CHAPTER 32-42
ALTERNATIVE DISPUTE RESOLUTION

32-42-01. Definitions.

In this chapter:

1. "Alternative dispute resolution" means the resolution of a health care malpractice claim in a manner other than through a health care malpractice action.
2. "Claimant" means any person who alleges a health care malpractice claim, and any person on whose behalf the claim is alleged, including the decedent in the case of an action brought through or on behalf of an estate.
3. "Health care malpractice action" means a claim for relief brought against a health care provider, or other defendant joined in the action, regardless of the theory of liability on which the claim is based, in which the claimant alleges a health care malpractice claim.
4. "Health care malpractice claim" means a claim brought against a health care provider or other defendant joined in a claim alleging that an injury was suffered by the claimant as a result of health care negligence or gross negligence, breach of 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. "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. "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. "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. "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.

32-42-02. Noneconomic damages limited - Reduction of award.

With respect to a health care malpractice action or claim, the total amount of compensation that may be awarded to a claimant or members of the claimant's family for noneconomic damage resulting from an injury alleged under the action or claim may not exceed five hundred thousand dollars, regardless of the number of health care providers and other defendants against whom the action or claim is brought or the number of actions or claims brought with respect to the injury. With respect to actions heard by a jury, the jury may not be informed of the limitation contained in this section. If necessary, the court shall reduce the damages awarded by a jury to comply with the limitation in this section.

32-42-03. Alternative dispute resolution.

1. Before initiating a health care malpractice action, the attorney representing a claimant shall advise the claimant about all reasonably available alternative dispute resolution options that may be available to the parties to settle the claim.
2. At the earliest opportunity after the attorney for a health care provider has notice of a potential health care malpractice claim or action, the attorney shall advise the health care provider about all reasonably available alternative dispute resolution options that may be available to the parties to settle the claim.
3. The claimant and health care provider shall make a good-faith effort to resolve part or all of the health care malpractice claim through alternative dispute resolution before the claimant initiates a health care malpractice action.

4. The attorneys for the claimant and health care provider shall state in the pleadings that they have complied with subsections 1 and 2 and that the parties have complied with subsection 3.
5. The court may sanction an attorney who fails to comply with subsection 1 or 2.
6. Notwithstanding section 28-26-01, the court, upon a finding that a party refused to comply with subsection 3, may award reasonable actual and statutory costs, including part or all of the attorney's fees to the prevailing party or parties.

32-42-04. Effective date.
Repealed by S.L. 2009, ch. 65, § 8.