

Regular Session, 2012

HOUSE BILL NO. 102

BY REPRESENTATIVE LORUSSO

MALPRACTICE: Provides with respect to medical malpractice claims

1 AN ACT

2 To amend and reenact R.S. 40:1299.42, relative to medical malpractice; to provide for a  
3 limitation of recovery; to provide for qualifications of health care providers; to  
4 provide for advance payments; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 40:1299.42 is hereby amended and reenacted to read as follows:

7 §1299.42. Limitation of recovery

8 A.(1) To be qualified under the provisions of this Part, a health care provider  
9 shall:

10 ~~(1)~~(a) Cause to be filed with the board proof of financial responsibility as  
11 provided by Subsection E of this Section.

12 ~~(2)~~(b) Pay the surcharge assessed by this Part on all health care providers  
13 according to R.S. 40:1299.44.

14 ~~(3)~~(2) For the purposes of this Part, initial qualification of self-insured health  
15 care providers, initial qualification shall be effective upon acceptance of proof of  
16 financial responsibility by and payment of the surcharge to the board. Initial  
17 qualification shall be effective for all other health care providers at the time the  
18 malpractice insurer accepts payment of the surcharge.

19 B.(1) The total amount recoverable for all malpractice claims for injuries to  
20 or death of a patient, exclusive of future medical care and related benefits as

1 ~~provided set forth~~ in R.S. 40:1299.43, shall not exceed five hundred thousand dollars  
2 plus interest and cost.

3 (2) A health care provider qualified under this Part ~~is not~~ shall not be liable  
4 for an amount in excess of one hundred thousand dollars plus interest thereon  
5 accruing after April 1, 1991, and costs specifically provided for by this Paragraph for  
6 all malpractice claims because of injuries to or death of any one patient. The sole  
7 cost for which a health care provider qualified under this Part may be assessed by a  
8 trial court shall be limited to the cost incurred prior to the rendering of a final  
9 judgment against the health care provider, not as a nominal defendant, after a trial  
10 on a malpractice claim, including but not limited to, costs assessed pursuant to Code  
11 of Civil Procedure Article 970 in any instance where the board was not the offeror  
12 or offeree of the proposed settlement amount. The health care provider shall not be  
13 assessed costs in any action in which the fund intervenes or the health care provider  
14 is a nominal defendant after there has been a settlement between the health care  
15 provider and the claimant.

16 (3)(a) Any amount due from a judgment, ~~or settlement,~~ or from a final award  
17 in an arbitration proceeding which is in excess of the total liability of all liable health  
18 care providers, as provided in Paragraph (2) of this Subsection, shall be paid from  
19 the ~~patient's compensation fund~~ Patient's Compensation Fund pursuant to the  
20 provisions of R.S. 40:1299.44(C).

21 (b) The total amounts paid in accordance with Paragraphs (2) and (3) of this  
22 Subsection shall not exceed the limitation as ~~provided set forth~~ in Paragraph (1) of  
23 this Subsection.

24 C. Except as provided in R.S. 40:1299.44(C), any advance payment made  
25 by the defendant health care provider or his insurer to or for the plaintiff, or any  
26 other person, may not be construed as an admission of liability for injuries or  
27 damages suffered by the plaintiff or ~~anyone else~~ any other person in an action  
28 brought for medical malpractice.

1 D.(1) Evidence of an advance payment is not admissible until there is a final  
2 judgment in favor of the plaintiff, in which event the court shall reduce the judgment  
3 to the plaintiff ~~to the extent~~ by an amount equal to the amount of the advance  
4 payment.

5 (2) The advance payment shall inure to the exclusive benefit of the defendant  
6 or his insurer who is making the payment.

7 (3) In the event the advance payment exceeds the liability of the defendant  
8 or the insurer making it, the court shall promptly order any adjustment necessary to  
9 equalize the amount which each defendant is obligated to pay, exclusive of costs.

10 (4) In no case shall an advance payment ~~in excess of~~ which exceeds an award  
11 be repayable by the person receiving it.

12 (5) In the event that a partial settlement is executed between the defendant  
13 ~~and/or~~ or his insurer with a plaintiff for the sum of one hundred thousand dollars or  
14 less, written notice of such settlement shall be sent to the board within ten days.  
15 Such settlement shall not bar the continuation of the action against the ~~patient's~~  
16 ~~compensation fund~~ Patient's Compensation Fund for excess sums in which event the  
17 court shall reduce any judgment to the plaintiff in the amount of malpractice liability  
18 insurance in force as provided for in R.S. 40:1299.42(B)(2).

19 E.(1) Financial responsibility of a health care provider under this Section  
20 may be established only by filing with the board sufficient proof that the health care  
21 provider is insured by a policy of malpractice liability insurance in the amount of at  
22 least one hundred thousand dollars per claim with qualification under this Section  
23 taking effect and following the same form as the policy of malpractice liability  
24 insurance of the health care provider, or in the event the health care provider is self-  
25 insured, proof of financial responsibility by depositing with the board one hundred  
26 twenty-five thousand dollars in money or represented by irrevocable letters of credit,  
27 federally insured certificates of deposit, bonds, securities, cash values of insurance,  
28 or any other security approved by the board. In the event any portion of said amount  
29 is seized pursuant to the judicial process, the self-insured health care provider shall

1 have five days to deposit with the board the amounts so seized. The health care  
2 provider's failure to timely post said amounts with the board shall terminate his  
3 enrollment in the Patient's Compensation Fund.

4 (2) For the purposes of this Subsection, any group of self-insured health care  
5 providers organized to and actually practicing together or otherwise related by  
6 ownership, whether as a partnership, professional corporation, or otherwise, shall be  
7 deemed a single health care provider and shall not be required to post more than one  
8 deposit. In the event any portion of the deposit of such a group is seized pursuant to  
9 judicial process, such group shall have five days to deposit with the board the  
10 amounts so seized. The group's failure to timely post said ~~amounts~~ amount with the  
11 board will terminate its enrollment and the enrollment of its members in the Patient's  
12 Compensation Fund.

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#### 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)]

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Lorusso

HB No. 102

**Abstract:** Provides relative to limitations of liability under the Medical Malpractice Act.

Present law provides that in order to be qualified under the Medical Malpractice Act (MMA), a health care provider shall file proof of financial responsibility and pay the assessed surcharges according to R.S. 40:1299.44, and provided that a self-insured health care provider is initially qualified upon acceptance of proof of financial responsibility and payment of the surcharge.

Proposed law retains present law and specifies that for purpose of the MMA, initial qualification shall be effective upon acceptance of proof of financial responsibility by and payment of the surcharge to the board.

Proposed law specifies that a health care provider qualified under the MMA shall not be liable for an amount in excess of \$100,000 plus interest thereon accruing after April 1, 1991, and costs specifically provided for by present law for all malpractice claims because of injuries to or death of any one patient.

Present law provides that evidence of an advance payment is not admissible until there is a final judgment in favor of the plaintiff, in which event the court shall reduce the judgment to the plaintiff to the extent of the advance payment.

Proposed law specifies that the court shall reduce the judgment by an amount equal to the amount of the advance payment, and provides that the court shall promptly order any adjustment necessary to equalize the amount which each defendant is obligated to pay,

exclusive of costs, but that in no case shall an advance payment which exceeds an award be repayable by the person receiving it.

Present law provides that in the event that a partial settlement is executed between the defendant and/or his insurer with a plaintiff for the sum of \$100,000 or less, written notice of such settlement shall be sent to the board.

Proposed law retains present law but requires notice to be sent within 10 days.

Present law provides that financial responsibility of a health care provider may be established only by filing with the board proof that the health care provider is insured by a policy of malpractice liability insurance in the amount of at least \$100,000 per claim.

Proposed law requires proof of insurance to be sufficient proof that the provider is insured by a malpractice liability policy in the amount of at least \$100,000 per claim.

(Amends R.S. 40:1299.42)