

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember David A. Catania introduced the following bill, which was referred to the Committee on _____.

To improve the performance of the Board of Medicine by requiring the Mayor to dedicate a minimum number of full-time employees within the Department of Health whose sole responsibility shall be to support the Board of Medicine; to require the creation of a centralized database for the collection of de-identified and anonymous information for the analysis of adverse medical events in order to reduce medical errors and improve health care delivery; to require individuals who intend to file suit alleging medical malpractice to file with potential defendants a 90-day notice of intent to file suit in the District of Columbia Superior Court; to require parties to the suit to engage in mediation early in the litigation process; to make inadmissible as an admission of medical malpractice liability certain benevolent gestures made by the defendant; to examine all closed liability claims against Obstetricians/Gynecologists in order to identify ways to improve healthcare delivery and share best practices; to require the current rates charged by medical malpractice insurers be made public; to require all information filed with the Commissioner of Insurance, Securities and Banking regarding rate changes for medical malpractice policies to be made public; and to require all insurance companies and self-insurers that offer medical malpractice insurance to disclose on a quarterly basis certain information about claims, settlements, and judgments related to medical malpractice, with all information being de-identified and anonymous.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Medical Malpractice Reform Act of 2005".

TITLE I. IMPROVED PERFORMANCE BY THE BOARD OF MEDICINE.

Sec. 101. Short title.

This title may be cited as the “Board of Medicine Performance Improvement Amendment Act of 2005”.

Sec. 102. Section 203(a) of the District of Columbia Health Occupations and Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202.03(a)), is amended as follows:

(a) A new paragraph (2a) is added to read as follows:

“(2a)(A) A physician licensed by the Board shall report to the Board within 60 days of the occurrence of any of the following:

“(1) Notice of a complaint in a medical malpractice suit in which the physician is named as a defendant; and

“(2) Disciplinary action taken against the physician by a health care licensing authority of another state.

“(B) Within 60 days of a complaint being filed against a physician with the Board or the submission by the physician of information pursuant to subparagraph (A) of this paragraph, the Board of Medicine shall commence an investigation of the physician. A ruling shall be issued by the Board no later than 60 days from the commencement of the investigation in which the Board, if it rules against the physician, shall order penalties. Nothing in this section shall restrict the Board from initiating investigations on its own.”.

(b) Paragraph 7 is amended by striking the existing text and inserting the following:

“(7) By no later than July 1, 2006, the Mayor shall appoint an executive director,

investigator, attorney and two clerical support staff who shall be full-time employees of the District and whose work shall be limited solely to administering and implementing the orders of the Board in accordance with this chapter and rules and regulations issued pursuant to this chapter. The requirement of this paragraph establishes a minimum number of employees and shall not restrict the Mayor’s ability to appoint additional staff.”.

Sec. 103. Section 4902 of the Department of Health Functions Clarification Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731), is amended as follows:

(a) Subsection (c) is amended by striking the phrase “implement this section.” and inserting the phrase “implement this section. The fee for the issuance of a license granted by the Board of Medicine shall be no less than \$300 and the revenue generated by the fee shall be devoted solely to the administration of the Board of Medicine and the implementation of its orders.”.

(b) A new subsection (d) is added to read as follows:

“(d) By no later than July 1, 2006, the Mayor shall establish and maintain a website where information about licensees of the Board of Medicine shall be available to the public. The information shall include, but not be limited to, a complete list of licensees and accurate and timely information regarding the licensees’ license status and education, hospital privileges, loss of hospital privileges and cause, areas of specialization, board certifications, prior criminal convictions, prior convictions of the charge of medical malpractice in a court of law, malpractice claims settled out of court, and disciplinary action taken against the licensee by the Mayor or Board of Medicine. The website shall allow licensees to respond to information posted by the Mayor.”.

TITLE II. MANDATORY ADVERSE EVENT REPORTING.

Sec. 201. Short title.

This title may be cited as the “Medical Malpractice Mandatory Adverse Event Reporting Act of 2005”.

Sec. 202. Definitions.

For the purposes of this title the term:

(1) “Adverse event” means an event, occurrence or situation involving the medical care of a patient by a healthcare provider that results in death or an unanticipated injury to the patient that is substantial in nature.

(2) “Primary health record” means the record of continuing care maintained by a health professional, group practice, or health care facility or agency containing all diagnostic and therapeutic services rendered to an individual patient by that health professional, facility, or agency.

(3) “Healthcare provider” means an individual or entity licensed or otherwise authorized under District law to provide healthcare service, including a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner’s office, long term care facility, behavior health residential treatment facility, clinical laboratory, health center, physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner.

Sec. 203. Creation of centralized reporting system. 1

Within 180 days of the enactment of this title, the Mayor shall establish, within the 2
Health Professional Licensing Administration, a centralized system for the collection and 3
analysis of adverse events in the District of Columbia. 4

Sec. 204. Appointment of system administrator. 5

The Mayor shall appoint an administrator of this system whose responsibilities shall 6
include, but are not limited to the following: 7

(1) Collecting, organizing, and storing data on adverse events occurring at medical 8
facilities in the District of Columbia; 9

(2) Tracking, assessing, and analyzing the incoming reports, findings, and 10
corrective action plans; 11

(3) Identifying common adverse event patterns or trends; 12

(4) Recommending methods to reduce systematic adverse events; 13

(5) Providing technical assistance to medical facilities on the development and 14
implementation of patient safety plans to prevent adverse events; 15

(6) Disseminating information and advising medical facilities in the District of 16
Columbia on medical best practices; 17

(7) Monitoring national trends in best practices and disseminating relevant 18
information and advice to medical facilities in the District of Columbia; and 19

(8) Publishing an annual report that includes summary data of the number and 20
types of adverse events of the prior calendar year by type of health care facility, rates of change, 21
and other analyses and communicating recommendations to improve health care delivery in the 22

District of Columbia. 1

Sec. 205. Mandatory reporting. 2

(a) Pursuant to this title, medical facilities providing services in the District of Columbia 3
shall submit biannual reports, on January 1 and July 1 of each calendar year, on adverse events to 4
the system administrator according to section 204 of this title. 5

(b) Each report required under subsection (a) of this section, shall contain, for each 6
adverse event, the patient’s full primary health record, except as provided under this section. 7

(c) Medical information provided to the system administrator pursuant to this section 8
shall be de-identified and anonymous. 9

Sec. 206. Confidentiality of data. 10

(a) Except as otherwise provided by this section: 11

(1) The files, records, findings, opinions, recommendations, evaluations, and 12
reports of the system administrator, information provided to or obtained by the system 13
administrator, the identity of persons providing information to the system administrator, and 14
reports or information provided pursuant to section 205 of this title shall be confidential, not 15
subject to disclosure pursuant to any other provision of law and shall be neither discoverable nor 16
admissible into evidence in any civil, criminal, legislative, or administrative proceeding and 17
under no circumstances shall the information be disclosed by any person. Nothing in this 18
paragraph shall preclude use of reports or information provided under section 205 of this title by 19
a board regulating a health profession or the Mayor in proceedings by the board or the Mayor. 20

(2) No person who provided information to the system administrator shall be compelled to testify in any civil, criminal, legislative, or administrative proceeding relating to any matter contained in the information provided to the system administrator.

(3) Notwithstanding paragraph (1) of this subsection, a court may order a system administrator to provide information in a criminal proceeding in which an individual is accused of a felony, if the court determines that disclosure is essential to protect the public interest and that the information being sought can be obtained from no other source. In determining whether disclosure is essential to protect the public interest, the court shall consider the seriousness of the offense with which the individual is charged, the need for disclosure of the party seeking it, and the probative value of the information. If the court orders disclosure, the identity of any patient shall not be disclosed without the consent of the patient or his or her legal representative, and the information disclosed shall not be used except in the criminal proceeding.

TITLE III. 90 DAY NOTICE OF INTENT TO FILE SUIT.

Sec. 301. Short title.

This title may be cited as the “Medical Malpractice 90 Day Notice of Intent to File Suit Act of 2005”.

Sec. 302. Definitions.

For the purposes of this title, the term “healthcare provider” means an individual or entity licensed or otherwise authorized under District law to provide healthcare service, including a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner’s office, long term care facility, behavior health residential treatment

facility, clinical laboratory, health center, physician, physician assistant, nurse practitioner, 1
clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, 2
psychologist, certified social worker, registered dietitian or nutrition professional, physical or 3
occupational therapist, pharmacist, or other individual health care practitioner. 4

Sec. 303. Notice of intention to file suit. 5

(a) Any person who intends to file suit in the Superior Court of the District of Columbia 6
alleging medical malpractice against a healthcare provider shall notify the intended defendant of 7
his or her suit no fewer than 90 days prior to filing the suit. 8

(b) In order to satisfy the requirement of this title, the notice required in subsection (a) of 9
this section shall include sufficient information to put the defendant on notice of the legal basis 10
for the claim and the type and extent of the loss sustained, including information regarding the 11
injuries suffered. 12

(c) No legal action alleging medical malpractice may be commenced in the Superior 13
Court of the District of Columbia unless the requirements of this section have been satisfied. 14

Sec. 304. Extension of statute of limitations. 15

If the notice is served within 90 days of the expiration of the applicable statute of 16
limitations, the time for the commencement of the action shall be extended 90 days from the date 17
of the service of the notice. 18

Sec. 305. Unknown defendant. 19

The requirements of section 303 of this title are not applicable with respect to any 20
defendant whose name is unknown to the plaintiff at the time of filing the complaint and who is 21
identified therein by a fictitious name. 22

TITLE IV. EARLY MANDATED MEDIATION.

Sec. 401. Short title.

This title may be cited as the “Medical Malpractice Early Mandated Mediation Act of 2005”.

Sec. 402. Definitions.

For the purposes of this title, the term “healthcare provider” means an individual or entity licensed or otherwise authorized under District law to provide healthcare service, including: a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner’s office, long term care facility, behavior health residential treatment facility, clinical laboratory, health center, physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner.

Sec. 403. Requirement for mediation.

After filing a suit in the Superior Court of the District of Columbia against a healthcare provider alleging medical malpractice, the Court shall require the parties to enter into mediation, with little or no discovery, prior to any further litigation in an effort to reach a settlement agreement. The mediation schedule shall be included in the scheduling conference order following the initial scheduling and settlement conferences.

Sec. 404. Mediation costs.

Unless otherwise agreed, the costs of mediation, if any, shall be equally shared by the parties. 1
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Sec. 405. Mediators. 3

(a) The Superior Court of the District of Columbia shall assign the parties to court- 4
provided mediation or provide a roster of medical malpractice mediators from which the parties 5
may hire an eligible medical malpractice mediator. To be eligible for inclusion in the roster of 6
medical malpractice mediators, an individual shall be a judge or lawyer with at least 10 years of 7
significant experience in medical malpractice litigation and shall no longer be practicing law. 8

(b) If the parties cannot agree on the selection of a mediator, the Court shall appoint one. 9

Sec. 406. Attendance at mediation session. 10

(a) As used in this section, the term “a representative with settlement authority” means an 11
individual with control of the financial settlement resources for the case, and the authority to 12
pledge those resources to settle the case on behalf of a party. 13

(b) All parties shall personally attend mediation sessions. 14

(c) When a party is not a natural person, a representative with settlement authority for the 15
party shall attend the mediation session. 16

(d) In cases involving an insurance company, a representative of the company with 17
settlement authority shall attend the mediation session. 18

(e) Attorneys representing each party with primary responsibility for the case shall attend 19
the mediation session. 20

Sec. 407. Mediation statements. 21

(a) Each party shall submit a mediation statement to the mediator and serve the statement on all parties no later than 10 days prior to the initial mediation session.

(b) Unless not already stated in the complaint and answer, the mediation statement shall:

(1) Include a brief summary of facts;

(2) Identify the issues of law and fact in dispute and summarize the party's position on those issues;

(3) Discuss whether there are issues of law or fact the early resolution of which could facilitate early settlement or narrow the scope of the dispute;

(4) Identify the attorney who will represent the party at the mediation session and the person with settlement authority who will attend the mediation session;

(5) Include any documents or materials relevant to the case which may assist the mediator and advance the purposes of the mediation session; and

(6) Present any other matters that may assist the mediator and facilitate the mediation.

(c) Mediation statements are intended solely to facilitate the mediation and shall not be filed with the court.

Sec. 408. Mediator's report.

(a) A mediator's report shall be filed with the court no later than 10 days after the mediation has terminated, informing the court regarding:

(1) Attendance;

(2) Whether a settlement was reached; or

(3) If a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation.

Sec. 409. Confidentiality.

(a) Mediation communications shall be confidential to the extent agreed by the parties or provided by other law or rule of the District of Columbia.

(b) A mediator shall not be compelled to provide evidence of a mediation communication in any subsequent trial.

TITLE V. INADMISSIBILITY OF BENEVOLENT GESTURES.

Sec. 501. Short title.

This title may be cited as the "Medical Malpractice Inadmissibility of Benevolent Gestures Act of 2005".

Sec. 502. Definitions.

For the purposes of this title, the term "healthcare provider" means an individual or entity licensed or otherwise authorized under District law to provide healthcare service, including: a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner's office, long term care facility, behavior health residential treatment facility, clinical laboratory, health center, physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner.

Sec. 503. Inadmissibility of benevolent gestures.

For the purpose of any civil action or administrative proceeding alleging medical malpractice against a healthcare provider, an expression of sympathy, regret, or apology made in writing, orally, or by conduct made by or on behalf of the healthcare provider to a victim of the alleged medical malpractice, any member of the victim's family, or any individual who claims damages by or through that victim is inadmissible as an admission of liability.

TITLE VI. ANALYSIS OF CLOSED OBSTETRICIAN/GYNECOLOGIST CLAIMS.

Sec. 601. Short title.

This title may be cited as the "Medical Malpractice Analysis of Closed Obstetrician/Gynecologist Claims Act of 2005".

Sec. 602. Closed claim analysis.

(a) Within 180 days of the enactment of this title, the Mayor shall submit legislation to the Council for the establishment of a database of closed Obstetrician/Gynecologist malpractice claims reports to be submitted by providers of medical malpractice insurance.

(b) The plan shall:

(1) Contain provisions to identify trends and develop recommendations for preventative action for adverse Obstetrician/Gynecologist events;

(2) Ensure dissemination of best practices among Obstetrician/Gynecologist practitioners and facilities and shall include provisions for ensuring the implementation of these practices; and

(3) Include provisions to study recommendations based on closed Obstetrician/Gynecologist malpractice claims in other jurisdictions.

TITLE VII. REPORTING OF MEDICAL MALPRACTICE LIABILITY INSURANCE	1
STREET RATES.	2
Sec. 701. Short title.	3
This title may be cited as the “Medical Malpractice Liability Insurance Street Rate Disclosure Act of 2005”.	4
Sec. 702. Medical malpractice liability insurance rates.	5
Insurers offering medical malpractice liability insurance (“malpractice insurance”) in the District of Columbia shall, on an annual basis, provide to the Commissioner of the Department of Insurance, Securities and Banking (“Commissioner”) the current rates charged by insurers for the malpractice insurance, excluding individual adjustments based on low, average, or high risk.	6
Sec. 703. Public information.	7
The Commissioner shall make all information submitted pursuant to section 702 of this title available to the public in a timely manner via a website administered by the Department of Insurance, Securities and Banking.	8
TITLE VIII. DISCLOSURE OF RATE CHANGE INFORMATION.	9
Sec. 801. Short title.	10
This title may be cited as the “Medical Malpractice Disclosure of Medical Malpractice Liability Insurance Rate Change Information Act of 2005”.	11
Sec. 802. Rate changes.	12
The Commissioner of the Department of Insurance, Securities and Banking (“DISB”) shall make available to the public any required information filed with DISB regarding rate changes, but shall not release proprietary information. The information shall be available in the	13
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offices of DISB or on its website.	1
TITLE IX. DISCLOSURE OF CLAIMS INFORMATION.	2
Sec. 901. Short title.	3
This title may be cited as the “Medical Malpractice Disclosure of Claims Information Act of 2005”.	4 5
Sec. 902. Reporting of claims.	6
All insurance companies and self-insures, including pools, joint underwriting associations and trusts, shall report quarterly to the Commissioner of the Department of Insurance, Securities and Banking (“DISB”) the number of claims they settle, the amount of the settlement, and the number of judgments entered together with their dollar amounts.	7 8 9 10
Sec. 903. Information to be anonymous.	11
All information collected pursuant to section 902 of this title shall be de-identified and anonymous. Reporting must be done on an individual claims basis and on a standardized form provided by DISB. The report shall include information concerning the policy, injury, and claims process.	12 13 14 15
TITLE X. IMPLEMENTATION.	16
Sec. 1001. Fiscal impact statement.	17
The Council adopts the attached fiscal impact statement as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).	18 19 20
Sec. 1002. Effective date.	21
This act shall take effect following approval by the Mayor (or in the event of veto by the	22

Mayor, action by the Council to override the veto), a 30-day period of Congressional review as 1
provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 2
24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of 3
Columbia Register. 4