



In an effort to keep you all apprised of the current issues that face our health care practices, I call your attention to a bill that is working its way through Congress regarding HR 5 titled "the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2011." HR 5 is proposed legislation that will impose limitations on medical malpractice suits at a federal level. This bill is currently in committee but is expected to reach a vote on the Full House Floor. I have attached a copy of HR 5 for your review.

Before providing you with an analysis of the proposed legislation it is important to note that HR 5 does contain a provision under Section 11 that preserves the provisions of our current Louisiana Medical Malpractice Act (MMA). In particular Section 11 provides that States will have flexibility and HR 5 will not preempt State law when:

(1) any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this Act, notwithstanding section 4(a); or

(2) any defense available to a party in a health care lawsuit under any other provision of State or Federal law.

Summary of HR 5

HR 5 is legislation that attempts to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system. In sum, the bill is proposed federal legislation that intends to revamp medical malpractice cases by placing limitations on damages (economic and non-economic), contingency fees, and time periods for bringing a medical malpractice case. Interestingly enough, the bill's proposed time limitations seem quite similar to Louisiana's LSA R.S. 9:5628 but does not provide an ultimate cut-off for bringing suit. The bill also does not provide for any administrative panel process unlike our MMA. As to damages, the bill does not cap economic damages, caps non-economic damages at \$250,000, and provides for a comparative fault allocation for the damage allocation.

Of note, the bill proposes to limit contingency arrangements. Specifically, the bill provides that the court shall have the power to restrict contingency fees to the following limitations:

- (1) Forty percent of the first \$50,000 recovered by the claimant(s).
- (2) Thirty-three and one-third percent of the next \$50,000 recovered by the claimant(s).
- (3) Twenty-five percent of the next \$500,000 recovered by the claimant(s).
- (4) Fifteen percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

Further, the bill addressed punitive damages in medical malpractice cases by allowing the same to be awarded against a provider when:

If permitted by State law, only if it is proven by clear and convincing evidence that a health care provider acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

However, the bill does not allow for an initial demand for punitive damages, but gives the court discretion to allow plaintiff to amend their petition to bring a claim for punitive damages only after a finding by the court that the claimant has established, by a substantial probability, that he or she will prevail on a claim for punitive damages. Despite this provision, the bill still provides a limitation on the maximum award of punitive damages to \$250,000 or two times the amount of economic damages awarded, whichever is greater.

Lastly, the bill addressed the issue of future damage awards equaling or exceeding \$50,000 against a party by allowing the court, at the request of any party, to enter a judgment ordering that the future damages be paid by periodic payments.

I will be sure to keep you all apprised of HR 5's status as it moves its way through Congress.

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