

February 3, 2005

S 44. HEALTH CARE LIABILITY CLAIMS. TO LIMIT THE AMOUNT OF DAMAGES THAT MAY BE AWARDED IN CIVIL ACTIONS AGAINST HEALTH CARE PROVIDERS FOR HEALTH CARE LIABILITY CLAIMS, TO OTHERWISE REFORM HEALTH CARE LIABILITY, AND TO MAKE CONFORMING CHANGES. As title indicates, enacts new GS Ch. 90, Art. 1H, which establishes procedures and standards of proof for health care liability claims, establishes a medical disclosure panel, and sets limits for noneconomic damages, future losses, and attorneys' fees recoverable in such actions, applicable to all claims filed on or after Oct. 1, 2005. Defines "health care liability claim" as a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical and health care. Provides that GS Ch. 75, Art. 1 (Monopolies, Trusts, and Consumer Protection) is inapplicable to negligence claims against physicians or health care providers involving personal injury or death. Makes conforming changes.

Notice and Pleadings: Requires that individual making a health care liability claim ("claimant") provide written notice of claim to physician or health care provider at least 60 days before filing suit, notice to include authorization for release of medical information, the language of which is specified in act. Notice tolls statute of limitation up to 75 days from date of notice. Provides that pleadings filed in subsequent lawsuit shall not state amount claimed as damages, but that defendant may obtain this information upon request.

Informed Consent: Limits theory of recovery in action in which claimant states that physician or health provider failed to adequately disclose risks of care to claim that failure to disclose was negligent and that disclosure could have influenced a reasonable person in making decision to undergo procedure. Establishes nine-member NC Medical Disclosure Panel composed of three lawyers and six physicians appointed by the Sec'y of Health and Human Services. Requires that panel publish in the NC Register separate lists of medical treatments and surgical procedures that do and do not require disclosure of medical risks, and specify the degree and nature of the disclosure required in each case. Requires that physicians and health care providers provide this information to patients. Provides that in a suit asserting negligent failure to disclose, fact that Disclosure Panel does not require certain disclosure creates a rebuttable presumption that section has been complied with and shall be included in jury charges, and that a failure to disclose risks which Disclosure Panel did require is admissible and creates a rebuttable presumption of negligence. Requires that Disclosure Panel, in consultation with NC Medical Board, develop written information designed to inform patient of the risk of hysterectomies and outlines specific statements which should be included.

Emergency and Volunteer Medical Care: Limits recovery in actions arising out of the provision of emergency care to situations in which claimant can show by a preponderance of the evidence that physician or health care provider deviated from standard of care in willful and wanton manner. Delineates instructions to be provided to jury considering such claims.

Statute of Limitations: Requires that regardless of claimant's minority or legal disability, all health care liability claims shall be filed within two years from the occurrence of the breach or tort or from the date of treatment or hospitalization, except that minors who were under 12 have until their 14th birthday to file claims. States that all claims must be brought no later than 10 years after the date of the act or omission.

Liability Limits: Limits amount of noneconomic damages which may be awarded against physician or health care provider to \$250,000 per claimant, regardless of number of defendants named or causes of action asserted. Limits noneconomic damages which may be awarded against health care institution to \$250,000 per claimant, except that where judgment is rendered against more than one institution, the limit is \$500,000 per claimant. In the event damage limitations are invalidated, establishes alternative limitation on noneconomic damages which takes into account amount of defendant's financial responsibility. Limits amount of all damages, including punitive damages awarded in wrongful death or survival action against physician or health care provider to \$500,000 per claimant, except that limit is inapplicable to damages awarded for future medical and care expenses. Provides that limit shall be increased or decreased in accordance with the consumer price index. Also sets liability limit of \$500,000 for action against hospitals providing "free care" if claimant signs acknowledgment of liability

limitation, or, if claimant could not sign acknowledgment because patient was incapacitated or is a minor and guardian is unavailable.

Procedural Provisions: Requires claimant serve at least one expert report on each defendant no later than 120 days from filing of action, and provides that failure to comply with this requirement shall result in dismissal of action and an award of reasonable attorney's fees to defendant. Establishes qualifications for expert in health care liability claims and procedures for challenging the adequacy of expert reports.

Arbitration Agreements: Specifies form to be used for arbitration agreements and provides that violations are subject to GS 90-14 enforcement provisions.

Payment for Future Losses: In health care liability claims where present value of future damages equals or exceeds \$100,000, requires that court order periodic payments upon defendant's request.

Attorneys Fees: Limits contingency fees according to amount of damages recovered as follows: 40% of the first \$50,000; 33 1/3% of next \$50,000; 25% of the next \$500,000; and 15% of amount over \$600,000. Amends GS 131E-44 to require that claims brought against public hospital district be brought in county in which district is established.

Intro. by Pittenger.

Ref. to Commerce

GS 1, 1A, 8C, 90,119, 131E