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NEWS

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

Medical Review Panel Act

[Title, enacting clause, et cetera]

Section 1. {Short Title.}

This Act may be known and cited as the Expedited Medical Review Panel Act

Section 2. {Purpose.}

The purpose of this Act is to provide for an expedited risk review panel process to shorten the time to conclusion of a medical malpractice claim, and to reduce the costs of moving claims through the legal process.

Section 3. {Enacting Clause.}

Be it enacted by the Legislature of {Insert State}

(a) By agreement of all parties, the use of the medical review panel may be waived.

(b) By agreement of all parties and upon written request to the attorney chairman, an expedited medical review panel process may be selected. Unless otherwise specified in the provisions of subsection (1)(a)(i) of this Section, the expedited process shall be governed by other provisions of this Section.

(1)(a)(i) Parties seeking an expedited panel process pursuant to the provisions of subsection b shall request such process in writing sixty days from the date of the letter of notification of the selection of the attorney chairman. When a written request for an expedited medical review panel process has been made to the attorney chairman, the chairman shall establish a schedule for submission of evidence to the medical review panel within ninety days following selection of the third physician member of the panel so that a panel opinion is rendered within twelve months of the date of notification of the selection of the attorney chairman.

(ii) The chairman shall submit a copy of the panel's report to the board and all parties and attorneys by registered or certified mail within five days after the panel renders its opinion. In accordance with Subsection L of this Section, where the medical review panel issues its opinion required by this Section, the suspension of the running of prescription shall not cease until ninety days following notification by certified mail to the claimant or his attorney of the issuance of the opinion.

(b)(i) No party may petition a court for an order extending the twelve month period. If an opinion is not rendered by the panel within the twelve month period established in this Subsection, suit may be instituted against the health care provider.

(ii) after the twelve month period provided for in this Subsection, the medical review panel established to review the claimant's complaint shall be dissolved without the necessity of obtaining a court order of dissolution.

(iii) ninety days after the notification to all parties by certified mail by the attorney chairman of the board of the dissolution of the medical review panel, the suspension of the running of prescription with respect to a qualified health care provider shall cease.

(2) During selection of the **physician members of the medical review panel**, the plaintiff shall notify both the attorney chairman and the named defendants of his choice of a health care provider member of the medical review panel within ten days of the date of written request to the chairman for an expedited panel process. The named defendant shall then have five days after notification by the plaintiff of the plaintiff's choice of his health care provider panelist to name the defendant's health care provider panelist. If no selection is made within the five and ten day respective periods, then the chairman shall make the selection on behalf of the failing party. The two health care provider panel members selected by the parties or on their behalf shall be notified by the chairman to select the third health care provider panel member within fifteen days of their receipt of such notice from the chairman to make the selection. If no selection is made within the fifteen day period, then the chairman shall make the selection on behalf of the two health care provider panel members.

(3)(a) Within thirty days of the parties' written request for an expedited medical review panel process to the attorney chairman, the claimant shall provide all defendants with a list of the names and addresses of all known health care providers, including individuals and entities, who have treated the patient during the time period starting from three years prior to the date of the alleged malpractice up to and including the date that the list is provided. The claimant shall make a good faith effort to identify the treating health care providers.

(b) The claimant shall execute and provide all defendants with a HIPAA Compliant Authorization form to permit the defendants to obtain the medical records.

(c) An order to protect the medical records may be sought as provided in [insert relevant state code] or the HIPAA regulations at 45 CFR 164.512(e) in a court of competent jurisdiction and proper venue.

(d) If an authorization is not provided or a protective order is not obtained within thirty days following the written request by the parties to the chairman for an expedited medical review panel process, the medical review panel shall lose its expedited status and no longer be governed by the provisions of this Subsection. The attorney chairman shall provide notice of this to the board and all parties by registered or certified mail.

(4)(a) The evidence to be considered by the medical review panel shall be promptly submitted by the respective parties in written form only, according to the schedule established by the chairman.

(b) **The evidence may consist only of medical charts, x-rays or other film**

studies, lab tests, other diagnostic or medical tests, and a position paper submitted by or on behalf of each party.

(c) Neither interrogatories to nor depositions of the parties and witnesses may be taken prior to the convening of the panel.

(d) No party or panel member shall be permitted to request the clerk of any district court to issue subpoenas and subpoenas duces tecum in aid of the taking of depositions and the production of documentary evidence. However, if a copy of the medical record is not produced by a health care provider within a reasonable period of time, not to exceed fifteen days, following a health care provider's receipt of a medical authorization executed by the claimant then the party who forwarded the authorization to the health care provider may request the clerk of any district court to issue subpoenas and subpoenas duces tecum in aid of the production of the medical records.

(5) The attorney chairman, after submission of all evidence and upon ten days notice, shall convene the panel at a time and place agreeable to the members of the panel, but in no event shall the opinion be rendered later than twelve months from the date of notification of the selection of the attorney chairman by the executive director to the selected attorney and all other. Either party may informally question the panel concerning any matters relevant to issues to be decided by the panel before and after the issuance of their report. The panel deliberation and the questioning of the panel shall not be recorded. The chairman of the panel shall preside at all meetings.

(6) The panel shall have the sole duty to express its expert opinion as to whether or not the evidence supports the conclusion that the defendant or defendants acted or failed to act within the appropriate standards of care. After reviewing all evidence and after any examination of the panel by counsel representing either party, the panel shall, within thirty days, but in no event later than twelve months of the date of notification of the selection of the attorney, render one or more of the following expert opinions, which shall be in writing and signed by the panelists, together with written reasons for their conclusions:

(a) The evidence supports the conclusion that the defendant or defendants failed to comply with the appropriate standard of care as charged in the complaint.

(b) The evidence does not support the conclusion that the defendant or defendants failed to meet the applicable standard of care as charged in the complaint.

(c) That there is a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court.

(7) The report of the expert opinion reached by the expedited medical review panel process pursuant to the provisions of this Subsection shall not be admissible as evidence in any action subsequently brought by the claimant in a court of law. Neither party shall have the right to call any member of the medical review panel as a witness. A panelist shall have absolute immunity from civil liability for all communications, findings, opinions and conclusions made in the course and scope of duties prescribed by this Part.

Section 4. {Severability clause.}

Section 5. {Repealer clause.}

Section 6. {Effective date.}

Adopted by the Civil Justice Task Force at the States and Nation Policy Summit December 9, 2006. Approved by the ALEC Board of Directors January 8, 2007.

Exposed

By the Center for
Media and Democracy
www.prwatch.org

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations-includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

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From CMD: This "model" bill holds out the prospect of an expedited decision in a medical malpractice case, where a patient believes he has been injured by the negligence of a doctor or hospital in exchange for submitting the case to a panel of doctors (or health care providers) rather than to a jury of the patient's peers with access to all relevant evidence. The evidence allowed appears to be only the official reports of medical treatment created by the defendants or defendant employees and not deposition of witnesses, along with other documentation such as lab tests.

Also from CMD: This bill establishes a panel to screen medical malpractice lawsuits before they can proceed to court. In many ways, the pre-trial medical panel resembles arbitration, where both parties select panelists to review the evidence and make a decision; also like arbitration, "repeat customer" biases may arise, where panelists who want to be hired again have an incentive to rule in favor of the doctor or hospital (the doctor or hospital must repeatedly select panelists, whereas an individual patient will only do so once). The bill does not specify which parties will have to pay the panelist fees, but it could make medical malpractice litigation more expensive for an injured person.