensation fund, or both.

25 SECTION 9. IC 27-12-14-4 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 4. (a) If the
27 possible liability of the health care provider to the patient is discharged
28 solely through an immediate payment, the limitations on recovery from
29 a health care provider stated in section 3(b) and 3(d) of this chapter
30 apply without adjustment.

31 (b) If the health care provider agrees to discharge its possible
32 liability to the patient through a periodic payments agreement, the
33 amount of the patient's recovery from a health care provider in a case
34 under this subsection is the amount of any immediate payment made by
35 the health care provider or the health care provider's insurer to the
36 patient, plus the cost of the periodic payments agreement to the health
37 care provider or the health care provider's insurer. For the purpose of
38 determining the limitations on recovery stated in section 3(b) and 3(d)
39 of this chapter and for the purpose of determining the question under
40 IC 27-12-15-3 of whether the health care provider or the health care
41 provider's insurer has agreed to settle its liability by payment of its
42 policy limits, the sum of:



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1 (1) the present payment of money to the patient (or the patient's
2 estate) by the health care provider (or the health care provider's
3 insurer); plus

4 (2) the cost of the periodic payments agreement expended by the
5 health care provider (or the health care provider's insurer);
6 must exceed seventy-five thousand dollars (\$75,000) **in causes of**
7 **action accruing before January 1, 1999, and one hundred thousand**
8 **dollars (\$100,000) in causes of action accruing after December 31,**
9 **1998.**

10 (c) More than one (1) health care provider may contribute to the cost
11 of a periodic payments agreement, and in such an instance the sum of
12 the amounts expended by each health care provider for immediate
13 payments and for the cost of the periodic payments agreement shall be
14 used to determine whether the ~~seventy-five thousand dollar (\$75,000)~~
15 **requirement in amount that must be exceeded under** subsection (b)
16 has been ~~satisfied~~ **exceeded**. However, one (1) health care provider or
17 its insurer must be liable for at least fifty thousand dollars (\$50,000).

18 SECTION 10. IC 27-12-15-3 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 3. If a health care
20 provider or its insurer has agreed to settle its liability on a claim by
21 payment of its policy limits of ~~one hundred thousand dollars~~
22 ~~(\$100,000)~~ **under IC 27-12-4-1**, and the claimant is demanding an
23 amount in excess of that amount, the following procedure must be
24 followed:

25 (1) A petition shall be filed by the claimant in the court named in
26 the proposed complaint, or in the circuit or superior court of
27 Marion County, at the claimant's election, seeking:

28 (A) approval of an agreed settlement, if any; or

29 (B) demanding payment of damages from the patient's
30 compensation fund.

31 (2) A copy of the petition with summons shall be served on the
32 commissioner, the health care provider, and the health care
33 provider's insurer, and must contain sufficient information to
34 inform the other parties about the nature of the claim and the
35 additional amount demanded.

36 (3) The commissioner and either the health care provider or the
37 insurer of the health care provider may agree to a settlement with
38 the claimant from the patient's compensation fund, or the
39 commissioner, the health care provider, or the insurer of the
40 health care provider may file written objections to the payment of
41 the amount demanded. The agreement or objections to the
42 payment demanded shall be filed within twenty (20) days after



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1 service of summons with copy of the petition attached to the
2 summons.
3 (4) The judge of the court in which the petition is filed shall set
4 the petition for approval or, if objections have been filed, for
5 hearing, as soon as practicable. The court shall give notice of the
6 hearing to the claimant, the health care provider, the insurer of the
7 health care provider, and the commissioner.
8 (5) At the hearing, the commissioner, the claimant, the health care
9 provider, and the insurer of the health care provider may
10 introduce relevant evidence to enable the court to determine
11 whether or not the petition should be approved if the evidence is
12 submitted on agreement without objections. If the commissioner,
13 the health care provider, the insurer of the health care provider,
14 and the claimant cannot agree on the amount, if any, to be paid
15 out of the patient's compensation fund, the court shall, after
16 hearing any relevant evidence on the issue of claimant's damage
17 submitted by any of the parties described in this section,
18 determine the amount of claimant's damages, if any, in excess of
19 the ~~one hundred thousand dollars (\$100,000)~~ **policy limit under**
20 **IC 27-12-4-1** already paid by the insurer of the health care
21 provider. The court shall determine the amount for which the fund
22 is liable and make a finding and judgment accordingly. In
23 approving a settlement or determining the amount, if any, to be
24 paid from the patient's compensation fund, the court shall
25 consider the liability of the health care provider as admitted and
26 established.
27 (6) A settlement approved by the court may not be appealed. A
28 judgment of the court fixing damages recoverable in a contested
29 proceeding is appealable pursuant to the rules governing appeals
30 in any other civil case tried by the court.
31 (7) A release executed between the parties does not bar access to
32 the patient's compensation fund unless the release specifically
33 provides otherwise.

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