Colorado Statutes: TITLE 13 COURTS AND COURT PROCEDURE: JUDGMENTS AND EXECUTIONS:
ARTICLE 64 HEALTH CARE AVAILABILITY ACT
Section

PART 1
SHORT TITLE - LEGISLATIVE DECLARATION

13-64-101. Short title.

This article shall be known and may be cited as the "Health Care Availability Act".

Source: L. 88: Entire article added, p. 612, § 1, effective July 1.

13-64-102. Legislative declaration.

(1) The general assembly determines and declares that it is in the best interests of the citizens of this state to assure the continued availability of adequate health care services to the people of this state by containing the significantly increasing costs of malpractice insurance for medical care institutions and licensed medical care professionals, and that such is rationally related to a legitimate state interest. To attain this goal and in recognition of the exodus of professionals from health care practice or from certain portions or specialties thereof, the general assembly finds it necessary to enact this article limited to the area of medical malpractice to preserve the public peace, health, and welfare.

(2) The general assembly further determines and declares:

(a) The purpose of enacting the "Health Care Availability Act" and amendments thereto is to clearly and unequivocally state the intent of the general assembly that, in order to promote the purposes set forth in subsection (1) of this section, the limitations of liability set forth in section 13-64-302 are hereby reaffirmed; and

(b) All noneconomic damages of any kind whatsoever, whether direct or derivative, including but not limited to grief, loss of companionship, pain and suffering, inconvenience, emotional stress, impairment of quality of life, physical impairment, disfigurement, and damages for any other nonpecuniary harm awarded in a medical malpractice action, shall not exceed the limitations on noneconomic loss or injury specified in section 13-64-302.

Source: L. 88: Entire article added, p. 612, § 1, effective July 1. L. 2003: Entire section amended, p. 1788, § 3, effective July 1.

PART 2
PERIODIC PAYMENTS OF TORT JUDGMENTS

Law reviews: For article, "1988 Update on Colorado Tort Reform Legislation -- Part I", see 17 Colo. Law. 1719 (1988); for article, "1990 Update on Colorado Tort Reform Legislation", see 19 Colo. Law. 1529 (1990).

13-64-201. Legislative declaration.

(1) The general assembly declares the purposes of enacting this part 2 are to:

(a) Alleviate the practical problems incident to the unpredictability of future losses;

(b) Effectuate more precise awards of damages for actual losses;

(c) Pay damages as the losses are found to accrue;

(d) Assure that payments of damages more nearly serve the purposes for which they are awarded;

(e) Reduce the burden on public assistance costs created by the dissipation of lump-sum payments; and

(f) Conform to the income tax policies in the federal "Internal Revenue Code of 1986" and the laws of this state with respect to compensation for personal injuries.

Source: L. 88: Entire article added, p. 613, § 1, effective July 1.

13-64-202. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Economic loss" means pecuniary harm for which damages are recoverable under the laws of this state.

(2) "Future damages" means damages of any kind arising from personal injuries which the trier of fact finds will accrue after the damages findings are made.

(3) "Health care institution" means any licensed or certified hospital, health care facility, dispensary, other institution for the treatment or care of the sick or injured, or a laboratory certified under the federal "Clinical Laboratories Improvement Act of 1967", as amended, 42 U.S.C. sec. 263a, to perform high complexity testing.

(4) (a) "Health care professional" means any person licensed in this state or any other state to practice medicine, chiropractic, nursing, physical therapy, podiatry, dentistry, pharmacy, optometry, or other healing arts. The term includes any professional corporation or other professional entity comprised of such health care providers as permitted by the laws of this state.

(b) Repealed.

(c) Nothing in this subsection (4) shall be construed to create an exception to the corporate practice of medicine doctrine.

(5) "Noneconomic loss" means nonpecuniary harm for which damages are recoverable under the laws of this state, but the term does not include punitive or exemplary damages.
(6) "Past damages" means damages that have accrued before the damages findings are made, including any punitive or exemplary damages allowed by the laws of this state.
(7) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the judgment is entered.
(8) "Qualified insurer" means an insurance company licensed to do business in this state or any self-insurer, assignee, plan, or arrangement approved by the court.
Source: L. 88: Entire article added, p. 613, § 1, effective July 1. L. 93: (4) amended, p. 1920, § 4, effective July 1. L. 2003: (4) amended, p. 1600, § 4, effective July 1. L. 2004: (3) amended, p. 966, § 5, effective May 21.

Editor's note: (1) Subsection (4)(b) provided for the repeal of subsection (4)(b), effective July 1, 1996. (See L. 93, p. 1920.)
(2) Section 9 of chapter 269, Session Laws of Colorado 2004, provides that the act amending subsection (3) applies to health benefit coverage issued to a multiple employer welfare arrangement and health discount services sold on or after May 21, 2004.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (4), see section 1 of chapter 240, Session Laws of Colorado 2003.

Physical impairment is a recoverable item of damages under Colorado law as used in subsection (5) of this section. Dupont v. Preston, 9 P.3d 1193 (Colo. App. 2000), aff'd, 35 P.3d 433 (Colo. 2001).
Noneconomic damages for physical impairment and disfigurement are not included in the definition of noneconomic loss contained in § 13-64-302. Preston v. Dupont, 35 P.3d 433 (Colo. 2001).

13-64-203. Periodic payments.
(1) In any civil action for damages in tort brought against a health care professional or a health care institution, the trial judge shall enter a judgment ordering that awards for future damages be paid by periodic payments rather than by a lump-sum payment if the award for future damages exceeds the present value of one hundred fifty thousand dollars, as determined by the court.
(2) In any such action in which the award for future damages is one hundred fifty thousand dollars or less, present value, the trial judge may order that awards for future damages be paid by periodic payments.
Source: L. 88: Entire article added, p. 614, § 1, effective July 1.

Law reviews. For article, "Health Care Litigation in Colorado: A Survey of Recent Decisions", see 30 Colo. Law. 91 (August 2001).

13-64-204. Special damages findings required.
(1) If liability is found in a trial under this part 2, the trier of fact, in addition to other appropriate findings, shall make separate findings for each claimant specifying the amount of:
(a) Any past damages for each of the following types:
(I) Medical and other costs of health care;
(II) Other economic loss except loss of earnings;
(III) Loss of earnings; and
(IV) Noneconomic loss;
(b) Any future damages and the period of time over which they will be paid, for each of the following types:
(I) Medical and other costs of health care;
(II) Other economic loss except loss of future earnings which would be incurred for the life of the claimant or any lesser period;
(III) Loss of future earnings which would be incurred for the work life expectancy of the claimant or a lesser period; and
(IV) Noneconomic loss which would be incurred for the life of the claimant or any lesser period.
(2) The calculation of all future damages under subparagraphs (I), (II), and (IV) of paragraph (b) of subsection (1) of this section shall reflect the costs and losses during the period of time, including life expectancy, if appropriate, that the claimant will sustain those costs and losses. The calculation of loss under subparagraph (III) of paragraph (b) of subsection (1) of this section shall be based on loss during the period of time the claimant would have earned income but for the injury upon which the claim is based.
(3) The fact that payment of any judgment will be paid by periodic payments shall not be disclosed to a jury.
Source: L. 88: Entire article added, p. 614, § 1, effective July 1.

Law reviews. For article, "Health Care Litigation in Colorado: A Survey of Recent Decisions", see 30 Colo. Law. 91 (August 2001).
The Health Care Availability Act limits the total recovery for all noneconomic loss or injury to $250,000, including any such loss or injury resulting from physical impairment or disfigurement as set forth in § 13-21-102.5. Plaintiffs may not recover for a separate category of damages for physical impairment and disfigurement in addition to the statutory categories set forth in this section. Ledstrom by and through Ledstrom v. Keeling, 10 F. Supp.2d 1195 (D. Colo. 1998).
This section does not prohibit recovery for physical impairment. Damages for physical impairment are recoverable under the laws of this state as either economic or noneconomic loss and court did not err in instructing jury to determine separately the amount of past damages attributable to any physical impairment and any future damages allocable to any physical impairment. Dupont v. Preston, 9 P.3d 1193 (Colo. App. 2000), aff'd, 35 P.3d 433 (Colo. 2001).
This section requires determination of present value of future damages but does not require presentation of expert testimony as to the calculation of present value. Dupont v. Preston, 9 P.3d 1193 (Colo. App. 2000), aff'd on other grounds, 35 P.3d 433 (Colo. 2001).

13-64-205. Determination of judgment to be entered.
(1) In order to determine what judgment is to be entered on a verdict requiring findings of special damages under this part 2, the court shall proceed as follows:
(a) The court shall apply to the findings of past and future damages any applicable rules of law, including setoffs, credits, comparative fault, additurs, and remittiturs in calculating the respective amounts of past and future damages each claimant is entitled to recover and each party is obligated to pay. The court shall preserve the rights of any subrogee to be paid in a lump sum.
(b) The court shall specify the payment of attorney fees and litigation expenses in a manner separate from the periodic installments payable to the claimant, either in a lump sum or by periodic installments, pursuant to any agreement entered into between the claimant or beneficiary and his attorney, computed in accordance with the applicable principles of law.
(c) The court shall enter judgment in a lump sum for past damages and for any damages payable in lump sum or otherwise under paragraphs (a) and (b) of this subsection (1).

(d) After hearing relevant expert testimony, the jury shall determine the present value of future damages and, except as provided in paragraphs (e) and (f) of this subsection (1), the court shall enter judgment for the periodic payment of future damages. The court, in considering evidence of the need for one or more future major medical proceedings or services, may enter judgment for lump-sum payment therefor, payable either immediately or at some designated date or dates in the future.
(e) Upon petition of a party before entry of judgment and a finding of incapacity to fund the periodic payments, the court, at the election of the claimant or at the election of the beneficiaries in an action for wrongful death, shall enter a judgment for the present value of the periodic payments.
(f) Within no more than three months after the entry of verdict by the trier of fact and before the court enters judgment for periodic payments, the plaintiff who meets the criteria set forth in this subsection (1) may elect to receive the immediate payment to the plaintiff of the present value of the future damage award in a lump-sum amount in lieu of periodic payments. In order to exercise this right, the plaintiff must:
(I) Have reached his twenty-first birthday by the time the periodic payment order is entered;
(II) Not be an incapacitated person, as defined in section 15-14-102 (5), C.R.S.; and
(III) Have been provided financial counseling and must be making an informed decision.
Source: L. 88: Entire article added, p. 614, § 1, effective July 1. L. 2000: (1)(f)(II) amended, p. 1833, § 6, effective January 1, 2001.

Law reviews. For article, "Health Care Litigation in Colorado: A Survey of Recent Decisions", see 30 Colo. Law. 91 (August 2001).
Subsection (1)(b) does not preclude or affect a prevailing defendant's right to recover costs and does not imply a repeal of § 13-16-105. Mullins v. Kessler, 83 P.3d 1203 (Colo. App. 2003).
Subsection (1)(f) excludes an "incapacitated person" from those who may elect to receive a lump-sum payment regardless of whether such person also is a "protected person". Rodriguez ex rel. Rodriguez v. Healthone, 24 P.3d 9 (Colo. App. 2000), rev'd on other grounds, 50 P.3d 879 (Colo. 2002).
Subsection (1)(f) is rationally related to a legitimate government objective and, therefore, is constitutional and does not violate the respondent's equal protection rights. Protecting "incapacitated persons represented by conservators" from prematurely exhausting their judgments is a legitimate governmental objective and subsection (1)(f) is rationally related to this legitimate governmental objective. HealthONE v. Rodriguez ex rel. Rodriguez, 50 P.3d 879 (Colo. 2002).
Court construed the Health Care Availability Act in harmony with § 13-16-105 and C.R.C.P. 54(d) to allow a prevailing defendant to recover costs in a medical negligence action. Mullins v. Kessler, 83 P.3d 1203 (Colo. App. 2003).

13-64-206. Periodic installment obligations.
(1) A judgment for periodic payments under this part 2 shall provide that:
(a) Such periodic payments are fixed and determinable as to amount and time of payment;
(b) Such periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of such payments; and
(c) The recipient of such payments shall be a general creditor of the qualified insurer.
(2) Unless the court directs otherwise and the parties otherwise agree, payments shall be scheduled at one-month intervals. Payments for damages accruing during the scheduled intervals are due at the beginning of the intervals. For good cause shown, the court may direct that periodic payments shall continue for an initial term of years notwithstanding the death of the judgment creditor during that term.
(3) Money damages awarded for loss of future earnings shall not be reduced or payments terminated by reason of the death of the judgment creditor. Any such remaining periodic payments shall be paid to the heirs and devisees of the judgment creditor. Payments for future damages other than loss of future earnings shall cease at the death of the judgment creditor.
Source: L. 88: Entire article added, p. 615, § 1, effective July 1.

Although the federal government is not subject to the Colorado Health Care Availability Act (HCAA), under the Federal Tort Claims Act the government is to be treated in the same manner and to the same extent as a private individual under like circumstances. Therefore the government was entitled to receive a reversionary interest in that part of an award to a seriously injured child resulting from the government's negligence that would approximate the result contemplated by the HCAA. Hill v. U.S., 81 F.3d 118 (10th Cir. 1996).

13-64-207. Form of funding.
(1) A judgment for periodic payments entered in accordance with this part 2 shall provide for payments to be funded in one or more of the following forms approved by the court:
(a) Annuity contract issued by a company licensed to do business as an insurance company under the laws of this state;
(b) An obligation or obligations of the United States;
(c) Evidence of applicable and collectible liability insurance from one or more qualified insurers;
(d) An agreement by one or more personal injury liability assignees to assume the obligation of the judgment debtor;
(e) An obligation of the state of Colorado or of a public entity other than the state which is self-insured as provided in section 24-10-115, 24-10-115.5, or 24-10-116, C.R.S.; or
(f) Any other satisfactory form of funding.
(2) The court shall require that the annuity contract or other form of funding permitted by subsection (1) of this section show that portion of each periodic payment which is attributable to loss of future earnings and that portion attributable to all other future damages.
Source: L. 88: Entire article added, p. 616, § 1, effective July 1.

13-64-208. Funding the obligation.
(1) If the court enters a judgment for periodic payments under this part 2, then each party liable for all or a portion of the judgment, unless found to be incapable of doing so, shall separately or jointly with one or more others provide the funding for the periodic payments in a form prescribed in section 13-64-207, within sixty days after the date the judgment is entered. A liability insurer having a contractual obligation and any other person adjudged to have an obligation to pay all or part of a judgment for periodic payments on behalf of a judgment debtor is obligated to provide such funding to the extent of its contractual or adjudged obligation if the judgment debtor has not done so.
(2) A judgment creditor or successor in interest and any party having rights under subsection (4) of this section may move that the court find that funding has not been provided with regard to a judgment obligation owing to the moving party. Upon so finding, the court shall order that funding complying with this article be provided within thirty days. If funding is not provided within that time and subsection (3) of this section does not apply, then the court shall calculate the present value of the periodic payment obligation and enter a judgment for that amount in favor of the moving party.
(3) If a judgment debtor who is the only person liable for a portion of a judgment for periodic payments fails to provide funding, then the right to

present value payment described in subsection (2) of this section applies only against that judgment debtor and the portion of the judgment so owed.
(4) If more than one party is liable for all or a portion of a judgment requiring funding under this part 2 and the required funding is provided by one or more but fewer than all of the parties liable, the funding requirements are satisfied and those providing funding may proceed under subsection (2) of this section to enforce rights for funding or present value payment to satisfy or protect rights of reimbursement from a party not providing funding.
Source: L. 88: Entire article added, p. 616, § 1, effective July 1.

13-64-209. Assignment of periodic payments.
(1) An assignment by a judgment creditor or an agreement by such person to assign any right to receive periodic payments for future damages contained in a judgment entered under this part 2 is enforceable only as to amounts:
(a) To secure payment of alimony, maintenance, or child support;
(b) For the costs of products, services, or accommodations provided or to be provided by the assignee for medical or other health care; or
(c) For attorney fees and other expenses of litigation incurred in securing the judgment.
Source: L. 88: Entire article added, p. 617, § 1, effective July 1.

13-64-210. Exemption of benefits.
Except as provided in section 13-64-209, periodic payments for future damages contained in a judgment entered under this part 2 for loss of earnings are exempt from garnishment, attachment, execution, and any other process or claim to the extent that wages or earnings are exempt.
Source: L. 88: Entire article added, p. 617, § 1, effective July 1.

13-64-211. Settlement agreements and consent judgments.
Nothing in this part 2 is to be construed to limit or affect the settlement of actions triable under this part 2 nor shall it apply to the settlement of actions except as otherwise agreed to by the parties. Parties to an action on a claim for personal injury may, but are not required to, file with the clerk of the court in which the action is pending or, if none is pending, with the clerk of a court of competent jurisdiction over the claim a settlement agreement for future damages payable in periodic payments. The settlement agreement may provide that one or more sections of this part 2 apply to it.
Source: L. 88: Entire article added, p. 617, § 1, effective July 1.

13-64-212. Satisfaction of judgment.
Upon entry of an order by the court that the form of funding complies with section 13-64-207 and that the funding of the obligation complies with section 13-64-208, the court shall order a satisfaction of judgment and discharge of the judgment debtor.
Source: L. 88: Entire article added, p. 617, § 1, effective July 1.

13-64-213. Effective date - applicability of part.
This part 2 shall take effect July 1, 1988, and shall apply to acts or omissions occurring on or after said date.
Source: L. 88: Entire article added, p. 617, § 1, effective July 1.

PART 3
FINANCIAL LIABILITY REQUIREMENTS - LIMITATIONS
Law reviews: For article, "1988 Update on Colorado Tort Reform Legislation -- Part I", see 17 Colo. Law. 1719 (1988); for article, "1990 Update on Colorado Tort Reform Legislation", see 19 Colo. Law. 1529 (1990).

13-64-301. Financial responsibility.
(1) Every physician or dentist, and every health care institution as defined in section 13-64-202, except as provided in section 13-64-303.5, which provide health care services shall establish financial responsibility, as follows:
(a) If a physician or dentist, by maintaining, no later than January 1, 1990, as a condition of active licensure or authority to practice in this state, commercial professional liability insurance coverage with an insurance company authorized to do business in this state in a minimum indemnity amount of five hundred thousand dollars per incident and one million five hundred thousand dollars annual aggregate per year; except that this requirement is not applicable to a health care professional who is a public employee under the "Colorado Governmental Immunity Act". The board of medical examiners and the board of dental examiners may by rule exempt from or establish lesser financial responsibility standards than those prescribed in this section for classes of license holders who perform medical or dental services as employees of the United States government; who render limited or occasional medical or dental services; who perform less than full-time active medical or dental services because of administrative or other nonclinical duties or partial or complete retirement; or who provide uncompensated health care to patients but do not otherwise provide any compensated health care to patients; or for other reasons that render the limits provided in this paragraph (a) unreasonable or unattainable, but nothing in this paragraph (a) shall preclude or otherwise prohibit a licensed physician or dentist from rendering appropriate patient care on an occasional basis when the circumstances surrounding the need for care so warrant.
(b) If a health care institution, by maintaining, as a condition of licensure, certification, or other authority to render health care services in this state, commercial professional liability insurance coverage with an insurance company authorized to do business in this state in a minimum indemnity amount of five hundred thousand dollars per incident and three million dollars annual aggregate per year; except that this requirement is not applicable to a certified health care institution which is a public entity under the "Colorado Governmental Immunity Act";
(c) In the alternative, by maintaining a surety bond in a form acceptable to the commissioner of insurance in the amounts set forth in paragraph (a) or (b) of this subsection (1);
(d) As an alternative, by depositing cash or cash equivalents as security with the commissioner of insurance in such applicable amounts;
(e) As an alternative, any other security acceptable to the commissioner of insurance, which may include approved plans of self-insurance.
(2) Each such physician or dentist, as a condition of receiving and maintaining an active or inactive license or other authority to provide health care services and each health care institution, as a condition of receiving and maintaining an active license, certification, or other authority to provide health care services in this state, shall furnish the appropriate authority which issues and administers such license, certification, or other authority with evidence of compliance with subsection (1) of this section. No such license, certification, or other authority shall be issued or renewed unless such evidence of compliance has been furnished.
(3) Notwithstanding the minimum amount specified in paragraph (a) of subsection (1) of this section, if two or more reports are received by the board of medical examiners pursuant to section 13-64-303, during any one-year period, as to any physician, the minimum amount of financial responsibility shall be two times that so specified; however, upon motion filed by the physician and sufficient evidence presented to the board that one or more of such reports involved an action or claim which did not represent any substantial failure to adhere to accepted professional standards of care, the board may reduce such additional amount to that which would be fair and conscionable.

(4) Each physician, dentist, or health care institution, subject to the provisions of this section, shall pay, in addition to any license fee, certification fee, or fee for such other authority, an additional fee in an amount to be determined by the appropriate authority which issues or administers such license, certification, or other authority, not to exceed fifteen dollars. Such fee shall be transmitted to the state treasurer, who shall credit the same to the division of registrations cash fund, which moneys shall be used exclusively for the purposes of this article as annually appropriated by the general assembly.

Source: L. 88: Entire article added, p. 617, § 1, effective July 1. L. 89: IP(1) and (1)(b) amended, p. 762, § 1, effective July 1. L. 90: IP(1), (1)(a), and (2) amended, p. 816, § 5, effective May 8. L. 91: (1)(a) amended, p. 973, § 2, effective May 6.

Cross references: For the "Colorado Governmental Immunity Act", see article 10 of title 24.

Law reviews. For article, "Physical Impairment and Disfigurement Under the Health Care Availability Act", see 28 Colo. Law. 65 (May 1999).

13-64-302. Limitation of liability - interest on damages.

(1) (a) As used in this section:

(I) "Derivative noneconomic loss or injury" means noneconomic loss or injury to persons other than the person suffering the direct or primary loss or injury.

Editor's note: This version of subparagraph (I) is effective until January 1, 2005.

(I) "Derivative noneconomic loss or injury" means noneconomic loss or injury to persons other than the person suffering the direct or primary loss or injury. "Derivative noneconomic loss or injury" does not include punitive or exemplary damages.

Editor's note: This version of subparagraph (I) is effective January 1, 2005.

(II) (A) "Noneconomic loss or injury" means nonpecuniary harm for which damages are recoverable by the person suffering the direct or primary loss or injury, including pain and suffering, inconvenience, emotional stress, physical impairment or disfigurement, and impairment of the quality of life. "Noneconomic loss or injury" does not include punitive or exemplary damages.

Editor's note: This version of sub-subparagraph (A) is effective until January 1, 2005.

(II) (A) "Direct noneconomic loss or injury" means nonpecuniary harm for which damages are recoverable by the person suffering the direct or primary loss or injury, including pain and suffering, inconvenience, emotional stress, physical impairment or disfigurement, and impairment of the quality of life. "Direct noneconomic loss or injury" does not include punitive or exemplary damages.

Editor's note: This version of sub-subparagraph (A) is effective January 1, 2005.

(B) Nothing in this section shall be construed to prohibit a recovery for economic damages, whether past or future, resulting from physical impairment or disfigurement.

(b) The total amount recoverable for all damages for a course of care for all defendants in any civil action for damages in tort brought against a health care professional, as defined in section 13-64-202, or a health care institution, as defined in section 13-64-202, or as a result of binding arbitration, whether past damages, future damages, or a combination of both, shall not exceed one million dollars, present value per patient, including any claim for derivative noneconomic loss or injury by any other claimant, of which not more than two hundred fifty thousand dollars, present value per patient, including any derivative claim by any other claimant, shall be attributable to noneconomic loss or injury, whether past damages, future damages, or a combination of both; except that if, upon good cause shown, the court determines that the present value of the amount of lost past earnings and the present value of lost future earnings, or the present value of the amount of past medical and other health care costs and the present value of the amount of future medical and other health care costs, or both, when added to the present value of other past damages and the present value of other future damages, would exceed such limitation and that the application of such limitation would be unfair, the court may award the present value of additional future damages only for loss of such excess future earnings, or such excess future medical and other health care costs, or both. The limitations of this section are not applicable to a health care professional who is a public employee under the "Colorado Governmental Immunity Act" and are not applicable to a certified health care institution which is a public entity under the "Colorado Governmental Immunity Act". For purposes of this section, "present value" has the same meaning as that set forth in section 13-64-202 (7). The existence of the limitations and exceptions thereto provided in this section shall not be disclosed to a jury.

Editor's note: This version of paragraph (b) is effective until January 1, 2005.

(b) The total amount recoverable for all damages for a course of care for all defendants in any civil action for damages in tort brought against a health care professional, as defined in section 13-64-202, or a health care institution, as defined in section 13-64-202, or as a result of binding arbitration, whether past damages, future damages, or a combination of both, shall not exceed one million dollars, present value per patient, including any claim for derivative noneconomic loss or injury, of which not more than two hundred fifty thousand dollars, present value per patient, including any derivative claim, shall be attributable to direct or derivative noneconomic loss or injury; except that, if, upon good cause shown, the court determines that the present value of past and future economic damages would exceed such limitation and that the application of such limitation would be unfair, the court may award in excess of the limitation the present value of additional past and future economic damages only. The limitations of this section are not applicable to a health care professional who is a public employee under the "Colorado Governmental Immunity Act" and are not applicable to a certified health care institution which is a public entity under the "Colorado Governmental Immunity Act". For purposes of this section, "present value" has the same meaning as that set forth in section 13-64-202 (7). The existence of the limitations and exceptions thereto provided in this section shall not be disclosed to a jury.

Editor's note: This version of paragraph (b) is effective January 1, 2005.

(c) Effective July 1, 2003, the damages limitation of two hundred fifty thousand dollars described in paragraph (b) of this subsection (1) shall be increased to three hundred thousand dollars, which increased amount shall apply to acts or omissions occurring on or after said date. It is the intent of the general assembly that the increase reflect an adjustment for inflation to the damages limitation.

(2) In any civil action described in subsection (1) of this section, prejudgment interest awarded pursuant to section 13-21-101 that

accrues during the time period beginning on the date the action accrued and ending on the date of filing of the civil action is deemed to be a part of the damages awarded in the action for the purposes of this section and is included within each of the limitations on liability that are established pursuant to subsection (1) of this section.

Source: L. 88: Entire article added, p. 619, § 1, effective July 1. L. 95: Entire section amended, p. 317, § 1, effective July 1. L. 2003: (1) amended, p. 1788, § 4, effective July 1. L. 2004: (1)(a)(I), (1)(a)(II)(A), and (1)(b) amended, p. 501, § 2, effective January 1, 2005.

Editor's note: Section 3 of chapter 165, Session Laws of Colorado 2004, provides that the act amending subsections (1)(a)(I), (1)(a)(II)(A), and (1)(b) applies to acts or omissions occurring on or after January 1, 2005.

Cross references: (1) For the "Colorado Governmental Immunity Act", see article 10 of title 24.
(2) For the legislative declaration contained in the 2004 act amending subsections (1)(a)(I), (1)(a)(II)(A), and (1)(b), see section 1 of chapter 165, Session Laws of Colorado 2004.

Law reviews. For article, "Health Care Litigation in Colorado: A Survey of Recent Decisions", see 30 Colo. Law. 91 (August 2001).
Constitutional. The provisions of this act and the damage limitations of this section do not violate the equal protection clause. Scholz v. Metropolitan Pathologists, P.C., 851 P.2d 901 (Colo. 1993).
The limitations of this section apply to any professional corporation or entity regardless of whether the injury was caused by a licensed health care professional or an unlicensed member of the staff. Scholz v. Metropolitan Pathologists, P.C., 851 P.2d 901 (Colo. 1993).
Prejudgment interest is not included in the damage cap provided in this section. Scholz v. Metropolitan Pathologists, P.C., 851 P.2d 901 (Colo. 1993) (decided prior to 1995 amendment).
Prejudgment interest is subject to statutory damages cap. Dupont v. Preston, 9 P.3d 1193 (Colo. App. 2000), aff'd on other grounds, 35 P.3d 433 (Colo. 2001).
Noneconomic damages for physical impairment and disfigurement are not included in the definition of noneconomic loss contained in this section. Preston v. Dupont, 35 P.3d 433 (Colo. 2001).
Provisions of the act unambiguously limit recovery for non-economic damages against health care professionals to $250,000 for a course of care of one patient regardless of the number of plaintiffs or the number of defendants. Evans v. Colorado Permanente Medical Group, P.C., 902 P.2d 867 (Colo. App. 1995), aff'd, 926 P.2d 1218 (Colo. 1996).
Limitations of damages for all defendants are governed by this act rather than the general damages statute because of the particular type of action, medical malpractice claims, and the particular class of defendants, health care professionals, involved. Evans v. Colorado Permanente Medical Group, P.C., 902 P.2d 867 (Colo. App. 1995), aff'd, 926 P.2d 1218 (Colo. 1996).
No challenge for cause for juror with specific knowledge of damages caps under Health Care Availability Act notwithstanding requirement in subsection (1) of this section that prevents disclosure of such damage limitations to the jury. Trial court did not err in rejecting defendant's challenge for cause for prospective juror with special knowledge of the caps because this is not a ground set forth in C.R.C.P. 47 (e) for dismissal of a potential juror. Dupont v. Preston, 9 P.3d 1193 (Colo. App. 2000), aff'd on other grounds, 35 P.3d 433 (Colo. 2001).
The $250,000 cap on noneconomic damages in this section does not limit damages for physical impairment or disfigurement in a medical malpractice case, and, therefore, it is proper for the court to instruct a jury to award a separate category of damages for physical impairment and disfigurement. Preston v. Dupont, 35 P.3d 433 (Colo. 2001).
However, damages for physical impairment and disfigurement are subject to the Health Care Availability Act's one million dollar damages limitation. Wallbank v. Rothenberg, 74 P.3d 413 (Colo. App. 2003).

13-64-302.5. Exemplary damages - legislative declaration - limitations - distribution of damages collected.
(1) The general assembly hereby finds, determines, and declares that it is in the public interest to establish a consistent and uniformly applicable standard for the determination, amount, imposition, and distribution of exemplary monetary damages arising from civil actions and arbitration proceedings alleging professional negligence in the practice of medicine. It is the intent of the general assembly that any such exemplary damages serve the public purposes of deterring negligent acts and where appropriate provide a form of punishment that is in addition to the disciplinary and licensing sanctions available to the state board of medical examiners.
(2) Notwithstanding any other provision of law to the contrary, the exemplary damages provided for in this section and authorized to be imposed upon a health care professional shall be the only such damages imposed as a result of the negligence claim.
(3) In any civil action or arbitration proceeding alleging negligence against a health care professional, exemplary damages may not be included in any initial claim for relief. A claim for such exemplary damages may be asserted by amendment to the pleadings only after the substantial completion of discovery and only after the plaintiff establishes prima facie proof of a triable issue. If the court or arbitrator allows such an amendment to the complaint under this subsection (3), it may also, in its discretion, permit additional discovery on the question of exemplary damages.
(4) (a) In any civil action or arbitration proceeding in which compensatory damages are assessed against a health care professional, the judge or arbitrator, in his discretion, and only if it is shown at the trial or proceeding that the action complained of was attended by circumstances of fraud, malice, or willful and wanton conduct, may allow the trier of fact to impose reasonable exemplary damages, as provided in this subsection (4). The degree of proof shall be as provided in section 13-25-127 (2).
(b) The standards for awarding and the amount of exemplary damages, if imposed upon such health care professional, shall be as provided in sections 13-21-102 and 13-25-127 (2).
(5) (a) No exemplary damages shall be imposed under subsection (4) of this section which were the result of the use of any drug or product approved for use by any state or federal regulatory agency and used within the approved standards therefor, or used in accordance with standards of prudent health care professionals.
(b) No exemplary damages shall be imposed under subsection (4) of this section which were the result of the use of any drug or product subject to the provisions of paragraph (a) of this subsection (5) when the clinically justified use of such drug or product is beyond the regulatory approvals or standards therefor and is in accordance with standards of prudent health care professionals, and when such use has been agreed to pursuant to the written informed consent of the recipient.
(6) No exemplary damages shall be assessed against a health care professional as a result of the acts of others unless he specifically directed the act to be done or ratified the same.

(7) For the purposes of this section, unless the context otherwise requires, "health care professional" has the same meaning set forth in section 13-64-202 (4).

Source: L. 90: Entire section added, p. 883, § 1, effective July 1. L. 91: (5) amended, p. 376, § 1, effective July 1.

Trial court's failure to dismiss plaintiffs' claim for exemplary damages from plaintiffs' initial pleading was not reversible error where claim was found to be sufficiently supported to allow its presentation in plaintiffs' case-in-chief. Evans v. Colorado Permanente Medical Group, P.C., 902 P.2d 867 (Colo. App. 1995), aff'd in part and rev'd in part on other grounds, 926 P.2d 1218 (Colo. 1996).

This section plainly limits recovery only against a health care professional or a health care institution. Because the nonparty at fault was neither of those, the court correctly refused to reduce the noneconomic damages award to the statutory limit prior to apportioning fault. Chavez v. Parkview Episcopal Med. Ctr., 32 P.3d 609 (Colo. App. 2001).

Trial court did not err in denying plaintiff's request to amend complaint to seek exemplary damages when materials presented amounted to a prima facia showing of negligence only. Sheron v. Lutheran Med. Center, 18 P.3d 796 (Colo. App. 2000).

13-64-303. Judgments and settlements - reported.

Any final judgment, settlement, or arbitration award against any health care professional or health care institution for medical malpractice shall be reported within fourteen days by such professional's or institution's medical malpractice insurance carrier in accordance with section 10-1-120, 10-1-121, 10-1-124, or 10-1-125, C.R.S., or by such professional or institution if there is no commercial medical malpractice insurance coverage to the licensing agency of the health care professional or health care institution for review, investigation, and, where appropriate, disciplinary or other action. Any health care professional, health care institution, or insurance carrier that knowingly fails to report as required by this section shall be subject to a civil penalty of not more than two thousand five hundred dollars. Such penalty shall be determined and collected by the district court in the city and county of Denver. All penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

Source: L. 88: Entire article added, p. 619, § 1, effective July 1. L. 2003: Entire section amended, p. 623, § 38, effective July 1.

13-64-303.5. Exclusion - mental health care facilities.

The provisions of section 13-64-301 do not apply to any outpatient mental health care facility, including but not limited to a community mental health center or clinic, and to any extended care facility or hospice with sixteen or fewer inpatient beds, including but not limited to nursing homes or rehabilitation facilities. The department of public health and environment shall by rule establish financial responsibility standards which are less than those prescribed in this section for classes of health care institutions which have less risk of exposure to medical malpractice claims or for other reasons that render the limits provided in section 13-64-301 (1) (b) unreasonable or unattainable.

Source: L. 89: Entire section added, p. 762, § 2, effective July 1. L. 94: Entire section amended, p. 2730, § 346, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

13-64-304. Effective date - applicability of part.

This part 3 shall take effect January 1, 1989, and shall apply to acts or omissions occurring on or after said date and to licenses, certification, or other authority granted on or after said date.

Source: L. 88: Entire article added, p. 620, § 1, effective July 1.

PART 4

PROCEDURES AND EVIDENCE IN MEDICAL MALPRACTICE ACTIONS

Law reviews: For article, "1988 Update on Colorado Tort Reform Legislation -- Part I", see 17 Colo. Law. 1719 (1988); for article, "1990 Update on Colorado Tort Reform Legislation", see 19 Colo. Law. 1529 (1990).

13-64-401. Qualifications as expert witness in medical malpractice actions or proceedings.

No person shall be qualified to testify as an expert witness concerning issues of negligence in any medical malpractice action or proceeding against a physician unless he not only is a licensed physician but can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the action or proceeding against the physician defendant, he was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the claim on the date of the incident. The court shall not permit an expert in one medical subspecialty to testify against a physician in another medical subspecialty unless, in addition to such a showing of substantial familiarity, there is a showing that the standards of care and practice in the two fields are similar. The limitations in this section shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

Source: L. 88: Entire article added, p. 620, § 1, effective July 1.

Doctrine of res ipsa loquitur cannot be used to avoid the requirements of this section, at least when there is no evidence or inference that the defendant had any control over the instrumentality causing the injury. Bilawsky v. Faseehudin, 916 P.2d 586 (Colo. App. 1995).

13-64-402. Collateral source evidence.

(1) In any action in a court or arbitration proceeding for personal injury against a health care provider for professional negligence, the plaintiff shall, within sixty days after the commencement thereof, serve written notice thereof to the third party payor or provider of any amount paid or payable as a medical benefit pursuant to any health, sickness, or accident insurance or plan, which provides health benefits, or any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or other health care services, and shall file a copy thereof with the court or arbitrator. Such service shall be made pursuant to section 10-3-107 (1) or (1.5), C.R.S., or pursuant to the Colorado rules of civil procedure.

(2) If such third party payor or provider of such benefits has a right of subrogation for such payments, it shall file with the court or arbitrator written notice of such subrogated claim, without specifying a definite amount, within ninety days after receipt of the notice required in subsection (1) of this section, and transmit a copy thereof to the party plaintiff. Failure to file such written notice shall constitute a waiver of such right of subrogation as to such action.

(3) Before entering final judgment, the court shall determine the amount, if any, due the third party payor or provider and enter its judgment in accordance with such finding.
(4) The provisions of this section shall not apply to section 26-4-403, C.R.S.
Source: L. 88: Entire article added, p. 620, § 1, effective July 1. L. 92: Entire section amended, p. 269, § 1, effective April 16.

There is no indication that the provision in this section creating a mechanism for insurers to assert their subrogation rights for medical benefits paid to a plaintiff is meant to supplant a prevailing party's right to recover costs. Mullins v. Kessler, 83 P.3d 1203 (Colo. App. 2003).
Court construed the Health Care Availability Act in harmony with § 13-16-105 and C.R.C.P. 54(d) to allow a prevailing defendant to recover costs in a medical negligence action. Mullins v. Kessler, 83 P.3d 1203 (Colo. App. 2003).

13-64-403. Agreement for medical services - alternative arbitration procedures - form of agreement - right to rescind.
(1) It is the intent of the general assembly that an arbitration agreement be a voluntary agreement between a patient and a health care provider and no medical malpractice insurer shall require a health care provider to utilize arbitration agreements as a condition of providing medical malpractice insurance to such health care provider. Making the use of arbitration agreements a condition to the provision of medical malpractice insurance shall constitute an unfair insurance practice and shall be subject to the provisions, remedies, and penalties prescribed in part 11 of article 3 of title 10, C.R.S.
(1.5) Exemplary damages may be awarded in any arbitration proceeding held pursuant to this section in accordance with section 13-21-102 (1) to (3) and (6). Any award of exemplary damages in a proceeding held pursuant to this section may be modified by the district court upon petition to the district court alleging that the award of such damages was either excessive or inadequate.
(2) Any agreement for the provision of medical services which contains a provision for binding arbitration of any dispute as to professional negligence of a health care provider that conforms to the provisions of this section shall not be deemed contrary to the public policy of this state, except as provided in subsection (10) of this section.
(3) Any such agreement shall have the following statement set forth as part of the agreement: "It is understood that any claim of medical malpractice, including any claim that medical services were unnecessary or unauthorized or were improperly, negligently, or incompetently rendered or omitted, will be determined by submission to binding arbitration in accordance with the provisions of part 2 of article 22 of this title, and not by a lawsuit or resort to court process except as Colorado law provides for judicial review of arbitration proceedings. The patient has the right to seek legal counsel concerning this agreement, and has the right to rescind this agreement by written notice to the physician within ninety days after the agreement has been signed and executed by both parties unless said agreement was signed in contemplation of the patient being hospitalized, in which case the agreement may be rescinded by written notice to the physician within ninety days after release or discharge from the hospital or other health care institution. Both parties to this agreement, by entering into it, have agreed to the use of binding arbitration in lieu of having any such dispute decided in a court of law before a jury."
(4) Immediately preceding the signature lines for such an agreement, the following notice shall be printed in at least ten-point, bold-faced type:
NOTE: BY SIGNING THIS AGREEMENT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL BINDING ARBITRATION RATHER THAN BY A JURY OR COURT TRIAL.
YOU HAVE THE RIGHT TO SEEK LEGAL COUNSEL AND YOU HAVE THE RIGHT TO RESCIND THIS AGREEMENT WITHIN NINETY DAYS FROM THE DATE OF SIGNATURE BY BOTH PARTIES UNLESS THE AGREEMENT WAS SIGNED IN CONTEMPLATION OF HOSPITALIZATION IN WHICH CASE YOU HAVE NINETY DAYS AFTER DISCHARGE OR RELEASE FROM THE HOSPITAL TO RESCIND THE AGREEMENT.
NO HEALTH CARE PROVIDER SHALL WITHHOLD THE PROVISION OF EMERGENCY MEDICAL SERVICES TO ANY PERSON BECAUSE OF THAT PERSON'S FAILURE OR REFUSAL TO SIGN AN AGREEMENT CONTAINING A PROVISION FOR BINDING ARBITRATION OF ANY DISPUTE ARISING AS TO PROFESSIONAL NEGLIGENCE OF THE PROVIDER.
NO HEALTH CARE PROVIDER SHALL REFUSE TO PROVIDE MEDICAL CARE SERVICES TO ANY PATIENT SOLELY BECAUSE SUCH PATIENT REFUSED TO SIGN SUCH AN AGREEMENT OR EXERCISED THE NINETY-DAY RIGHT OF RESCISSION.

(5) Once signed, the agreement shall govern all subsequent provision of medical services for which the agreement was signed until or unless rescinded by written notice. Written notice of such rescission may be given by a guardian or conservator of the patient if the patient is incapacitated or a minor. Where the agreement is one for medical services to a minor, it shall not be subject to disaffirmation by the minor if signed by the minor's parent or legal guardian.
(6) The patient shall be provided with a written copy of any agreement subject to the provisions of this section at the time that it is signed by the parties.
(7) No health care provider shall refuse to provide medical care services to any patient solely because such patient refused to sign such an agreement or exercised the ninety-day right of rescission.
(8) No health care provider shall withhold the provision of emergency medical services to any person because of that person's failure or refusal to sign an agreement containing a provision for binding arbitration of any dispute arising as to professional negligence of the provider.
(9) If a health care provider refuses to provide medical care services to any patient in violation of subsection (7) of this section or withholds the provision of emergency medical services to any person in violation of subsection (8) of this section or fails to comply with the requirements of subsection (3) or (4) or both of this section, such refusal or withholding of services shall constitute unprofessional conduct as such term is used under the relevant licensing statute governing that particular care provider, and the appropriate authority which conducts disciplinary proceedings relating to such health care provider shall consider and take appropriate disciplinary action against such health care provider as provided under the relevant licensing statute.
(10) Even where it complies with the provisions of this section, such an agreement may nevertheless be declared invalid by a court if it is shown by clear and convincing evidence that:
(a) The agreement failed to meet the standards for such agreements as specified in this section; or
(b) The execution of the agreement was induced by fraud; or
(c) The patient executed the agreement as a direct result of the willful or negligent disregard of the patient's right to refrain from such execution; or

(d) The patient executing the agreement was not able to communicate effectively in spoken and written English, unless the agreement is written in his native language.
(11) No such agreement may be submitted to a patient for approval when the patient's condition prevents the patient from making a rational decision whether or not to execute such an agreement.
(12) For the purposes of this section:
(a) (I) "Health care provider" means any person licensed or certified by the state of Colorado to deliver health care and any clinic, health dispensary, or health facility licensed by the state of Colorado. The term includes any professional corporation or other professional entity comprised of such health care providers as permitted by the laws of this state.
(II) (A) Nothing in this paragraph (a) shall be construed to permit a professional service corporation, as described in section 12-36-134, C.R.S., to practice medicine.
(B) Nothing in this paragraph (a) shall be construed to otherwise create an exception to the corporate practice of medicine doctrine.
(b) "Professional negligence" means a negligent act or omission by a health care provider in the rendering of professional services, which act or omission is the proximate cause of personal injury or wrongful death, as long as such services are within the scope of services for which the provider is licensed.
Source: L. 88: Entire article added, p. 620, § 1, effective July 1. L. 89: (1.5) added, p. 763, § 3, effective July 1. L. 95: (1.5) amended, p. 16, § 7, effective March 9. L. 2003: (12)(a) amended, p. 1600, § 5, effective July 1. L. 2004: (3) amended, p. 1731, § 2, effective August 4.
Editor's note: Subsection (3) was contained in a 2004 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (12)(a), see section 1 of chapter 240, Session Laws of Colorado 2003.

Law reviews. For article, "Arbitration of Medical Malpractice Disputes", see 18 Colo. Law. 897 (1989). For article, "Mandatory Arbitration and the Medical Malpractice Plaintiff", see 27 Colo. Law. 77 (May 1998).
When an arbitration provision does not comply with subsections (3) and (4) of this section, these subsections govern the arbitration provision and are not preempted by the Federal Arbitration Act. Although the arbitration provision in the HMO contract does extend to wrongful death actions filed by a member's non-party spouse, the respondent is not bound by the arbitration provision because it does not comply with subsections (3) and (4) of this section. The Colorado Health Care Availability Act governs the arbitration provision because the McCarran-Ferguson Act exempts this provision from federal preemption by the Federal Arbitration Act. Allen v. Pacheco, 71 P.3d 375 (Colo. 2003) (disagreeing with the reasoning of the federal district court in Morrison v. Colo. Permanente Med. Group, annotated below).
Subsections (3) and (4) are inconsonant with, and therefore preempted by, the Federal Arbitration Act. The Colorado Uniform Arbitration Act, § 13-22-210 et seq., places no text or form limitations on arbitration agreements. Thus, the effect of the provisions in subsection (3) and (4) is to place arbitration clauses in medical services agreements in a class apart not only from any contract but also from all other arbitration agreements. By doing so, the Health Care Availability Act singularly limits their validity. Morrison v. Colo. Permanente Med. Group, 983 F. Supp. 937 (D. Colo. 1997).
If dispute resolution procedures include arbitration of professional negligence claims against health care providers who provide medical services, the patient must be notified of this fact in a manner consistent with the Health Care Availability Act requirements. Evans v. Colo. Permanente Med. Group, P.C., 902 P.2d 867 (Colo. App. 1995), aff'd, 926 P.2d 1218 (Colo. 1996).
Fact that agreement to arbitrate was obtained by a health maintenance organization on behalf of a doctor and nurses does not create a conflict with the Colorado Health Maintenance Organization Act; the Health Care Availability Act applies to any agreement for the provision of medical services by a health care provider. Evans v. Colo. Permanente Med. Group, P.C., 902 P.2d 867 (Colo. App. 1995), aff'd, 926 P.2d 1218 (Colo. 1996).
A doctor, nurses, and a professional entity comprised of physicians are each a "health care provider" within the meaning of subsection (12). Evans v. Colo. Permanente Med. Group, P.C., 902 P.2d 867 (Colo. App. 1995), aff'd in part and rev'd in part on other grounds, 926 P.2d 1218 (Colo. 1996).

13-64-404. Effective date - applicability of part.
This part 4 shall take effect July 1, 1988, and shall apply to acts or omissions occurring on or after said date and shall apply to agreements for medical services containing a binding arbitration provision on or after said date.
Source: L. 88: Entire article added, p. 623, § 1, effective July 1.

PART 5
LIMITATION ON ACTIONS BROUGHT
Law reviews: For article, "1988 Update on Colorado Tort Reform Legislation -- Part I", see 17 Colo. Law. 1719 (1988); for article, "1990 Update on Colorado Tort Reform Legislation", see 19 Colo. Law. 1529 (1990).

13-64-501. Definitions.
As used in this part 5, unless the context otherwise requires:
(1) "Health care institution" means any licensed or certified hospital, health care facility, dispensary, or other institution for the treatment or care of the sick or injured.
(2) "Health care professional" means any person licensed in this state or any other state to practice medicine, chiropractic, or nursing.
Source: L. 88: Entire article added, p. 623, § 1, effective July 1.

13-64-502. Limitation on actions.
(1) No claimant, including an infant or his personal representative, parents, or next of kin, may recover for any damage or injury arising from genetic counseling and screening and prenatal care, or arising from or during the course of labor, delivery, or the period of postnatal care in a health care institution, where such damage or injury was the result of genetic disease or disorder or other natural causes, unless the claimant can establish by a preponderance of the evidence that the damage or injury could have been prevented or avoided by ordinary standard of care of the physician or other health care professional or health care institution.
(2) (a) Medical records of or any other medical information concerning a person whose alleged death or injury is the subject matter of a civil action under subsection (1) of this section shall be discoverable by a party defendant under the provisions of the Colorado rules of civil procedure and shall not be inadmissible in evidence because of the provisions of section 13-90-107 (1) (d).
(b) Medical records and information concerning such person's genetic siblings, parents, and grandparents may be discoverable as provided in paragraph (a) of this subsection (2) if the defendant, after reasonable efforts, is unable to obtain appropriate releases and makes a showing to the court of the possible relevancy of such records or information. In such case, the court may order the production of such records. If

deemed necessary, the court may hold an in camera proceeding on the relevancy of such records. No liability shall attach to any physician, health care professional, or health care institution as a result of the release of such medical records or information.
Source: L. 88: Entire article added, p. 623, § 1, effective July 1. L. 89: Entire section R&RE, p. 763, § 4, effective July 1.

13-64-503. Effective date - applicability of part.
This part 5 shall take effect July 1, 1988, and shall apply to acts or omissions occurring on or after said date.
Source: L. 88: Entire article added, p. 623, § 1, effective July 1.