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MEMORANDUM

DATE: March 31, 2003
TO: Assemblyman Garn Mabey
FROM: Allison Combs, Principal Research Analyst
Research Division
SUBJECT: Overview of States with Law Providing for Medical Malpractice Review Panels and Caps on Damages

You requested information on any states that have both caps on damages in medical malpractice cases and mandatory review panels prior to trial.

In researching your question, I reviewed information available through the Advocacy Resource Center of the American Medical Association and the National Conference of State Legislatures. I also reviewed the state-by-state *Summary of United States Medical Malpractice Law*, prepared by McCullough, Campbell and Lane, which is available on the Web at <http://mcandl.com/state/html> and is often cited by national sources for information regarding the laws and court decisions involving medical malpractice.

Based upon this research, the following six states have both requirements:

- Hawaii;
- Idaho;
- Indiana;
- New Mexico;
- Utah; and
- Virginia.

Following is an overview of the laws in each of these states regarding caps on damages and the submission of the case to a panel prior to trial:

ASSEMBLY JUDICIARY

DATE: 4-07-03 ROOM 3138 EXHIBIT E
SUBMITTED BY: Assemblyman Mabey

E-195

Hawaii

Caps on Damages—\$375,000 limit on recovery for noneconomic damages.

Review by Panel—As described by the *Summary of United States Medical Malpractice Law*, “Hawaii has established a system of medical claims conciliation panels which review potential cases and issue advisory opinions on liability and damages. Review by the conciliation panel is a prerequisite to filing a complaint in court. Haw. Rev. Stat. § 671-12 (1995).

The panel will determine whether the named defendants were negligent, and determine the amount of economic, noneconomic, and punitive damages. The parties have the option of rejecting the panel's recommendation and taking the claim to court. Haw. Rev. Stat. § 671-16 (1995).

A judge may require a medical malpractice action to be arbitrated prior to trial. However, the Hawaii legislature has recognized that the three-step process of hearing, arbitration, and trial can delay cases unnecessarily. Therefore a party to a medical malpractice action can choose between arbitration or a hearing by the panel. Haw. Rev. Stat. § 671-16.5 (1995).”

Idaho

Cap on Damages—\$250,000 limit on recovery for noneconomic damages enacted in 2003. The new cap takes effect on July 1, 2004, and will be adjusted annually on July 1 by the rate of increase or decrease in average wages. The prior cap of \$400,000 had also been adjusted annually on July 1 by the same factor since 1988. Under these adjustments, the cap amount for July 1, 2000 – July 1, 2001 was \$609,708.74. After July 1, 2001, the amount increased to \$640,776.70.

Review by a Panel—As described by the *Summary of United States Medical Malpractice Law*, “All medical malpractice injury or death cases must, as a condition precedent to bring suit, be presented to a hearing panel established by the Idaho State Board of Medicine. Idaho Code §§ 6-1001 to 1011 (1990). The proceedings before the panel are informal and nonbinding. *Id.* The findings and determinations of the panel are inadmissible in any civil action. Idaho Code § 6-1011 (1990).”

Indiana

Cap on Damages—\$1.25 million cap on *total* damages for claims accruing on or after July 1, 1999, and health care providers are limited to \$250,000. Amount awarded in excess of that amount is paid through a patient compensation fund. For claims accruing on or after January 1, 1990, and before July 1, 1999, cap is \$750,000.

Review by a Panel—As described by the *Summary of United States Medical Malpractice Law*, “All claims for more than \$15,000 against qualified providers under the Indiana Medical Malpractice Act must be heard by a medical review panel (unless each party executes a written waiver). Ind. Code Ann. § 34-18-8-4 to 34-18-8-6 (West Supp. 1998). A medical review panel consists of one lawyer and three health care providers. Ind. Code Ann. § 34-18-10-3 (West Supp. 1998).”

It is the duty of the health care providers on the panel to express an expert opinion as to whether the evidence supports the conclusion that the defendant(s) acted or failed to act within the appropriate standards of care and, if so, whether that was a factor in the injury. Ind. Code Ann. § 34-18-10-22 (West Supp. 1998). The opinion issued by the panel is admissible as evidence in any subsequent action, but it is not conclusive. Ind. Code Ann. § 34-18-10-23 (West Supp. 1998).”

New Mexico

Cap on Damages—\$600,000 limit on *total* damages, excluding costs for medical care. Health care provider’s personal liability limited to \$200,000, with the remainder paid by a patient compensation fund.

Review by Panel—As described by the *Summary of United States Medical Malpractice Law*, “Any claim for medical malpractice must first be reviewed by the state’s medical review commission. N.M. Stat. Ann. § 41-5-15 (Michie 1996). The commission’s findings are neither binding nor admissible in any subsequent court proceedings. § 41-5-20 (Michie 1996).”

Utah

Cap on Damages—\$400,000 cap on noneconomic damages, adjusted annually for inflation, enacted in 2001. Previously, the cap was \$250,000.

Review by Panel—As described by the *Summary of United States Medical Malpractice Law*, “The Utah Health Care Malpractice Act provides for the compulsory filing of a notice of intent to commence an action and for review by a prelitigation panel (except in dental cases). Utah Code Ann. §§ 78-14-8 (1996) and 78-14-12 (Supp. 1998). The proceedings are informal and a panel’s opinion about whether the case is meritorious is not only nonbinding, but inadmissible in the following lawsuit. Utah Code Ann. §§ 78-14-13 to 78-14-15 (1996). The parties may agree to waive the hearing or to convert it to binding arbitration. Utah Code Ann. §§ 78-14-12 (Supp. 1998) and 78-14-16 (1996).”

Virginia

Cap on Damages—\$1.5 million cap on *total* damages enacted in 1999, which increases annually by \$50,000 until 2007. In 2008, the cap is increased for a final time by \$75,000.

Review by Panel—As described by the *Summary of United States Medical Malpractice Law*, “The Virginia Medical Malpractice Act established a system of medical malpractice review panels to assess the validity of medical malpractice claims. A claimant must file notice of the claim with the court. The Supreme Court of Virginia then appoints a panel to review the claim. Va. Code Ann. § 8.01-581.2 (Michie Supp. 1997).

After hearing the evidence, the panel determines whether the evidence supports the conclusion that the health care provider failed to comply with the relevant standard of care and whether that failure proximately caused the injury. Va. Code Ann. § 8.01-581.7 (Michie Supp. 1997). The findings of the panel are nonbinding and the claimant has the option of filing a lawsuit after the panel has made its ruling. However, any opinion of the medical review panel is admissible as evidence in a subsequent action. Both parties have the right to call panel members, except the chairman, as witnesses. Va. Code Ann. § 8.01-581.8 (Michie Supp. 1997).

A new amendment to the act, effective January 1, 1998, lets the parties agree in advance of treatment to binding arbitration of any claim, so long as the patient has the option to withdraw from the agreement within 60 days after the termination of treatment. Va. Code Ann. § 8.01-581.12 (Michie Supp. 1997).”

NEVADA LAW

As you are aware, the Nevada Legislature repealed the pretrial screening panels for cases involving medical and dental malpractice in the 2003 Special Session. A cap of \$350,000 on noneconomic damages, with certain exceptions, was enacted at that time.

Interim Study Examination of Nevada's Screening Panel

As you are also aware, the Legislative Commission created an interim subcommittee in 2002 to examine the issues involving medical malpractice in Nevada. The subcommittee received testimony regarding various aspects of the screening panels, and the relevant minutes and exhibits from the study are enclosed for your review.

Overview of Nevada's Screening Panel Process and its History

An overview prepared by legislative staff of the screening panel process and the history of the concept of the panel in Nevada since the 1960s is included in the enclosed exhibits from the May 13, 2002, meeting (See Exhibit A, Tab VIA).

Concluding Remarks

Also enclosed are two charts prepared by the Advocacy Resource Center of the American Medical Association, which provide an overview of the laws in all 50 states relating to medical malpractice litigation.

I trust this information is helpful. If you have any questions or would like additional assistance, please do not hesitate to contact me.

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Enc.

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