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## Judiciary Committee

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### HB 2510

**Title:** An act relating to early settlement offers in actions for injuries resulting from health care.

**Brief Description:** Encouraging early settlement offers in health care actions.

**Sponsors:** Representatives Priest, Morrell, B. Sullivan and Rodne.

#### Brief Summary of Bill

- Establishes an early settlement offer procedure for medical malpractice actions.
- Establishes a requirement for claimants' attorneys in medical malpractice actions to file a demand for compensation on allegedly responsible parties before filing suit.
- Places limitations on attorneys' fees in medical malpractice actions based on early settlement offer outcomes and violations of the demand for compensation requirements.

**Hearing Date:** 1/13/06

**Staff:** Edie Adams (786-7180).

#### Background:

Medical malpractice actions are civil tort actions for the recovery of damages for injury or death resulting from the provision of health care. There are three grounds on which a health care provider may be found liable in a medical malpractice action: (1) the health care provider failed to follow the standard of care; (2) the health care provider promised that the injury suffered would not occur; or (3) the injury resulted from health care to which the patient did not consent.

It is common for attorneys representing plaintiffs in medical malpractice actions to represent the plaintiff on a contingency fee basis. In a contingency fee arrangement, the attorney receives no fee unless money is recovered for the client. If there is a recovery, the attorney is paid an agreed-upon percentage. Attorneys' fees are regulated by the Rules of Professional Conduct (RPC). Under the RPC, contingency fee arrangements are authorized but must comply with certain requirements, including that they be in writing and that they be reasonable. A statutory provision applicable in medical malpractice actions also requires the court to determine the reasonableness of each party's attorneys' fees considering a number of factors, including time, labor, amount involved, and experience of the attorney.

Offer of settlement statutes are often proposed as a mechanism to encourage the parties to a civil lawsuit to reach a settlement and avoid a lengthy and costly trial. One example of an offer of settlement statute is that a party who makes an offer of settlement that is rejected, and then improves his or her position at trial, is entitled to an award of attorneys' fees.

A different kind of early settlement offer statute for medical malpractice actions has been proposed in Congress for many years. Under these proposals, a defendant may make an early offer to compensate the claimant for all economic damages and reasonable attorneys' fees. If the claimant rejects the offer and goes to trial, the claimant must meet a higher standard in order to prevail, e.g., clear and convincing evidence that the defendant engaged in reckless or intentional misconduct. If no early settlement offer is made, the normal procedures apply in the civil action. Other components of these early settlement offer proposals include a requirement that a claimant's attorney serve a demand for compensation on the allegedly responsible party prior to filing suit and limitations on attorneys' fees tied to early settlement offer outcomes and violations of the demand for compensation requirements.

### **Summary of Bill:**

In medical malpractice actions, procedures are created for early settlement offers and a requirement for a demand for compensation is established. Limitations on attorneys' fees are established based on early settlement offer outcomes and violations of demand for compensation requirements.

In a medical malpractice action, an allegedly responsible party may make a good faith offer to compensate the claimant for his or her current and future economic damages, less collateral sources of compensation, and for reasonable hourly attorneys' fees for the claimant. If the claimant rejects the offer, the claimant may recover damages in a civil suit only if the claimant proves by clear and convincing evidence that the allegedly responsible party engaged in reckless, willful, or wanton conduct. If no early settlement offer is made, the normal preponderance of the evidence standard applies in the civil action.

An early settlement offer may be made at any time before 120 days after the claim is filed. The offer must be in writing and sent to the claimant by certified mail. The offer must remain open for 30 days from the date the offer is received by the claimant.

An attorney who represents a claimant on a contingent fee basis in a medical malpractice case must demand compensation simultaneously from all known allegedly responsible parties prior to filing an action. The demand for compensation must include certain information, including information about the alleged injury or loss, the basis for the claim, known witnesses, photographic evidence, and documentation of the damages suffered.

An allegedly responsible party need not respond to a demand for compensation. The fact that a demand for compensation or an early settlement offer was or was not made, or the amount of any demand or settlement offer that was made, may not be admitted as evidence at trial.

If a claimant accepts an early settlement offer, the claimant's attorney may not collect a fee that is more than the attorney's reasonable hourly fees for the services performed. If the claimant rejects the early settlement offer, the claimant's attorney may collect a fee no greater than 20 percent of the offer, plus the percentage of the amount recovered in excess of the offer as agreed to by the claimant and the attorney. A claimant's attorney who fails to make the required demand for

compensation in a materially complete fashion, or who fails to provide the claimant with a copy of an early settlement offer, may collect a fee no greater than 20 percent of the amount the claimant recovers.

If an attorney proposes to represent a claimant on a contingent fee basis, the attorney must inform the claimant of the statutory provisions just described, and that the fee limitations in these provisions are maximum limits, and that the claimant may negotiate a lower fee.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.