

EDWARD LEAR, ESQ.

Problem solver who has practiced law in CA for 30+ years

Have solved legal problems in Guam in past

Chair of Blue Ribbon Commission for CA State Bar to analyze effectiveness of laws

Arbitrator/ Judge pro tem

Hired by Guam health care provider community to facilitate a solution; *I was not hired to advocate a position*

Here to provide perspective

OVERVIEW OF BILL 112-36

§10101 Legislative Statement

However, *I Liheslaturan Guåhan* also recognizes the unique medical climate on Guam, where there has always been a shortage of medical practitioners. It is not our intent to drive these numbers lower, but to find a fair and balanced solution for all parties involved.

The goal of any legislation addressing medical malpractice claims should be as follows: (1) to prevent the filing in court of actions against healthcare providers for liability in situations where the facts do not permit a reasonable judgement of malpractice; and (2) to make fair and impartial the proceeding of such claims that are, or reasonably may be, well-founded.

OVERVIEW OF BILL 112-36

§10105 Medical Malpractice Pre-Trial Screening

- Begins after the filing of a complaint
- Referred to Magistrate Judge for Pre-trial Screening
- Answer must be filed within 20 days
- Pre-trial screening will be conducted before a Magistrate Judge with witnesses able to testify remotely
- Magistrate Judge will decide after review of testimony, medical records, x-rays, test results, treatises

OVERVIEW OF BILL 112-36

§10105 Medical Malpractice Pre-Trial Screening

- Magistrate Judge determines:
 - Whether evidence supports malpractice
 - Whether there is a material issue of fact
 - Whether the conduct was/was not a factor in the damages
- If Magistrate Judge finds malpractice, will set a monetary value
- Magistrate Judge's decision is sealed for 30 days

OVERVIEW OF BILL 112-36

§10105 Medical Malpractice Pre-Trial Screening

- Either party may pursue a trial within 30 days after the opinion
- The opinion is admissible in trial but is not conclusive and can be refuted

OVERVIEW OF BILL 112-36

§10109 Applicability to Small Claims

- Any claim for \$20,000.00 or less may be brought with the Small Claims Division

§10110 EFFECT OF CHAPTER

This chapter may apply to any claim that accrues before the date that the chapter becomes law, at the election of any party.

The bill applies retroactively to any claim.

- Will lead to a flood of litigation against doctors for medical malpractice claims without regard to a statute of limitations

PROBLEMS WITH BILL 112-36 THE COURT NOT CONSULTED



Supreme Court of Guam

GUAM JUDICIAL CENTER SUITE 300
120 WEST O'BRIEN DRIVE, HAGĀTÑA, GUAM 96910-5174
Telephone: (671) 475-3162/80 • Facsimile: (671) 475-3140



HON. F. PHILIP CARBULLIDO
CHIEF JUSTICE

HANNAH G. ARROYO
CLERK OF COURT

VIA EMAIL

July 7, 2021

The Honorable Tina Rose Muña Barnes
I Mina'trentai Sais Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

At the outset, I note that the Judiciary was not invited to provide fiscal comments—as has been done in the past—as shown on the fiscal note associated with Bill 112. The comments here may be taken as fiscal comments relative to Bill 112. Your questions and my responses are provided below:

PROBLEMS WITH BILL 112-36



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While Bill 112 states in its legislative intent section that the “goal of any legislation addressing medical malpractice claims should be . . . to prevent the filing in court of actions against healthcare providers for liability in situations where the facts do not permit a reasonable judgement [sic] of malpractice,” this bill would actually require the filing of a court action to initiate a malpractice claim. Bill 112 in effect doubles the judicial review of a malpractice claim—first by a Magistrate Judge for pre-trial screening, then through actual litigation before a Superior Court Judge. The impact upon the Judiciary’s operations would be immediate and profound.

In conclusion, Bill 112 replaces the arbitration panel, currently in 10 GCA Chapter 10, with a Magistrate Judge to perform pre-trial screening of malpractice claims. The Judiciary does not have the financial or personnel resources to meet the mandates of Bill 112 should it become law in its present form. Without adequate funding to support the required resources, the Magistrate Judges will be unable to effectively and efficiently conduct pre-trial screening and processing of malpractice claims as contemplated by Bill 112. The Judiciary respectfully requests consideration of additional appropriations and a prospective effective date for Bill 112.

PROBLEMS WITH BILL 112-36

K57 INTERVIEWS PATTI ARROYO

GOVERNOR LEON GUERRERO ON BILL 112: “I AM REALLY HOPING THAT THE AUTHOR OF THE LEGISLATION LISTEN, AND NOT PUT THIS BILL ON THE FLOOR... GO BACK AND MEET WITH DOCTORS, ATTORNEYS, CONSUMERS...”,
WITH PATTI

PROBLEMS WITH BILL 112-36 FROM THE CHIEF JUSTICE

While Bill 112 states in its legislative intent section that the “goal of any legislation addressing medical malpractice claims should be . . . to prevent the filing in court of actions against healthcare providers for liability in situations where the facts do not permit a reasonable judgement [sic] of malpractice,” **this bill would actually require the filing of a court action to initiate a malpractice claim.** Bill 112 in effect **doubles the judicial review** of a malpractice claim—first by a Magistrate Judge for pre-trial screening, then through actual litigation before a Superior Court Judge. The impact upon the Judiciary’s operations would be immediate and profound.

PROBLEMS WITH BILL 112-36 REVIEW PROCESS

Review by Magistrate Judge does not occur until after a legal complaint has been filed

- **Must report lawsuits to insurance**
- **Increases case load of judiciary by requiring double review of medical malpractice cases**

Magistrate Judge initially decides case. There is no involvement by a neutral medical professional.

PROBLEMS WITH BILL 112-36 REVIEW PROCESS

Even if the Magistrate Judge finds a case is not supported, there is nothing that disincentivizes plaintiff from continuing with litigation

- Previous bill provided that plaintiff would be responsible for fees, costs, etc. if his/ her recovery did not exceed 40% of the arbitration award**

No cap on how much may be awarded by Magistrate Judge or after a trial

PROBLEMS WITH BILL 112-36 MALPRACTICE RATES WILL INCREASE

- More malpractice claims
- Before, arbitration required serving of claim on doctor but not a filing in superior court. Bill 112 allows plaintiff to file lawsuit first, then seal it. The lawsuit will be reported to insurance carriers in a way that it was not required to be reported in the past bill.

PROBLEMS WITH BILL 112-36 DOCTORS WILL NOT PRACTICE IN GUAM

- MMMAA incentivized doctors to practice in Guam and led to an increase in the number of doctors in Guam
- Doctors chose to “come home” instead of stay on the mainland
- Small claims cases under \$20,000.00 can be brought without any screening

PROBLEMS WITH BILL 112-36

PATIENTS WILL SUFFER

- Doctors will be unwilling to provide patient care that falls in any way outside their practice areas for fear of malpractice suits. Many doctors submitted letters stating that they would no longer treat patients with the input of specialists and would send patients off-island to see specialists for fear of being sued for malpractice.
 - For instance, adult neurologists accessible to them to help provide care to their patients as there are no pediatric neurologists on island to see these patients.
 - Doctors will be more conservative in terms of what treatment they provide
- Increased patient costs
 - Reduced access to specialty care will mean referrals to specialists off-island

PROBLEMS WITH BILL 112-36 WILL AFFECT MORE THAN DOCTORS

- **The Bill affects all “healing arts” professionals:**
 - **Nurses**
 - **Veterinarians**
 - **Chiropractors**

PROBLEMS WITH BILL 112-36 MEDICAL COMMUNITY NOT CONSULTED BEFORE BILL PROPOSED

Healthcare practitioners have spoken out at length regarding their objections and concerns to the Bill. Proponents of the Bill have not met until recently with the medical community to discuss their objections and concerns with the Bill.

SOLUTION

**1. Notification of Grievance by
alleged victim**

20 days to respond

2. Mediation

3. Arbitration

4. Trial de Novo