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goll89sb

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 323

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

11 CHAPTER 18. ALASKA HEALTH CARE CLAIMS ACT.

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

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

21 (c) Board member terms are three years. Members are entitled to  
22 compensation of \$400 a day for each day or portion of a day spent in  
23 actual meeting or on authorized official business incidental to board  
24 duties, and are entitled to transportation expenses and per diem as  
25 provided by law for members of boards and commissions.

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

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 that are related to the questions in dispute. Upon appli-  
7 cation by the board, the superior court shall enforce the attendance  
8 of witnesses and the production and examination of books, records, and  
9 documents.

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

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

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

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

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

27 Sec. 09.18.030. AGREED SETTLEMENT OF CLAIMS. (a) The claimant  
28 and health care provider may reach an agreement in regard to a claim  
29 for injury or death at any time following 30 days after the discovery

1 of an injury or death. If an agreement is reached, a memorandum of  
2 agreement shall be filed with the board. If approved by the board,  
3 the agreement discharges the liability of the health care provider for  
4 all compensation under this chapter and is enforceable as an order of  
5 the board.

6 (b) The agreement must be approved by the board if 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 CLAIMS. (a) A claim under this chapter  
16 for compensation for injury must be filed within one year after the  
17 claimant knew or, in the exercise of reasonable diligence, should have  
18 known the nature of the injury and its relation to the treatment by  
19 the health care provider. A claim for compensation for death must be  
20 filed within one year after the death. In the event of a latent  
21 injury, a claim must be filed within one year after the date, as  
22 determined by the board, that the claimant knew or, in the exercise of  
23 reasonable diligence, should have known the nature of the injury and  
24 its relation to the treatment by the health care provider.

25 (b) If a person entitled to compensation is mentally incompetent  
26 or a minor, the provisions of (a) of this section are not applicable  
27 so long as the person has no guardian or other legal representative,  
28 but they are applicable from the date of appointment of a guardian or  
29 other legal representative, or in the case of a minor, if no guardian

1 is appointed, from the date the minor reaches the age of majority.

2 (c) A claim must be in writing and must contain

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

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

5 (3) the time, place, nature, and description of the injury

6 or death; and

7 (4) the signature of the claimant.

8 (d) A claim must be filed by delivering or mailing it to the

9 board's office. Notice of the claim shall be given by the claimant to

10 the health care provider by delivering it or mailing it to the health

11 care provider's last known address. If the health care provider is a

12 corporation, the notice of the claim may be delivered or mailed to an

13 agent or officer upon whom legal process may be served.

14 (e) Failure of the claimant to give notice of a claim is not a

15 bar to compensation under this chapter.

16 (f) Failure to file a claim within the period prescribed in (a)

17 or (b) of this section is not a bar to compensation unless objection

18 to the failure is made within 30 days after receipt of notice of the

19 claim.

20 (g) The board may by regulation set a filing fee for filing

21 claims. The board may provide for an exemption to the filing fee

22 where the filing fee would cause financial hardship.

23 (h) The commissioner of administration shall separately account

24 for fees collected under this section and deposited in the general

25 fund. The annual estimated balance in the account may be used by the

26 legislature to make appropriations to the board for the purposes of

27 implementing this chapter.

28 Sec. 09.18.050. INVESTIGATION AND HEARING OF CLAIMS. (a)

29 Within 15 days after a claim is filed, the board shall notify the

1 health care provider and any person, other than the claimant, whom the  
2 board considers an interested party, that a claim has been filed. The  
3 notice may be served personally or sent by certified mail.

4 (b) Within 30 days after receipt of notice of a claim, the  
5 health care provider shall accept or deny the claim. Notice of accep-  
6 tance or denial of the claim shall be promptly mailed to the board and  
7 the claimant. If the claim is denied, in whole or in part, the rea-  
8 sons for denial shall be stated in the notice in a full, clear, and  
9 readily understood manner.

10 (c) Any interested party may request a hearing within 30 days  
11 after a claim is accepted or denied.

12 (d) The board shall, within a time set by the board by regu-  
13 lation, after receipt of a request from an interested party, hold a  
14 hearing on the denied claim.

15 (e) The board may order a hearing on a denied claim. The  
16 hearing shall take place within a time set by the board by regulation.

17 (f) The board may make an investigation of a denied claim in the  
18 manner and to the extent it considers necessary.

19 (g) If the board orders a hearing under (d) or (e) of this  
20 section, the board shall provide at least 10 days' notice of the  
21 hearing, sent by certified mail, to all interested parties.

22 (h) The board shall, within 30 days after the hearing record  
23 closes, make an order rejecting the claim or awarding compensation.

24 (i) Board hearings shall be simple and fair to the interested  
25 parties. Each party shall be given an opportunity to be heard, to  
26 call witnesses, and to present evidence with respect to the claim.  
27 The board shall make its investigation or conduct a hearing in the  
28 simplest manner to ascertain the facts of the claim and the rights of  
29 the parties. In conducting its hearings, the board is not bound by

1 the Administrative Procedure Act (AS 44.62), the Alaska Rules of  
2 Evidence, or the Alaska Rules of Civil Procedure. Board hearings are  
3 open to the public.

4 (j) The board may appoint a hearing officer to take evidence  
5 concerning denied claims. A hearing officer may exercise all powers  
6 relating to the conduct of the hearing. A hearing officer shall  
7 prepare recommended findings, which shall be submitted to the board.  
8 The board may adopt the recommended findings and decide the case upon  
9 the record.

10 (k) If the board does not adopt the hearing officer's recommen-  
11 dations, the board may decide the case upon the record, with or  
12 without taking additional evidence.

13 (l) The board shall make the final decision in all cases, in-  
14 cluding those heard by a hearing officer. The board may not decide a  
15 case without giving the parties the opportunity to present oral or  
16 written argument before the board.

17 (m) In cases heard by a hearing officer, that officer has the  
18 sole power to determine the credibility of witnesses. In all other  
19 cases, the board has that power.

20 (n) A witness summoned to a hearing before the board is entitled  
21 to receive the same fees and mileage expenses as a witness in the  
22 superior court.

23 Sec. 09.18.060. ATTORNEY PARTICIPATION. (a) The proceedings of  
24 the board shall be simplified, to encourage the determination of  
25 claims without the use of attorney representation.

26 (b) Fees for legal services rendered to a health care provider  
27 or a person claiming compensation under this chapter may not exceed 20  
28 percent of the amount equal to the difference between an offer to  
29 settle and the amount awarded.

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

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

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

14 (c) Upon its own initiative, or upon application of any party in  
15 interest, on the grounds of a mistake in the board's determination of  
16 a fact or misapplication of law, the board may, until 30 days after  
17 the order is filed, reconsider an order and may issue a new order on  
18 the claim.

19 (d) A final order of the board is reviewable by the superior  
20 court as provided by the Alaska Rules of Appellate Procedure.

21 Sec. 09.18.075. FRIVOLOUS CLAIMS. If the board finds that a  
22 claimant or health care provider has presented a frivolous claim or  
23 defense the board may require the party making the frivolous claim or  
24 defense to pay a monetary penalty up to the amount of the other  
25 parties' attorney fees.

26 Sec. 09.18.080. COMPENSATION PAYMENTS. (a) Compensation for  
27 injury under this chapter includes

28 (1) payment of medical expenses, including medical, surgi-  
29 cal, or other attendance or treatment, nurse and hospital service,

1 medicine and other prescribed apparatus required by the injury for a  
2 period of two years following the date of knowledge of the injury;  
3 however, the board may authorize continued treatment or care, or both,  
4 beyond the two-year period; the board shall take into consideration  
5 the nature of the injury, and the extension of continued treatment  
6 beyond the two-year period specified in this paragraph;

7 (2) in case of an injury resulting in permanent impairment,  
8 payment of a sum produced by multiplying \$1,000,000 by the percentage  
9 of impairment of the whole person attributable to the injury; payment  
10 shall be made in a single lump sum, and may not be discounted; the  
11 board shall adopt a schedule for rating injuries consistent with the  
12 most recent edition of the American Medical Association Guides to the  
13 Evaluation of Permanent Impairment, supplementing from other recog-  
14 nized guides if the injury cannot be rated by use of the American  
15 Medical Association Guides; ratings of a claimant's impairment on  
16 which claims for compensation are based shall be filed in the board's  
17 office within 30 days after the rating; and

18 (3) in case of injury resulting in temporary inability to  
19 return to the injured person's employment, payment of a sum equal to  
20 100 percent of the injured person's actual lost wages for the period  
21 in which the person is unable to return to employment.

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

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

28 (1) the date the expense is incurred under (a)(1) of this  
29 section;

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

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

5 (d) If the board awards compensation to a claimant, all compen-  
6 sation accrued before the order is due in a lump sum within 30 days  
7 after the order. All future compensation awarded shall be paid in  
8 accordance with (c) of this section.

9 (e) In the case of payment of compensation under (a)(3) of this  
10 section, compensation payments shall be reduced by an amount equal to  
11 any temporary disability compensation payable on account of the injury  
12 under the Alaska Workers' Compensation Act (AS 23.30), the Federal  
13 Employee's Compensation Act, the Longshore and Harbor Workers' Comp-  
14 ensation Act, or similar workers' compensation laws.

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

26 (g) In case of death that was proximately caused by an injury  
27 covered by this chapter, the health care provider shall pay, in addi-  
28 tion to compensation under (a)(1) of this section, compensation in the  
29 amount of \$1,000,000 to the dependents of the decedent as follows:

1 (1) to a widow or widower with no children of the deceased,  
2 100 percent;

3 (2) to a widow or widower with one child of the deceased,  
4 50 percent to the widow or widower and 50 percent to the child;

5 (3) to a widow or widower with two or more children of the  
6 deceased, 30 percent to the widow or widower, and 70 percent divided  
7 equally among the children;

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

11 (5) if the decedent is a minor, the compensation shall be  
12 divided equally among the siblings and parents of the minor; however,  
13 a parent is not entitled to a share of compensation if the parent had  
14 not contributed to the support of the minor decedent in the year  
15 preceding the injury;

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

20 Sec. 09.18.090. RECOVERY OF COMPENSATION. (a) If, because of  
21 injury or death for which compensation is payable under this chapter,  
22 the person entitled to compensation believes that a third person other  
23 than a health care provider is liable for damages, the person need not  
24 elect whether to receive compensation under this chapter or to recover  
25 damages from the third person.

26 (b) The liability of a health care provider for compensation is  
27 not affected by the fact that the claimant was originally injured  
28 through the fault or negligence of a third party. Even if a claimant  
29 brings an action or settles a claim against the third person, the

1 health care provider shall pay the compensation required under this  
2 chapter.

3 (c) If the claimant recovers damages from a third person, the  
4 claimant shall pay to the health care provider the total amount paid  
5 by the health care provider under (b) of this section, insofar as the  
6 recovery is sufficient after deducting litigation costs and expenses.  
7 Payment shall be made to the health care provider only to the propor-  
8 tionate extent that the damages were proximately caused by the act or  
9 omission of the health care provider.

10 (d) If the health care provider is insured, and the insurer has  
11 assumed the payment of compensation, the insurer is subrogated to all  
12 the rights of the health care provider.

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

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

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

25 (2) assess the health care provider a penalty, to go to the  
26 claimant, in an amount not to exceed \$1,000,000, having considered the  
27 severity of the injury and the nature of the conduct.

28 (b) Orders of the board assessing penalties under (a) of this  
29 section may be appealed to the superior court, which may grant a trial

1 de novo solely on the issue of the amount of the penalty or hear the  
2 matter as an administrative appeal under the Administrative Procedure  
3 Act (AS 44.62).

4 Sec. 09.18.190. DEFINITIONS. In this chapter,

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

6 (2) "child" includes a person up to age 19, or up to age  
7 23 if the person is enrolled in public or private elementary, second-  
8 ary, or postsecondary education, who is the natural legitimate child  
9 of the decedent, a posthumous child, a child legally adopted by the  
10 decedent, a child in relation to whom the decedent stood as a parent  
11 for at least one year preceding the death, a stepchild residing in the  
12 decedent's home, and an acknowledged illegitimate child, but does not  
13 include married children unless wholly dependent on the decedent;

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

18 (4) "compensation" means money paid to, or on behalf of, an  
19 injured person, or to the decedent's survivors, as provided in this  
20 chapter;

21 (5) "consent" means verbal or written consent, unless a  
22 patient is unconscious and no guardian is reasonably available; if a  
23 patient is unconscious and a guardian is not reasonably available, the  
24 patient is considered to have given consent to recognized forms of  
25 treatment for which the harmful effects are outweighed by the pros-  
26 pective and probable benefits of the treatment;

27 (6) "death" as a basis for a right to compensation means  
28 only death proximately caused by an injury;

29 (7) "drugs" means marijuana or a controlled substance as

1 listed in AS 11.71.140 - 11.71.180;

2 (8) "employment" means duties and obligations under a con-  
3 tract of hire for wages;

4 (9) "health care provider" means a physician, including a  
5 doctor of medicine, surgeon, osteopath; a dentist; and an optometrist;  
6 a nurse, including a registered nurse, licensed practical or vocation-  
7 al nurse, nurse practitioner, nurse clinician, and certified nurse  
8 midwife; a physician's assistant; a midwife; a physical therapist; a  
9 naturopath; a chiropractor; a hospital trustee, director, or hospital  
10 board member; a hospital, clinic, or other treatment facility; a  
11 clinical laboratory; any person directly employed by a hospital,  
12 clinic, physician, clinical laboratory, or other treatment facility;  
13 and any other person listed as a "health care provider" in  
14 AS 09.55.560 and AS 21.88.900;

15 (10) "injury" means physical or mental injury or disease or  
16 infection proximately caused by an act or omission of a health care  
17 provider in the course of treatment sought by or obtained on behalf of  
18 the claimant, but does not include

19 (A) probable harmful effects of recognized forms of  
20 treatment that are outweighed by the prospective and probable  
21 benefits of the treatment, and are described by the health care  
22 provider and consented to by the patient or patient's guardian;

23 (B) pain, suffering, inconvenience, or loss of enjoy-  
24 ment of life;

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

27 (12) "medical expenses" includes health care providers'  
28 fees, and charges for hospital services, hospital supplies, medicine  
29 and prosthetic devices, physical therapy and rehabilitation

- 1 necessitated by the injury, and transportation to the nearest place
- 2 where adequate treatment facilities are available.