



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3527

Introduced 2/10/2010, by Sen. Bill Brady

SYNOPSIS AS INTRODUCED:

New Act
225 ILCS 60/29

from Ch. 111, par. 4400-29

Creates the Affordable Health Care Act and amends the Medical Practice Act of 1987. Provides that the Affordable Health Care Act applies to and governs all health care agreements between a patient and a health care provider that (A) voluntarily limit economic damages or non-economic damages arising out of (i) injuries alleged to have been received by a person as the result of medical negligence, or (ii) the death of a person, due to alleged medical negligence of a health care provider or (B) contractually obligate the plaintiff in a medical negligence lawsuit to pay the defendants' reasonable legal fees, including costs and expenses, if the lawsuit fails to establish liability on the part of the defendants. Sets forth conditions to which health care agreements are subject, and requires that such agreements contain a notice to patients. Provides for the termination of health care agreements. Provides that no patient with an emergency medical condition shall be asked to enter into a health care agreement until after stabilization of the patient's condition. Prohibits certain types of threats to health care providers, and makes a violation of those provisions a Class A misdemeanor. Provides that a health care agreement that complies with the Affordable Health Care Act does not violate the provisions of the Medical Practice Act of 1987 concerning certain prohibited contracts or agreements and is not void or against the public policy of the State of Illinois.

LRB096 17957 ASK 33326 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Affordable Health Care Act.

6 Section 5. Findings and purpose.

7 (a) The General Assembly recognizes that many consumers of
8 health care services experience difficulty in trying to find
9 and obtain affordable health care services. The General
10 Assembly finds that many consumers of health care services
11 experience high out-of-pocket costs when receiving those
12 services. The General Assembly also finds that consumers should
13 have the right to voluntarily contract with and negotiate with
14 their health care providers in ways to decrease their
15 out-of-pocket costs for health care services.

16 The General Assembly acknowledges that jury awards in
17 Illinois have increased substantially, far in excess of the
18 rate of inflation or the consumer price index. Medical
19 malpractice liability insurance costs have increased
20 dramatically, causing physicians to leave the State, retire
21 early, and discontinue providing certain medical services. The
22 fear of jury awards in excess of a physician's professional
23 medical malpractice insurance policy limits is dramatically

1 and negatively affecting access to health care in the State.
2 Threats of a potential jury award above a physician's policy
3 limits are often used to coerce physicians into out-of-court
4 settlements. These fears are placing physicians in an
5 adversarial relationship with their patients. The General
6 Assembly finds this is contrary to the best interest of the
7 citizens of the State of Illinois.

8 Furthermore, the General Assembly acknowledges that many
9 health care providers order expensive diagnostic medical tests
10 and procedures on consumers based on the assumption that these
11 tests and procedures will decrease potential liability in the
12 event a claim is filed against them based upon allegations of
13 medical negligence. This unnecessarily increases the overall
14 costs for health care services. Health care providers are
15 experiencing difficulty in finding affordable medical
16 liability insurance because many insurance companies have
17 discontinued selling medical liability insurance in this
18 State. Many geographic areas of the State are unable to attract
19 health care providers, resulting in limited access to health
20 care services, due to the lack of affordable medical liability
21 insurance.

22 Allegations of medical negligence often include requests
23 for economic damages and non-economic damages such as pain and
24 suffering. The possibility of awards for economic damages and
25 non-economic damages have resulted in many insurance companies
26 discontinuing business operations in the State. This has

1 limited access to affordable medical liability insurance and
2 resulted in higher costs for liability insurance, which are
3 ultimately passed on to the consumers of health care services.
4 Inability to obtain affordable medical malpractice liability
5 insurance has resulted in many health care providers
6 discontinuing the provision of high risk medical services,
7 leaving the State, and discontinuing the provision of medical
8 services altogether.

9 (b) This Act is intended to:

10 (1) Specifically authorize the right of consumers to
11 voluntarily contract with health care providers in an
12 attempt to lower their costs for health care services by
13 entering into agreements that voluntarily limit the amount
14 of economic or non-economic damages, or both, that may be
15 recovered in a medical negligence lawsuit, or that
16 contractually obligate the plaintiff in a medical
17 negligence lawsuit to pay the defendants' reasonable legal
18 fees, including costs and expenses, if the lawsuit fails to
19 establish liability on the part of the defendants.

20 (2) Improve the overall quality of care delivered to
21 the public by health care providers throughout the State.

22 (3) Improve access to health care services by allowing
23 consumers and health care providers to voluntarily enter
24 into agreements, thereby encouraging health care providers
25 to continue to offer services in this State.

26 (4) Lower the overall cost of health care services by

1 reducing the number and amount of unnecessary diagnostic
2 tests and procedures that are performed on patients based
3 on the theory of "defensive medicine".

4 (5) Encourage health care providers to offer and
5 provide services in geographic areas of the State that have
6 traditionally been underserved or experienced shortages in
7 qualified health care providers.

8 Section 10. Definitions. In this Act:

9 "Consumer" means any person, individual, corporation,
10 association, partnership, limited liability company, sole
11 proprietorship, or other legal entity.

12 "Economic damages" means objectively verifiable monetary
13 losses incurred as a result of the provision of, use of, or
14 payment for health care services or medical products, such as
15 past and future medical expenses, loss of past and future
16 earnings, cost of obtaining domestic services, loss of
17 employment, and loss of business or employment opportunities.

18 "Effective date" means the date on which a health care
19 agreement becomes effective and binds the parties to the terms
20 of the agreement.

21 "Emergency medical condition" means a medical condition
22 manifesting itself by acute symptoms of sufficient severity
23 (including, but not limited to, severe pain) such that a
24 prudent layperson, who possesses an average knowledge of health
25 and medicine, could reasonably expect the absence of immediate

1 medical attention to result in:

2 (1) placing the health of the individual (or, with
3 respect to a pregnant woman, the health of the woman or her
4 unborn child) in serious jeopardy;

5 (2) serious impairment to bodily functions; or

6 (3) serious dysfunction of any bodily organ or part.

7 "Emergency services" means medical services furnished by a
8 health care provider that are needed to evaluate or stabilize
9 an emergency medical condition. "Emergency services" does not
10 refer to post-stabilization medical services.

11 "Group of health care providers" means any group,
12 association, partnership, corporation, limited liability
13 company, limited liability partnership, organization, or
14 collection of health care providers that provide health care
15 services to the general public or perform business operations
16 under a common business name.

17 "Health care agreement" means a written agreement entered
18 into between a patient and a health care provider that (A)
19 prohibits or limits economic damages or non-economic damages
20 arising out of (i) injuries alleged to have been received by a
21 patient as the result of medical negligence or (ii) the death
22 of a patient, due to alleged medical negligence services
23 provided by a health care provider or (B) contractually
24 obligates the plaintiff in a medical negligence lawsuit to pay
25 the defendants' reasonable legal fees, including costs and
26 expenses, if the lawsuit fails to establish liability on the

1 part of the defendants.

2 "Health care provider" means any physician, nurse,
3 licensed advanced practice nurse, licensed physician
4 assistant, chiropractor, licensed hospital facility, licensed
5 ambulatory surgery center, or other person that is licensed or
6 otherwise authorized to provide or deliver health care
7 services.

8 "Health care service" means any service provided to a
9 person by a health care provider that relates to, or is for the
10 purpose of, preventing, alleviating, curing, or healing human
11 illness or injury.

12 "Non-economic damages" means damages for physical and
13 emotional pain, suffering, inconvenience, physical impairment,
14 mental anguish, disfigurement, loss of enjoyment of life, loss
15 of society and companionship, loss of consortium, hedonic
16 damages, injury to reputation, and all other non-pecuniary
17 losses of any kind or nature.

18 "Nurse" means a person licensed under the Nursing and
19 Advanced Practice Nursing Act.

20 "Party" means any person who is a plaintiff or a defendant
21 in a medical negligence lawsuit.

22 "Patient" means any person who receives health care
23 services from a health care provider.

24 "Person" means any individual, corporation, association,
25 partnership, limited liability company, sole proprietorship,
26 or any other legal entity.

1 "Physician" means a person licensed under the Medical
2 Practice Act of 1987 to practice medicine in all of its
3 branches or a chiropractic physician licensed to treat human
4 ailments without the use of drugs and without operative
5 surgery.

6 "Post-stabilization medical services" means health care
7 services furnished by a health care provider to a patient after
8 stabilization of an emergency medical condition.

9 "Stabilization" means, with respect to an emergency
10 medical condition, to provide such medical treatment of the
11 condition as may be necessary to ensure, within reasonable
12 medical probability, that no material deterioration of the
13 condition is likely to result.

14 "Termination date" means the date after which a health care
15 agreement becomes terminated and no longer binds the parties to
16 the agreement.

17 Section 15. Applicability. This Act shall apply to and
18 shall govern all health care agreements between a patient and a
19 health care provider that (A) voluntarily limit economic
20 damages or non-economic damages arising out of (i) injuries
21 alleged to have been received by a person as the result of
22 medical negligence, or (ii) the death of a person, due to
23 alleged medical negligence of a health care provider or (B)
24 contractually obligate the plaintiff in a medical negligence
25 lawsuit to pay the defendants' reasonable legal fees, including

1 costs and expenses, if the lawsuit fails to establish liability
2 on the part of the defendants.

3 Section 20. Minor parties. A minor child shall be bound by
4 a health care agreement executed on his or her behalf by any
5 parent or legal guardian of the minor child. A minor child
6 shall be bound by such an agreement irrespective of whether
7 that parent is also a minor. A minor child shall be bound by a
8 health care agreement executed on his or her behalf
9 irrespective of whether the agreement was entered into before
10 the birth of the minor child. An agreement so executed shall
11 not be voidable because of the minority of the parent, and for
12 such purposes a minor who is a parent shall be deemed to have
13 the full legal capacity as if that parent were above the age of
14 majority.

15 Section 25. Conditions. Every health care agreement shall
16 be subject to all of the following conditions:

17 (1) The agreement shall be voluntarily executed by the
18 patient receiving health care services or the patient's
19 legal parent or guardian prior to, during, or after the
20 term of provision of services by a health care provider.

21 (2) The agreement must be a separate instrument
22 complete in itself and not a part of any other contract or
23 instrument.

24 (3) The agreement may not limit, impair, or waive any

1 substantive rights or defenses of any patient, other than
2 the right of a patient to (A) allege damages and receive an
3 award for economic damages or non-economic damages in a
4 medical negligence lawsuit or (B) contractually obligate
5 the plaintiff in a medical negligence lawsuit to pay the
6 defendants' reasonable legal fees, including costs and
7 expenses, if the lawsuit fails to establish liability on
8 the part of the defendants.

9 (4) The agreement may not limit, impair, or waive the
10 procedural rights to be heard, to present material
11 evidence, to cross-examine witnesses, and to be
12 represented by an attorney, or other procedural rights of
13 due process of any party.

14 (5) The original agreement may be in written or
15 electronic format, and any patient executing such an
16 agreement shall be given a copy of the signed agreement
17 immediately after executing the agreement or at any time
18 when requested by the patient.

19 (6) The agreement shall remain in effect and shall
20 apply to all health care services provided to the patient
21 on or after the effective date by the health care provider
22 or providers who is, or are, a party to the agreement.

23 (7) The agreement shall include an effective date
24 clearly indicating the date the agreement is to become
25 effective; the effective date may be a date prior to the
26 date the agreement is executed.

1 (8) The agreement may be amended to include additional
2 health care providers with the written consent of the
3 patient, by including a written amendment with the names of
4 the additional health care providers and the effective date
5 or dates of the amendment.

6 (9) The agreement may be terminated by the patient at
7 any time by notifying the health care provider in writing
8 via certified mail, return receipt requested, at the
9 address listed on the original agreement, and the
10 termination shall become effective on the date the
11 termination letter is postmarked by the United States
12 Postal Service.

13 (10) Notwithstanding any other provision in this Act,
14 an agreement under this Act may limit economic damages only
15 to the extent those damages exceed \$500,000.

16 Section 30. Termination of a health care agreement. Any
17 health care agreement subject to this Act may be terminated at
18 any time by the patient by notifying the health care provider
19 in writing via certified mail, return receipt requested, at the
20 address listed on the original agreement, and the termination
21 shall become effective on the date the termination letter is
22 postmarked by the United States Postal Service. After the
23 termination date of a health care agreement, a patient shall
24 not be subject to any limitations on economic damages or
25 non-economic damages for claims based on medical negligence for

1 health care services provided after the termination date.
2 Health care services provided to a patient by a health care
3 provider prior to the termination date of a health care
4 agreement shall be subject to the limitations regarding
5 economic damages or non-economic damages contained in the
6 agreement, and the plaintiff in a medical negligence lawsuit
7 shall be contractually obligated to pay the defendants'
8 reasonable legal fees, including costs and expenses, if the
9 lawsuit fails to establish liability on the part of the
10 defendants in the agreement.

11 Section 35. Emergencies. No patient with an emergency
12 medical condition shall be asked to enter into a health care
13 agreement until after stabilization of the patient's
14 condition. Nothing contained in this Act shall prohibit a
15 health care provider from entering into a health care agreement
16 with a patient after stabilization of the emergency medical
17 condition or while providing post-stabilization medical
18 services.

19 Section 40. Groups of health care providers. Any patient
20 may enter into a health care agreement with a group of health
21 care providers by including the name of the group on the
22 agreement. The terms of the agreement shall apply to the
23 patient and all members of the group, irrespective of whether
24 the individual members of the group of health providers sign

1 the agreement. A health care agreement signed by a patient and
2 any authorized representative of a group of health care
3 providers shall apply to each and every member of the group,
4 thereby restricting or limiting a patient's right to economic
5 damages or non-economic damages that may result from negligence
6 caused by any member of the group.

7 Section 45. Hospitalization. A patient may sign a health
8 care agreement with a hospital that limits or restricts a
9 patient's right to economic damages or non-economic damages or
10 that contractually obligates the plaintiff in a medical
11 negligence lawsuit to pay the defendants' reasonable legal
12 fees, including costs and expenses, and the agreement may
13 include language that applies to all health care providers who
14 provide health care services to the patient during
15 hospitalizations up to and through discharge from the hospital,
16 irrespective of whether those health care providers are
17 employees, agents, or representatives of the hospital.

18 Section 50. Required language. Every health care agreement
19 shall contain, immediately above the signature lines, in
20 upper-case type in printed letters of at least 3/16-inch
21 height, captions and a paragraph as follows:

22 AGREEMENT LIMITING DAMAGES IN NEGLIGENCE CLAIMS AND BINDING THE
23 PLAINTIFF TO PAY THE DEFENDANTS' LEGAL FEES IN THE EVENT OF A
24 TRIAL

1 NOTICE TO PATIENT

2 BY SIGNING THIS AGREEMENT, YOU ARE LIMITING YOUR RIGHT
3 TO DAMAGES THAT MAY RESULT FROM NEGLIGENCE DURING YOUR
4 TREATMENT OR CARE BY THE HEALTH CARE PROVIDER OR GROUP OF
5 HEALTH CARE PROVIDERS LISTED BELOW. YOU ARE ALSO ENTERING INTO
6 AN AGREEMENT THAT WILL OBLIGATE THE PLAINTIFF TO PAY THE
7 DEFENDANTS' REASONABLE LEGAL FEES, INCLUDING COSTS AND
8 EXPENSES, IN THE EVENT OF A TRIAL, IF AT TRIAL THE JURY FAILS
9 TO ESTABLISH LIABILITY ON THE PART OF THE DEFENDANTS. THIS
10 AGREEMENT MAY BE TERMINATED BY YOU AT ANY TIME BY SENDING A
11 WRITTEN NOTICE VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO
12 YOUR HEALTH CARE PROVIDER AT THE ADDRESS LISTED BELOW. HEALTH
13 CARE SERVICES PROVIDED TO YOU AFTER TERMINATION OF THIS
14 AGREEMENT SHALL NOT BE SUBJECT TO DAMAGE LIMITATIONS FOR CLAIMS
15 BASED ON ALLEGATIONS OF NEGLIGENCE. ALL HEALTH CARE SERVICES
16 PROVIDED TO YOU AFTER SIGNING THIS DOCUMENT SHALL BE SUBJECT TO
17 THE LIMITATIONS FOR DAMAGES CONTAINED IN THIS AGREEMENT AND
18 SHALL OBLIGATE YOU TO PAY THE DEFENDANTS' LEGAL COSTS AND
19 EXPENSES IF YOU FAIL TO ESTABLISH DEFENDANTS' LIABILITY AT
20 TRIAL. IF YOU HAVE QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD
21 CONTACT AN ATTORNEY TO DISCUSS THE LEGAL CONSEQUENCES OF
22 SIGNING THIS DOCUMENT.

23 Section 55. Admissibility as evidence. A health care
24 agreement subject to this Act shall be admissible as evidence
25 in any court, mediation panel, or arbitration hearing or before

1 any tribunal, board, agency, or person. Any person challenging
2 the validity of a health care agreement shall have the burden
3 of proving that the agreement was not voluntarily entered into
4 or that consent to the agreement was based on willful and
5 wanton fraud or deceit.

6 Section 60. Threats to health care providers. No person,
7 attorney, agent, or representative shall orally, or in writing,
8 attempt to coerce, threaten, intimidate, or extort another
9 person to induce settlement of a medical negligence lawsuit by
10 referring to, implying, or stating the plaintiff will seek
11 damages in excess of a health care provider's medical
12 malpractice liability insurance policy limits. No person,
13 attorney, agent, or representative shall orally, or in writing,
14 attempt to coerce, threaten, intimidate, or extort another
15 person to induce settlement of a medical negligence lawsuit by
16 referring to, implying, or stating the plaintiff will seek the
17 health care provider's personal assets to satisfy any judgment
18 rendered in a medical negligence lawsuit. Any person convicted
19 of violating any of the provisions of this Section 60 is guilty
20 of a Class A misdemeanor.

21 Section 90. The Medical Practice Act of 1987 is amended by
22 changing Section 29 as follows:

23 (225 ILCS 60/29) (from Ch. 111, par. 4400-29)

1 (Section scheduled to be repealed on December 31, 2010)

2 Sec. 29. Except as otherwise provided in this Section, any
3 ~~Any~~ contract or agreement signed by any person prior to, or as
4 a condition of, such person receiving medical treatment in any
5 form, which releases from liability any physician, hospital or
6 other health care provider for any malfeasance, misfeasance or
7 nonfeasance in the course of administering any medical
8 treatment or service is void and against the public policy of
9 the State of Illinois. A health care agreement that complies
10 with the Affordable Health Care Act does not violate this
11 Section and is not void or against the public policy of the
12 State of Illinois.

13 (Source: P.A. 85-4.)