

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)


SENATE
S.B. No. 2661

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

We often hear about mothers and their babies dying in hospitals because of inadequate health care. Because of the high cost of medical accommodation and health insurance, there is a lack of availability of obstetrical services most especially in public hospitals. Women, most especially in the poor provinces, travel longer distances to find a doctor and have longer waiting periods for appointments. In addition, they have less access to maternal-fetal medicine specialists, physicians with the most experience and training in the care of women with high-risk pregnancies. We have fewer hospitals with maternity wards where they can deliver their child, potentially endangering the lives and health of the woman and her unborn child.

It is the purpose of this bill to implement reasonable, comprehensive, and effective health care liability reforms designed to improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services, and to ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable non-economic damages.


MIRIAM DEFENSOR SANTIAGO
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AN ACT
TO PROVIDE MOTHERS AND BABIES OF ACCESS TO HEALTH CARE

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* – This Act shall be known as the “Healthy Mothers and Healthy Babies Access to Care Act of 2007.”

SECTION 2. *Declaration of Policy.* – It is hereby declared the policy of the State to improve women's access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services.

SECTION 3. *Definition of Terms* - As used in this section, the term –

(1) “Alternative Dispute Resolution System” or ‘ADR’ means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in court.

(2) “Claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) “Collateral Source Benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to--

(a) any health, sickness, income-disability, accident, or workers’ compensation law;

(b) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(c) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(d) any other publicly or privately funded program.

(4) “Compensatory Damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other non-pecuniary losses of any kind or nature. Such term includes economic damages and non-economic damages, as such terms are defined in this section.

(5) “Contingent Fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) “Economic Damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) “Health Care Goods or Services” means any obstetrical or gynecological goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any obstetrical or gynecological-related human disease or impairment, or the assessment of the health of human beings.

(8) “Health Care Institution” means any entity licensed under the law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) “Health Care Lawsuit” means any health care liability claim concerning the provision of obstetrical or gynecological goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) obstetrical or gynecological goods or services affecting interstate commerce, brought in a court or pursuant to an alternative dispute resolution system, against a physician or other health care provider who delivers obstetrical or gynecological services or a health care institution (only with respect to obstetrical or gynecological services) regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) “Health Care Liability Action” means a civil action brought in court or pursuant to an alternative dispute resolution system, against a health care provider who delivers obstetrical or gynecological services or a health care institution (only with respect to obstetrical or gynecological services) regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) “Health Care Liability Claim” means a demand by any person, whether or *not pursuant to ADR*, against a health care provider who delivers obstetrical or gynecological services or a health care institution (only with respect to obstetrical or gynecological services), including *third-party claims, cross-claims, counter-claims, or contribution claims*, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) obstetrical or gynecological services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) “Health Care Provider” means any person (including but not limited to a physician, nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist, required by law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

For purposes of this Act, a professional association that is organized under the law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under the law, or a company formed by a group of physicians under the law shall be treated as a health care provider under this paragraph.

(13) “Malicious Intent to Injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) “Non-Economic Damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) “Obstetrical or Gynecological Services” means services for pre-natal care or labor and delivery, including the immediate postpartum period.

(16) “Punitive Damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider who delivers obstetrical or gynecological services or a health care institution. Punitive damages are neither economic nor non-economic damages.

(17) “Recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

SECTION 4. *Encouraging Speedy Resolution Of Claims.* –

(A) In General – Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(B) General Exception – The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of--

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(C) Minors – An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

SECTION 5. *Compensating Patient Injury.* –

(A) Unlimited Amount of Damages for Actual Economic Losses in Health Care Lawsuits - In any health care lawsuit, nothing in this Act shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(B) Additional Non-economic Damages -

(1) Health Care Providers- In any health care lawsuit where final judgment is rendered against a health care provider, the amount of non-economic damages recovered from the provider, if otherwise available under applicable law, may be as much as PhP 5,000,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) Health Care Institutions-

(2.1.) Single Institution- In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of non-economic damages recovered from the institution, if otherwise available under applicable law, may be as much as PhP 5,000,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2.2.) Multiple Institutions- In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of non-economic damages recovered from each institution, if otherwise available under applicable law, may be as much as PhP 5,000,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed PhP 10,000,000.

(C) No Discount of Award for Noneconomic Damages- In any health care lawsuit-

(1) an award for future non-economic damages shall not be discounted to present value;

(2) an award for non-economic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(3) if separate awards are rendered for past and future non-economic damages and the combined awards exceed the limitations provided for in subsection (b), the future non-economic damages shall be reduced first.

(D) Fair Share Rule- In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person.

SECTION 6. *Maximizing Patient Recovery.* –

(A) *Court Supervision of Share of Damages Actually Paid to Claimants-*

(1) In General- In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) Contingency Fees-

(2.1.) In General- In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(2.2.) Limitation- The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

- (i) 40 percent of the first PhP 500,000 recovered by the claimant(s).
- (ii) 33 1/3 percent of the next PhP 500,000 recovered by the claimant(s).
- (iii) 25 percent of the next PhP1,000,000 recovered by the claimant(s).
- (iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of PhP 1,500,000.

(B) *Applicability* –

(1) In General- The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) Minors- In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(C) *Expert Witnesses-*

(1) No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual--

(1.1.) except as required under paragraph (2), is a health care professional who--

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(1.2.) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) Physician Review- In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) Specialties And Subspecialties- With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity, there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

SECTION 7. Additional Health Benefits. The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits. This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SECTION 8. *Punitive Damages.* –

(A) Punitive Damages Permitted -

(1) Punitive damages may, if otherwise available under applicable laws, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the

evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding--

(3.1.) whether punitive damages are to be awarded and the amount of such award; and

(3.2.) the amount of punitive damages following a determination of punitive liability.

If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(B) Determining Amount of Punitive Damages -

(1) In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(1.1.) the severity of the harm caused by the conduct of such party;

(1.2.) the duration of the conduct or any concealment of it by such party;

(1.3.) the profitability of the conduct to such party;

(1.4.) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(1.5.) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(1.6.) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or PhP 500,000, whichever is greater.

(C) Liability of Health Care Providers -

(1) In General- A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) "Medical Product" means a drug or device intended for humans. "Drug" and "Device" include any component or raw material used therein, but excluding health care services.

SECTION 9. Authorization of Payment of Future Damages to Claimants in Health Care Lawsuits. –

(a) In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding PhP 500,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments.

(b) Applicability- This section applies to all actions which have not been first set for trial or retrial before the effective date of this Act.

SECTION 10. *Separability Clause.* – If any provision or part thereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 11. *Repealing Clause.* – Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

SECTION 12. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,