VERMONT MEDICAL SOCIETY RESOLUTION

Medical Liability Reforms

Adopted October 27, 2012

Whereas, Dr. William Hsiao's February 2011 report to the Vermont General Assembly indicates a 2009 survey estimated that 91 percent of the 1213 physicians surveyed ordered more tests and procedures than were necessary for their patients to protect themselves from malpractice suits and in 2008, an additional survey of physicians found that between 60 and 78 percent of 4,720 physicians reported ordering additional tests or consultations as a result of malpractice fears, concern over malpractice suits, or an increased reliance on technology because of malpractice fears;[1] and

Whereas, The report states researchers estimate that defensive medicine contributes 2-9 percent of health expenditures in the US;[2] and

Whereas, Pursuant to Act No.48 of 2011, section 2(a)(7), on January 30, 2012 the Secretary of Administration submitted his Medical Malpractice Reforms Report and Proposals to address any findings of defensive medicine, reduce health care costs and medical errors, and protect patients' rights, and shall include the secretary's or designee's consideration of a no-fault system and of confidential pre-suit mediation;[3] and

Whereas, Based on one of the Secretary's Medical Malpractice Reforms Proposals, the General Assembly enacted Act 171 of 2012, Section 24a, creating a new requirement that no civil action for negligence can be filed against a health care provider unless the plaintiff's attorney certifies that he or she has consulted with a qualified health care provider who indicated to the attorney there is a reasonable likelihood that the attorney will be able to show the defendant's failure to meet the standard of care caused the plaintiff's injury; and

Whereas, Under Section 24a, the plaintiff attorney's certificate of merit does not identify either the name and credentials of the qualified health care provider or the specific standard of care that allegedly caused the plaintiff's injury; and

Whereas, Sections 220-224 of recently enacted into law Massachusetts Senate Bill 2400 contains medical liability reforms agreed to by the Massachusetts Medical Society, the Massachusetts Bar Association, and the Massachusetts Association of Trial Attorneys; and

Whereas, The three organizations issued a joint press release[4] announcing an historic and unprecedented partnership between physicians and attorneys in Massachusetts has led to significant reforms to the medical liability system, allowing for improvements to resolving malpractice cases that both sides say could greatly benefit patients by reducing some unnecessary and protracted lawsuits while improving patient safety; and

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[1] Hsioa W. Act 128 Health System Reform Design, 2011. Page 58

[2] Ibid. Page 35

[3] http://www.leg.state.vt.us/reports/2012ExternalReports/275848.pdf

[4] http://www.massmed.org/AM/Template.cfm?Section=Search8&template=/CM/HTMLDisplay.cfm&ContentID=74661

Whereas, The changes include provisions for a six-month, pre-litigation resolution period that affords the time to go through a Disclosure, Apology, and Offer process with sharing of all pertinent medical records by the patient, full disclosure by providers, and for statements of apology by providers to be inadmissible in court; and

Whereas, The University of Michigan health system pioneered this approach more than a decade ago; and

Whereas, Under the new law, no civil action for negligence can be filed against a health care provider unless 182 days of written notice has been provided by the claimant; and

Whereas, The claimant's written notice must include: (1) the factual basis for the claim; (2) the applicable standard of care alleged by the claimant; (3) the manner in which it is claimed that the applicable standard of care was breached by the health care provider; (4) the alleged action that should have been taken to achieve compliance with the alleged standard of care; (5) the manner in which it is alleged the breach of the standard of care was the proximate cause of the injury claimed in the notice; and (6) the names of all health care providers that the claimant intends to notify in relation to a claim; and

Whereas, Not later than 56 days after giving notice, the claimant shall allow the health care provider access to all of the medical records related to the claim that are in the claimant's control and shall furnish a release for any medical records related to the claim that are not in the claimant's control, but of which the claimant has knowledge; and

Whereas, Within 150 days after receipt of notice under this section, the health care provider against whom the claim is made shall furnish to the claimant a written response that contains a statement including the following: (1) the factual basis for the defense, if any, to the claim; (2) the standard of care that the health care provider claims to be applicable to the action; (3) the manner in which it is claimed by the health care provider that there was or was not compliance with the applicable standard of care; and (4) the manner in which the health care provider contends that the alleged negligence of the health care provider was or was not a proximate cause of the claimant's alleged injury or alleged damage; and

Whereas, If at any time during the notice period a health care provider informs the claimant that the health care provider does not intend to settle the claim, the claimant may commence an action alleging medical malpractice against the health care provider; and

Whereas, The President of the Massachusetts Medical Society announced that the society was extremely pleased that the bill includes the Disclosure, Apology and Offer model of medical liability reform that it has championed for many years and its belief that implementing this alternative to traditional litigation will foster a climate of safety and openness in all health care settings, especially when a patient is harmed by an adverse medical outcome; now therefore be it

Resolved, The Vermont Medical Society urges the General Assembly to enact the recently passed Massachusetts Medical Liability Reform providing for a six-month, pre-litigation resolution period with the sharing of all pertinent medical records by the patient, full disclosure by providers, and for statements of apology by providers to be inadmissible in court; and be it further

Resolved, The Vermont Medical Society will seek the support of the Governor of Vermont, the Green Mountain Care Board, the Vermont Bar Association and the Vermont Association for Justice, for the passage of legislation modeled on the Massachusetts Medical Liability Reforms in the state of Vermont.