
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.

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.