

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 845 Session of
2003

INTRODUCED BY MUNDY, BARD, BEBKO-JONES, BELFANTI, BISHOP,
BROWNE, CAWLEY, CURRY, DeLUCA, GEORGE, HARHAI, HORSEY, JAMES,
JOSEPHS, LaGROTTA, LAUGHLIN, LEACH, LESCOVITZ, MANDERINO,
McCALL, PRESTON, READSHAW, ROEBUCK, ROONEY, SAYLOR, SOLOBAY,
STURLA, TANGRETTI, THOMAS, WALKO, WANSACZ, WHEATLEY,
YOUNGBLOOD, YUDICHAK, STETLER, MELIO, BIANCUCCI, MANN,
FRANKEL, GOODMAN AND GRUCELA, MARCH 11, 2003

REFERRED TO COMMITTEE ON INSURANCE, MARCH 11, 2003

AN ACT

1 Amending the act of March 20, 2002 (P.L.154, No.13), entitled
2 "An act reforming the law on medical professional liability;
3 providing for patient safety and reporting; establishing the
4 Patient Safety Authority and the Patient Safety Trust Fund;
5 abrogating regulations; providing for medical professional
6 liability informed consent, damages, expert qualifications,
7 limitations of actions and medical records; establishing the
8 Interbranch Commission on Venue; providing for medical
9 professional liability insurance; establishing the Medical
10 Care Availability and Reduction of Error Fund; providing for
11 medical professional liability claims; establishing the Joint
12 Underwriting Association; regulating medical professional
13 liability insurance; providing for medical licensure
14 regulation; providing for administration; imposing penalties;
15 and making repeals," further providing for declaration of
16 policy, for the Medical Care Availability and Reduction of
17 Error Fund, for medical professional liability insurance by
18 the joint underwriting association, for approval of medical
19 professional liability insurers and for administrative
20 definitions; and providing for functions of the Department of
21 Health.

22 The General Assembly of the Commonwealth of Pennsylvania

23 hereby enacts as follows:

24 Section 1. Sections 102, 712(g), 733, 741 and 902 of the act
25 of March 20, 2002 (P.L.154, No.13), known as the Medical Care

1 Availability and Reduction of Error (Mcare) Act, are amended to
2 read:

3 Section 102. Declaration of policy.

4 The General Assembly finds and declares as follows:

5 (1) It is the purpose of this act to ensure that medical
6 care is available in this Commonwealth through a
7 comprehensive and high-quality health care system.

8 (2) Access to a full spectrum of hospital services and
9 to highly trained physicians in all specialties must be
10 available across this Commonwealth.

11 (3) To maintain this system, medical professional
12 liability insurance has to be obtainable at an affordable and
13 reasonable cost in every geographic region of this
14 Commonwealth.

15 (4) A person who has sustained injury or death as a
16 result of medical negligence by a health care provider must
17 be afforded a prompt determination and fair compensation.

18 (5) Every effort must be made to reduce and eliminate
19 medical errors by identifying problems and implementing
20 solutions that promote patient safety.

21 (6) Recognition and furtherance of all of these elements
22 is essential to the public health, safety and welfare of all
23 the citizens of Pennsylvania.

24 (7) The cost of medical malpractice insurance premiums
25 are directly impacted by medical errors.

26 (8) Health care providers' cost of poor quality is
27 estimated to be as high as 30% to 50% of the total amount
28 paid for health care.

29 (9) A 1999 study by the Institute of Medicine of Harvard
30 University revealed that, each year, as many as 98,000 people

1 die as a result of preventable medical errors which cost the
2 nation an estimated \$29,000,000,000. The study cites medical
3 errors as the fifth leading cause of death in the United
4 States.

5 (10) Research shows that a vast majority of medical
6 errors are systemic rather than human errors.

7 (11) Total quality management systems implemented in
8 industry and, recently, by the United States Department of
9 Veterans Affairs hospital system have successfully reduced
10 medical errors.

11 (12) It is the purpose of this act to improve patient
12 safety, improve health care quality and lower health care
13 costs by offering medical malpractice premium discounts to
14 health care providers that institute total quality management
15 health care systems.

16 Section 712. Medical Care Availability and Reduction of Error
17 Fund.

18 * * *

19 (g) Additional adjustments of the prevailing primary
20 premium.--The department shall adjust the applicable prevailing
21 primary premium of each participating health care provider in
22 accordance with the following:

23 (1) The applicable prevailing primary premium of a
24 participating health care provider which is not a hospital
25 may be adjusted through an increase in the individual
26 participating health care provider's prevailing primary
27 premium not to exceed 20%. Any adjustment shall be based upon
28 the frequency of claims paid by the fund on behalf of the
29 individual participating health care provider during the past
30 five most recent claims periods and shall be in accordance

1 with the following:

2 (i) If three claims have been paid during the past
3 five most recent claims periods by the fund, a 10%
4 increase shall be charged.

5 (ii) If four or more claims have been paid during
6 the past five most recent claims periods by the fund, a
7 20% increase shall be charged.

8 (2) The applicable prevailing primary premium of a
9 participating health care provider which is not a hospital
10 and which has not had an adjustment under paragraph (1) may
11 be adjusted through an increase in the individual
12 participating health care provider's prevailing primary
13 premium not to exceed 20%. Any adjustment shall be based upon
14 the severity of at least two claims paid by the fund on
15 behalf of the individual participating health care provider
16 during the past five most recent claims periods.

17 (3) The applicable prevailing primary premium of a
18 participating health care provider not engaged in direct
19 clinical practice on a full-time basis may be adjusted
20 through a decrease in the individual participating health
21 care provider's prevailing primary premium not to exceed 10%.
22 Any adjustment shall be based upon the lower risk associated
23 with the less-than-full-time direct clinical practice.

24 (4) The applicable prevailing primary premium of a
25 hospital may be adjusted through an increase or decrease in
26 the individual hospital's prevailing primary premium not to
27 exceed 20%. Any adjustment shall be based upon the frequency
28 and severity of claims paid by the fund on behalf of other
29 hospitals of similar class, size, risk and kind within the
30 same defined region during the past five most recent claims

1 periods.

2 (5) A participating health care provider that
3 implements, to the satisfaction of the Department of Health,
4 a total quality management health care system approved by the
5 Department of Health shall be entitled to a 20% discount in
6 the applicable prevailing primary premium for each fiscal
7 year in which the system is implemented.

8 * * *

9 Section 733. Deficit.

10 (a) Filing.--In the event the joint underwriting association
11 experiences a deficit in any calendar year, the board of
12 directors shall file with the commissioner the deficit.

13 (b) Approval.--Within 30 days of receipt of the filing, the
14 commissioner shall approve or deny the filing. If approved, the
15 joint underwriting association is authorized to borrow funds
16 sufficient to satisfy the deficit.

17 (c) Rate filing.--Within 30 days of receiving approval of
18 its filing in accordance with subsection (b), the joint
19 underwriting association shall file a rate filing with the
20 department. The commissioner shall approve the filing if [the]:

21 (1) The premiums generate sufficient income for the
22 joint underwriting association to avoid a deficit during the
23 following 12 months and to repay principal and interest on
24 the money borrowed in accordance with subsection (b).

25 (2) There is a 20% discount in each premium for a health
26 care provider that implements, to the satisfaction of the
27 Department of Health, a total quality management health care
28 system approved by the Department of Health.

29 Section 741. Approval.

30 In order for an insurer to issue a policy of medical

1 professional liability insurance to a health care provider or to
2 a professional corporation, professional association or
3 partnership which is entirely owned by health care providers,
4 the insurer must [be] comply with all of the following:

5 (1) Be authorized to write medical professional
6 liability insurance in accordance with the act of May 17,
7 1921 (P.L.682, No.284), known as The Insurance Company Law of
8 1921.

9 (2) Offer a 20% discount in the premium for a health
10 care provider that implements, to the satisfaction of the
11 Department of Health, a total quality management health care
12 system approved by the Department of Health.

13 Section 902. Definitions.

14 The following words and phrases when used in this chapter
15 shall have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 "Department." The Department of Health of the Commonwealth.

18 "Licensure board." Either or both of the following,
19 depending on the licensure of the affected individual:

20 (1) The State Board of Medicine.

21 (2) The State Board of Osteopathic Medicine.

22 "Physician." An individual licensed under the laws of this
23 Commonwealth to engage in the practice of:

24 (1) medicine and surgery in all its branches within the
25 scope of the act of December 20, 1985 (P.L.457, No.112),
26 known as the Medical Practice Act of 1985; or

27 (2) osteopathic medicine and surgery within the scope of
28 the act of October 5, 1978 (P.L.1109, No.261), known as the
29 Osteopathic Medical Practice Act.

30 Section 2. The act is amended by adding a section to read:

1 Section 911. Department of Health.

2 (a) Total quality management health care system approval.--

3 (1) A total quality management health care system may
4 apply to the department for approval. The application must be
5 on a form prescribed by the Department of Health and must be
6 accompanied by a fee set by regulation.

7 (2) Within 30 days of receipt of an application under
8 paragraph (1), the department shall do one of the following:

9 (i) If the department determines that the system
10 will successfully reduce medical errors by a health care
11 provider, approve the application.

12 (ii) If the department determines that the system
13 will not successfully reduce medical errors by a health
14 care provider, deny the application. This subparagraph is
15 subject to 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial
16 review of Commonwealth agency action).

17 (3) Failure to act within the time specified in
18 paragraph (2) shall be deemed approval of the application.

19 (b) Total quality management health care system
20 implementation.--The department shall provide health care
21 providers with certification of implementation of total quality
22 management health care systems as required by sections
23 712(g)(5), 733(c)(2) and 741(2).

24 (c) Regulations.--The department may promulgate regulations
25 to implement this section.

26 Section 3. This act shall take effect in 60 days.