

April 21, 2005

**H 1359. REDUCE HEALTH CARE COSTS. TO REDUCE HEALTH CARE COSTS BY AMENDING THE LAWS PERTAINING TO MEDICAL MALPRACTICE CIVIL ACTIONS AND INSURANCE RATES AND PROVIDING FOR A MEDICAL MALPRACTICE INSURANCE TAX CREDIT.** Makes numerous changes to the law governing medical malpractice actions, insurance rates, and medical malpractice insurance tax credits.

*Medical Malpractice Insurance Rates.* Enacts new GS 58-40-32 to prohibit insurers from charging malpractice premiums that are excessive, inadequate, or unfairly discriminatory and provide that in applying this standard no consideration will be given to the degree of competition, and to require that the Comm'r of Insurance must consider whether the rate mathematically reflects the insurer's investment income. Further requires that any insurer that wants to change malpractice rates first file a completed rate application as defined in subsection and that Comm'r notify public of application for rate change on the Department of Insurance's Internet Web site and also send written notices to all health care providers that register with Dep't. Application will be considered to be approved 60 days after required notification unless the Comm'r grants a hearing request submitted by an insured health care provider or application requests a rate increase or decrease of 15% or more.

*Annual Claims Statements/Rating Methods/Committees.* Amends GS 58-2-170 to delete deadline for the filing of annual statements by professional liability insurers and to require that Comm'r make statement forms available by January 1 of each year (was, December). Also requires that all medical malpractice insurers file a separate report containing certain claims data (was, upon request of Comm'r) and details the type of information insured must report. Provides that aggregate data of malpractice claims reports will be a public record. Requires that Comm'r submit summaries of claims data to the General Assembly by October 1 of each year. Amends GS 58-40-25 to require written approval of the Comm'r upon a finding of good cause before a malpractice insurer may use regional or countrywide expense or loss experience or other regional or countrywide data. Amends GS 131E-95, 90-21.22A, 122C-191(e), and 122C-30 to make certain records maintained by certain quality review committees confidential and not subject to discovery.

*Medical Malpractice Pretrial Liability Panel.* Amends Rule 53 of the NC Rules of Civil Procedure (NCRCP) to require that the issue of liability in all medical malpractice actions be referred to a Medical Malpractice Pretrial Liability Panel, but provides that referral will not deprive any party of the right to a jury trial. Requires that court appoint three referees to consider malpractice liability from a list of emergency superior court judges and establishes a procedure by which the parties may alternately strike names from the list. Requires that all referees serving jointly be paid the same and that where more than one referee is appointed, the report and finding must be agreed to by a majority vote. Enacts new GS 90-21.12D to require that issue of liability be referred under Rule 53 upon the completion of discovery, to provide that the referee's report will be admissible as prima facie evidence of liability but to authorize parties to submit other evidence, to require that the jury be instructed that it is not bound by report, to require that the prevailing party in a malpractice action be awarded any reasonable attorney's fees incurred after the filing of the referee's report, and to provide for the admissibility of a report from a previous action voluntarily dismissed in any refiled action, except as otherwise ordered by the court. Effective for actions filed on or after October 1, 2005.

*Procedural Provisions/Verdicts/Settlements.* Amends Rule 9(j) of the NCRCP to require that expert affidavits required by Rule also affirm that expert reviewed all available medical records pertaining to the alleged injury. Enacts new GS 90-21.14(b1) to require that the court impose monetary sanctions against a plaintiff's attorney, including court costs and attorneys' fees of the defendant, if an action against certain volunteer medical or health care providers is dismissed due to the limitation of liability provided in that section. Enacts new Rule 42(b)(3) to require that in a medical malpractice action alleging more than \$100,000 in damages, a court must order separate trials for liability and damages upon motion by any party, new GS 90-21.12E to require that a verdict in any medical malpractice or wrongful death action specify the amount awarded for noneconomic damages, and new GS 90-21.12G to require that an insurer report all malpractice settlements in accordance with GS 28A-12-2 and specify the amount attributable to economic damages. Amends NCRCP Rule 26(f1)(2) to require that each expert designation be

accompanied by a written report containing certain listed information and requires that report be supplemented if party learns that it is incomplete or incorrect. Effective October 1, 2005.

Enacts new GS 90-21.12C to provide that evidence concerning the source of payment of a medical bill may be offered only by the party that incurred the medical expense. Amends GS 1-17(b) to require that malpractice actions brought on behalf of a minor relating to the minor's birth be commenced within 10 years of the last act giving rise to minor's claim.

*Voluntary Remittitur and Noneconomic Damages Limitations.* Enacts new GS 90-21.12F to require that if a jury awards noneconomic damages in a medical malpractice action in excess of \$250,000, the court, upon plaintiff's motion, must conduct a posttrial hearing to determine whether that damage award is reasonable or excessive. Establishes procedure and criteria for court review of award and for giving the plaintiff the option of remittitur where court finds award excessive. Provides that where plaintiff refuses remittitur option offered by court, court must order a new trial on damages and requires that the plaintiff pay defendant's costs and reasonable attorneys' fees if in the new trial the plaintiff is not awarded noneconomic damages greater than the amount offered by the court. Enacts new GS 90-21.12B to place a cap of \$500,000 on noneconomic damages awarded in malpractice actions. Both provisions are effective for causes of action arising on or after October 1, 2005.

*Tax Credit for Malpractice Insurance Premiums.* Creates a tax credit for medical care providers providing medical care services in State of either 10% of medical malpractice insurance premiums that exceed \$30,000 per practitioner or 20% of premiums that exceed \$70,000 per practitioner, effective for tax years beginning on or after January 1, 2005, and expiring for tax years beginning on or after January 1, 2010.

Makes technical and conforming changes.

**Intro. by Rapp, England, Nye, Goforth.**

Ref. to Rules

GS 1, 1A, 58, 90, 105, 122C, 131E