

After the Consumer Case Procedure Act and the Product Liability Act became effective, several health care providers voiced concerns regarding the applicability of these new laws and medical injury-related matters. As expected, there were recommendations from certain groups of health care professionals that disputes involving medical injuries should not be governed by these acts.

In light of this, there has been an emerging movement in Thailand for some form of medical malpractice legislation. There have now been a total of seven draft bills governing medical malpractice. The draft presented by the Ministry of Public Health has passed through the Council of State and has been approved by the cabinet. The legislation is now pending the Parliament's consideration.

The draft law is referred to as the Medical Malpractice Bill, although a more appropriate name would be the Patient Injury Bill to better reflect its Thai-language name and the no-fault system upon which the law is based.

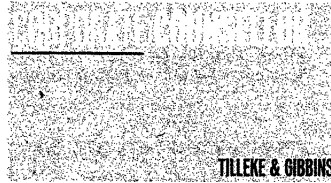
The bill is aimed at establishing a compensation fund for patients suffering injuries from medical care. Under this

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system, compensation should be paid in a timely manner to patients regardless of whether any health care provider has committed an error. This is referred to as a "no-fault compensation system" or a "no-blame compensation system".

In addition to providing compensation, the Thai government hopes that the law will provide a mechanism to resolve conflicts between patients and physicians, thereby reducing the number of court cases concerning medical malpractice. The intent of the law is to promote good relations between patients and medical personnel, while also establishing a system to prevent the occurrence of and provide compensation for health care-related injuries. The current draft bill contains important provisions in a number of areas as summarised below.

No-fault system: The bill provides that a patient who suffers injuries from medical care is entitled to receive compensation without proving fault. However, this entitlement is subject to



the exceptions listed below.

The following exceptions are listed under Section 6 of the bill:

- ◆ The injury is an ordinary consequence of the nature of the illness and the medical service was performed pursuant to professional standards.
- ◆ The injury would not have been avoidable despite performing the medical service pursuant to professional standards.
- ◆ The injury does not affect the patient's normal course of living after the medical process has been completed.

Ironically, although this is a no-fault system, the first and second exceptions require consideration as to whether a

medical error or medical malpractice is involved. If there was no error, the patient cannot receive any compensation. In the case of the third exception, however, it can be interpreted that even though there was an error, the patient would not receive compensation if he or she has completely healed.

Compensation: Under the bill, compensation payable refers to the same compensation for wrongful acts under Thailand's Civil and Commercial Code. However, the bill does not provide a clear explanation as to the criteria for considering the quantum of compensation.

Fund establishment: The bill calls for the establishment of a fund to provide compensation to injured patients. This fund will be derived from various sources including contributions from all registered sanatoriums, a transfer from the Universal Coverage Scheme, support from the government, donations and others. Importantly, the size of the fund is not specified in the bill.

Civil court cases: It is worth noting that the bill does not prohibit injured patients from filing civil actions against health care providers. An injured patient will have the choice of whether to initiate a civil court case or seek compensation under the bill or both. If the injured patient chooses to pursue both options and ultimately wins the lawsuit, compensation under the bill will still be paid and is considered part of the judgment award.

Criminal court cases: Section 45 of the bill provides for the possibility that health care providers could face criminal punishment for negligence. If the court determines that a health care provider is at fault, the court may take into consideration the health care provider's records, professional standards, the health care provider's guilty plea, relief and remedy provided to the patient, any compromise agreement made under the bill, the patient's wish to not demand punishment and other appropriate circumstances. Based on these facts, the

court will be empowered to reduce the degree of punishment or exempt punishment.

The bill has now become the subject of contentious debate among health care professionals in Thailand. Groups of doctors are claiming that this compensation system would ultimately increase lawsuits against medical professionals. Others are suggesting that although the law was designed to help poor and middle-class Thais, it could instead benefit foreign patients who use private hospitals.

Despite these various concerns, the bill represents another step forward for Thailand's health care system. It is meant to provide financial assistance to medical victims and resolve increasing conflicts between patients and medical professionals. Given the substantial debate that has surrounded the details of the legislation, the government faces a difficult road ahead in implementing such extensive public policy.

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