

2018 Regular Session

SENATE BILL NO. 503

BY SENATOR WARD

MALPRACTICE. Provides relative to medical malpractice and certain limitations of liability and procedures. (8/1/18)

1 AN ACT

2 To amend and reenact R.S. 40:1231.1(A)(4), 1231.2(B)(1) and (2), (D)(5) and (E)(1),  
3 1231.3(D), and 1231.4(B), (C)(5)(d) and (e) and (E), relative to medical malpractice;  
4 to provide relative to certain limitations of liability; to provide relative to certain  
5 procedures, terms, definitions, conditions, and requirements; and to provide for  
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

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

11 §1231.1. Definitions and general applications

12 A. As used in this Part:

13 \* \* \*

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



1 or less, written notice of such settlement shall be sent to the board. Such settlement  
2 shall not bar the continuation of the action against the patient's compensation fund  
3 for excess sums in which event the court shall reduce any judgment to the plaintiff  
4 in the amount of malpractice liability insurance in force as provided for in R.S.  
5 40:1231.2(B)(2).

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

20 \* \* \*

21 §1231.3. Future medical care and related benefits

22 \* \* \*

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

26 \* \* \*

27 §1231.4. Patient's Compensation Fund

28 \* \* \*

29 B.(1) Subject to the other provisions of this Section, the board shall issue

1 payment in the amount of each claim submitted to and approved by it, or prorated  
2 payment, as the case may be, against the fund within thirty days of receipt of a  
3 certified copy of the settlement, judgment, or arbitration award except that payment  
4 for claims made pursuant to Subparagraph (2)(d) or (e) of this Subsection or both,  
5 shall be made upon receipt of such certified copy.

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

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

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

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

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

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

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

25 **(b) On October first of each year, the commissioner of financial**  
26 **institutions shall determine the percentage increase or decrease in the**  
27 **Consumer Price Index-U for the previous twelve month period. The limits of**  
28 **liability as provided in Paragraph (1) of this Subsection shall be increased or**  
29 **decreased, as applicable, by a percentage equal to the percentage change in the**

1 Consumer Price Index-U during the preceding twelve-month period. The limit  
 2 of liability for the calendar year following the calculation date shall be posted  
 3 on the Division of Administration, Patient's Compensation Fund website, and  
 4 published in the December issue of the Louisiana Bar Journal, the December  
 5 issue of the Louisiana Register, and in one daily newspaper of general  
 6 circulation in each of the cities of Alexandria, Baton Rouge, Lake Charles,  
 7 Lafayette, Monroe, New Orleans, and Shreveport. The notice in the daily  
 8 newspapers shall be published on two separate occasions, with at least one week  
 9 between publications, during the month of December. The publication in the  
 10 Louisiana Register shall not be considered rulemaking, within the intent of the  
 11 Administrative Procedure Act, R.S. 49:950 et seq., and particularly R.S. 49:953.

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

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

19 \* \* \*

20 (5)(a)

21 \* \* \*

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

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

6 \* \* \*

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

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The original instrument was prepared by Xavier I. Alexander. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

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#### DIGEST

SB 503 Engrossed

2018 Regular Session

Ward

Present law relative to medical malpractice provides that the total amount recoverable for all malpractice claims for injuries to or death of a patient, exclusive of future medical care and related benefits, shall not exceed \$500,000 plus interest and cost.

Proposed law provides that the total amount recoverable per claimant for all malpractice claims for injuries to or death of a patient, exclusive of all economic losses, including loss of earnings, loss of earning capacity and loss of support and services, and future medical care and related benefits, shall not exceed \$750,000 plus interest and costs. The total amount recoverable for all malpractice claims may increase with inflation.

Present law provides that a health care provider qualified under the Patient's Compensation Fund is not liable for an amount in excess of \$100,000 plus interest and costs. Proposed law changes amount from \$100,000 to \$50,000 and retains remainder of present law.

Present law defines "claimant" as a patient or representative or any person, including a decedent's estate, seeking or who has sought recovery of damages or future medical care and related benefits under the present law. All persons claiming to have sustained damages as a result of injuries to or death of any one patient are considered a single claimant.

Proposed law deletes that all persons claiming to have sustained damages as a result of injuries to or death of any one patient are considered a single claimant, and retains remainder of present law.

Present law provides that in the event that a partial settlement is executed between the defendant and/or his insurer with a plaintiff for the sum of \$100,000 or less, written notice of such settlement shall be sent to the Patient's Compensation Fund Oversight Board. Such settlement shall not bar the continuation of the action against the patient's compensation fund for excess sums in which event the court shall reduce any judgment to the plaintiff in the amount of malpractice liability insurance in force.

Proposed law reduces amount from \$100,000 to \$50,000 and retains remainder of present law.

Present law provides the financial responsibility of a health care provider may be established only by filing with the board proof that the health care provider is insured by a policy of malpractice liability insurance in the amount of at least \$100,000 per claim with qualification taking effect and following the same form as the policy of malpractice liability insurance of the health care provider, or in the event the health care provider is self-insured, proof of financial responsibility by depositing with the board \$125,000 dollars in money or represented by irrevocable letters of credit, federally insured certificates of deposit, bonds, securities, cash values of insurance, or any other security approved by the board.

Proposed law reduces amounts from \$100,000 to \$50,000 and from \$125,000 to \$62,500 and retains remainder of present law.

Present law provides that relative to future medical and related benefits, payments for medical care and related benefits shall be paid by the patient's compensation fund without regard to the \$500,000 limitation. Proposed law changes amount from \$500,000 to \$750,000 and retains remainder of present law.

Present law provides relative to the Patient's Compensation Fund that the board shall issue payment in the amount of each claim submitted to and approved by it within 30 days of receipt of certain information. Provides that the only claim against the fund shall be a voucher or other appropriate request by the board after it receives a certified copy of a final judgment or court-approved settlement or arbitration award in excess of \$100,000 against a health care provider.

Proposed law changes amount from \$100,000 to \$50,000. Further provides that such limitations shall be adjusted annually based upon the United States Consumer Price Index, but no adjustment shall be increased or decreased by more than 4%. This shall become effective on January 1, 2020, and be adjusted on January first of every subsequent year. Provides procedure for determining the percentage increase or decrease and for posting and publication of this information. Proposed law further provides that the limitation of recovery per claimant shall be governed by the limitation in effect on the date a medical review panel is requested.

Present law provides procedures if the insurer of a health care provider or a self-insured health care provider has agreed to settle its liability on a claim against its insured and the claimant is demanding an amount in excess thereof from the patient's compensation fund for a complete and final release. Includes under certain circumstances that the board shall have the burden of proving the negligence or fault of the qualified health care provider whose percentage of fault the board seeks to allocate, except where the sum of \$100,000 has been paid by the health care provider. Also provides that in approving a settlement or determining the amount, if any, to be paid from the patient's compensation fund, the trier of fact shall consider the liability of the health care provider as admitted and established where the insurer has paid its policy limits of \$100,000 or where the self-insured health care provider has paid \$100,000.

Proposed law changes amounts from \$100,000 to \$50,000 and retains remainder of present law.

Present law provides that in any instance in which a complaint for bodily injuries to or death of a patient on account of malpractice has been filed in court and the parties enter into a stipulation prior to trial as to the amount of past medical expenses and related benefits and the amount exceeds \$100,000, the parties shall also stipulate to the admissibility of the documents supporting the stipulated amount and shall introduce these documents into evidence at the trial. Proposed law changes amount from \$100,000 to \$50,000 and retains remainder of present law.

Effective August 1, 2018.

(Amends R.S. 40:1231.1(A)(4), 1231.2(B)(1) and (2), (D)(5) and (E)(1), 1231.3(D), and 1231.4(B), (C)(5)(d) and (e) and (E))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Deletes proposed law relative to certain risk management revisions.
2. Adds language relative to definition of claimants.
3. Adds language relative to revising certain dollar amounts.
4. Adds language relative to certain adjustments based upon CPI.