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H.441

Introduced by Representatives Morrissey of Bennington, Batchelor of Derby,
Beyor of Highgate, Branagan of Georgia, Browning of
Arlington, Canfield of Fair Haven, Devereux of Mount Holly,
Gage of Rutland City, Gamache of Swanton, Graham of
Williamstown, Hebert of Vernon, Higley of Lowell, Hubert of
Milton, LaClair of Barre Town, Lawrence of Lyndon, Lewis of
Berlin, Martel of Waterford, Myers of Essex, Parent of
St. Albans City, Purvis of Colchester, Quimby of Concord,
Shaw of Pittsford, Shaw of Derby, Smith of New Haven, Strong
of Albany, Tate of Mendon, Van Wyck of Ferrisburgh, Viens of
Newport City, and Willhoit of St. Johnsbury

Referred to Committee on

Date:

Subject: Court procedure; medical malpractice actions

Statement of purpose of bill as introduced: This bill proposes several measures
related to medical malpractice claims. The bill proposes to:

- (1) establish a system of mandatory arbitration for medical malpractice
claims;
- (2) require a claimant to file a notice of intent to file a claim 182 days
prior to filing a complaint for medical malpractice;

1 (3) establish limits on the amount of damages recoverable in medical
2 malpractice actions;

3 (4) provide that a defendant's compliance with the State's health care
4 cost containment initiatives is an affirmative defense in medical malpractice
5 actions;

6 (5) establish a fund to compensate persons who suffer injury as a result
7 of the State's health care cost containment initiatives; and

8 (6) establish screening panels for medical malpractice claims.

9 An act relating to medical malpractice actions

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

11 Sec. 1. 1992 Acts and Resolves No. 160, Sec. 50 is amended to read:

12 Sec. 50. EFFECTIVE DATE

13 Secs. 46, 47, 48, and 49, amending ~~chapter 215 of Title 12~~ 12 V.S.A.
14 chapter 215 to provide for mandatory arbitration in medical malpractice cases
15 and admission of practice guidelines, shall take effect on ~~the effective date of a~~
16 ~~universal access health care system enacted by the general assembly~~ July 1,
17 2015 and apply to all claims arising on or after that date.

1 Sec. 2. 12 V.S.A. § 1043 is added to read:

2 § 1043. NOTICE OF INTENT TO FILE A CLAIM FOR MEDICAL
3 MALPRACTICE

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

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

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

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

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

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

- 1 (e) The notice of intent to file a claim given to a health care provider shall
2 include all of the following information:
- 3 (1) the factual basis for the claim;
4 (2) the applicable standard of care alleged by the claimant;
5 (3) the manner in which it is claimed that the applicable standard of care
6 was breached by the health care provider;
7 (4) the alleged action that should have been taken to achieve compliance
8 with the alleged standard of care;
9 (5) the manner in which it is alleged the breach of the standard of care
10 was the proximate cause of the injury claimed in the notice;
11 (6) the names of all health care providers that the claimant intends to
12 notify under this section in relation to a claim; and
13 (7) any additional information the claimant chooses to provide.
- 14 (f) No later than 56 days after giving notice under this section, the claimant
15 shall allow the health care provider receiving the notice access to all the
16 medical records related to the claim that are in the claimant's control and shall
17 furnish a release for any medical records the claimant knows about that are
18 related to the claim that are not in the claimant's control. This subsection shall
19 not restrict a patient's right of access to his or her medical records under any
20 other law.

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

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

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

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

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

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

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

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

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

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

14 Sec. 3. 12 V.S.A. § 1913 is added to read:

15 § 1913. MEDICAL MALPRACTICE; LIMITATIONS ON DAMAGES

16 (a) The damages awarded for pain and suffering or other noneconomic loss
17 in an action based on medical malpractice shall not exceed the amount of:

18 (1) \$250,000.00 per claimant if the defendant is a natural person; and

19 (2) \$500,000.00 per claimant and \$250,000.00 per defendant if the
20 defendant is not a natural person.

1 (b) The damages awarded for wrongful death in an action based on medical
2 malpractice shall not exceed the amount of \$500,000.00 per claimant.

3 (c) The amount of punitive damages awarded shall not exceed \$200,000.00
4 or twice the total of economic and noneconomic losses, whichever is greater.

5 Sec. 4. 12 V.S.A. § 1914 is added to read:

6 § 1914. MEDICAL MALPRACTICE; COMPLIANCE WITH HEALTH
7 CARE COST CONTAINMENT INITIATIVES; AFFIRMATIVE
8 DEFENSE

9 In an action based on medical malpractice, it shall be an affirmative
10 defense, to be proven by a preponderance of the evidence, that at the time of
11 the alleged malpractice the defendant was acting in compliance with the State's
12 health care cost containment initiatives.

13 Sec. 5. 12 V.S.A. chapter 219 is added to read:

14 CHAPTER 219. COMPENSATION PROGRAM FOR INJURIES
15 SUFFERED AS A RESULT OF HEALTH CARE
16 COST CONTAINMENT INITIATIVES

17 § 7201. DEFINITIONS

18 As used in this chapter:

19 (1) "Board" means the Health Care Cost Containment Initiative Injury
20 Review Board established by section 7203 of this title.

1 (2) “Compensable injury” means an injury suffered when care is
2 withheld from a patient or a patient is denied care as a result of the State’s
3 health care cost containment initiatives, irrespective of fault by the health care
4 provider.

5 (3) “Department” means the Department of Financial Regulation.

6 (4) “Health care provider” shall have the same meaning as in 18 V.S.A.
7 § 9402(7).

8 § 7202. INJURIES SUFFERED AS RESULT OF HEALTH CARE COST
9 CONTAINMENT INITIATIVES

10 (a) A health care cost containment initiative injury compensation program
11 is established under the direction and authority of the Department of Financial
12 Regulation. The Program shall provide for the payment of compensation from
13 the Health Care Cost Containment Injury Compensation Special Fund
14 established by section 7204 of this title to any patient injured when care is
15 withheld or denied as a result of the State’s health care cost containment
16 initiatives. The Health Care Cost Containment Initiative Injury Review Board
17 established by section 7203 of this title shall determine whether a person’s
18 application for compensation from the Fund shall be granted.

19 (b) The Department shall adopt rules under section 7205 of this title for
20 purposes of administering the Health Care Cost Containment Initiative Injury
21 Compensation Program established by this chapter.

1 § 7203. HEALTH CARE COST CONTAINMENT INITIATIVE INJURY

2 REVIEW BOARD

3 (a)(1) A health care cost containment initiative injury review board is
4 established under the direction and authority of the Commissioner of Financial
5 Regulation for the purpose of hearing and deciding applications for
6 compensation submitted pursuant to the Health Care Cost Containment
7 Initiative Injury Compensation Program established by this chapter.

8 (2) The Board shall consist of the following five members appointed by
9 the Governor:

10 (A) one primary care physician licensed to practice in this State;

11 (B) one attorney licensed to practice in this State who has experience
12 bringing medical malpractice actions;

13 (C) one person employed by a health insurer as defined in 18 V.S.A.
14 § 9402(8); and

15 (D) two public members.

16 (b) The Health Care Cost Containment Initiative Injury Review Board shall
17 have the authority to:

18 (1) receive and review applications filed by a patient seeking
19 compensation for an injury the patient alleges to have suffered on account of
20 being denied or withheld care as a result of the State's health care cost
21 containment initiatives; and

1 (2) determine whether the patient has suffered a compensable injury
2 and, if so, order that the Department compensate the patient from the Health
3 Care Cost Containment Injury Compensation Special Fund established by
4 section 7204 of this title.

5 (c) The Board shall meet at least monthly to review and determine
6 applications. Members of the Board are entitled to compensation and expenses
7 as provided under 32 V.S.A. § 1010.

8 (d) The Board may employ staff and hire consultants as are needed to carry
9 out the provisions of this chapter. Staff and consultants retained by the Board
10 shall be compensated from the Health Care Cost Containment Injury
11 Compensation Special Fund established by section 7204 of this title and shall
12 not be considered State employees.

13 § 7204. HEALTH CARE COST CONTAINMENT INJURY

14 COMPENSATION SPECIAL FUND

15 (a) There is established a fund to be known as the Health Care Cost
16 Containment Injury Compensation Special Fund. The Fund shall be
17 administered by the Department of Financial Regulation. The purpose of the
18 Fund shall be to compensate patients injured by the withholding or denial of
19 care as a result of the State's health care cost containment initiatives,
20 irrespective of fault by the health care provider.

1 (b) The Fund shall consist of appropriations made to it by the General
2 Assembly and any grants or donations the Department receives on behalf of
3 the Fund. When the Department receives a compensation award order issued
4 by the Board under subdivision 7203(b)(2) of this title, the Department shall
5 cause a payment to be issued from the Fund to the petitioner in the amount of
6 the award.

7 (c) Balances in the Fund at the end of the fiscal year shall be carried over
8 and remain in the Fund. The Fund shall be audited annually by the State
9 Auditor.

10 § 7205. RULEMAKING

11 The Commissioner of Financial Regulation shall adopt rules to administer
12 the Health Care Cost Containment Initiative Injury Compensation Program
13 established by this chapter. The rules shall include rules for proceedings
14 before the Health Care Cost Containment Initiative Injury Review Board and
15 shall describe how compensation payments shall be made from the Health Care
16 Cost Containment Injury Compensation Special Fund to successful petitioners.

17 Sec. 6. 12 V.S.A. chapter 221 is added to read:

18 CHAPTER 221. SCREENING PANELS FOR
19 MEDICAL INJURY CLAIMS

1 § 7301. FINDINGS, PURPOSE, AND INTENT

2 (a) Availability and affordability of insurance against liability for medical
3 injury is essential for the protection of patients as well as ensuring availability
4 of and access to essential medical and hospital care. This chapter affirms the
5 intent of the General Assembly to contain the costs of the medical injury
6 reparations system and to promote availability and affordability of insurance
7 against liability for medical injury. Claims for medical injury should be
8 resolved as early and inexpensively as possible to contain system costs.
9 Claims that are resolved before court determination cost less to resolve than
10 claims that must be resolved by a court. Meritorious claims should be
11 identified as quickly as possible, as should nonmeritorious claims. Defendants
12 should consider paying or compromising on meritorious claims, and plaintiffs
13 should consider withdrawing or compromising on nonmeritorious claims, as
14 soon as the merits of the claims are known to the parties. Presentation of
15 claims to a medical review panel is intended to help identify both meritorious
16 and nonmeritorious claims without the delay and expense of a court trial. It is
17 essential to the effectiveness of the panel process that panel proceedings be
18 confidential unless and until a matter heard by a panel proceeds to trial. It is
19 equally essential to the effectiveness of the panel process that a panel's
20 unanimous findings be presented to the jury in any matter that is not resolved
21 prior to trial. The panel process will encourage the prompt resolution of

1 claims, because both sides will be given an objective view of the merits. If the
2 panel finds that a claim has merit, the defendant will be more likely to pay the
3 claim or negotiate a compromise that is favorable to the claimant. If the panel
4 finds that the claim lacks merit, the claimant is more likely to withdraw the
5 claim or accept a nominal settlement.

6 (b) The purposes of pretrial screening panels are:

7 (1) to identify claims of professional negligence which merit
8 compensation and to encourage early resolution of those claims prior to
9 commencement of a lawsuit; and

10 (2) to identify claims of professional negligence and to encourage early
11 withdrawal or dismissal of nonmeritorious claims.

12 § 7302. DEFINITIONS

13 As used in this chapter:

14 (1) “Action for medical injury” means any action against a medical care
15 provider, whether based in tort, contract, or otherwise, to recover damages on
16 account of medical injury.

17 (2) “Medical care provider” means a physician, physician assistant,
18 registered or licensed practical nurse, hospital, clinic, or other health care
19 agency licensed by the State or otherwise lawfully providing medical care or
20 services, or an officer, employee, or agent thereof acting in the course and
21 scope of employment.

1 (3) “Medical injury” or “injury” means any adverse, untoward, or
2 undesired consequences arising out of or sustained in the course of
3 professional services rendered by a medical care provider, whether resulting
4 from negligence, error, or omission in the performance of such services; from
5 rendition of such services without informed consent or in breach of warranty or
6 in violation of contract; from failure to diagnose; from premature abandonment
7 of a patient or of a course of treatment; from failure properly to maintain
8 equipment or appliances necessary to the rendition of such services; or
9 otherwise arising out of or sustained in the course of such services.

10 § 7303. FORMATION AND PROCEDURE

11 (a) The Supreme Court shall maintain a list of retired judges, persons with
12 judicial experience, and other qualified persons to serve on screening panels
13 under this chapter from which the Chief Justice shall choose a panel chair
14 under subsection (b) of this section. The Court shall maintain lists of health
15 care practitioners and attorneys with litigation experience, recommended by
16 their respective professional organizations to serve on screening panels under
17 this chapter. As directed by the Court, the professional organization of each
18 profession shall inform the Court of the names of volunteers to serve on
19 panels.

1 (b) Screening panel members shall be selected as follows:

2 (1) Upon the entry of a medical injury case, the clerk of the Superior
3 Court in which the medical injury case is filed shall notify the Chief Justice of
4 the Supreme Court.

5 (2) Within 14 days following the return date, the Chief Justice shall
6 choose a retired judge, a person with judicial experience, or other qualified
7 person from the list maintained by the Court to serve as chair of the panel to
8 screen the claim. If at any time the Chair chosen under this subsection is
9 unable or unwilling to serve, the Chief Justice shall appoint a replacement
10 following the procedure in this subsection for the initial appointment of the
11 Chair. Persons other than retired judges or those with judicial experience may
12 be appointed as Chair based on appropriate trial experience. If the Chief
13 Justice appoints as Chair a person who is not a retired judge or who does not
14 have judicial experience, each side may make one challenge to the
15 appointment.

16 (3) The Chief Justice shall notify the clerk of the name of the person
17 designated to serve as Chair and shall provide the clerk with the lists of health
18 care practitioners, health care providers, and attorneys maintained under this
19 section. Upon notification of the Chief Justice's choice of chair, the clerk shall
20 notify the Chair and the parties, and provide them with the lists of health care

1 practitioners, health care providers, and attorneys. The Chair shall choose two
2 or three additional panel members from the lists as follows:

3 (A) One attorney.

4 (B) One health care practitioner. If possible, the Chair shall choose a
5 practitioner who practices in the same specialty or profession as the person or
6 entity accused of professional negligence.

7 (C) Where the claim involves more than one person accused of
8 professional negligence, the Chair may choose a fourth panel member who is a
9 health care practitioner. If possible, the Chair shall choose a practitioner or
10 provider in the specialty or profession of a person accused.

11 (D) When agreed upon by all the parties, the list of available panel
12 members may be enlarged in order to select a panel member who is agreed to
13 by the parties but who is not on the Court's list.

14 (4) The screening panel process is not intended to delay or postpone the
15 trial of a medical injury case. The Superior Court may establish a trial date
16 and all interim deadlines as it would in any other case.

17 (5) The Supreme Court shall establish the compensation of the panel
18 Chair if he or she is not otherwise compensated by the State. Other panel
19 members shall serve without compensation or payment of expenses.

1 (6) The clerk of the Superior Court in the unit in which a medical injury
2 case is filed shall, with the consent of the Supreme Court, provide clerical and
3 other assistance to the panel Chair.

4 (7) Only challenges for cause shall be allowed. If a panel member other
5 than the Chair is challenged for cause, the party challenging the member shall
6 notify the panel Chair. If the panel Chair finds cause for the challenge, he or
7 she shall replace the panel member. If the Chair is challenged for cause, the
8 party challenging the Chair shall notify the Chief Justice, who shall replace the
9 Chair upon a finding of cause.

10 (8) The panel, through the Chair, shall have the same subpoena power as
11 exists for a Superior Judge. The Chair shall have sole authority, without
12 requiring the agreement of other panel members, to issue subpoenas.

13 (9) The Vermont Rules of Civil Procedure shall govern discovery
14 conducted under this chapter. The parties shall attempt in good faith to resolve
15 discovery issues themselves. The Chair shall rule on disputes regarding
16 discovery. Any person aggrieved by a Chair's ruling regarding discovery may
17 appeal to the Civil Division of the Superior Court, which shall defer to the
18 Chair's factual findings unless they are clearly erroneous.

19 § 7304. PANEL PROCEDURES

20 (a) All documents filed with the Court in a medical injury action that are
21 part of the screening process are confidential.

1 (b) Within 20 days of the return date, the person or persons accused shall
2 contact the claimant's counsel and by agreement shall designate a timetable for
3 filing all the relevant medical and provider records necessary to a
4 determination by the panel. If the parties are unable to agree on a timetable
5 within 60 days of the return date, the claimant shall notify the Chair of the
6 panel. The Chair shall then establish a timetable for the filing of all relevant
7 records and reasonable discovery, which shall be filed at least 30 days before
8 any hearing date. The hearing shall be no later than six months from the return
9 date, except when the time period has been extended by the panel chair in
10 accordance with this chapter.

11 (c) The pretrial screening may be bypassed if all parties agree upon a
12 resolution of the claim by trial.

13 (d) All parties to a claim may, by written agreement, submit a claim to the
14 binding determination of the panel. Both parties may agree to bypass the panel
15 for any reason or may request that certain preliminary legal affirmative
16 defenses or issues be litigated prior to submission of the case to the panel. The
17 panel shall have no jurisdiction to hear or decide, absent agreement of the
18 parties, dispositive legal affirmative defenses, other than comparative
19 negligence. The panel Chair may require the parties to litigate, by motion,
20 dispositive legal affirmative defenses in the Civil Division of the Superior
21 Court prior to submission of the case to the panel. Any such defense, as well

1 as any motion relating to discovery that the panel Chair has chosen not to rule
2 on, may be presented by motion to the Court.

3 (e) Except as otherwise provided in this section, there shall be one
4 combined hearing for all claims under this section arising out of the same set
5 of facts. When a medical injury case has been filed against more than one
6 person accused of medical injury based on the same facts, the parties may,
7 upon agreement of all parties, require that hearings be separated. The Chair
8 may, for good cause, order separate hearings.

9 (f) All requests for extensions of time under this section shall be made to
10 the panel Chair. The Chair may extend any time period for good cause, except
11 that the Chair may not extend any time period that would result in the hearing
12 being held more than 11 months following the return date, unless good cause is
13 shown.

14 (g)(1)(A) On failure of the plaintiff to prosecute or to comply with rules or
15 any order of the Chair or if the plaintiff fails to attend a properly scheduled
16 hearing, and on motion by the Chair or any party, after notice to all parties has
17 been given and the party against whom sanctions are proposed has had the
18 opportunity to be heard and show good cause, the Chair may order appropriate
19 sanctions, which may include dismissal of the case. If any sanctions are
20 imposed, the Chair shall state the sanctions in writing and include the grounds
21 for the sanctions.

1 (B) Unless the Chair or the panel in an order for dismissal specifies
2 otherwise, a dismissal under this subdivision (1) is with prejudice for purposes
3 of proceedings before the panel. A dismissal with prejudice is the equivalent
4 of a finding for the defendant on all issues before the panel.

5 (2)(A) On failure of a defendant to comply with the rules or any order of
6 the Chair, or if a defendant fails to attend a properly scheduled hearing, and on
7 motion by the Chair or any party, after notice to all parties has been given and
8 the party against whom sanctions are proposed has had the opportunity to be
9 heard and show good cause, the Chair may order appropriate sanctions, which
10 may include default. If any sanctions are imposed, the Chair shall state the
11 sanctions in writing and include the grounds for the sanctions.

12 (B) Unless the Chair or the panel in its order for default specifies
13 otherwise, a default under this subdivision (2) is the equivalent of a finding
14 against the defendant on all issues before the panel.

15 (3) Any person aggrieved by a Chair's ruling regarding sanctions may
16 appeal to the Superior Court, which shall defer to the chair's factual findings
17 unless they are clearly erroneous.

18 § 7305. HEARING

19 (a)(1) The claimant or a representative of the claimant shall present the
20 case before the panel. The person accused of professional negligence or that
21 person's representative shall make a responding presentation. The panel shall

1 afford the parties wide latitude in the conduct of the hearing including, but not
2 limited to, the right of examination and cross-examination by attorneys.

3 Depositions are admissible whether or not the person deposed is available at
4 the hearing. The Chair shall make all procedural rulings, which shall be final.
5 The Vermont Rules of Evidence shall not apply. Evidence shall be admitted if
6 it is the kind of evidence upon which reasonable persons are accustomed to
7 rely in the conduct of serious affairs. The panel shall make findings upon
8 evidence presented at the hearing, the records, and any expert opinions
9 provided by or sought by the panel or the parties.

10 (2) After presentation by the parties, the panel may request additional
11 facts, records, or other information from either party to be submitted in writing
12 or at a continued hearing, which continued hearing shall be held as soon as
13 possible. The continued hearing shall be attended by the same members of the
14 panel who have sat on all prior hearings in the same claim, unless otherwise
15 agreed by all parties. Replacement panel members shall be appointed pursuant
16 to this chapter.

17 (b) The panel shall maintain an electronically recorded record. Except as
18 provided in section 7308 of this title, the record may not be made public, and
19 the hearings may not be public without the consent of all parties.

20 (c) The Chair of the panel shall attempt to mediate any differences of the
21 parties before proceeding to findings.

1 § 7306. FINDINGS BY PANEL

2 (a) At the conclusion of the presentations, the panel shall make its findings
3 regarding negligence and causation in writing within 30 days by answering the
4 following questions:

5 (1) Whether the acts or omissions complained of constitute a deviation
6 from the applicable standard of care by the medical care provider charged with
7 that care;

8 (2) Whether the acts or omissions complained of proximately caused the
9 injury complained of; and

10 (3) If fault on the part of the medical care provider is found, whether any
11 fault on the part of the patient was equal to or greater than the fault on the part
12 of the provider.

13 (b) The standard of proof used by the panel shall be as follows:

14 (1) The plaintiff shall prove negligence and proximate causation by a
15 preponderance of the evidence; and

16 (2) The defendant shall prove comparative negligence by a
17 preponderance of the evidence.

18 § 7307. NOTIFICATION OF FINDINGS

19 The panel's findings, signed by the panel members, indicating their vote,
20 shall be sent by registered or certified mail to the parties within seven days of
21 the date of the findings. The findings and record of the hearing shall be

1 preserved until 30 days after final judgment or final resolution of the case, after
2 which time they shall be destroyed. All medical and provider records shall be
3 returned to the party providing them to the panel.

4 § 7308. CONFIDENTIALITY AND ADMISSIBILITY

5 (a) Except as provided in this section, all proceedings before the panel,
6 including its final determinations, shall be treated as private and confidential
7 by the panel and the parties to the claim.

8 (1) The findings and other writings of the panel and any evidence and
9 statements made by a party or a party's representative during a panel hearing
10 are not admissible in Court, shall not be submitted or used for any purpose in a
11 subsequent trial, and shall not be publicly disclosed, except as follows:

12 (A) Any testimony or writings made under oath may be used in
13 subsequent proceedings for purposes of impeachment.

14 (B) The party who made a statement or presented evidence may
15 agree to the submission, use, or disclosure of that statement or evidence.

16 (2) If the panel findings as to both the questions under subdivisions
17 7306(a)(1) and (2) of this title are unanimous and unfavorable to the defendant,
18 the findings are admissible in any subsequent trial of the medical injury case.

19 (3) If the panel findings as to any question under subsection 7306(a) of
20 this title are unanimous and unfavorable to the plaintiff, the findings are
21 admissible in any subsequent trial of the medical injury case.

1 (b) The confidentiality provisions of this section shall not apply if the
2 findings were influenced by fraud.

3 (c) The deliberations and discussion of the panel and the testimony of any
4 expert, whether called by a party or the panel, shall be privileged and
5 confidential, and no such person may be asked or compelled to testify at a later
6 court proceeding concerning the deliberations, discussions, findings, or expert
7 testimony or opinions expressed during the panel hearing, unless by the party
8 who called and presented the nonparty expert, except such deliberation,
9 discussion, and testimony as may be required to prove an allegation of fraud.

10 § 7309. MANDATORY INSTRUCTIONS

11 (a) When panel findings are offered and admitted into evidence in a
12 subsequent court action in accordance with section 7308 of this title, the Court
13 shall provide the following information to the jury to provide a basis for the
14 jury to understand the nature of the panel findings and to put the panel findings
15 in context in evaluating all of the evidence presented at the trial:

16 (1) The panel process is a preliminary procedural step through which
17 malpractice claims proceed.

18 (2) The panel in this case consisted of (insert the name and identity of
19 the members).

20 (3) The panel conducts a summary hearing and is not bound by the rules
21 of evidence.

1 (4) The hearing is not a substitute for a full trial and may or may not
2 have included all of the evidence that is presented at the trial.

3 (5) The jury is not bound by the findings of the panel, and it is the
4 jurors' duty to reach their own conclusions based on all of the evidence
5 presented to them.

6 (6) The panel proceedings are privileged and confidential.
7 Consequently, the parties may not introduce panel documents or present
8 witnesses to testify about the panel proceedings, and they may not comment on
9 the panel findings or proceedings except as provided in subdivisions (1)
10 through (5) of this subsection.

11 (b) The information specified in subsection (a) of this section shall be
12 provided to the jury when the findings are admitted into evidence and when the
13 Court instructs the jury prior to submitting the case to the jury.

14 § 7310. EFFECT OF PANEL FINDINGS

15 Unanimous findings entered by the panel under subsection 7306(a) of this
16 title shall be implemented as follows:

17 (1) If findings are in the plaintiff's favor, the defendant shall promptly
18 enter into negotiations to pay the claim or admit liability. If liability is
19 admitted, the claim may be submitted to the panel, upon agreement of the
20 parties, for determination of damages. If the claim goes to a trial, the findings
21 of the panel are admissible as provided in subdivision 7308(a)(2) of this title.

1 (2) If the findings are in the defendant's favor, the plaintiff shall release
2 the claim or claims based on the findings, without payment, or be subject to the
3 admissibility of those findings under subdivision 7308(a)(3) of this title.

4 § 7311. REPORTS

5 (a) The Court Administrator shall collect data on medical injury claims and
6 submit a report on the screening panel process to the House and Senate
7 Committees on Judiciary and to the Commissioner of the Department of
8 Financial Regulation on or before September 30 of each year.

9 (b) The report required by this section shall include the number of medical
10 injury cases filed, pending, and resolved; the number of panel hearings; and the
11 number of panel hearing days during the fiscal year ending on the June 30
12 preceding the report date.

13 (c) The report required by this section shall include, for medical injury
14 cases resolved during the fiscal year:

15 (1) The mean and median lengths of time from initial filing to final
16 resolution.

17 (2) The number and average settlement amount of cases that were
18 resolved prior to the panel hearing.

19 (3) The number and average settlement amount of cases that were
20 resolved after a panel hearing but before a trial.

1 (4) The number and average settlement amount of cases that were
2 resolved by or after a jury verdict.

3 (d) The report required by this section shall include, for medical injury
4 cases in which a panel made findings during the fiscal year, the number of
5 cases that fell into each category of possible results of a panel hearing
6 (unanimous for the plaintiff; majority for the plaintiff; unanimous for the
7 defendant; majority for the defendant), the status, and, if applicable, the results
8 of the cases in each category.

9 (e) To the extent possible, the report required by this section shall include
10 comparative data from the previous five years.

11 (f) The Commissioner of Financial Regulation shall report to the House
12 and Senate Committees on Judiciary annually, on or before November 1 of
13 each year, on the medical malpractice market and the effects of the panel
14 process established in this chapter. The report shall include, but not be limited
15 to, the average rates of medical liability insurance for categories of medical
16 providers and specialties identified by the Commissioner, the frequency and
17 severity of medical injury claims, and the time for resolution of medical injury
18 claims from first notice to final resolution.

19 (g) The Commissioner of Financial Regulation may adopt rules to collect
20 the data from insurers necessary to prepare the report required by this section.
21 To the extent the Commissioner collects information from insurers regarding

1 individual claims, loss adjustment and other expenses, reserves, indemnity
2 payments, or other financial information that is not otherwise reported to the
3 Commissioner and available to the public, the information shall be treated as
4 examination materials and kept confidential.

5 Sec. 7. EFFECTIVE DATE

6 This act shall take effect on July 1, 2015.