

ASSEMBLY, No. 188

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Assemblywoman AMY H. HANDLIN

District 13 (Monmouth)

SYNOPSIS

Establishes system for early resolution of medical injury claims.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the resolution of medical injury claims and
2 supplementing Title 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 “Claim for medical injury” means any claim against a medical
9 care provider, whether based in tort, contract, or otherwise, to
10 recover damages on account of a medical injury.

11 “Claimant” means an individual who, in his or her own right, or
12 on behalf of another as otherwise permitted by law, is seeking
13 compensation for a medical injury, due to alleged sub-standard
14 medical care or treatment.

15 “Early offer” means an offer to pay an injured person’s economic
16 loss related to a medical injury, and reasonable attorney’s fees and
17 costs incurred in representing the injured person under this act. No
18 other damages of any kind shall be included in an early offer under
19 this act.

20 “Economic loss” means monetary expenses incurred by or on
21 behalf of a claimant reasonably related to a medical injury and its
22 consequences, including actual out-of-pocket medical expenses,
23 replacement services, additional payment to the claimant pursuant
24 to section 7 of this act, and 100 percent of the claimant’s salary,
25 wages, or income from self-employment or contract work lost as a
26 result of the medical injury. Economic loss does not include:
27 damages for physical and emotional pain, suffering, inconvenience,
28 physical impairment, mental anguish, disfigurement, loss of
29 enjoyment of life, loss of society and companionship, loss of
30 consortium, hedonic damages, injury to reputation, and all other
31 non-pecuniary losses of any kind or nature.

32 “Hearing officer” means a person of legal training chosen by
33 agreement of the parties from a list of civil mediators maintained by
34 the Superior Court of New Jersey.

35 “Medical care provider” means a physician, physician’s
36 assistant, nurse, hospital, clinic, or other health care provider or
37 agency licensed by the State, or otherwise lawfully providing
38 medical care or services, or an officer, employee, or agent thereof
39 acting in the course of and scope of employment.

40 “Medical injury” or “injury” means any adverse, untoward, or
41 undesired consequences caused by professional services rendered
42 by a medical care provider, whether resulting from: negligence,
43 error, or omission in the performance of those services; rendition of
44 those services without informed consent or in breach of warranty or
45 in violation of contract; failure to diagnose; premature abandonment
46 of a patient or of a course of treatment; failure properly to maintain
47 equipment or appliances necessary to the rendition of those

1 services; or otherwise arising out of or sustained in the course of
2 those services.

3 “Notice of injury” means written notice by certified mail
4 provided to a medical care provider alleged to have caused a
5 medical injury, and containing a request that the medical care
6 provider extend an early offer, and such information as provided in
7 subsection 1. of section 2 of this act.

8 “Personal representative” means an executor, administrator,
9 successor, personal representative, or special administrator of a
10 decedent’s estate or a person legally authorized to perform
11 substantially the same functions.

12 “Reasonable attorney fee” means 20 percent of the present value
13 of the claimant’s economic loss and the reasonable costs incurred in
14 representing the injured person under this act.

15 “Replacement services” means expenses reasonably incurred in
16 obtaining ordinary and necessary services from others, who are not
17 members of the injured person’s household, in lieu of those the
18 injured person would have performed for the benefit of the
19 household, but could not because of the injury.

20 “Wages” means monetary payment for services rendered, and the
21 reasonable value of board, rent, housing, lodging, fuel, or a similar
22 advantage received from the employer and gratuities received in the
23 course of employment from others than the employer; but “wages”
24 shall not include any sum paid by the employer to the employee to
25 cover any special expenses incurred by the employee because of the
26 nature of the employment. For a minor who is injured prior to
27 reaching the age of 18 and who is unable to perform any gainful
28 work as a result of the medical injury, upon reaching the age of 18
29 wages shall equal the mean New Jersey per capita income as shown
30 by the American Community Survey’s 1-year Estimate (inflation
31 adjusted), produced by the United States Census Bureau.

32

33 2. a. After a medical injury, a claimant may:

34 (1) Pursue resolution of a claim for medical injury pursuant to
35 this act; or

36 (2) Pursue an action for medical injury in a court of competent
37 jurisdiction.

38 b. For as long as the claimant and medical care provider are
39 proceeding under this act, this act shall govern the procedure for
40 resolving the medical injury claim at issue between the parties,
41 notwithstanding any other provision of law.

42 c. If the claimant elects to pursue a remedy under this act, the
43 claimant shall serve a notice of injury to the medical care provider
44 alleged to be responsible for the injury and an executed notification
45 and waiver of rights in the form set forth in section 13 of this act,
46 by certified mail, return receipt requested.

- 1 d. Upon the receipt by the medical care provider of a notice of
2 injury and an executed notification and waiver of rights, the
3 medical care provider may elect to:
- 4 (1) Extend an early offer of settlement; or
5 (2) Decline to extend an early offer of settlement.
- 6 e. A claimant's failure to submit a notice of injury requesting
7 an early offer, or a provider's failure to extend an early offer, shall
8 not be subject to review in any hearing, court, or other proceeding
9 of any kind.
- 10 f. The medical care provider shall respond to the claimant's
11 notice of injury in writing, within 90 days, setting forth the details
12 of its early offer, or indicating that the medical care provider has
13 decided not to extend an early offer of settlement. The medical care
14 provider's written response shall be sent by certified mail, return
15 receipt requested, to the address provided in the claimant's notice of
16 injury.
- 17 g. The medical care provider may request in writing that the
18 individual alleging a medical injury submit to an independent
19 medical examination by a qualified and board certified physician
20 chosen by the medical care provider and agreed to by the claimant
21 at a time and place reasonably convenient for the claimant. If the
22 parties cannot agree on a physician to conduct the examination
23 within 30 days of the request, the hearing officer shall select the
24 physician. The physician conducting the examination shall not be
25 affiliated directly or indirectly with the medical care provider
26 alleged to have caused the injury. The cost of the examination,
27 including reasonable travel expenses for the claimant, shall be paid
28 by the medical care provider's professional liability insurance
29 company. Within five days of receipt, the medical care provider or
30 its insurer shall, at no cost to the claimant, provide the claimant
31 with all reports and documents originating from the examination.
32 The claimant shall also be entitled to obtain a transcript and audio-
33 video recording of the examination at the claimant's expense. Any
34 physician conducting medical examinations under this section shall
35 be certified by the appropriate specialty board as recognized by the
36 American Board of Medical Specialties and in good standing with
37 the State Board of Medical Examiners.
- 38 h. If the medical care provider requests that the claimant
39 submit to a physical examination as set forth in subsection g. of this
40 section, the time allowed for a medical care provider to respond to
41 the claimant's notice of injury shall be extended by 30 days.
- 42 i. If the medical care provider extends an early offer, the
43 claimant shall accept or reject the medical care provider's written
44 offer in writing within 60 days of receipt of the offer. If the
45 claimant requests a hearing pursuant to section 10 of this act, to
46 resolve any dispute with respect to the content of an early offer, the
47 timeframe within which the claimant may accept or reject the early

1 offer shall be extended until 10 days after the decision on the
2 disputed issue is issued by the hearing officer.

3 j. If the claimant accepts the medical care provider's early
4 offer, the claimant shall notify the medical care provider in writing
5 by certified mail, return receipt requested, and thereafter, the
6 claimant is barred from pursuing any claim for the same medical
7 injury against any medical care provider.

8 k. If the claimant rejects the medical care provider's early offer
9 or does not accept the medical care provider's early offer within the
10 time constraints provided by subsection i. of this section, the early
11 offer shall be considered rejected. A claimant who rejects an early
12 offer may pursue an action for medical injury against the medical
13 care provider in a court of competent jurisdiction.

14 l. A notice of injury shall be provided to a medical care
15 provider by certified mail and shall contain:

- 16 (1) The name, address, and telephone number of the claimant;
- 17 (2) The believed date and place of the alleged medical injury;
- 18 (3) The nature of the alleged injury;
- 19 (4) An explanation, if known, as to how the alleged injury was
20 caused;
- 21 (5) A description of the severity of the alleged injury, including
22 the claimant's opinion of where the injury is located on the National
23 Practitioner Data Bank severity scale;
- 24 (6) Medical records and medical bills associated with the
25 alleged injury or a limited authorization allowing the medical care
26 provider to obtain medical records and medical bills associated with
27 the alleged injury;
- 28 (7) Evidence of lost wages or income from self-employment or
29 contract work for the individual suffering from an alleged medical
30 injury, which may be supplied through income tax returns or
31 paycheck stubs for the year prior to the alleged injury and any
32 subsequent records up to the date of the notice of alleged injury, or
33 a limited authorization allowing the medical care provider to obtain
34 those records;
- 35 (8) A demand for economic loss resulting from the alleged
36 injury, that includes only medical expenses, replacement services,
37 reasonable attorney fees, and lost wages, or income from self-
38 employment or contract work;
- 39 (9) The name, address, and telephone number of claimant's
40 attorney; and
- 41 (10) A request that the medical care provider extend an early
42 offer of settlement of the claim.

43
44 3. a. If the claimant is not represented by legal counsel, upon
45 receiving a notice of injury, the medical care provider shall provide
46 a neutral advisor who is a licensed attorney of this State or a retired
47 judge, at the medical care provider's expense, to offer assistance to
48 the claimant and medical care provider under this act. Among other

1 things, the neutral advisor shall encourage the claimant to consider
2 retaining an attorney, and shall ensure the claimant is aware of the
3 differences between proceeding under this act and proceeding with
4 an action in a court of competent jurisdiction.

5 b. A claimant who was unrepresented at the time the claimant
6 submitted the notice and waiver of rights shall have the right to
7 withdraw the notice of injury and the notice and waiver of rights
8 within five business days after the claimant's first meeting with the
9 neutral advisor, which shall occur no later than 10 business days
10 from the claimant's notification of the identity of the neutral
11 advisor. In the event the claimant withdraws the notice of injury,
12 the early offer process shall be terminated and both parties shall
13 proceed as if the notice of injury was never filed.

14 c. No medical care provider or insurer shall extend an early
15 offer prior to the expiration of 15 business days after the claimant
16 receives notification of the appointment of the neutral advisor.

17

18 4. a. Proceedings, records, and communications during
19 negotiation of an early offer shall be treated as private and
20 confidential by the claimant and the medical care provider. The
21 outcome and any other writings, evidence, or statements made or
22 offered by a party or a party's representative during negotiation of
23 an early offer and relevant only to the early offer negotiation
24 process are not admissible in court, shall not be submitted or used
25 for any purpose in a subsequent trial, and shall not be publicly
26 disclosed.

27 b. A notice of injury provided pursuant to subsection c. of
28 section 2 of this act and subsequent actions taken pursuant to this
29 act shall be exempt from the reporting requirements of section 2 of
30 P.L.1983, c.247 (C.17:30D-17), unless the parties reach a
31 settlement under this act. Settlements reached pursuant to this act
32 are not exempt from the reporting requirements of section 2 of
33 P.L.1983, c.247 (C.17:30D-17).

34

35 5. a. If an early offer is accepted, economic losses previously
36 incurred by the claimant as a result of the medical injury and
37 reasonable attorney fees shall be paid by the medical care provider
38 to the claimant within 15 days of the claimant accepting an early
39 offer.

40 b. If an early offer is accepted, the medical care provider shall
41 pay future economic losses incurred by the claimant to the claimant
42 as those losses accrue. If any requested payment is denied, the
43 medical care provider shall notify the claimant in writing of the
44 denial and the basis for denial, and inform the claimant that any
45 request for a hearing under section 10 of this act regarding the
46 denial must be made within 30 days of the date of denial.

47 (1) Payments for medical bills arising after the early offer
48 settlement is reached shall be made within 15 days after the medical

1 care provider receives reasonable proof of the fact and the amount
2 of loss sustained. If reasonable proof is not supplied as to the entire
3 claim, the amount supported by reasonable proof shall be paid
4 within 15 days after that proof is received. Any part or all of the
5 remainder of the claim that is later supported by reasonable proof
6 shall be paid within 15 days after that proof is received by the
7 medical care provider. The medical care provider shall pay any and
8 all fees and charges incurred by the claimant resulting from the
9 medical care provider's failure to make timely payment of medical
10 bills.

11 (2) Payment of lost wages shall be made weekly. At a minimum,
12 payments shall be adjusted annually on July 1 by a factor equal to
13 the percentage change in the Consumer Price Index for Urban Wage
14 Earners and Clerical Workers (CPI-W) for New York-Northern
15 New Jersey, for the prior 12 months established by the Federal
16 Bureau of Labor Statistics.

17 (3) Payment of any other amounts due under an early offer shall
18 be paid within 30 days of the date that the provider receives notice
19 and proof of the fact and amount that is due.

20 (4) When necessary for the medical care provider or its insurer
21 to evaluate whether medical expenses are reasonably related to the
22 medical injury, the medical care provider may request in writing
23 that the claimant submit to an independent medical evaluation as
24 provided by subsection g. of section 2 of this act.

25 c. Interest shall accrue at the rate of 1.5 percent per month on
26 any amounts due under an early offer that are not paid as prescribed
27 by this section.

28 d. In lieu of periodic payments as provided for in this section,
29 the claimant and medical care provider may agree upon a lump sum
30 payment for any and all potential future economic losses suffered
31 by the claimant, provided that the lump sum agreement is reviewed
32 and approved by a hearing officer after a hearing.

33
34 6. If death results from a medical injury, the amount of an early
35 offer pursuant to this act shall include:

36 a. Any economic loss incurred by the decedent prior to death;

37 b. The value at the time of death of what would have been the
38 net earnings of the deceased, less living expenses during the period
39 of his or her life expectancy, but for the medical injury;

40 c. The value of replacement services during the period of the
41 decedent's life expectancy, but for the medical injury;

42 d. The additional payment determined pursuant to section 7 of
43 this act; and

44 e. A reasonable attorney fee.

45

46 7. a. In addition to the lost wages, medical expenses, and
47 replacement services, economic loss included in any early offer
48 under this act shall include an additional payment to the claimant.

1 b. The additional payment, as adjusted under subsection e. of
2 this section, included in an early offer shall be:

3 (1) For a temporary injury involving only emotional harm,
4 without physical injury: \$6,600.

5 (2) For a temporary injury involving insignificant harm: \$2,100.

6 (3) For a temporary injury involving minor harm: \$7,800.

7 (4) For a temporary injury involving major harm: \$31,500.

8 (5) For a permanent injury involving minor harm: \$35,500.

9 (6) For a permanent injury involving significant harm: \$81,500.

10 (7) For a permanent injury involving major harm: \$127,500.

11 (8) For a permanent injury involving grave harm, or an injury
12 resulting in death: \$140,000.

13 c. Classification of injuries under subsection b. of this section
14 shall be determined using the National Practitioner Data Bank
15 severity scale.

16 d. Either party may request a hearing pursuant to section 10 of
17 this act to resolve a dispute regarding classification of injury
18 severity under this section.

19 e. The additional payment amounts in subsection b. of this
20 section shall be adjusted annually on July 1 beginning in 2013 by a
21 factor equal to the percentage change in the Consumer Price Index
22 for All Urban Consumers (CPI-U) for medical care for the
23 Northeast Region for the prior 12 months established by the Federal
24 Bureau of Labor Statistics.

25

26 8. a. Payments for economic loss under this act shall not be
27 assignable.

28 b. Claims for child support, spousal support, or combination
29 child and spousal support payments may be enforced against
30 economic loss settlements.

31

32 9. a. Every early offer to settle a claim pursuant to this act
33 shall include all of the economic loss, plus reasonable attorney fees
34 as set forth in this act, and shall not be reduced or apportioned
35 based on comparative fault of multiple providers. Any medical care
36 provider, or combination of providers, alleged to have contributed
37 to causing an injury may extend an early offer as provided in this
38 act, and acceptance of that offer by the claimant shall bar any
39 further lawsuit or other claims for compensation by the claimant
40 against all medical care providers arising as a result of the same
41 medical injury. Any medical care provider that extends an early
42 offer to a claimant may seek contribution in a separate action
43 against any medical care provider or other party that contributed to
44 causing the medical injury. The injured individual shall not be a
45 party to any action for contribution between medical care providers;
46 however, the injured individual shall reasonably cooperate with the
47 proceedings and provide reasonable information and testimony as
48 may be necessary to resolve the contribution claim. The parties to

1 the action shall pay the injured individual all reasonable costs
2 associated with reasonable cooperation and testimony, including
3 travel expenses and reasonable loss of earnings or a witness fee of
4 \$100 per day, whichever is greater.

5 b. Nothing in this section shall limit claims by the claimant
6 against any party other than medical care providers who
7 participated in providing medical care which gave rise to the
8 medical injury.

9
10 10. a. Upon the request of either party, a qualified hearing
11 officer shall be chosen to resolve a dispute regarding an early offer
12 made under this act. If the parties cannot agree on the choice of a
13 hearing officer, one will be selected at random.

14 b. Dispute resolution under this act shall be limited to the
15 following issues:

16 (1) Whether an early offer includes all of the economic loss
17 related to the injury that is required by this act;

18 (2) Whether economic loss of any kind, past or future, asserted
19 by the claimant, is reasonably related to an injury that is the subject
20 of an early offer;

21 (3) Which severity level, pursuant to section 7 of this act, most
22 closely describes the injury that is the subject of an early offer; and

23 (4) What the net present value of an early offer is, for the
24 purposes of calculating the appropriate payment for reasonable
25 attorney fees.

26 c. No other disputes arising under this act may be the subject
27 of, or resolved through, a hearing under this section.

28 d. Any request for a hearing pursuant to this section shall
29 contain a reasonably complete statement of the issue or issues to be
30 resolved in the hearing and shall fully identify all parties to the
31 dispute. Hearings concerning economic loss that arise after a
32 settlement under this act shall be requested within 30 days of the
33 date payment for economic loss is denied under subsection b. of
34 section 5 of this act.

35 e. The medical care provider or, if applicable, the medical care
36 provider's insurer, shall pay all reasonable costs associated with a
37 hearing under this section.

38 f. Hearings conducted under this act shall be governed
39 exclusively by this section and by rules adopted by the Superior
40 Court.

41 g. Any hearing conducted under this act shall be conducted
42 within 45 days of the request and a decision shall be issued within
43 10 days of completion of the hearing. Hearings may be conducted in
44 person or telephonically.

45 h. On a motion from any party, or on his or her own motion, a
46 hearing officer may summarily determine any issue in dispute
47 without a hearing if it appears from the record that there are no
48 material issues of fact in dispute. By agreement of the parties, any

1 dispute may be determined by the hearing officer on the written
2 record without a hearing.

3 i. Hearings conducted pursuant to this section shall be limited
4 to a reasonable amount of time as determined by the hearing officer,
5 shall not require the presence or testimony of expert witnesses, and
6 shall be recorded by an accurate audio or stenographic recording of
7 all testimony, available to both parties at the non-prevailing parties'
8 expense.

9 j. Parties to a hearing under this section shall exchange
10 exhibits and witness lists at least 10 days prior to the hearing. No
11 exhibit may be introduced or witness called in a hearing unless
12 exchanged with the opposing party pursuant to this subsection.

13 k. The hearing officer shall issue a written decision resolving
14 the issues in dispute. If the hearing officer finds against the medical
15 care provider on any issue, the decision shall modify the terms of
16 the early offer. The early offer, as modified by the decision of the
17 hearing officer, shall be binding on the parties.

18 l. In a hearing conducted pursuant to paragraph (2) of
19 subsection b. of this section, if the hearing officer determines the
20 claimant's position to be frivolous, the claimant shall reimburse the
21 medical care provider for its costs related to presenting the dispute
22 to the hearing officer, up to a maximum of \$1,000.

23 m. In a hearing conducted pursuant to paragraph (2) of
24 subsection b. of this section, if the hearing officer determines the
25 medical care provider's position to be frivolous, the medical care
26 provider shall reimburse the claimant for its costs related to
27 presenting the dispute to the hearing officer, up to a maximum of
28 \$1,000, or if the claimant is unrepresented, pay the claimant double
29 the amount that was frivolously disputed or denied.

30 n. Fees paid to the hearing officer for presiding at hearings
31 under this act shall be paid by the medical care provider at a rate of
32 \$200 per hour. No hearing officer shall serve if service would
33 constitute a conflict under the New Jersey Rules of Professional
34 Conduct, or would require disqualification under the Code of
35 Judicial Conduct.

36
37 11. a. Except for claims on behalf of deceased individuals,
38 claims for medical injury to a competent adult under this act shall
39 be subject to the limitation set forth in N.J.S.2A:14-2.

40 b. Except for claims on behalf of deceased individuals, claims
41 for medical injury to a minor or incompetent under this act shall be
42 subject to the limitation set forth in section 1 of P.L.1964, c.214
43 (C.2A:14-2.1).

44 c. Claims for medical injuries on behalf of deceased
45 individuals shall be subject to the limitations set forth in section 1
46 of P.L.1977, c.61 (C.2A:14-23.1).

47 d. Providing a notice of injury to a medical care provider as
48 provided in this act shall operate to toll the applicable statute of

1 limitation with respect to that injury from the time that notice is
2 provided to a medical care provider until the expiration of time for a
3 medical care provider to extend an early offer, or if an early offer is
4 extended, until the acceptance or rejection of an early offer by the
5 claimant, whichever occurs later.

6
7 12. Any insurer or third party who has paid or reimbursed
8 economic losses to or for the benefit of the claimant, shall have the
9 right of subrogation against the medical care provider entering into
10 an early offer of settlement under this act.

11
12 13. a. Claimants electing to pursue resolution of a medical injury
13 under this act shall execute a notice and waiver of rights which
14 contains the following wording:

15
16 **WAIVER OF RIGHTS**

17 By agreeing to submit a notice of injury to the medical care
18 provider, I understand that my rights to seek legal remedies and a
19 jury trial for my injuries guaranteed by Paragraph 9 of Article 1 of
20 the New Jersey Constitution may be affected.

21 I understand that I have the right to consult and retain an attorney
22 to represent me regarding this matter, and that if an early offer
23 settlement is reached, my attorney will be paid by the health care
24 provider, in addition to any amount that is paid for my economic
25 loss.

26 If I do not have an attorney when I sign this waiver form, the
27 medical care provider will appoint a neutral advisor to assist me in
28 the early offer process and to explain, among other things, the
29 differences between proceeding with an early offer settlement and
30 filing an action in a court of competent jurisdiction. I HAVE THE
31 RIGHT TO WITHDRAW THIS WAIVER AND THE NOTICE OF
32 INJURY ANY TIME PRIOR TO MIDNIGHT OF THE FIFTH
33 BUSINESS DAY AFTER MY FIRST MEETING WITH THE
34 ADVISOR, WHICH MUST OCCUR NO LATER THAN 10
35 BUSINESS DAYS FROM MY NOTIFICATION OF THE
36 IDENTITY OF THE NEUTRAL ADVISOR.

37 If, after submitting a notice of injury, the medical care provider
38 does NOT extend an early offer, I am free to pursue my legal
39 remedies as defined in New Jersey law without restriction.

40 If after submitting a notice of injury, the medical care provider
41 does extend an early offer, I may either:

- 42 (1) Accept the early offer;
43 (2) Request a hearing before a hearing officer to determine
44 whether the early offer includes all of the economic loss I am
45 entitled to under the statute, and if necessary, the hearing officer
46 may order the medical care provider to increase the early offer to
47 meet the requirements of the early offer law; or
48 (3) Reject the early offer and seek legal remedies.

1 I understand that if an early offer is made by the medical care
2 provider and I accept that offer, disputes regarding the early offer
3 can be resolved only by a hearing officer chosen from the list of
4 civil mediators maintained by the Superior Court of New Jersey, at
5 my request or the request of the medical care provider. If either
6 party believes that the decision of the hearing officer is unlawful,
7 that party may seek discretionary review in the New Jersey court
8 system; however, there is no assurance that the courts will
9 undertake that review.

10 Date _____ Signature _____

11 b. A properly executed waiver form by a claimant who is
12 competent at the time the waiver is executed shall be conclusively
13 presumed to be a sufficient, knowing, and voluntary waiver if the
14 waiver form complies with this section.

15
16 14. Except as set forth in subsection i. of section 2 of this act, a
17 claimant may only pursue an action for medical injury in a court of
18 competent jurisdiction when:

19 a. The claimant elects not to submit a notice of injury pursuant
20 to this act;

21 b. The medical care provider elects not to extend an early offer
22 pursuant to this act in response to the notice of injury; or

23 c. The claimant withdraws the notice of injury and the notice
24 and waiver of rights pursuant to section 3 of this act.

25
26 15. This act shall take effect on the 90th day next following
27 enactment.

28
29

30 STATEMENT

31

32 This bill establishes a mediation system for the resolution of
33 medical injury claims as an alternative for claimants choosing to
34 pursue a medical malpractice action in Superior Court. Under the
35 system, claimants suffering from medical injuries caused by
36 medical care providers may send the provider a notice of injury,
37 requesting that the provider extend an early offer of settlement of
38 the claim of injury. The system then provides for procedures by
39 which an early offer may be calculated and extended to the
40 claimant, as a means of resolving the claim without litigation,
41 which can be costly and time consuming.

42 Under the bill, a claimant who has been injured by a medical
43 care provider may attempt to resolve the claim through an early
44 offer of settlement. A claimant must first send the provider a notice
45 of injury, which sets forth certain details of the injury and contains
46 a request for an early offer of settlement. Upon receipt of the notice
47 of injury, a provider has 90 days to respond to the claimant with
48 details of its early offer of settlement, or a refusal to extend an early

1 offer of settlement. A claimant must respond to an early offer of
2 settlement within 60 days and, if the offer is accepted, the claimant
3 is barred from pursuing a claim against that provider in court. A
4 provider may also request that the claimant undergo an independent
5 medical examination.

6 The bill provides that if the claimant is not represented by legal
7 counsel, upon receiving a notice of injury, the medical care provider
8 shall provide a neutral advisor who is a member of the New Jersey
9 Bar Association or a retired judge, at the medical care provider's
10 expense, to offer assistance to the claimant and medical care
11 provider under the bill.

12 The bill provides that proceedings, records, and communications
13 during negotiation of an early offer shall be treated as private and
14 confidential by the claimant and the medical care provider. A
15 notice of injury received by a medical care provider is exempt from
16 certain reporting requirements under the "Medical Malpractice
17 Liability Insurance Act" until a settlement is reached.

18 Under the bill, an early offer is an offer by the medical care
19 provider to pay the claimant for economic losses as well as
20 attorney's fees. An early offer also provides certain compensation
21 depending on the severity of injury, according to a schedule based
22 on the National Practitioner Data Bank severity scale.

23 The bill also provides for a system to resolve disputes
24 concerning certain aspects of the early offer. Under the dispute
25 resolution system, claimants and providers may request a hearing
26 before a neutral hearing officer, chosen from the list of civil
27 mediators maintained by the Superior Court of New Jersey.
28 Dispute resolution is limited to the following issues:

29 (1) Whether an early offer includes all of the economic loss
30 related to the injury that is required by this act;

31 (2) Whether economic loss of any kind, past or future, asserted
32 by the claimant, is reasonably related to an injury that is the subject
33 of an early offer;

34 (3) Which severity level most closely describes the injury that is
35 the subject of an early offer; and

36 (4) What the net present value of an early offer is, for the
37 purposes of calculating the appropriate payment for reasonable
38 attorney fees.

39 The bill also provides a notice and waiver of rights form for
40 claimants pursuing an early offer of settlement, which provides that
41 the claimant may be waiving certain rights, such as the right to
42 pursue an action in court, by agreeing to an early offer of
43 settlement.