

Introduced by

Representatives Dosch, Meier, Wald

Senators Dever, Wardner

1 A BILL for an Act to create and enact three new sections to chapter 32-42 of the North Dakota
2 Century Code, relating to medical professional liability reform; and to amend and reenact
3 section 32-42-01 of the North Dakota Century Code, relating to definitions.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 32-42-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **32-42-01. Definitions.** In this chapter:

- 8 1. "Alternative dispute resolution" means the resolution of a health care malpractice
9 claim in a manner other than through a health care malpractice action.
- 10 2. "Claimant" means any person who alleges a health care malpractice claim, and
11 any person on whose behalf the claim is alleged, including the decedent in the
12 case of an action brought through or on behalf of an estate.
- 13 3. "Future damages" includes damages for future medical treatment, care or custody,
14 loss of future earnings, loss of bodily function, or future pain and suffering of the
15 judgment creditor.
- 16 4. "Health care malpractice action" means a claim for relief brought against a health
17 care provider, or other defendant joined in the action, regardless of the theory of
18 liability on which the claim is based, in which the claimant alleges a health care
19 malpractice claim.
- 20 ~~4.~~ 5. "Health care malpractice claim" means a claim brought against a health care
21 provider or other defendant joined in a claim alleging that an injury was suffered by
22 the claimant as a result of health care negligence or gross negligence, breach of
23 express or implied warranty or contract, failure to discharge a duty to warn, or

failure to obtain consent arising from the provision of or failure to provide health care services.

~~5-~~ 6. "Health care negligence" means an act or omission by a health care provider which deviates from the applicable standard of care and causes an injury.

~~6-~~ 7. "Health care provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

~~7-~~ 8. "Injury" means an injury, illness, disease, or other harm suffered by an individual as a result of the provision of health care services by a health care provider.

~~8-~~ 9. "Noneconomic damage" means damage arising from pain; suffering; inconvenience; physical impairment; disfigurement; mental anguish; emotional distress; fear of injury, loss, or illness; loss of society and companionship; loss of consortium; injury to reputation; humiliation; and other nonpecuniary damage incurred by an individual with respect to which a health care malpractice action or claim is pursued.

10. "Periodic payments" means the payment of money or delivery of other property to the judgment creditor at regular intervals.

11. "Recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorney's office overhead costs or charges are not deductible disbursements or costs for such purpose.

SECTION 2. Three new sections to chapter 32-42 of the North Dakota Century Code are created and enacted as follows:

Periodic payment of damages.

1. In any action for injury or damages against a provider of health care services, the district court, at the request of either party, shall enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic payments rather than by a lump sum payment if the award equals or exceeds fifty thousand dollars in future damages. In entering a judgment ordering the payment of future damages by periodic payments, the court shall make a specific finding as to the dollar amount of periodic payments

1 which will compensate the judgment creditor for the future damages. As a
2 condition to authorizing periodic payments of future damages, the court shall
3 require the judgment debtor who is not adequately insured to post security
4 adequate to assure full payment of the damages awarded by the judgment. Upon
5 termination of periodic payments of future damages, the court shall order the return
6 of this security, or so much as remains, to the judgment debtor.

7 2. The judgment ordering the payment of future damages by periodic payments must
8 specify the recipient or recipients of the payments, the dollar amount of the
9 payments, the interval between payments, and the number of payments or the
10 period of time over which payments are to be made. The payments may only be
11 subject to modification in the event of the death of the judgment creditor. If the
12 court finds that the judgment debtor has exhibited a continuing pattern of failing to
13 make the payments, the court shall find the judgment debtor in contempt of court
14 and, in addition to the required periodic payments, shall order the judgment debtor
15 to pay the judgment creditor all damages caused by the failure to make the
16 periodic payments, including court costs and attorney's fees.

17 3. Money damages awarded for loss of future earnings may not be reduced or
18 payments terminated by reason of the death of the judgment creditor, but must be
19 paid to persons to whom the judgment creditor owed a duty of support, as provided
20 by law, immediately before the judgment creditor's death. In such cases the court
21 that rendered the original judgment, upon petition of any party in interest, may
22 modify the judgment to award and apportion the unpaid future damages in
23 accordance with this subsection.

24 4. Following the occurrence or expiration of all obligations specified in the periodic
25 payment judgment, any obligation of the judgment debtor to make further
26 payments ceases and any security given under subsection 1 reverts to the
27 judgment debtor.

28 **Evidence of collateral source benefits.** Notwithstanding section 32-03.2-06, any
29 party may introduce evidence of collateral source benefits in a health care malpractice action. If
30 a party elects to introduce the evidence, any opposing party may introduce evidence of any
31 amount paid or contributed or reasonably likely to be paid or contributed in the future by or on

1 behalf of the opposing party to secure the right to those collateral source benefits. No provider
2 of collateral source benefits may recover any amount against the claimant or receive any lien or
3 credit against the claimant's recovery or be equitably or legally subrogated to the right of the
4 claimant in a health care malpractice action. This section applies to any health care
5 malpractice action that is settled or resolved by a factfinder.

6 **Maximizing patient recovery.**

- 7 1. In any health care malpractice action in which the attorney for a party claims a
8 financial stake in the outcome by virtue of a contingent fee, the court may restrict
9 the payment of a claimant's damage recovery to the attorney and may redirect
10 those damages to the claimant based upon the interests of justice and principles of
11 equity. The total of all contingent fees for representing all claimants in a health
12 care malpractice action may not exceed:
- 13 a. Forty percent of the first fifty thousand dollars recovered by the claimants;
14 b. Thirty-three and one-third percent of the next fifty thousand dollars recovered
15 by the claimants;
16 c. Twenty-five percent of the next five hundred thousand dollars recovered by
17 the claimants; and
18 d. Fifteen percent of any amount on which the recovery by the claimants
19 exceeds six hundred thousand dollars.
- 20 2. The limitations of this section apply regardless of whether the recovery is by
21 settlement, arbitration, judgment, mediation, or any form of alternative dispute
22 resolution. In a health care malpractice action involving a minor or incompetent
23 person, a court retains the authority to authorize or approve a fee that is less than
24 the maximum permitted under this section.
- 25 3. If periodic payments are awarded to the plaintiff under section 32-03.2-09, the
26 court shall place a total value on these payments based upon the projected life
27 expectancy of the plaintiff and include this amount in computing the total award
28 from which fees are calculated under this section.