

1 S.146

2 Introduced by Senator Mullin

3 Referred to Committee on

4 Date:

5 Subject: Court procedure; pleading and practice; notice of intent to file a claim
6 for medical malpractice

7 Statement of purpose of bill as introduced: This bill proposes to require a
8 claimant to file a notice of intent to file a claim 182 days prior to filing a
9 complaint for medical malpractice.

10 An act relating to requiring a notice of intent to file a claim for medical
11 malpractice cases

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 12 V.S.A. § 1043 is added to read:

14 § 1043. NOTICE OF INTENT TO FILE A CLAIM FOR MEDICAL

15 MALPRACTICE

16 (a) Except as otherwise provided in this section, a person shall not file a
17 civil action against a health care provider in which it is alleged that personal
18 injury or wrongful death resulted from negligence unless the person has given
19 the health care provider 182 days' written notice before the action is
20 commenced.

1 (b) The notice of intent to file a claim required by subsection (a) of this
2 section shall be mailed to the last known professional business address or
3 residential address of the health care provider who is subject of the claim.

4 (c) The 182-day notice period required by subsection (a) of this section
5 shall be decreased to 90 days if:

6 (1) the claimant has previously filed a 182-day notice against another
7 health care provider involved in the claim; or

8 (2) the claimant has filed a complaint and commenced an action against
9 any health care provider involved in the claim.

10 (d) The notice of intent to file a claim required by subsection (a) of this
11 section shall not be required if the claimant did not identify and could not
12 reasonably have identified a health care provider to whom notice should be
13 sent as a potential party to the action before filing the complaint.

14 (e) The notice of intent to file a claim given to a health care provider shall
15 include all of the following information:

16 (1) the factual basis for the claim;

17 (2) the applicable standard of care alleged by the claimant;

18 (3) the manner in which it is claimed that the applicable standard of care
19 was breached by the health care provider;

20 (4) the alleged action that should have been taken to achieve compliance
21 with the alleged standard of care;

1 (5) the manner in which it is alleged the breach of the standard of care
2 was the proximate cause of the injury claimed in the notice;

3 (6) the names of all health care providers that the claimant intends to
4 notify under this section in relation to a claim; and

5 (7) any additional information the claimant chooses to provide.

6 (f) No later than 56 days after giving notice under this section, the claimant
7 shall allow the health care provider receiving the notice access to all the
8 medical records related to the claim that are in the claimant's control and shall
9 furnish a release for any medical records the claimant knows about that are
10 related to the claim that are not in the claimant's control. This subsection shall
11 not restrict a patient's right of access to his or her medical records under any
12 other law.

13 (g) Within 150 days after receiving a notice of intent to file a claim under
14 subsection (a) of this section, the health care provider or authorized
15 representative against whom the claim is made shall furnish to the claimant or
16 claimant's authorized representative a written response that contains a
17 statement including all of the following information:

18 (1) the factual basis for any defenses to the claim;

19 (2) the standard of care that the health care provider claims to be
20 applicable to the action;

1 (3) the manner in which it is claimed by the health care provider that
2 there was or was not compliance with the applicable standard of care; and

3 (4) the manner in which the health care provider contends that the
4 alleged negligence of the health care provider was or was not a proximate
5 cause of the claimant's alleged injury.

6 (h) The claimant may commence an action alleging medical malpractice if
7 the health care provider does not respond within 150 days pursuant to
8 subsection (g) of this section. If the claimant notifies the court that the
9 provider has not responded within 150 days, interest on any judgment against
10 the health care provider shall accrue from 150 days before the date of judgment
11 rather than the date of judgment. The claimant and provider may agree to
12 extend the 150-day period at any time before it expires.

13 (i) If at any time during the applicable notice period a health care provider
14 receiving notice under this section informs the claimant in writing that the
15 health care provider does not intend to settle the claim within the applicable
16 notice period, the claimant may commence an action alleging medical
17 malpractice against the health care provider, provided that the claim is not
18 barred by another provision of law.

19 (j) A civil action against a health care provider filed less than six months
20 before the expiration of the statute of limitations as to any claimant shall be
21 exempt from compliance with this section.

1 (k) Nothing in this section shall prohibit a person from seeking a court
2 order to preserve and permit inspection of tangible evidence.

3 (l) As used in this section, "health care provider" shall have the same
4 meaning as in 18 V.S.A. § 9432.

5 Sec. 2. 12 V.S.A. § 1912 is amended to read:

6 § 1912. EXPRESSION OF REGRET OR APOLOGY BY HEALTH CARE
7 PROVIDER INADMISSIBLE

8 (a)(1) An oral expression of regret or apology, including any oral good
9 faith explanation of how a medical error occurred, made by or on behalf of a
10 health care provider or health care facility, that is provided within 30 days of
11 when the provider or facility knew or should have known of the consequences
12 of the error, does not constitute a legal admission of liability for any purpose
13 and shall be inadmissible in any civil or administrative proceeding against the
14 health care provider or health care facility, including any arbitration or
15 mediation proceeding.

16 (2) A health care provider or health care facility shall fully inform a
17 patient and, when appropriate, a patient's family when a patient suffers an
18 unanticipated outcome with significant medical complication resulting from a
19 provider's mistake.

20 (b) In any civil or administrative proceeding against a health care provider
21 or health care facility, including any arbitration or mediation proceeding, the

1 health care provider, health care facility, or any other person who makes an
2 oral expression of regret or apology, including any oral good faith explanation
3 of how a medical error occurred, on behalf of the provider or facility, that is
4 provided within 30 days of when the provider or facility knew or should have
5 known of the consequences of the potential adverse outcome, may not be
6 examined by deposition or otherwise with respect to the expression of regret,
7 apology, or explanation.

8 (c) As used in this section:

9 (1) "Health care facility" shall have the same meaning as in 18 V.S.A.
10 § 9402(7).

11 (2) "Health care provider" shall have the same meaning as in 18 V.S.A.
12 § 9402(8).

13 (d) The liability protections afforded by subsections (a) and (b) of this
14 section shall not be construed to limit access to information that is otherwise
15 discoverable.

16 (e) This section shall apply only to medical errors that occur on or after
17 July 1, 2006.

18 Sec. 3. EFFECTIVE DATE

19 This act shall take effect on July 1, 2013.