

HB 1336 – AS INTRODUCED

2010 SESSION

10-2105

06/03

HOUSE BILL 1336

AN ACT relative to health care liability claims.

SPONSORS: Rep. W. Smith, Rock 18; Rep. Boyce, Belk 5; Rep. Hagan, Rock 7; Rep. Cebrowski, Hills 18

COMMITTEE: Judiciary

ANALYSIS

This bill limits health care liability claims.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to health care liability claims.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Paragraphs; Medical Injury Actions; Definitions. Amend RSA 507-E:1 by inserting after paragraph I the following new paragraphs:

I-a. "Health care institution" means:

- (a) An ambulatory surgical center.
- (b) An assisted living facility as defined in RSA 151-E:2.
- (c) An emergency medical services provider.
- (d) A hospice.
- (e) A hospital.
- (f) An intermediate care facility for the intellectually disabled.
- (g) A nursing home.

I-b. "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed, certified, registered, or chartered by the state of New Hampshire to provide health care, including:

- (a) A registered nurse.
- (b) A dentist.
- (c) A podiatrist.
- (d) A pharmacist.
- (e) A chiropractor.
- (f) An optometrist.
- (g) A health care institution.

2 New Subdivision; Medical Liability. Amend RSA 507-E by inserting after section 4 the following new subdivision:

Medical Liability

507-E:5 Theory of Recovery; Informed Consent. In a suit against a physician or health care provider involving a health care liability claim that is based on the failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could

have influenced a reasonable person in making a decision to give or withhold consent.

507-E:6 Duty of Physician or Health Care Provider. Before a patient or a person authorized to consent for a patient gives consent to any medical care or surgical procedure, the physician or health care provider shall disclose to the patient or person authorized to consent for the patient the risks and hazards involved in that kind of care or procedure. A physician or health care provider shall be considered to have complied with the requirements of this section if disclosure is made as provided in RSA 507-E:7.

507-E:7 Manner of Disclosure. Consent to medical care shall be considered effective under this subdivision if it is given in writing, signed by the patient or a person authorized to give the consent and by a competent witness, and the written consent specifically states the risks and hazards that are involved in the medical care or surgical procedure.

507-E:8 Liability for Emergency Care.

I. No person who in good faith administers emergency care is liable in civil damages for an act performed during the emergency unless the act is wilfully or wantonly negligent.

II. Paragraph I shall not apply to care administered:

- (a) For or in expectation of remuneration, provided that being legally entitled to receive remuneration for the emergency care rendered shall not determine whether or not the care was administered for or in anticipation of remuneration.
- (b) By a person who was at the scene of the emergency because he or she or a person he or she represents as an agent was soliciting business or seeking to perform a service for remuneration.
- (c) To a person whose negligent act or omission was a producing cause of the emergency for which care is administered.

507-E:9 Unlicensed Medical Personnel. Persons not licensed or certified in the healing arts who in good faith administer emergency care as emergency medical service personnel are not liable in civil damages for an act performed in administering the care unless the act is wilfully or wantonly negligent regardless of whether the care is provided for or in expectation of remuneration.

507-E:10 Standard of Proof in Cases Involving Emergency Medical Care. In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising out of the provision of emergency medical care

in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, the claimant may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the claimant shows by a preponderance of the evidence that the physician or health care provider, with wilful and wanton negligence, deviated from the degree of care and skill that is reasonably expected of an ordinarily prudent physician or health care provider in the same or similar circumstances.

507-E:11 Statute of Limitations on Health Care Liability Claims. Notwithstanding any other law, no health care liability claim may be commenced unless the action is filed within 2 years from the occurrence of the act or omission or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed; provided that, minors under the age of 12 years shall have until their fourteenth birthday in which to file the claim, or have the claim filed on their behalf.

507-E:12 Qualifications of Expert Witness in Suit Against Physician. In a suit involving a health care liability claim against a physician for injury to or death of a patient, a person may qualify as an expert witness on the issue of whether the physician departed from accepted standards of medical care only if the person is a physician who:

- I. Is practicing medicine at the time such testimony is given or was practicing medicine at the time the claim arose.
- II. Has knowledge of accepted standards of medical care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim.
- III. Is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of medical care.

507-E:13 Qualifications of Expert Witness in Suit Against Health Care Provider. In a suit involving a health care liability claim against a health care provider, a person may qualify as an expert witness on the issue of whether the health care provider departed from accepted standards of care only if the person:

- I. Is practicing health care in a field of practice that involves the same type of care or treatment as that delivered by the defendant health care provider, if the defendant health care provider is an individual, at the time the testimony is given or was practicing that type of health care at the time the claim arose.

II. Has knowledge of accepted standards of care for health care providers for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim.

III. Is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of health care.

507-E:14 Arbitration Agreements. No physician, professional association of physicians, or health care provider shall request or require a patient or prospective patient to execute an agreement to arbitrate a health care liability claim.

507-E:15 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subdivision which can be given effect without the invalid provisions or application, and to this end the provisions of this subdivision are severable.

3 Effective Date. This act shall take effect January 1, 2011.