

TITLE XXXIV
LIMITATIONS ON NONECONOMIC DAMAGES IN MEDICAL MALPRACTICE
ACTONS NOT COVERED UNDER THE FEDERAL TORT CLAIMS ACT

CHAPTER 1. LIMITATIONS ON NONECONOMIC DAMAGES IN MEDICAL MALPRACTICE ACTIONS NOT COVERED UNDER THE FEDERAL TORT CLAIMS ACT

§34-1-1 Statement of Need

The Choctaw Tribal Council has determined that it is in the best interest of the Tribe and its members to ensure that liability insurance coverage is available for medical malpractice and other civil claims against health care providers arising on Choctaw Reservation lands not covered by the Federal Torts Claim Act (“FTCA”).

§34-1-2 Purpose, Definitions, and Intent

- (1) For the purposes of this section, the following words and phrases shall have the meanings ascribed herein unless the context clearly requires otherwise:
 - (a) “Non-economic damages” means subjective, nonpecuniary damages arising from death, pain, suffering, inconvenience, mental anguish, worry, emotional distress, loss of society and companionship, loss of consortium, bystander injury, physical impairment, disfigurement, injury to reputation, humiliation, embarrassment, loss of the enjoyment of life, hedonic damages, other nonpecuniary damages, and any other theory of damages such as fear of loss, illness or injury. The term “non-economic damages” shall not include punitive or exemplary damages.
 - (b) “Actual economic damages” means objectively verifiable pecuniary damages arising from medical expenses and medical care, rehabilitation services, custodial care, disabilities, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, loss of employment, loss of business or employment opportunities, and other objectively verifiable monetary losses.
 - (c) “Health care provider” means any licensed physician, physician’s assistant, registered nurse, nurse practitioner, acupuncturist, licensed practical nurse, osteopath, dentist, hospital, institution for the aged or infirm, pharmacist, podiatrist, optometrist or chiropractor [or other health care practitioners or institutions who would be covered by Miss. Code § 11-1-60 et seq. if a medical malpractice claim had arisen against them off the reservation subject to state law].
- (2) It is the intent of this section to limit all non-economic damages as follows:
 - (a) In any cause of action filed on or after May 1, 2019, for injury based on medical malpractice or breach of standard of care against a health care provider, including institutions for the aged or infirm, in the event the trier of fact finds the defendant liable, they shall not award the plaintiff more than Five Hundred Thousand Dollars (\$500,000.00) for non-economic damages.
 - (b) In any civil action filed on or after May 1, 2019, other than those actions described in paragraph (a) of this subsection, in the event the trier of fact finds the defendant liable, they shall not award the plaintiff more than One Million Dollars (\$1,000,000.00) for non-economic damages.

- (c) The trier of fact shall not be advised of the limitations imposed by this provision and the judge shall appropriately reduce any award of non-economic damages that exceeds the applicable limitation.
 - (d) These limits apply only to actions against health care providers for claims which are not covered by the Federal Tort Claims Act.
- (3) Nothing contained in section (1) or (2) shall be construed as creating a cause of action or as setting forth elements of or types of damages that are or are not recoverable in any type of cause of action.