



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

HB7279

Introduced 3/18/2004, by Rep. Tom Cross

SYNOPSIS AS INTRODUCED:

New Act

Creates the Medical Malpractice Pre-Trial Review Act. Provides that the Medical Malpractice Pre-Trial Review shall consider any claim involving alleged malpractice occurring in Illinois by a health care provider. Outlines how the Review shall be selected. Provides for filing fees and fees for entering an appearance. Provides procedures for a hearing by the Review. Provides that the findings of the Review are admissible at trial as evidence. Provides that the findings of the Review are non-binding on the parties unless both parties agree. Effective immediately.

LRB093 21562 LCB 48803 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning medical malpractice.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Medical Malpractice Pre-Trial Review Act.

6 Section 5. Public policy.

7 (a) The goal of this Act is to deter or eliminate nuisance
8 lawsuits and to encourage parties to settle meritorious claims
9 of medical malpractice.

10 (b) Pre-trial reviews identify claims of professional
11 negligence that merit compensation.

12 (c) Pre-trial reviews identify claims that are without
13 merit and should not be lawsuits in court.

14 (d) There is currently a medical malpractice crisis in
15 Illinois that is driving physicians and other health providers
16 out of this State. Due to the growing number of frivolous
17 lawsuits against health care providers, the costs for health
18 care providers are spiraling out of control and forcing doctors
19 to move to other states.

20 Section 10. Definitions. As used in this Act:

21 "Health care provider" means a person who is licensed,
22 certified, or otherwise authorized or permitted by the law of
23 this State to administer health care in the ordinary course of
24 business or practice of a profession including, but not limited
25 to, a physician, nurse, health care facility, and any employee,
26 officer, director, agent, or person under contract with such a
27 person.

28 "Review" means the Medical Malpractice Pre-Trial Review.

29 Section 15. Applicability. The Medical Malpractice
30 Pre-Trial Review shall consider any claim involving alleged

1 malpractice occurring in Illinois by a health care provider.

2 Section 20. Formation and selection of Review.

3 (a) The Review shall consist of one attorney admitted to
4 practice law in this State and 3 physicians licensed to
5 practice medicine under the Medical Practice Act of 1987. The
6 attorney shall act in an advisory capacity and as Chairperson
7 of the Review, but shall have no vote.

8 (b) The Review shall be selected from among all physicians
9 engaged in the active practice of medicine in this State,
10 whether in the teaching profession or otherwise, who hold a
11 license to practice medicine in this State in the following
12 manner:

13 (1) Each party to the action shall have the right to
14 select one physician and, upon selection, the physician
15 shall be required to serve, except as provided in item (3)
16 of this Section. The 2 physicians shall then select the
17 third physician for the Review. If one of parties involved
18 is a hospital, a fourth member who is a hospital
19 administrator shall be selected by the hospital.

20 (2) When there are multiple plaintiffs or defendants,
21 there shall be only one physician or hospital administrator
22 picked per side. The plaintiff, whether single or multiple,
23 shall have the right to select one physician.

24 (3) A Review member so selected shall serve, except
25 that for good cause shown he or she may be excused. To show
26 good cause for relief from serving, the Review member shall
27 be required to serve an affidavit upon a judge of a court
28 having jurisdiction over the claim when filed. The
29 affidavit shall set out the facts showing that service
30 would constitute an unreasonable burden or undue hardship.
31 The judge may excuse the proposed Review member from
32 serving.

33 (4) Within 20 days after receipt of notification of a
34 proposed Review member by the plaintiff, the defendants
35 shall select a proposed Review member and advise the

1 plaintiff or his or her attorney.

2 (5) Within 20 days of receipt of notice of selection,
3 written challenge without cause may be made to the Review
4 member. Upon challenge, a party shall select another Review
5 member. If multiple plaintiffs or defendants are unable to
6 agree on a physician Review member, or if 2 challenges are
7 made and submitted, the judge shall submit a list
8 consisting of 3 qualified Review members and each side
9 shall strike one and the remaining member shall serve in
10 the place of the challenged Review member designated by the
11 party.

12 (6) The Parties may agree on the attorney member of the
13 board or, if no agreement can be reached, then 5 proposed
14 attorney members shall be designated by the judge having
15 jurisdiction of the cause. The parties shall then each
16 strike 2 names alternatively with the plaintiff striking
17 first until both sides have stricken 2 names and the
18 remaining name shall be the attorney member of the Review.

19 (c) If the members of the Review have not been selected
20 within 150 days of filing the claim, the court shall have
21 authority to select members of the Review and to set a specific
22 date for the hearing.

23 Section 25. Submission of claims.

24 (a) Once a lawsuit is filed with the Circuit Court for
25 medical malpractice, the case shall be automatically sent to
26 the Review.

27 (b) At the time of filing the lawsuit, the plaintiff shall
28 pay to the Review a filing fee of \$100.

29 (c) Within 20 days of receipt of the Review receiving the
30 claim, each defendant in the notice or his or her
31 representative shall file an appearance with the Review and
32 send a copy to the plaintiff. At the time of filing, each
33 defendant shall each pay a fee of \$100 for entering an
34 appearance per notice filed to the Review.

35 (d) The filing fee or the fee for entering an appearance

1 may be waived under the following circumstances:

2 (1) the party is indigent;

3 (2) the party is or was an employee of another party
4 and that other party stipulates that the employee at the
5 time of the claimed injury was acting in the course and
6 scope of employment with that other party; or

7 (3) the waiver is necessary to avoid requiring an
8 individual who is a party to the case from paying 2 or more
9 filing fees because a professional association or other
10 business entity of which the individual is a member is also
11 named as a party and has substantially the same interests
12 as the individual in the case.

13 (e) Within 20 days of entry of appearance, each defendant
14 shall contact the plaintiff's counsel and by agreement shall
15 designate a timetable for filing all the relevant medical and
16 provider records necessary to a determination of the Review and
17 for completing discovery. If the parties are unable to agree on
18 a timetable within 60 days of the entry of appearance, the
19 plaintiff shall notify the Chairperson of the Review. The
20 Chairperson shall then establish a timetable for the filing of
21 all relevant records and reasonable discovery, which must be
22 filed at least 30 days before any hearing date. The hearing may
23 not be later than 6 months from the service of the notice of
24 claim upon the clerk, except when the time period has been
25 extended by the Review Chairperson in accordance with this
26 Section.

27 (f) All requests for extension of time must be made to the
28 Review Chairperson. The Chairperson may extend any time period
29 for good cause, except that the Chairperson may not extend any
30 time period that would result in the hearing being held more
31 than one year from the filing of notice of claim upon the clerk
32 unless good cause is shown.

33 (g) Except as otherwise as provided in this subsection,
34 there shall be one combined hearing for all claims under this
35 Section arising out of the same set of facts. Where there is
36 one person accused of professional negligence against whom a

1 notice of claim has been filed based on the same facts, the
2 parties may, upon agreement of all parties, require that
3 hearings be separated. The Chairperson may, for good cause,
4 order separate hearings.

5 (h) If the Circuit Court dismisses the lawsuit, the action
6 before the Review may be dismissed by the plaintiff by filing a
7 notice of dismissal at any time prior to the appointment of the
8 Review or by filing a stipulation of dismissal signed by all
9 parties who have appeared in the action. Unless otherwise
10 stated in the notice of dismissal, stipulation, or order, the
11 dismissal is without prejudice.

12 (i) Except as provided in subsection (h), an action shall
13 not be dismissed on the plaintiff's motion except on order of
14 the Chairperson of the Review and on terms and conditions the
15 Chairperson deems proper.

16 (j) Upon failure of the plaintiff to prosecute or to comply
17 with rules or any order of the Chairperson, and upon a motion
18 by the Chairperson or any party, after notice to all parties
19 has been given and the party against whom sanctions are
20 proposed has had the opportunity to be heard and show good
21 cause, the Chairperson may order appropriate sanctions, which
22 may include dismissal of the case. If any sanctions are
23 imposed, the Chairperson shall state the sanctions in writing
24 and include the grounds for the sanctions. The involuntary
25 dismissal shall be ruled a case without merit, and will be
26 noted in the findings of the Review.

27 (k) Unless the Chairperson or the Review in an order for
28 dismissal specifies otherwise, a dismissal under subsection
29 (j) is with prejudice for purposes of proceedings before the
30 Review. A dismissal with prejudice is deemed to be the
31 equivalent of a finding for the defendant on all issues before
32 the Review.

33 (l) Upon the failure of a defendant to comply with the
34 rules or any order of the Chairperson, and upon the motion by
35 the Chairperson or any party, after notice to all parties has
36 been given and the party against whom sanctions are proposed

1 has had the opportunity to be heard and show good cause, the
2 Chairperson may order appropriate sanctions, which may include
3 default. If any sanctions are imposed, the Chairperson shall
4 state the sanctions in writing and include the grounds for the
5 sanctions. Unless the Chairperson or the Review in its order
6 for default specifies otherwise, a default under this
7 subsection (1) is deemed to be the equivalent of a finding
8 against the defendant on all issues before the Review.

9 Section 30. Hearings.

10 (a) The plaintiff or a representative of the plaintiff
11 shall present the case before the Review. The defendant or
12 defendant's representative shall make a responding
13 presentation. Wide latitude shall be afforded the parties by
14 the Review in the conduct of the hearing including, but not
15 limited to, the right of examination and cross-examination by
16 attorneys. The Chairperson shall make all procedural rulings
17 and those rulings are final. The rules of evidence do not
18 apply. Evidence must be admitted if it is the kind of evidence
19 upon which reasonable persons are accustomed to rely in the
20 conduct of serious affairs. The Review shall make its findings
21 based upon the evidence as it is presented at the hearing, the
22 records, and any expert opinions provided by or sought by the
23 Review or the parties.

24 (b) After presentation by the parties, as provided in this
25 Section, the Review may request from either party additional
26 facts, records, or other information to be submitted in writing
27 or at a continued hearing. The continued hearing must be held
28 as soon as possible and must be attended by the same members of
29 the Review who have sat on all prior hearings in the same
30 claim, unless otherwise agreed upon by all parties.

31 (c) The evidence may consist of medical charts, x-rays, lab
32 tests, excerpts of treatises, and any other form of evidence
33 allowable by the Review.

34 (d) Except for the introduction into evidence of the report
35 of the Review, all proceedings before the Review, all actions

1 taken by any party or his or her counsel in preparation for the
2 proceedings and the submission of any matter to the Review
3 shall be handled on a confidential basis. The hearing may not
4 be conducted as a public hearing and the proceedings before the
5 Review shall not be matters of public record.

6 (e) Initiation of proceedings before the Review by a
7 patient or his representative shall constitute waiver of any
8 privilege or rights as to any hospital records or testimony or
9 records of any physician or surgeon who is attending or has
10 attended the patient for physical or mental conditions or
11 injuries or conditions involved in the proceeding to the same
12 extent and with like effect. Any witness providing information
13 or facts or opinions to the Review shall be entitled to the
14 immunities and protection provided to witnesses generally in
15 court proceedings.

16 (f) The Review shall maintain a tape recorded record.

17 (g) Failure of a party, without good cause, to attend a
18 properly scheduled hearing to participate in authorized
19 discovery, or to otherwise substantially comply with this Act,
20 shall result in a finding made by a majority of the Review
21 against that party and that finding has the same effect as a
22 finding against that party.

23 Section 35. Powers. The Review, through the Chairperson,
24 shall have subpoena powers as exist for administrative law
25 judges under the Illinois Administrative Code.

26 Section 40. Findings of the Review. The findings of the
27 Review are admissible at trial as evidence. The findings are
28 non-binding on the parties unless both parties agree.

29 Section 45. Effect of findings. The Review shall issue
30 findings as to whether or not the claim filed is meritorious or
31 does not reach the level of professional negligence.

32 Section 50. Statute of limitations; tolling. The running of

1 the applicable limitation period in a medical malpractice claim
2 shall be tolled upon submission of the case for the
3 consideration of the Review and shall not commence to run again
4 until 30 days after the Review's final decision is entered in
5 the permanent files of the Review and a copy is served upon the
6 plaintiff and his or her attorney by certified mail.

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.