



# Office of the Speaker **THERESE M. TERLAJE**

*I Mina'trentai Sais na Liheslaturan Guåhan* | 36th Guam Legislature  
Committee on Health, Land, Justice and Culture

## **SUMMARY OF SUBSTITUTE BILL NO. 112-36, As Substituted by the Committee on Health, Land, Justice and Culture**

Following Public Hearings held on July 7, 2022, and July 12, 2022, on the *As Introduced* Bill No. 112-36 (COR), the Committee has substituted the bill in consideration of public testimony.

The goal of this legislation remains the same:

- to prevent court actions against healthcare providers for liability in situations where the facts do not permit a reasonable judgement of malpractice; and,
- to make fair and impartial, the proceeding of such claims that are, or reasonably may be well-founded.

It was determined by Chief Judge Mangloña that Guam's current mandatory arbitration law does not explain what to do when an indigent plaintiff is incapable of paying his or her half of the cost of arbitration. Judge Manglona further stated: *"It would be manifestly unfair to enforce the statutory requirement against a person financially incapable of arbitrating. Doing so would have the absurd result of prohibiting the poor from recovering on a claim they might be otherwise entitled to. It would likewise shield the healthcare industry from ever owing liability to the underprivileged. There is no evidence to indicate that the Guam legislature enacted the MMMAA with such a draconian purpose in mind."*

Some of the changes contained in Substitute Bill 112-36 (COR), are as follows:

- Amends the current Medical Malpractice Mandatory Arbitration law to put a government funded Mandatory Pre-Screening process in lieu of expensive arbitration for any claim for damages for personal injury or death on account of alleged medical malpractice of a healthcare provider.
- Requires that prior to the filing for a Medical Malpractice Pre-Screening, a claimant **SHALL provide no less than a 45-day notification** to a healthcare provider of his or her intent to file a complaint.
- **NOTHING SHALL PROHIBIT A HEALTHCARE PROVIDER FROM:**
  - o Communicating with a claimant during this 45-day period, to attempt to resolve a claim outside of the pre-screening process through mutual agreement through mediation or arbitration, or other alternate and legal process.
  - o **PRIOR** to a Pre-Screening complaint, **MAKE AN OFFER OF REPARATIONS. ALL COMMUNICATIONS** regarding reparations made in writing to a patient by a healthcare provider **WILL BE PRIVILEGED and MAY NOT** be used by **ANY** party to establish liability or measure of damages attributable to the offeror.

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- Exercising his or her **CURRENT RIGHT** under the Medical Malpractice Reform Act of 1975 (codified in § 11112 of Chapter 11, Title 10, Guam Code Annotated), to expressions of sympathy or benevolence relating to any pain or suffering or death of a patient involved in the incident, to the patient or the family of the patient. Such expressions **WILL REMAIN INADMISSABLE AS EVIDENCE** of an admission of liability in **ANY civil or ANY arbitration proceedings**.
- The current Standard of Care under Guam law remains intact.
- Statute of Limitations are not affected by this bill.
- Pre-Screening complaint shall be filed with the court. The Court **SHALL SEAL THE CASE IMMEDIATELY** from public access and refer the matter to a Judge (not a magistrate) for Pre-Screening.
- **AT ANY TIME AND UPON MUTUAL CONSENT**, parties can make a motion to the Pre-Screening Judge to **HALT** proceedings while they submit their dispute to **mediation** based on agreed upon terms and conditions.
- **AT ANY TIME AND UPON MUTUAL CONSENT**, parties can make a motion to the Pre-Screening Judge to **HALT** proceedings while they submit their dispute to **arbitration** pursuant to the Guam International Arbitration Law based on agreed upon terms and conditions. A decision of an arbitral tribunal on a medical malpractice dispute **SHALL BE FINAL AND BINDING**.
- The Pre-Screening process will be conducted by a Judge, **NOT** a Magistrate Judge as originally proposed, promptly upon notice in writing to all parties and their counsel should a claim not be resolved through a mutually agreed upon process.
- Within 20 days of service of a Pre-Screening Complaint, a defendant **SHALL** file an ANSWER to the complaint and serve it to the claimant or their attorney which identifies any defenses then known. Should a defendant fail to provide a response in the time frame, the claimant **MAY** proceed to default Pre-Screening.
- During a Pre-Screening, the Judge will examine, but not limited to, the following:
  - (1) Testimony of witnesses which may be taken remotely by telephone, videoconference, or any other electronic means.
  - (2) Any findings of fact and decisions made by Guam health licensing boards on the same subject of the complaint.
  - (3) Expert witness affidavits submitted by both claimant and defendant from a medical professional in the same or similar field, licensed to practice on Guam or any other U.S. jurisdictions, that attest to whether or not there may be a breach in the standard of care pursuant to Guam's standard of care.
  - (4) Any records for examination to determine whether the defendant acquired informed consent from the claimant prior to and during treatment pursuant to the provisions of Guam law regarding informed consent.

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- After consideration of the above records, the Judge shall decide the following:
  - (1) If the evidence supports a conclusion that the defendant or defendants failed to comply with the appropriate standard of care.
  - (2) If the evidence does not support the conclusion that the defendant or defendants failed to meet the appropriate standard of care.
  - (3) The conduct complained of was or was not a factor in the resultant damages.
- If the Judge finds that the evidence supports the conclusion that the defendant(s) failed to comply with the appropriate standard of care and that the conduct complained of was a factor in causing damages to claimants(s), the Judge shall proceed to set a monetary settlement value on the claim, distinguishing between economic and noneconomic damages.
- The record of Pre-Screening proceedings and the Pre-Screening decision reached by the Judge **SHALL REMAIN SEALED FOR THIRTY (30) Days; HOWEVER**, the Pre-Screening Judge **MAY** order the Pre-Screening Decision sealed longer or permanently upon agreement by the parties and shall be sealed **PERMANENTLY** if a trial **IS NOT** pursued.
- Either party may pursue their right to a jury or a non-jury trial within 30 days after the Pre-Screening Judge renders its decision by notifying the court of the party's intent to proceed to trial.
- The Pre-Screening Judge's decision **FOR OR AGAINST** a claim of malpractice **SHALL** be admissible as evidence in the pending Court action brought by the claimant, but such a decision **SHALL NOT** be conclusive and can be refuted by a defendant given admissible conflicting evidence.
- Any claim against any defendant within the small claims statutory limit **SHALL BE** filed with the Small Claims Division.
- **REPORTING REQUIREMENT:** The Judiciary of Guam **SHALL SUBMIT** an annual report of the number of claims files, number of cases that opted for mediation or arbitration, number of cases resolved through the pre-screening process, number of cases found to be meritorious, and number of outcomes of cases that proceeded to trial.

The Committee is also considering the following additional amendment not yet in the Substitute bill:

1. “**§ 10106. Standard of Care.** The prevailing standard of duty, practice, or care by a reasonable physician in the same field practicing medicine in the community at the time of the alleged malpractice shall be the standard applied in the Pre-Screening, arbitration, and trial, provided that it shall be an affirmative defense for a physician who in good faith with the informed consent of the patient provided care in another specialty because of the unavailability of a practitioner on island who offers said specialty when the failure to provide said care would have adverse consequences for the patient.”
2. To further discourage frivolous litigation:

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“After the verdict is received and filed, or the court’s decision rendered in a *trial de novo*, the trial court *sua sponte* shall issue findings of fact and conclusions of law announcing whether plaintiff filed a frivolous suit and if so, impose sanctions, as appropriate against plaintiff in accordance with the standards set forth in GCRP11 (b) (1) through (3) in addition to any sanctions imposed on counsel.”

Substitute Bill 112-36 (COR) shows amendments to the existing law with underlines signifying proposed additions, and strikethroughs signifying proposed deletions to current law. Please contact my office with any questions you may have. We look forward to your participation.