

Introduced: 5/5/89
Referred: Judiciary and Finance

go01189s

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

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SENATE BILL NO. 323

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to medical malpractice and claims
against health care providers and creating the Alaska
Health Care Claims Board."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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* Section 1. AS 09 is amended by adding a new chapter to read:

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CHAPTER 18. ALASKA HEALTH CARE CLAIMS ACT.

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Sec. 09.18.010. ALASKA HEALTH CARE CLAIMS BOARD. (a) There is
created in the Department of Commerce and Economic Development the
Alaska Health Care Claims Board.

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(b) The Alaska Health Care Claims Board consists of five members
appointed by the governor. One member must be a person licensed to
practice medicine in Alaska. One member must be a person licensed to
practice law in Alaska. The remaining three members appointed by the
governor may not be formerly or presently employed in the legal or
health care professions.

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(c) Board member terms are three years. Members are entitled to
compensation of \$400 a day for each day or portion of a day spent in
actual meeting or on authorized official business incidental to board
duties and to all other transportation and per diem as provided by
law.

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(d) Board members' initial appointments must be for staggered
terms. A member of the board serves until a successor is appointed.
An appointment to fill a vacancy on the board is for the remainder of
the expired term.

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1 (e) The board may adopt regulations to carry out the purposes of
2 this chapter. Rules of procedure must be as informal, summary, and
3 simple as possible. The board, or a member of it, may subpoena wit-
4 nesses, administer or cause to be administered oaths, and examine or
5 cause to be examined books, records, and documents of the parties to a
6 proceeding which are related to the questions in dispute. Upon appli-
7 cation by the board the superior court shall enforce the attendance of
8 witnesses and production and examination of books, records, and docu-
9 ments.

10 (f) The Department of Commerce and Economic Development shall
11 employ an executive director and other persons necessary to carry out
12 the provisions of this chapter.

13 Sec. 09.18.020. LIABILITY OF HEALTH CARE PROVIDER. (a) A
14 health care provider is liable for and shall secure payment to claim-
15 ants of compensation for injury and death only as provided for in this
16 chapter.

17 (b) As provided in this chapter, compensation is payable irre-
18 spective of fault as a cause for an injury or death.

19 (c) The liability of a health care provider as provided in this
20 chapter is exclusive and in place of all other liability of the health
21 care provider to any claimant, the claimant's estate, next of kin,
22 spouse, parents, dependents, or anyone else entitled to recover dam-
23 ages from the health care provider on account of injury or death.

24 (d) If a health care provider fails to secure payment of compen-
25 sation as required by this chapter, the claimant may elect to claim
26 compensation under this chapter or may maintain an action at law for
27 damages on account of the claimant's injury or death.

28 Sec. 09.18.030. AGREED SETTLEMENT OF CLAIMS. (a) The claimant
29 and health care provider may reach an agreement in regard to a claim

1 for injury or death at any time within 30 days after an injury or
2 death. If an agreement is reached, a memorandum of agreement shall be
3 filed with the board. If approved by the board, the agreement dis-
4 charges the liability of the health care provider for all compensation
5 under this chapter and shall be enforceable as an order of the board.

6 (b) The agreement must be approved by the board when it appears
7 that the agreement

- 8 (1) is in the best interests of the claimant;
9 (2) conforms to the provisions of this chapter; and
10 (3) is fair and equitable to all parties.

11 (c) The board may, through informal conferences, encourage the
12 settlement of claims before a hearing.

13 (d) When an agreement is accepted, compensation shall be paid in
14 accordance with AS 09.18.080.

15 Sec. 09.18.040. FILING OF CLAIMS. (a) The right to compen-
16 sation for injury, under this chapter, is barred unless a claim for it
17 is filed within one year after the claimant has knowledge of the
18 nature of the injury and its relation to the treatment by the health
19 care provider. The right to compensation for death is barred unless a
20 claim is filed within one year after the death. In the event of a
21 latent injury, the claim is barred unless filed within one year after
22 the date, as determined by the board, that the claimant knew or, in
23 the exercise of reasonable diligence, should have known the nature of
24 the injury and its relation to the treatment by the health care pro-
25 vider. In deciding when a claimant should have known the nature of an
26 injury and its relation to the treatment by the health care provider,
27 the board shall take into account the claimant's age, education,
28 experience, and intelligence.

29 (b) If a person entitled to compensation is mentally incompetent

1 or a minor, the provisions of (a) of this section are not applicable
2 so long as the person has no guardian or other legal representative,
3 but they are applicable from the date of appointment of a guardian or
4 other legal representative, or in the case of a minor, if no guardian
5 is appointed, from the date the minor reaches the age of majority.

6 (c) The claim must be in writing and must contain

7 (1) the name and address of the health care provider;

8 (2) the name and address of the injured person;

9 (3) the time, place, nature, and alleged cause of the
10 injury or death; and

11 (4) the signature of the claimant.

12 (d) The claim must be filed by delivering or mailing it to the
13 board's office. Notice of the claim shall be given by the claimant to
14 the health care provider by delivering it or mailing it to the health
15 care provider's last known address. If the health care provider is a
16 corporation, the notice of the claim may be delivered or mailed to an
17 agent or officer upon whom legal process may be served.

18 (e) Failure of the claimant to give notice of a claim is not a
19 bar to compensation under this chapter.

20 (f) Failure to file a claim within the period prescribed in (a)
21 or (b) of this section is not a bar to compensation unless objection
22 to the failure is made within 30 days after receipt of notice of the
23 claim.

24 Sec. 09.18.050. INVESTIGATION AND HEARING OF CLAIMS. (a)
25 Within 15 days after a claim is filed, the board shall notify the
26 health care provider and any person, other than the claimant, whom the
27 board considers an interested party, that a claim has been filed. The
28 notice may be served personally or sent by certified mail.

29 (b) Within 30 days after receipt of notice of a claim, the

1 health care provider shall accept or deny the claim. Notice of accep-
2 tance or denial of the claim shall be promptly mailed to the board and
3 the claimant. If the claim is denied, in whole or in part, the rea-
4 sons for denial shall be stated in the notice in a full, clear, and
5 readily understood manner.

6 (c) The board shall, within 90 days after receipt of a request
7 from an interested party, hold a hearing on the denied claim.

8 (d) The board may in its own discretion order a hearing on a
9 denied claim. If the board so orders, the hearing shall take place
10 within 90 days after the order.

11 (e) The board may make an investigation of a denied claim in the
12 manner and to the extent it considers necessary subject to the time
13 limits in (c) and (d) of this section.

14 (f) If the board orders a hearing under (c) or (d) of this
15 section, the board shall provide 10 days' notice, of the hearing, sent
16 by certified mail, to all interested parties.

17 (g) The board shall, within 30 days after the hearing record
18 closes, make an order rejecting the claim or awarding compensation.

19 (h) Board hearings shall be simple and fair to the interested
20 parties. Each party shall be given an opportunity to be heard, to
21 call witnesses, and to present evidence in respect to the claim. The
22 board shall make its investigation or conduct a hearing in the sim-
23 plest manner to ascertain the facts of the claim and the rights of the
24 parties. In conducting its hearings, the board is not bound by the
25 Administrative Procedure Act (AS 44.62), the Alaska Rules of Evidence,
26 or the Alaska Rules of Civil Procedure. Board hearings shall be open
27 to the public.

28 (i) Upon a finding of necessity to ensure timely hearings under
29 this chapter, the board may appoint a hearing officer to take evidence

1 concerning denied claims. A hearing officer shall exercise all powers
2 relating to the conduct of the hearing. A hearing officer shall
3 prepare recommended findings which shall be submitted to the board.
4 The board may adopt the recommended findings and decide the case upon
5 the record.

6 (j) If the board does not adopt the hearing officer's recommen-
7 dations the board may decide the case upon the record, with or without
8 taking additional evidence.

9 (k) The board shall make the final decision in all cases, in-
10 cluding those heard by a hearing officer. The board may not decide a
11 case without giving parties the opportunity to present oral or written
12 argument before the board.

13 (l) In cases heard by a hearing officer, that officer has the
14 sole power to determine the credibility of witnesses. In all other
15 cases, the board has that power. The board's findings are subject to
16 the same standard of review as a jury's findings in a civil action.

17 (m) A witness summoned to a hearing before the board is entitled
18 to receive the same fees and mileage expenses as a witness in the
19 superior court.

20 Sec. 09.18.060. ATTORNEY PARTICIPATION. (a) The proceedings of
21 the board shall be simplified to encourage the determination of claims
22 without the use of attorney representation.

23 (b) Fees for legal services rendered to a health care provider
24 or a person claiming compensation under this chapter may not exceed 20
25 percent of the amount of compensation in controversy.

26 (c) In addition to compensation awarded, if a board order is
27 appealed to a court, the court may allow attorney fees for services
28 provided in respect to the appeal, and the fees shall be paid as the
29 court directs.

1 Sec. 09.18.070. BOARD ORDERS AND AWARDS. (a) A board order
2 rejecting a claim or awarding compensation must contain clearly stated
3 findings of fact and reasoned conclusions supporting the board order.
4 A board order shall be signed by a majority of the board. In the
5 event of disagreement, the minority members of the board may attach a
6 dissent to the board order.

7 (b) A board order takes effect on the 31st day after it is
8 signed, unless proceedings are instituted as provided in (c) of this
9 section.

10 (c) Upon its own initiative, or upon application of any party in
11 interest, on the grounds of a mistake in its determination of a fact,
12 the board may, until 30 days after the order is filed, reconsider an
13 order and may issue a new order on the claim.

14 (d) A final order of the board is reviewable by the superior
15 court as provided by the Administrative Procedure Act (AS 44.62) or
16 the Alaska Rules of Appellate Procedure.

17 Sec. 09.18.080. COMPENSATION PAYMENTS. (a) Compensation for
18 injury under this chapter includes

19 (1) payment of medical expenses, including medical, surgi-
20 cal, or other attendance or treatment, nurse and hospital service,
21 medicine and other prescribed apparatus required by the injury for a
22 period of two years following the date of knowledge of the injury;
23 however, the board may in its discretion authorize continued treatment
24 or care, or both, beyond the two-year period; the board shall take
25 into consideration the nature of the injury and the resources of the
26 injured person in determining compensation or the extension of con-
27 tinued treatment beyond the two-year period specified in this para-
28 graph;

29 (2) in case of an injury resulting in permanent impairment,

1 payment of a sum produced by the multiplication of \$1,000,000 by the
2 percentage of impairment of the whole person attributable to the
3 injury; payment shall be made in a single lump sum, and may not be
4 discounted; the board shall adopt a schedule for rating injuries
5 consistent with the most recent edition of the American Medical Asso-
6 ciation Guides to the Evaluation of Permanent Impairment, supplement-
7 ing from other recognized guides where the injury cannot be rated by
8 use of the American Medical Association Guides; ratings of a claim-
9 ant's impairment on which claims for compensation are based shall be
10 filed in the board's office within 30 days after the rating; and

11 (3) in case of injury resulting in temporary inability to
12 return to the injured person's employment, payment of a sum equal to
13 100 percent of the injured person's actual lost wages, for the period
14 in which the person is unable to return to employment.

15 (b) Compensation shall be paid in accordance with (c) of this
16 section, unless, upon appeal to the superior court, the board order is
17 stayed by the superior court.

18 (c) When a health care provider accepts a claim without an order
19 of the board, or if an agreement is reached between the parties under
20 AS 09.18.030, the compensation shall be paid within 30 days after

21 (1) the date the expense is incurred under (a)(1) of this
22 section;

23 (2) the date the impairment rating is filed with the board
24 under (a)(2) of this section; or

25 (3) the date the wage loss is incurred, calculated on a
26 weekly basis.

27 (d) If the board awards compensation to a claimant, all compen-
28 sation accrued before the order is due in a lump sum within 30 days
29 after the order. All future compensation awarded shall be paid in

1 accordance with (c) of this section.

2 (e) In the case of payment of compensation under (a)(3) of this
3 section, compensation payments shall be reduced by an amount equal to
4 any temporary disability compensation payable on account of the injury
5 under the Alaska Workers' Compensation Act (AS 23.30), the Federal
6 Employee's Compensation Act, the Longshore and Harbor Workers' Compens-
7 ation Act, or similar workers' compensation laws.

8 (f) All payments of compensation shall be paid directly to the
9 person entitled to it and shall be reported by the claimant to the
10 board within 15 days after payment. When the board considers it
11 advisable, it may require a health care provider to make a deposit
12 with the Department of Revenue to secure prompt payment of compen-
13 sation, and payments from the deposit upon an award shall be made upon
14 order of the board. If compensation is not paid as provided in (b) of
15 this section, the board may assess a penalty against the health care
16 provider in an amount not to exceed 25 percent of the amount of com-
17 pensation due. The penalty shall be added to the unpaid compensation
18 and paid to the claimant.

19 (g) In case of death that was proximately caused by an injury
20 covered by this chapter, the health care provider shall pay, in addi-
21 tion to compensation under (a)(1) and (a)(3) of this section, compen-
22 sation in the amount of \$1,000,000 to the dependents of the decedent
23 as follows:

24 (1) to a widow or widower with no children of the deceased,
25 100 percent;

26 (2) to a widow or widower with one child of the deceased,
27 50 percent to the widow or widower and 50 percent to the child;

28 (3) to a widow or widower with two or more children of the
29 deceased, 30 percent to the widow or widower, and 70 percent divided

1 equally among the children;

2 (4) if there is no widow or widower, but the deceased had a
3 dependent child or children, the compensation shall be paid to the
4 child or divided equally among the children;

5 (5) if the decedent is a minor, the compensation shall be
6 divided equally among the siblings and parents of the minor; however,
7 a parent is not entitled to a share of compensation if the parent had
8 not contributed to the support of the minor decedent in the year
9 preceding the injury;

10 (6) compensation ordered under this section shall be paid
11 within 30 days after the order awarding compensation is signed, un-
12 less, upon appeal to the superior court, the board order is stayed by
13 the superior court.

14 Sec. 09.18.090. RECOVERY OF COMPENSATION. (a) If, because of
15 mental or physical injury or death for which compensation is payable
16 under this chapter, the person entitled to compensation believes that
17 a third person other than a health care provider is liable for dam-
18 ages, the person need not elect whether to receive compensation under
19 this chapter or to recover damages from the third person.

20 (b) The liability of a health care provider for compensation is
21 not affected by the fact that the claimant was originally injured
22 through the fault or negligence of a third party. Even if a claimant
23 brings an action or settles a claim against the third person, the
24 health care provider shall pay compensation required under this chap-
25 ter.

26 (c) If the claimant recovers damages from a third person, the
27 claimant shall pay to the health care provider the total amount paid
28 by the health care provider under (b) of this section, insofar as the
29 recovery is sufficient after deducting litigation costs and expenses.

1 Payment shall be made to the health care provider only to the propor-
2 tionate extent the damages were proximately caused by the act or
3 omission of the health care provider.

4 (d) If the health care provider is insured, and the insurer has
5 assumed the payment of compensation, the insurer is subrogated to all
6 the rights of the health care provider.

7 (e) The claimant shall give notice of commencement of an action
8 against a third party to the board and the interested health care
9 provider within 30 days after filing the action.

10 Sec. 09.18.100. AGGRAVATED INJURIES. (a) In case of injuries
11 determined by the board to have been proximately caused or aggravated
12 by a health care provider's (1) consumption of alcohol or illegal use
13 of intoxicants or drugs, (2) deliberate and malicious act toward the
14 injured person, or (3) conscious disregard and reckless indifference
15 to the welfare of the injured person, the board shall

16 (1) report the matter in full to the appropriate state
17 occupational licensing agency and any other appropriate national
18 licensing or examining agencies, public or private; and

19 (2) assess the health care provider a penalty to go to the
20 claimant in an amount not to exceed \$1,000,000, having considered the
21 severity of the injury and the outrageousness of the conduct.

22 (b) Orders of the board assessing penalties under (a) of this
23 section may be appealed to the superior court, which may grant a trial
24 de novo solely on the issue of the amount of the penalty or hear the
25 matter as an administrative appeal under the Administrative Procedure
26 Act (AS 44.62).

27 Sec. 09.18.190. DEFINITIONS. In this chapter

28 (1) "board" means the Alaska Health Care Claims Board;

29 (2) "child" includes the natural legitimate child of the

1 decedent, a posthumous child, a child legally adopted by the decedent,
2 a child in relation to whom the decedent stood as a parent for at
3 least one year preceding the death, a stepchild residing in the dece-
4 dent's home, and an acknowledged illegitimate child, but does not
5 include married children unless wholly dependent on the decedent;

6 (3) "compensation" means money paid to, or on behalf of, an
7 injured person, or to the decedent's survivors, as provided in this
8 chapter;

9 (4) "death" as a basis for a right to compensation means
10 only death proximately caused by an injury;

11 (5) "drugs" means marijuana or a controlled substance as
12 listed in AS 11.71.140 - 11.71.180;

13 (6) "claimant" means a person, a person's legal representa-
14 tive, estate, next of kin, spouse, parents, dependents, or any person
15 entitled to file a claim for compensation in respect to injury or
16 death under this chapter;

17 (7) "health care provider" means a physician, including a
18 doctor of medicine, surgeon, osteopath; a dentist; and an optometrist;
19 a nurse, including a registered nurse, licensed practical or vocation-
20 al nurse, nurse practitioner, nurse clinician, and certified nurse
21 midwife; a physician's assistant; a midwife; a physical therapist; a
22 naturopath; a chiropractor; a hospital trustee, director, or hospital
23 board member; a hospital, clinic, or other treatment facility; a
24 clinical laboratory; any person directly employed by a hospital,
25 clinic, physician, clinical laboratory, or other treatment facility;
26 and any other person listed as a "health care provider" in
27 AS 09.55.560 and AS 21.88.900;

28 (8) "injury" means physical or mental injury or disease or
29 infection proximately caused by an act or omission of a health care

1 provider in the course of treatment sought by or obtained on behalf of
2 the claimant, but does not include

3 (A) probable harmful effects of recognized forms of
4 treatment that are outweighed by the prospective and probable
5 benefits of the treatment, and are described by the health care
6 provider and consented to by the patient or patient's guardian;

7 (B) pain, suffering, inconvenience, or loss of enjoy-
8 ment of life;

9 (9) "employment" means duties and obligations under a con-
10 tract of hire for wages;

11 (10) "insurer" means a person authorized to insure for
12 damages under this chapter;

13 (11) "medical expenses" includes health care providers'
14 fees, and charges for hospital services, hospital supplies, medicine
15 and prosthetic devices, physical therapy and rehabilitation neces-
16 sitated by the injury, and transportation to the nearest place where
17 adequate treatment facilities are available.