

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1718

BY: THOMPSON and NIEMI of the
HOUSE

and

MILES-LaGRANGE of the
SENATE

AS INTRODUCED

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY AND
OFFICERS; PROVIDING SHORT TITLE; CREATING THE
MATERNAL AND INFANT CARE ACT; REQUIRING STATE
DEPARTMENT OF HEALTH TO ESTABLISH CERTAIN PUBLIC
AWARENESS PROGRAM; PROVIDING THAT CERTAIN PERSONNEL
FALL UNDER PURVIEW OF GOVERNMENTAL TORT CLAIMS ACT;
SPECIFYING CONTRACTUAL REQUIREMENTS; CREATING THE
OKLAHOMA PERINATAL PROVIDER BOARD; PROVIDING FOR
APPOINTMENT OF MEMBERS; STATING DUTIES OF BOARD;
REQUIRING ANNUAL REPORT; PROVIDING FOR STAFF
ASSISTANCE; AMENDING SECTION 37, CHAPTER 265,
O.S.L. 1990 (63 O.S. SUPP. 1990, SECTION 1-230),
WHICH RELATES TO STATE DEPARTMENT OF HEALTH REPORT;
REQUIRING SUBMISSION OF REPORT TO OKLAHOMA
PERINATAL PROVIDER BOARD; AMENDING 51 O.S. 1981,
SECTIONS 152, AS LAST AMENDED BY SECTION 1, CHAPTER
313, O.S.L. 1990 AND 154, AS LAST AMENDED BY
SECTION 115, CHAPTER 51, O.S.L. 1990 (51 O.S. SUPP.
1990, SECTIONS 152 AND 154), WHICH RELATE TO THE
GOVERNMENTAL TORT CLAIMS ACT; MODIFYING DEFINITION
OF EMPLOYEE; PROVIDING LIMITATIONS OF LIABILITY FOR

CERTAIN EMPLOYEES; PROVIDING FOR CODIFICATION;
PROVIDING AN EFFECTIVE DATE; AND DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-231 of Title 63, unless there is created a duplication in numbering, reads as follows:

Section 1 through Section 4 of this act shall be known and may be cited as the "Maternal and Infant Care Act" which shall have as its purpose, the coordination, development and enhancement of a system of maternal and infant health services in the state in order to decrease infant mortality by providing prenatal care to pregnant women.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-232 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall establish a statewide public awareness program directed toward the health needs of pregnant women and infants. This program shall promote the importance of prenatal and postnatal maternal and infant health care and shall provide free information regarding the types, location and availability of maternal and infant health care services.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-233 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. From September 1, 1991, through June 30, 1996, persons licensed to practice medicine and surgery or who are licensed osteopathic physicians and surgeons or who are certified nurse-

midwives and who provide prenatal, delivery and infant care services to State Department of Health clients pursuant to and in strict compliance with all terms of a contract with the State Department of Health authorized by paragraph (3) of subsection (b) of Section 1-106 of this title, shall be considered employees of the state for purposes of the Governmental Tort Claims Act only, Section 151 et seq. of Title 51, but only insofar as actions within the employee's scope of employment as specified by the terms of the contract.

B. Such contracts shall provide that any prenatal, delivery and infant care services rendered by the provider shall fully comply with the Standards for Ambulatory Obstetrical Care of the American College of Obstetrics and Gynecology and the Perinatal Care Guidelines of the American College of Obstetrics and Gynecology and the American Academy of Pediatrics as adopted and incorporated into the Standards and Guidelines for Public Providers of Maternity Services of the State Department of Health in order to entitle the provider to the limited liability provided by subsection A of this section.

C. Any contract executed pursuant to this section shall state with specificity, the exact services to be provided and the particular services which shall entitle the provider to the limited liability provided by subsection A of this section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-234 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Oklahoma Perinatal Provider Board, which shall be composed of fifteen (15) members. The members of the Oklahoma Perinatal Provider Board shall be appointed by the Governor within thirty (30) days after the effective date of this act. The Governor or the Governor's designee shall chair the Board.

B. The Oklahoma Perinatal Provider Board shall:

1. Assess existing state and local programs which provide prenatal, delivery and infant care services in the state, with particular emphasis on services for women and infants of low-income households;

2. Develop a comprehensive strategy, including funding therefor, for the provision of prenatal, delivery and infant care services to all women and infants in the state. The strategy shall include the provision of services on a community level, county level and statewide level. The statewide strategy shall include approaches which eliminate barriers to accessing and delivering maternal and infant health care services. Current barriers to services, such as the shortage of maternal and infant health care providers, cumbersome procedures regarding eligibility and reimbursement for Medicaid, lack of affordable insurance which covers maternal and infant health care services, misdirected and misused public funds, and professional liability costs for maternal and infant health care providers, should be addressed;

3. Investigate the feasibility of incorporating Health Maintenance Organizations (HMOs) within the statewide maternal and infant health care delivery system;

4. Meet with other state officials and agencies which are responsible for the provisions of maternal and infant health care services at regular intervals as established by the Board and when otherwise necessary to ensure that the purpose of the Maternal and Infant Care Act is accomplished promptly and thoroughly;

5. Recommend legislation and modifications in existing state programs, including any programs federally funded, which are necessary for the effective implementation and administration of this act;

6. Perform such other duties as required by law or as necessary to accomplish the purpose of the Maternal and Infant Care Act.

C. The Oklahoma Perinatal Provider Board shall submit an annual report on or before January 1, 1992, and each January 1 thereafter, to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and to the Governor, regarding the progress of the statewide strategy for delivery of prenatal, delivery and infant care services. The annual report shall include all findings and recommendations of the Board developed pursuant to subsection B of this section.

D. Legal assistance shall be provided by the Office of the Attorney General. Other staff support and assistance shall be provided by the Oklahoma Commission on Children and Youth.

SECTION 5. AMENDATORY Section 37, Chapter 265, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-230), is amended to read as follows:

Section 1-230. The State Department of Health shall submit an annual report on or before July 1, 1991, and each July 1 thereafter, to the Speaker of the House of Representatives, the President Pro Tempore of the Senate ~~and~~, the Governor, and the Oklahoma Perinatal Provider Board regarding the progress of programs providing prenatal, delivery and infant care services including expenditures, recommendations regarding legislation, funding needs and other matters pertaining to the State Department of Health's provision of prenatal, delivery and infant care services. The report shall provide in detail, current expenditures for each program and statistics by geographical areas of the state which relate to improvements in pregnancy outcome and improvements in coordination of prenatal, delivery and infant health services in the state.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1010 of Title 56, unless there is created a duplication in numbering, reads as follows:

The Department of Human Services is hereby required to amend the Oklahoma Medicaid Program, administered by the Department pursuant

to Title XIX of the federal Social Security Act, 42 U.S.C., Section 1396 et seq., to amend the income eligibility requirement for pregnant women and infants to one hundred eighty-five percent (185%) of the federal poverty level.

SECTION 7. AMENDATORY 51 O.S. 1981, Section 152, as last amended by Section 1, Chapter 313, O.S.L. 1990 (51 O.S. Supp. 1990, Section 152), is amended to read as follows:

Section 152. As used in this act, Section 151 et seq. of this title:

1. "Action" means a proceeding in a court of competent jurisdiction by which one party brings a suit against another.
2. "Agency" means any board, commission, committee, department or other instrumentality or entity designated to act in behalf of the state or a political subdivision.
3. "Claim" means any written demand presented by a claimant or his authorized representative in accordance with this act to recover money from the state or political subdivision as compensation for an act or omission of a political subdivision or the state or an employee.
4. "Claimant" means the person or his authorized representative who files notice of a claim in accordance with this act. Only the following persons and no others may be claimants:
 - a. any person holding an interest in real or personal property which suffers a loss, provided that the claim of said person shall be aggregated with claims of all other persons holding an interest in the property and the claims of all other persons which are derivative of the loss, and that multiple claimants shall be considered a single claimant,
 - b. the individual actually involved in the accident or occurrence who suffers a loss, provided that he shall

aggregate in his claim the losses of all other persons which are derivative of his loss, or

- c. in the case of death, an administrator, special administrator or a personal representative who shall aggregate in his claim all losses of all persons which are derivative of the death.

5. "Employee" means any person who is authorized to act in behalf of a political subdivision or the state whether that person is acting on a permanent or temporary basis, with or without being compensated or on a full-time or part-time basis. Employee also includes:

- a. all elected or appointed officers, members of governing bodies and other persons designated to act for an agency or political subdivision, but the term does not mean a person or other legal entity while acting in the capacity of an independent contractor or an employee of an independent contractor, and
- b. from September 1, 1991, through June 30, 1996,
licensed physicians, licensed osteopathic physicians
and certified nurse-midwives providing prenatal,
delivery or infant care services to State Department
of Health clients pursuant to a contract entered into
with the State Department of Health in accordance with
paragraph (3) of subsection (b) of Section 1-106 of
Title 63 of the Oklahoma Statutes but only insofar as
services authorized by and in conformity with the
terms of the contract and the requirements of Section
3 of this act.

For the purpose of this act, the following are employees of this state, regardless of the place in this state where duties as employees are performed:

- a. physicians acting in an administrative capacity,

- b. resident physicians and resident interns participating in a graduate medical education program of the University of Oklahoma Health Sciences Center or the College of Osteopathic Medicine of Oklahoma State University,
- c. faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University, while engaged in teaching duties.

Physician faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University not acting in an administrative capacity or engaged in teaching duties are not employees or agents of the state. However, in no event shall the state be held liable for the tortious conduct of any physician, resident physician or intern while practicing medicine or providing medical treatment to patients.

6. "Loss" means death or injury to the body or rights of a person or damage to real or personal property or rights therein.

7. "Municipality" means any incorporated city or town, and all institutions, agencies or instrumentalities of a municipality.

8. "Political subdivision" means:

- a. a municipality,
- b. a school district,
- c. a county,
- d. a public trust where the sole beneficiary or beneficiaries are a city, town, school district or county. For purposes of the Governmental Tort Claims Act, a public trust shall include a municipal hospital created pursuant to Section 30-101 et seq. of Title 11 of the Oklahoma Statutes, a county hospital created pursuant to Section 781 et seq. of Title 19 of the

Oklahoma Statutes, or is created pursuant to a joint agreement between such governing authorities, that is operated for the public benefit by a public trust created pursuant to Section 176 et seq. of Title 60 of the Oklahoma Statutes and managed by a governing board appointed or elected by the municipality, county, or both, who exercises control of the hospital, subject to the approval of the governing body of the municipality, county, or both, provided, this subparagraph shall not apply to hospitals or trusts which purchase advertising or which belong to organizations which purchase advertising, in which public funds have been used, in any media the purpose of which is to influence legislation on the civil justice system or to advocate support for or opposition to a candidate for public office,

- e. for the purposes of the Governmental Tort Claims Act, Section 151 et seq. of this title, only, a housing authority created pursuant to the provisions of the Oklahoma Housing Authority Act, Section 1051 et seq. of Title 63 of the Oklahoma Statutes,
- f. for the purposes of the Governmental Tort Claims Act only, corporations organized not for profit pursuant to the provisions of the Oklahoma General Corporation Act for the primary purpose of developing and providing rural water supply and sewage disposal facilities to serve rural residents,
- g. for the purposes of the Governmental Tort Claims Act only, districts formed pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act,
- h. for the purposes of the Governmental Tort Claims Act, Section 151 et seq. of this title, only, a fire

protection district created pursuant to the provisions of Section 901.1 et seq. of Title 19 of the Oklahoma Statutes,

- i. for the purposes of the Governmental Tort Claims Act, Section 151 et seq. of this title, only, a benevolent or charitable corporate volunteer or full-time fire department for an unincorporated area created pursuant to the provisions of Section 592 et seq. of Title 18 of the Oklahoma Statutes,
- j. for purposes of the Governmental Tort Claims Act, Section 151 et seq. of this title, only, an Emergency Services Provider rendering services within the boundaries of a Supplemental Emergency Services District pursuant to an existing contract between the Emergency Services Provider and the Oklahoma State Department of Health. Provided, however, that the acquisition of commercial liability insurance covering the activities of such Emergency Services Provider performed within the State of Oklahoma shall not operate as a waiver of any of the limitations, immunities or defenses provided for political subdivisions pursuant to the terms of the Governmental Tort Claims Act,

and all their institutions, instrumentalities or agencies.

9. "Scope of employment" means performance by an employee acting in good faith within the duties of his office or employment or of tasks lawfully assigned by a competent authority including the operation or use of an agency vehicle or equipment with actual or implied consent of the supervisor of the employee, but shall not include corruption or fraud.

10. "State" means the State of Oklahoma or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof.

11. "Tort" means a legal wrong, independent of contract, involving violation of a duty imposed by general law or otherwise, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment.

SECTION 8. AMENDATORY 51 O.S. 1981, Section 154, as last amended by Section 115, Chapter 51, O.S.L. 1990 (51 O.S. Supp. 1990, Section 154), is amended to read as follows:

Section 154. A. The total liability of the state and its political subdivisions on claims within the scope of this act, Section 151 et seq. of this title, arising out of an accident or occurrence happening after the effective date of this act, Section 151 et seq. of this title, shall not exceed:

1. Twenty-five Thousand Dollars (\$25,000.00) for any claim or to any claimant who has more than one claim for loss of property arising out of a single act, accident, or occurrence;

2. One Hundred Thousand Dollars (\$100,000.00) to any claimant for his claim for any other loss arising out of a single act, accident, or occurrence ~~except~~. Except however, the limits of said liability for the Oklahoma Medical Center and State Mental Health Hospitals operated by the Department of Mental Health and Substance Abuse Services for claims arising from medical negligence shall be Two Hundred Thousand Dollars (\$200,000.00). For claims arising from medical negligence by any licensed physician, osteopathic physician or certified nurse-midwife rendering prenatal, delivery or infant care services from September 1, 1991, through June 30, 1996, pursuant to a contract authorized by subsection (b) of Section 1-106 of Title 63 of the Oklahoma Statutes and in conformity with the

requirements of Section 3 of this act, the limits of said liability shall be Two Hundred Thousand Dollars (\$200,000.00); or

3. One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single occurrence or accident.

B. No award for damages in an action or any claim against the state or a political subdivision shall include punitive or exemplary damages.

C. When the amount awarded to or settled upon multiple claimants exceeds the limitations of this section, any party may apply to the district court which has jurisdiction of the cause to apportion to each claimant his proper share of the total amount as limited herein. The share apportioned to each claimant shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims against the state or its political subdivisions arising out of the occurrence. When the amount of the aggregate losses presented by a single claimant exceeds the limits of paragraphs 1 or 2 of subsection A of this section, each person suffering a loss shall be entitled to his proportionate share.

D. The total liability of resident physicians and interns while participating in a graduate medical education program of the University of Oklahoma College of Medicine, its affiliated institutions and the Oklahoma College of Osteopathic Medicine and Surgery shall not exceed One Hundred Thousand Dollars (\$100,000.00).

E. The state or a political subdivision may petition the court that all parties and actions arising out of a single accident or occurrence shall be joined as provided by law, and upon order of the court the proceedings upon good cause shown shall be continued for a reasonable time or until such joinder has been completed. The state or political subdivision shall be allowed to interplead in any action which may impose on it any duty or liability pursuant to this act.

F. The liability of the state or political subdivision under this act shall be several from that of any other person or entity, and the state or political subdivision shall only be liable for that percentage of total damages that corresponds to its percentage of total negligence. Nothing in this section shall be construed as increasing the liability limits imposed on the state or political subdivision under this act.

SECTION 9. This act shall become effective July 1, 1991.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-1-5599

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