

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 625 Session of  
1999

INTRODUCED BY SERAFINI, NAILOR, GANNON, GORDNER, TIGUE, FEESE,  
BAKER, E. Z. TAYLOR, STEELMAN, L. I. COHEN, RAMOS, WILT,  
M. COHEN, SCRIMENTI, HARHAI, SEYFERT, STABACK AND FARGO,  
FEBRUARY 22, 1999

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 22, 1999

AN ACT

1 Amending the act of October 15, 1975 (P.L.390, No.111), entitled  
2 "An act relating to medical and health related malpractice  
3 insurance, prescribing the powers and duties of the Insurance  
4 Department; providing for a joint underwriting plan; the  
5 Arbitration Panels for Health Care, compulsory screening of  
6 claims; collateral sources requirement; limitation on  
7 contingent fee compensation; establishing a Catastrophe Loss  
8 Fund; and prescribing penalties," further providing for  
9 liability insurance and the Medical Professional Liability  
10 Catastrophe Loss Fund.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13 Section 1. Section 701(e) of the act of October 15, 1975  
14 (P.L.390, No.111), known as the Health Care Services Malpractice  
15 Act, amended November 26, 1996 (P.L.776, No.135), is amended to  
16 read:

17 Section 701. Professional Liability Insurance and Fund.--\* \*  
18 \*

19 (e) (1) After December 31, 1996, the fund shall be funded  
20 by the levying of an annual surcharge on or after January 1 of  
21 every year on all health care providers entitled to participate

1 in the fund. The surcharge shall be determined by the fund,  
2 filed with the commissioner and communicated to all basic  
3 insurance coverage carriers and self-insured providers. The  
4 surcharge shall be based on the prevailing primary premium for  
5 each health care provider for maintenance of professional  
6 liability insurance and shall be the appropriate percentage  
7 thereof, necessary to produce an amount sufficient to reimburse  
8 the fund for the payment of final claims and expenses incurred  
9 during the preceding claims period and to provide an amount  
10 necessary to maintain an additional 15% of the final claims and  
11 expenses incurred during the preceding claims period.

12 (2) The Joint Underwriting Association shall file updated  
13 rates for all health care providers with the commissioner by May  
14 1 of each year.

15 (3) The fund shall review and may adjust the prevailing  
16 primary premium in line with any applicable changes to the  
17 prevailing primary premium made in filings by the Joint  
18 Underwriting Association and approved by the commissioner.

19 (4) The fund may adjust the applicable prevailing primary  
20 premium of any hospital, including a hospital associated with a  
21 university or other education institution, through an increase  
22 or decrease in the individual hospital's prevailing primary  
23 premium not to exceed 20%. Any such adjustment shall be based  
24 upon the frequency and severity of claims paid by the fund on  
25 behalf of other hospitals of similar class, size, risk and kind  
26 within the same defined region during the past five most recent  
27 claims periods. All premium adjustments pursuant to this  
28 subsection shall require the approval of the commissioner.

29 (5) For health care providers that do not engage in direct  
30 clinical practice on a full-time basis, the prevailing primary

1 premium rate shall be adjusted by the fund to reflect the lower  
2 risk associated with the less-than-full-time direct clinical  
3 practice.

4 (6) The surcharge provided in paragraph (1) shall be  
5 reviewed by the commissioner within 30 days of submission. After  
6 review, the commissioner may only disapprove a surcharge if it  
7 is inadequate or excessive. If so disapproved, the fund shall  
8 make an adjustment to the next surcharge calculation to reflect  
9 the appropriate increase or decrease.

10 (7) When a health care provider changes the term of its  
11 professional liability coverage, the surcharge shall be  
12 calculated on an annual base and shall reflect the surcharge  
13 percentages in effect for all the surcharge periods over which  
14 the policy is in effect.

15 (8) Health care providers having approved self-insurance  
16 plans shall be surcharged an amount equal to the surcharge  
17 imposed on a health care provider of like class, size, risk and  
18 kind as determined by the director. The fund and all income from  
19 the fund shall be held in trust, deposited in a segregated  
20 account, invested and reinvested by the director, and shall not  
21 become a part of the General Fund of the Commonwealth. All  
22 claims shall be computed on August 31 for all claims which  
23 became final between that date and September 1 of the preceding  
24 year. All such claims shall be paid on or before December 31  
25 following the August 31 by which they became final, as provided  
26 above.

27 (9) Notwithstanding the above provisions relating to an  
28 annual surcharge, the commissioner shall have the authority,  
29 during September of each year, if the fund would be exhausted by  
30 the payment in full of all claims which have become final and

1 the expenses of the fund, to determine and levy an emergency  
2 surcharge on all health care providers then entitled to  
3 participate in the fund. Such emergency surcharge shall be the  
4 appropriate percentage of the cost to each health care provider  
5 for maintenance of professional liability insurance necessary to  
6 produce an amount sufficient to allow the fund to pay in full  
7 all claims determined to be final as of August 31 of each year  
8 and the expenses of the fund as of December 31 of each year.

9 (10) The annual and emergency surcharges on health care  
10 providers and any income realized by investment or reinvestment  
11 shall constitute the sole and exclusive sources of funding for  
12 the fund. No claims or expenses against the fund shall be deemed  
13 to constitute a debt of the Commonwealth or a charge against the  
14 General Fund of the Commonwealth.

15 (11) The director shall issue rules and regulations  
16 consistent with this section regarding the establishment and  
17 operation of the fund including all procedures and the levying,  
18 payment and collection of the surcharges except that the  
19 commissioner shall issue rules and regulations regarding the  
20 imposition of the emergency surcharge.

21 (12) Upon the effective date of this section, the fund shall  
22 immediately notify all insurers writing professional liability  
23 insurance of the schedule of occurrence rates approved by the  
24 commissioner and in effect for the Joint Underwriting  
25 Association.

26 (13) Within 20 days of the effective date of this section,  
27 the fund shall recalculate the surcharge for health care  
28 providers for the surcharge period beginning January 1, 1997,  
29 based upon the prevailing primary premium.

30 (14) A health care provider may elect to pay the annual

1 surcharge in equal installments, not exceeding four, if the  
2 health care provider informs the primary carrier of the option  
3 to pay in installments and the entire annual surcharge is  
4 collected and remitted to the fund by December 10, with four  
5 equal installments commencing 60 days from the date of policy  
6 inception or renewal with payment due each 60 days thereafter  
7 until the full remittance is paid. This paragraph shall apply to  
8 surcharges for 1997. This paragraph shall expire January 1,  
9 1998.

10 (15) A health care provider may elect to pay the annual  
11 surcharge in equal installments, not exceeding four, if the  
12 health care provider informs the primary carrier of the option  
13 to pay in installments and the entire annual surcharge is  
14 collected and remitted to the fund by December 31.

15 \* \* \*

16 Section 2. This act shall take effect immediately.