

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 743 Session of
2005

INTRODUCED BY MUNDY, BEBKO-JONES, CALTAGIRONE, CURRY, FRANKEL,
GEORGE, GOOD, GRUCELA, JAMES, JOSEPHS, LESCOVITZ, LEVDANSKY,
MANDERINO, MANN, ROONEY, STETLER, STURLA, SURRA, THOMAS,
WALKO, WATERS, WHEATLEY, YOUNGBLOOD, YUDICHAK, TIGUE, BROWNE,
KIRKLAND AND TANGRETTI, MARCH 1, 2005

REFERRED TO COMMITTEE ON INSURANCE, MARCH 1, 2005

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
26 Availability and Reduction of Error (Mcare) Act, are amended to

1 read:

2 Section 102. Declaration of policy.

3 The General Assembly finds and declares as follows:

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

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

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

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

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

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

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

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

28 (9) A 1999 study by the Institute of Medicine of Harvard
29 University revealed that, each year, as many as 98,000 people
30 die as a result of preventable medical errors which cost the

1 nation an estimated \$29,000,000,000. The study cites medical
2 errors as the fifth leading cause of death in the United
3 States.

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

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

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

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

17 * * *

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

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

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

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

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

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

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

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

7 * * *

8 Section 733. Deficit.

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

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

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

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

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

28 Section 741. Approval.

29 In order for an insurer to issue a policy of medical
30 professional liability insurance to a health care provider or to

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

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

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

12 Section 902. Definitions.

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

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

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

19 (1) The State Board of Medicine.

20 (2) The State Board of Osteopathic Medicine.

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

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

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

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

30 Section 911. Department of Health.

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

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

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

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

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

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

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

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

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