

2021 Regular Session

HOUSE BILL NO. 78

BY REPRESENTATIVE MCMAHEN

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

MALPRACTICE/MEDICAL: Provides for modifications of certain time periods in medical malpractice claims

1 AN ACT

2 To amend and reenact R.S. 9:5628(A), R.S. 40:1231.8(A)(2)(a), (B)(3), (G)(introductory
3 paragraph), (L), and (N)(1)(b)(iii), and 1237.2(A)(2)(a), (B)(3), and (G)(introductory
4 paragraph), relative to medical malpractice; to provide relative to certain time
5 periods in medical malpractice claims against state and non-state qualified healthcare
6 providers; to provide relative to prescriptive periods and suspension of prescriptive
7 periods; to provide relative to time periods for the medical review panel to render an
8 opinion; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 9:5628(A) is hereby amended and reenacted to read as follows:

11 §5628. Actions for medical malpractice

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

1 date of such discovery, in all events such claims shall be filed at the latest within a
2 period of ~~three~~ four years from the date of the alleged act, omission, or neglect.

3 * * *

4 Section 2. R.S. 40:1231.8(A)(2)(a), (B)(3), (G)(introductory paragraph), (L), and
5 (N)(1)(b)(iii) and 1237.2(A)(2)(a), (B)(3), and (G)(introductory paragraph) are hereby
6 amended and reenacted to read as follows:

7 §1231.8. Medical review panel

8 A.

9 * * *

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

28 * * *

1 B.

2 * * *

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

8 * * *

9 G. The panel shall have the sole duty to express its expert opinion as to
10 whether or not the evidence supports the conclusion that the defendant or defendants
11 acted or failed to act within the appropriate standards of care. After reviewing all
12 evidence and after any examination of the panel by counsel representing either party,
13 the panel shall, within thirty days and no later than one year from the date the request
14 for review of a malpractice claim under this Section is filed, render one or more of
15 the following expert opinions, which shall be in writing and signed by the panelists,
16 together with written reasons for their conclusions:

17 * * *

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

22 * * *

23 N.(1)

24 * * *

25 (b)

26 * * *

27 (iii) In accordance with Paragraph (B)(3) of this Section, ~~ninety days~~ six
28 months after the notification to all parties by certified mail by the attorney chairman

1 of the board of the dissolution of the medical review panel, the suspension of the
2 running of prescription with respect to a qualified health care provider shall cease.

3 * * *

4 §1237.2. State medical review panel

5 A.

6 * * *

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

25 * * *

26 B.

27 * * *

28 (3) ~~Ninety days~~ six months after the notification to all parties by certified
29 mail by the attorney chairman or the commissioner of the dissolution of the state

1 medical review panel or ninety days after the expiration of any court-ordered
2 extension as authorized by Paragraph (1) of this Subsection, the suspension of the
3 running of prescription with respect to the state or person shall cease.

* * *

5 G. The panel shall have the sole duty to express its expert opinion as to
6 whether or not the evidence supports the conclusion that the defendant or defendants
7 acted or failed to act within the appropriate standards of care as charged in the
8 complaint. After reviewing all evidence and after any examination of the panel by
9 counsel representing either party, the panel shall, within thirty days and no later than
10 one year from the date the request for review of a malpractice claim under this
11 Section is filed, render one or more of the following expert opinions which shall be
12 in writing and signed by the panelists, together with written reasons supporting each
13 opinion, which shall constitute part of the report:

* * *

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 78 Original 2021 Regular Session McMahon

Abstract: Modifies filing deadlines and prescriptive periods regarding medical malpractice claims against state and non-state healthcare providers.

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 does not provide for a time period for the medical review panel to render an opinion once a claim is filed.

Proposed law requires the medical review panel to render an opinion no later than one year from the date a claim is filed.

Present law (R.S. 9:5628) requires that all medical malpractice claims be filed 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. Present law further provides that in all events, claims shall be filed at the latest within a period of three years from the date 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 four years and extends the time period 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.

(Amends R.S. 9:5628(A), R.S. 40:1231.8(A)(2)(a), (B)(3), (G)(intro. para.), (L), and (N)(1)(b)(iii), and 1237.2(A)(2)(a), (B)(3), and (G)(intro. para.))