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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2389 Session of  
1993

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INTRODUCED BY ROONEY, FARGO, TRELLO, VEON, SEMMEL, ROBERTS,  
COLAIZZO, DeLUCA, HARLEY, MASLAND AND STEELMAN,  
DECEMBER 15, 1993

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REFERRED TO COMMITTEE ON JUDICIARY, DECEMBER 15, 1993

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AN ACT

1 Providing for reform of health care malpractice arbitration;  
2 further providing for the Office of Administrator for Health  
3 Care Arbitration Panels, for operation of health care  
4 arbitration panels and for judicial review; and making  
5 repeals.

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28 Section 2102. Effective date.  
29 The General Assembly of the Commonwealth of Pennsylvania  
30 hereby enacts as follows:

1 CHAPTER 1

2 PRELIMINARY PROVISIONS

3 Section 101. Short title.

4 This act shall be known and may be cited as the Health Care  
5 Malpractice Arbitration Reform Act.

6 Section 102. Declaration of policy.

7 The General Assembly finds and declares as follows:

8 (1) The purpose of this act is to streamline the  
9 procedures for the arbitration and adjudication of health  
10 care malpractice lawsuits in this Commonwealth so that  
11 patients who have sustained injuries as a result of the  
12 malpractice of a health care provider may obtain a prompt and  
13 efficient adjudication of their claims.

14 (2) The compulsory arbitration system described in this  
15 act is designed to reduce frivolous claims and expedite the  
16 disposition of nonmeritorious or nuisance suits against  
17 health care providers.

18 Section 103. Definitions.

19 The following words and phrases when used in this act shall  
20 have the meanings given to them in this section unless the  
21 context clearly indicates otherwise:

22 "Administrator." The Office of Administrator for Health Care  
23 Arbitration Panels.

24 "Arbitration panel." A health care arbitration panel.

25 "Fund." The Health Care Arbitration Panel Fund established  
26 in section 302.

27 "Health care provider." A person, corporation, facility,  
28 institution or other entity licensed or approved by the  
29 Commonwealth to provide health care or professional medical  
30 services. The term includes:

1           (1) physicians, osteopathic physicians and surgeons,  
2     physician's assistants, nurse practitioners, certified nurse-  
3     midwives, podiatrists, hospitals, nursing homes and birth  
4     centers; and

5           (2) officers, employees or agents of persons listed in  
6     paragraph (1) acting in the course and scope of their  
7     employment.

8     "Malpractice." Any of the following:

9           (1) A tort or breach of contract caused by an act or the  
10    failure to act of a health care provider which results in an  
11    injury to a patient.

12          (2) A failure of a health care provider, in rendering  
13    health care or professional services, to use the reasonable  
14    care, skill or knowledge ordinarily used under similar  
15    circumstances.

16    "Patient." An individual who receives or should have  
17    received a health care service from a licensed health care  
18    provider. The term includes a representative of a deceased,  
19    incompetent or incapacitated patient.

20    Section 104. Liability of nonqualifying health care providers.

21    Any person or entity rendering services to a patient normally  
22    rendered by a health care provider that fails to qualify as a  
23    health care provider under this act is subject to liability  
24    under the law without regard to the provisions of this act.

### 25                                   CHAPTER 3

#### 26                                   OFFICE OF ADMINISTRATOR FOR

#### 27                                   HEALTH CARE ARBITRATION PANELS

28    Section 301. Administrator.

29          (a) Establishment.--There is established within the Office  
30    of Attorney General the Office of Administrator for Health Care

1 Arbitration Panels, to be appointed by the Attorney General  
2 subject to the approval of a majority of the elected members to  
3 the Senate. The administrator shall be an administrative officer  
4 under the act of April 9, 1929 (P.L.177, No.175), known as The  
5 Administrative Code of 1929, and shall serve for a term of  
6 office as provided by section 208(c) of The Administrative Code  
7 of 1929. The salary of the administrator shall be set by the  
8 Executive Board.

9 (b) Qualifications of administrator.--The administrator must  
10 have a minimum of three years' experience as a judge of a court  
11 of common pleas.

12 (c) Employees.--The administrator shall appoint a secretary  
13 and other employees as required to administer this act.

14 (d) Powers and duties.--The administrator has the following  
15 powers and duties:

16 (1) To consult with the president judges of the courts  
17 of common pleas and the Civil Procedure Rules Committee to  
18 develop appropriate and efficient rules of procedure for the  
19 transfer of cases from the arbitration panels to the courts  
20 of common pleas.

21 (2) To establish health care arbitration centers in each  
22 county. The administrator shall utilize existing facilities  
23 of the courts of the Commonwealth whenever feasible.

24 (3) To select qualified individuals to serve as  
25 arbitration members and, when necessary, require  
26 participation by licensed health care providers.

27 (4) To promulgate uniform regulations as necessary to  
28 carry out the provisions of this act.

29 (5) To rule on questions regarding the sufficiency of  
30 expert opinions as described in section 508(d).

1           (6) Prior to appointment of an arbitration panel  
2       chairperson, to rule on all prearbitration pleadings, motions  
3       and petitions.

4           (7) To rule on questions related to disputes, including  
5       the advancement and continuances of arbitration hearings and  
6       the qualifications of any panel members.

7           (8) To rule on any other questions regarding  
8       interpretation of this act and related regulations for  
9       purposes of administering this act.

10       (e) Removal of administrator for cause.--The administrator  
11   may be removed by the Attorney General only for incompetence,  
12   neglect of duty, misconduct in office or other good cause to be  
13   stated in writing in the order of removal.

14   Section 302. Fund.

15       (a) Establishment.--The Health Care Arbitration Panel Fund  
16   is established. The administrator shall administer the fund to  
17   compensate panelists, provide training and otherwise implement  
18   the provisions of this act. The administrator shall promulgate  
19   regulations necessary for the collection of filing fees and  
20   premiums for the fund.

21       (b) Funding.--The administrator has the authority to draw on  
22   the following sources of funding for the proper administration  
23   of the fund:

24           (1) The existing funding sources for the administration  
25       of the act of October 15, 1975 (P.L.390, No.111), known as  
26       the Health Care Services Malpractice Act.

27           (2) The filing fees under section 507.

28           (3) Whenever necessary, a fee based upon a surcharge of  
29       the malpractice premiums paid by health care providers in  
30       this Commonwealth.

1 Section 303. Training and selection of panelists.

2 The administrator shall promulgate regulations necessary to  
3 provide for the selection and reimbursement of panelists for the  
4 efficient administration of this act. The administrator is  
5 authorized to make payments from the fund to provide  
6 compensation to panelists for their services. The administrator  
7 is authorized to make payments for the training of panelists and  
8 judges of the courts of the Commonwealth, or other individuals  
9 where appropriate, for the administration of this act.

10 Section 304. Submission of annual report.

11 The administrator shall submit to the Governor, the General  
12 Assembly and the Attorney General annually, by March 1, a report  
13 of the work of the administrator during the preceding calendar  
14 year.

## 15 CHAPTER 5

### 16 ARBITRATION PANELS

17 Section 501. Establishment.

18 (a) Pool.--The administrator shall establish and maintain a  
19 pool from which to select arbitration panelists to hear claims  
20 made under this act. Appointments to the pool of panel members  
21 shall be made by the administrator with consideration given to  
22 individuals recommended by appropriate recognized professional  
23 or lay organizations.

24 (b) Composition.--Each arbitration panel shall be composed  
25 of three members, including one attorney, who shall be  
26 designated as chairperson and who shall determine questions of  
27 law once the panel has been convened; one health care provider;  
28 and one lay person who is neither a health care provider nor an  
29 attorney. The administrator shall select a physician, hospital  
30 administrator, podiatrist, osteopathic physician or surgeon,

1 physician assistant, nurse practitioner or nurse-midwife as the  
2 health care provider panel member if the claim involves a member  
3 of one of those classes of health care providers.

4 (c) Challenge.--Any arbitration panel member selected by the  
5 administrator shall be subject to challenge for cause by any  
6 party under sections 502(d) and 512. All challenges for cause  
7 shall be determined by the administrator.

8 (d) Party selection.--The parties shall not be restricted to  
9 arbitration panels drawn from the pool. If all parties mutually  
10 agree upon an arbitration panelist or panelists who are  
11 otherwise qualified to serve under this act, the panelist or  
12 panelists shall be invited to serve by the administrator.  
13 However, any panel mutually agreed upon by the parties must be  
14 composed of three members: one attorney, one health care  
15 provider and one lay person.

16 Section 502. Qualifications of panelists.

17 (a) Health care providers.--A health care provider member of  
18 the pool under section 501(a) must be a licensed health care  
19 provider in this Commonwealth with a minimum of five years'  
20 experience as a licensed health care professional.

21 (b) Attorneys.--The attorney member of the pool under  
22 section 501(a) must be admitted to practice before the Supreme  
23 Court of the Commonwealth for at least five years, have tried at  
24 least one civil case in this Commonwealth, be currently engaged  
25 in the practice of law in this Commonwealth and have attended a  
26 seminar, approved by the administrator, on health care  
27 arbitration practices and procedures.

28 (c) Lay members.--The lay members of the pool under section  
29 501(a) must be drawn from the jury lists of the county in which  
30 the claim for malpractice was originally filed.



1 (d) Conflicts of interest.--The administrator has the  
2 authority to promulgate regulations to define and prevent  
3 potential and actual conflict of interests of panelists. The  
4 administrator shall decide if and when there is a conflict of  
5 interest in an individual case.

6 Section 503. Authority of administrator to compel participation  
7 by qualified panelists.

8 The administrator has the authority to compel the  
9 participation of health care providers in the arbitration panels  
10 when necessary, as set forth in section 301(d)(3). Availability  
11 for participation in arbitration panels shall be a condition of  
12 licensure for health care providers in this Commonwealth.

13 Section 504. Compensation for panelists.

14 Arbitration panel members shall be paid at a daily or annual  
15 salary rate fixed by the administrator, plus actual and  
16 necessary expenses incurred in the performance of their official  
17 duties. The administrator shall provide for all other necessary  
18 expenses of the arbitration panels.

19 Section 505. Jurisdiction and authority.

20 (a) Establishment of jurisdiction.--An arbitration panel  
21 shall have original exclusive jurisdiction to hear and decide  
22 any claim brought by patients or their representatives for loss  
23 or damages resulting from malpractice. An arbitration panel  
24 shall also have original exclusive jurisdiction to hear and  
25 decide any claim for malpractice asserted against a non-health  
26 care provider who is made a party defendant with a health care  
27 provider.

28 (b) Loss of jurisdiction.--If an arbitration panel fails to  
29 render a decision within 240 days of service of the complaint,  
30 any party may file a motion to transfer jurisdiction to the

1 court of common pleas of the judicial district in which the  
2 complaint was originally filed. Grant of this motion shall be  
3 automatic if a party has demonstrated that 240 days have passed  
4 since the filing of the complaint. The administrator shall  
5 promulgate regulations to assure the prompt return of filing  
6 fees to parties who have not received a hearing within 240 days  
7 and who opt to transfer out of the arbitration system.

8 (c) Authority.--In the conduct of arbitration hearings, an  
9 arbitration panel has the general powers of a court, including  
10 the power to determine the admissibility of evidence, to permit  
11 testimony to be offered by depositions and to decide the law and  
12 the facts of the case submitted.

13 Section 506. Complaint.

14 (a) Court.--A patient having a claim for loss or damages  
15 resulting from malpractice must file a complaint in a court of  
16 competent jurisdiction. Complaints for malpractice must state in  
17 the upper right hand corner in capital letters: "This is a  
18 health care malpractice case." No fee shall be charged for this  
19 initial filing.

20 (b) Administrator.--A patient having a claim for loss or  
21 damages resulting from malpractice must also file a copy of the  
22 complaint with the administrator. The administrator shall time-  
23 stamp the complaint and select a date and time for a health care  
24 arbitration hearing for the claim. The hearing shall be  
25 scheduled no more than 210 days after the filing of the  
26 complaint with the administrator, and the date of the hearing  
27 shall be clearly written on the time-stamped copy of the  
28 complaint. This is the only notice of the hearing which the  
29 parties will receive.

30 (c) Service.--The patient shall serve copies of the time-

1 stamped complaint with the notice of hearing date on all parties  
2 in compliance with the Pennsylvania Rules of Civil Procedure and  
3 the local rules of the court in which the original complaint was  
4 filed.

5 (d) Content.--The complaint must contain a clear and concise  
6 statement of the facts of the case, showing the persons involved  
7 and the dates and circumstances, so far as known, of the alleged  
8 instance of malpractice.

9 (e) Notice to court.--No more than three days after a  
10 complaint has been filed with the administrator under subsection  
11 (b), the administrator shall notify the court where the  
12 complaint was filed under subsection (a) that the case has been  
13 scheduled for a health care arbitration hearing. The court, upon  
14 receiving a notice from the arbitrator, shall mark the case  
15 "Transferred to an Arbitration Panel" on the docket but shall  
16 consider the case as filed on the date of the original filing  
17 with the court for purposes of reserving a spot for the case on  
18 the trial list.

19 (f) Limitation of actions.--The original filing of the  
20 complaint under subsection (a) shall toll the statute of  
21 limitations.

22 (g) Pleading deadlines.--For purposes of calculating the  
23 pleading deadlines described in this act, the administrator  
24 shall refer to the date the complaint was filed with the  
25 administrator under subsection (b).

26 (h) Limitation of action.--

27 (1) Except as provided in paragraph (2), a civil action  
28 for malpractice must be commenced within four years from the  
29 date the breach of contract or tort occurred. This subsection  
30 shall apply even though the alleged malpractice is not

1 discovered until after four years from the date.

2 (2) If a civil action for malpractice is based upon any  
3 of the following, the action must be commenced within four  
4 years from the date that the patient knows or, with  
5 reasonable diligence, should know that medical negligence has  
6 occurred:

7 (i) Injuries resulting from radiation treatment or  
8 therapy.

9 (ii) Injuries resulting from the ingestion of  
10 medications and therapeutic drugs.

11 (iii) Injuries resulting from the retention of a  
12 foreign substance in the body of the patient as a result  
13 of a surgical or other invasive procedure or as a result  
14 of any injury received by the patient prior to treatment  
15 by the provider.

16 (iv) Injuries the cause of which or the nature of  
17 which were fraudulently concealed from the patient.

18 (v) Injuries occurring prior to the date the injured  
19 patient attains majority.

20 Section 507. Filing fees.

21 (a) Plaintiff.--The patient shall pay the administrator a  
22 \$50 filing fee to process the complaint.

23 (b) Defendant.--Any defendant named in the patient's  
24 complaint or otherwise made a party to the lawsuit before the  
25 arbitration panel shall pay a filing fee of \$350 upon the filing  
26 of an answer to the complaint.

27 (c) Refunds.--The administrator shall promulgate regulations  
28 and establish procedures for the refund of filing fees to  
29 defendants who are improperly or mistakenly named in a lawsuit  
30 before an arbitration panel.

(d) Exclusive fee.--There shall be no other filing fees for an arbitration panel.

Section 508. Pleadings.

(a) General rule.--Except as otherwise provided in this act, the Pennsylvania Rules of Civil Procedure shall apply to all pleadings, motions and petitions before an arbitration panel.

(b) Time requirement.--Notwithstanding the provisions of subsection (a), the administrator shall not accept for consideration any motion or petition filed less than 45 days before the scheduled hearing. The administrator shall rule on all outstanding pleadings, motions and petitions at least 15 days before the scheduled hearing.

(c) Discovery.--In ruling on discovery motions, the administrator shall encourage the prompt compliance with requests for discovery. The administrator shall establish a strict policy against any party's failure to comply with a discovery request.

(d) Expert opinions.--

(1) No more than 90 days after the filing of a complaint, a patient must serve on all parties one or more expert opinions which must, at a minimum, state that the expert has reviewed the available relevant evidence, including the patient's medical records, and concluded that, to a reasonable degree of medical certainty, malpractice by the health care provider occurred. A patient must submit at least one expert opinion which meets the requirements of this paragraph in order for the action to proceed to arbitration.

(2) Within 15 days after receipt of an expert opinion, a party may file a motion with the administrator to contest the sufficiency of the expert opinion under paragraph (1).

1           (3) Within 15 days after receipt of a motion from any  
2 party, the administrator shall rule on the sufficiency of the  
3 patient's expert opinion under paragraph (1). In ruling on  
4 the sufficiency of the expert opinion, the administrator  
5 shall consider whether the person rendering the expert  
6 opinion would qualify as an expert witness under the rules of  
7 evidence and the Pennsylvania Rules of Civil Procedure.

8           (4) If the administrator rules that the expert opinion  
9 is not sufficient, the patient may file an amended complaint  
10 and expert opinion with the administrator and serve all  
11 parties within 30 days.

12           (5) The administrator shall rule on the sufficiency of  
13 an amended expert opinion within 15 days of the date upon  
14 which it is filed.

15           (6) If the administrator rules that the expert opinion  
16 is sufficient, the administrator shall begin the processes of  
17 convening an arbitration panel to hear the patient's case.

18           (7) If the administrator rules that the expert opinion  
19 is not sufficient, the patient's case shall be dismissed from  
20 the arbitration system. The arbitrator's decision under this  
21 paragraph shall be final and appealable to the court of  
22 common pleas in the judicial district where the case was  
23 originally filed. In filing for an appeal, the patient shall  
24 be entitled to a trial de novo, but must pay for the  
25 defendant's filing fees in the court of common pleas.

26 Section 509. Joinder of necessary party.

27           (a) Motion.--A motion for joinder of a necessary party must  
28 be filed with the administrator and served on all parties no  
29 more than 120 days after the filing of the complaint.

30           (b) Ruling.--The administrator shall rule on the motion

1 within ten days of service on all parties.

2 Section 510. Continuance.

3 The administrator shall establish a strict policy against  
4 continuances of arbitration cases. Regulations for the  
5 continuance of a hearing date shall include the following  
6 provisions:

7 (1) No continuance will be granted if requested at any  
8 time less than 14 days prior to the date of the arbitration  
9 hearing except for an emergency situation. An emergency  
10 situation consists exclusively and solely of circumstances of  
11 which counsel could not have reasonably been aware. In an  
12 emergency situation, counsel requesting a continuance must  
13 state the nature of the emergency and justify with  
14 particularity the reason why the situation could not have  
15 been foreseen. An application which does not comply with this  
16 paragraph shall not be accepted, and the hearing shall  
17 proceed as scheduled.

18 (2) (i) All applications for continuances submitted at  
19 a date at least 14 days prior to the date of the  
20 arbitration hearing must in writing define the basis for  
21 the request for continuance, certify that all counsel  
22 have been notified of the application, state the position  
23 of all other counsel and offer an alternative date and  
24 time which is mutually convenient to all counsel. The  
25 alternative hearing date must be within 14 days of the  
26 original listing. Any application lacking the required  
27 specificity and detail shall not be accepted and the  
28 hearing shall proceed as scheduled.

29 (ii) An arbitration hearing may be rescheduled, by  
30 expressed approval of all counsel, for a date and time

1 not later than two weeks subsequent to the originally  
2 scheduled hearing. The date and time of the hearing, as  
3 rescheduled, must be communicated by the parties to the  
4 administrator not later than two weeks prior to the  
5 originally scheduled hearing.

6 (3) If any of the following reasons for the requested  
7 continuance apply, the party shall bring the information  
8 stated after each of the following to the attention of the  
9 administrator:

10 (i) A material witness or party has not yet been  
11 produced or submitted to a deposition even though a  
12 motion to compel deposition has already been filed of  
13 record.

14 (ii) Service has not been effected upon a defendant  
15 or additional defendant. The appropriate party shall  
16 describe with particularity facts supporting the  
17 contention that due diligence has been exercised in  
18 attempting service on another party but that service  
19 could not have been obtained prior to the date of the  
20 arbitration hearing.

21 (iii) A party or material witness or counsel is  
22 confined to home, bed or a hospital due to illness; is  
23 under the care of a physician or hospital; and will be  
24 available for attendance at the arbitration hearing in  
25 less than 20 days.

26 Section 511. Prearbitration conference.

27 (a) Timing.--The administrator shall schedule a  
28 prearbitration conference after the certification of the expert  
29 opinion under section 508(d)(6), but not more than 180 days  
30 after the filing of the complaint. For good cause shown, the



1 administrator may continue the prearbitration conference once,  
2 for a period of not more than seven days.

3 (b) Purposes.--The primary purposes of the prearbitration  
4 conference are to resolve any disputes regarding the identity or  
5 qualifications of panelists and to see whether a settlement of  
6 the claim may be reached. The administrator has the power and  
7 duty to rule on outstanding motions or petitions at the  
8 prearbitration conference.

9 (c) Other issues.--The administrator shall determine the  
10 following issues:

11 (1) Whether the matter can be settled.

12 (2) Whether all parties have acted in accordance with  
13 this act.

14 (3) Whether there are any outstanding motions.

15 (4) Whether there is just cause for permitting  
16 additional time for discovery.

17 Section 512. Selection of arbitration panel.

18 (a) Procedure.--The parties shall notify the administrator  
19 as soon as possible if they have been able to mutually agree to  
20 the selection of an arbitration panel. The administrator shall  
21 hear motions to disqualify panelists at the prearbitration  
22 conference. If the parties cannot agree to a list of panelists  
23 within seven days of the prearbitration conference, the  
24 administrator has the authority to unilaterally select an  
25 arbitration panel within five days.

26 (b) Notice.--

27 (1) The administrator shall notify the parties and the  
28 members selected to serve on the arbitration panel as soon as  
29 selections have been made. Copies of all pleadings, motions  
30 and relevant evidence of record shall be made available to

1 each panelist.

2 (2) A selected panelist shall serve unless excused for  
3 good cause shown. To show good cause for relief from serving,  
4 the panelist must serve an affidavit upon the administrator.  
5 The affidavit shall set out the facts showing that serving on  
6 the panel would constitute an unreasonable burden or undue  
7 hardship. If any member so selected is deemed unable to  
8 serve, the administrator shall immediately select a  
9 replacement from the list.

10 Section 513. Prearbitration memorandum.

11 (a) Summary of case.--Not less than ten days prior to the  
12 arbitration hearing date, each party shall file a prearbitration  
13 memorandum, which shall include, but shall not be limited to:

14 (1) Statement of facts.

15 (2) Brief statement of the applicable law.

16 (3) List of fact witnesses.

17 (4) List of expert witnesses.

18 (5) List of exhibits.

19 (6) Statement of damages.

20 (b) Memorandum of law.--Each party shall also prepare a  
21 short, written memorandum of law on any point of law which is  
22 complex or unsettled which may arise during the conduct of the  
23 hearing. A memorandum of law prepared for the arbitration panel  
24 must be exchanged with opposing counsel at least five days in  
25 advance of the hearing.

26 (c) Opening statement.--Each party shall also prepare a  
27 brief opening statement which summarizes the nature of the  
28 action the arbitration panel will be asked to consider.

29 Section 514. Prehearing documents procedure.

30 (a) Evidence.--The arbitration panel may receive into

1 evidence certain documents without further proof. These  
2 documents include bills, records and reports of hospitals,  
3 doctors and other health care providers; bills for drugs,  
4 medical appliances and prostheses; reports of rate or earnings  
5 and time lost from work or lost compensation prepared by an  
6 employer; and expert witness reports.

7 (b) Notice.--At least 20 days prior to the first date  
8 assigned for a hearing, each party must notify the opposing  
9 party of the intention to offer into evidence a bill, record or  
10 report, including the report of an expert, to be presented at  
11 the hearing. A copy of a bill, record or report which the party  
12 will offer into evidence must also be served upon the adverse  
13 party at least 20 days prior to the hearing.

14 Section 515. Subpoena practice.

15 (a) General rule.--Subpoena practice before the health care  
16 arbitration panels shall be conducted in essentially the same  
17 fashion as that followed in nonarbitration cases. A subpoena to  
18 testify or for the production of documents or things shall be  
19 substantially in the form provided by Pa.R.C.P. Nos. 234.1  
20 through 234.9.

21 (b) Documentary evidence.--If a party chooses to offer into  
22 evidence a bill, report or estimate under section 514 rather  
23 than to present the testimony of the maker, any other party  
24 shall have the right to subpoena to appear at the hearing the  
25 person whose testimony is waived. Any adverse party may cross-  
26 examine the subpoenaed witness as to the document prepared,  
27 including an expert report, as though the witness were a witness  
28 for the party offering the document.

29 (c) Fees and costs.--Any party who subpoenas a witness under  
30 subsection (b) shall pay the witness fees and costs of the

1 witness for appearing before the arbitration panel.

2 Section 516. Hearings.

3 (a) Chairperson.--The attorney member of the arbitration  
4 panel shall serve as the chairperson of the panel and shall make  
5 all rulings regarding the rules of evidence and procedure during  
6 the hearing. The attorney member shall explain the reasons for  
7 decisions to the other panelists.

8 (b) Conduct.--All parties shall be allowed to present  
9 testimony and evidence related to their pleadings before the  
10 arbitration panel. The administrator shall promulgate  
11 regulations necessary for the orderly and efficient conduct of  
12 the hearings. No hearing may last more than five days.

13 (c) Evidence.--

14 (1) Hearings shall be conducted in accordance with the  
15 established rules of evidence, liberally construed to promote  
16 justice, except that expert witness reports and the evidence  
17 permitted by Pa.R.C.P. No. 1305(b) shall be received in  
18 evidence without further proof if at least 20 days' written  
19 notice, accompanied by a copy of the item, was given to the  
20 adverse party.

21 (2) The arbitration panel shall consider all the  
22 documentary material, including the complaint, answer and  
23 response; health care records and records of a hospital or  
24 office; and the testimony of any expert witnesses the panel  
25 considers necessary. The arbitration panel shall determine  
26 only from that evidence whether, by a preponderance of the  
27 evidence, the acts complained of constitute malpractice.

28 (d) Decision.--The written findings of the arbitration panel  
29 shall be based upon a vote of the members of the arbitration  
30 panel made by written ballot, shall be rendered within five days

1 after the review and shall make at least one of the following  
2 determinations:

3 (1) Based upon a review of the materials submitted by  
4 the parties and the testimony of medical experts (if any were  
5 called), we find by a preponderance of the evidence that  
6 health care malpractice occurred and that the patient was  
7 injured thereby.

8 (2) Based upon a review of the materials submitted by  
9 the parties and the testimony of medical experts (if any were  
10 called), we find by a preponderance of the evidence that no  
11 health care malpractice occurred.

12 (3) Based upon a review of the materials submitted by  
13 the parties and the testimony of medical experts (if any were  
14 called), there should be no decision on the issue of health  
15 care malpractice practice until more discovery is conducted.

16 (e) Voting.--A majority vote of the full arbitration panel  
17 is required to decide all matters before it.

18 (f) Charge.--The arbitration chairperson shall request that  
19 the administrator provide appropriate jury instructions for a  
20 panelist upon the request of a panelist before making any  
21 decision on the merits of the case.

## 22 Section 517. Assessment of damages.

23 (a) General rule.--If the arbitration panel determines that  
24 malpractice has occurred, the arbitration panel shall make a  
25 determination as to the amount of damages awarded to the  
26 patient.

27 (b) Collateral source rule.--In estimating the damages due  
28 to the patient, the arbitration panel shall apply the collateral  
29 source rule. In applying the collateral source rule, the  
30 arbitration panel shall consider, where available, the medical

1 bills paid on the patient's behalf, the lost wages received by a  
2 patient through private insurance, worker's compensation  
3 insurance, employer-paid disability programs and Social Security  
4 payments before estimating the total damages due to the patient.

5 (c) Pain and suffering.--In estimating the patient's total  
6 damages, the arbitration panel may consider awarding damages for  
7 pain and suffering and for punitive damages. The arbitration  
8 panel's estimate of punitive damages shall bear a reasonable  
9 relation to the patient's actual damages.

10 (d) Approval.--In accordance with section 516(e), a majority  
11 of the arbitration panel members shall approve of a written  
12 statement of the patient's damages.

13 (e) Advance payments.--In an action brought to recover  
14 damages under this act, no advance payment made by the defendant  
15 health care provider or a professional liability insurer to or  
16 for the plaintiff shall be construed as an admission of  
17 liability for injuries or damages suffered by the plaintiff.

18 Section 518. Appointment of expert witnesses.

19 The arbitration panel may, upon the application of either  
20 party or upon its own motion, appoint a disinterested and  
21 qualified expert to make any necessary professional or expert  
22 examination of the claimant or relevant evidentiary matter and  
23 to testify as a witness in respect thereto. The expert witness  
24 shall be allowed necessary expenses and a reasonable fee to be  
25 fixed and paid by the arbitration panel.

26 Section 519. Additional powers and duties of arbitration panel.

27 In addition to the powers and duties under sections 516  
28 through 518, the arbitration panel has the following powers and  
29 duties:

30 (1) To make findings of fact.

1           (2) To take depositions and testimony where necessary to  
2       make a determination.

3           (3) To subpoena witnesses and administer oaths.

4           (4) To apply to a court of competent jurisdiction to  
5       enforce the attendance and testimony of witnesses and the  
6       production and examination of books, papers and records.

7           (5) To exercise all other powers and duties necessary  
8       for the execution of this act.

9       Section 520. Decisions.

10       Written copies of the arbitration panel's decision and  
11       estimate of damages shall be sent to each party at the same time  
12       it is submitted to the administrator.

13                                       CHAPTER 7

14                               APPEALS FROM AND ENFORCEMENT OF

15                               DECISIONS OF ARBITRATION PANELS

16       Section 701. Judicial review.

17       Appeals from determinations made by an arbitration panel must  
18       be made to the appropriate court of common pleas within 30 days  
19       of receipt of the decision. The review shall be in the form of a  
20       trial de novo in the appropriate court of common pleas.

21       Section 702. Record on appeal.

22       (a) Admissibility.--If an appeal is taken, the decision,  
23       findings of fact and estimate of damages of the arbitration  
24       panel shall be admissible as evidence before the court.

25       (b) Offer.--Although admissible, the decision and findings  
26       of fact of the arbitration panel shall not be deemed conclusive  
27       as a matter of law. The admission of an arbitration panel's  
28       decision shall not create a presumption of validity and shall  
29       not serve to shift the burden of going forward with the  
30       evidence.

1 Section 703. Transfer and enforcement of judgment.

2 (a) Procedure.--If an appeal is not entered within the time  
3 period set forth in section 701, the party in whose favor the  
4 award has been made may request the administrator to transfer  
5 the record and judgment to the court of common pleas in the  
6 judicial district where the complaint under section 506(a) was  
7 filed. It shall be the duty of the prothonotary, at the request  
8 of the party in whose favor the award was made and upon receipt  
9 and filing of the arbitration award from the administrator, to  
10 issue execution or such other process as necessary to carry into  
11 effect the judgment entered upon the award, subject to the  
12 provisions of law concerning the stay of execution upon  
13 judgments.

14 (b) Effect.--The plaintiff may proceed upon the transferred  
15 record and judgment for the collection of the judgment in the  
16 same manner as if the judgment was from the court to which it  
17 has been transferred. Upon a finding by the arbitration panel  
18 that the defendant's conduct was tortious or constituted a  
19 breach of contract, the plaintiff shall have the same rights of  
20 recovery for damages as are now provided by law.

21 CHAPTER 21

22 MISCELLANEOUS PROVISIONS

23 Section 2101. Repeals.

24 Articles II, III, IV, V and VI of the act of October 15, 1975  
25 (P.L.390, No.111), known as the Health Care Services Malpractice  
26 Act, are repealed.

27 Section 2102. Effective date.

28 This act shall take effect as follows:

29 (1) The following provisions shall take effect upon  
30 publication of regulations under section 301(d)(4):



1           (i) Sections 505 through 516.

2           (ii) Chapter 7.

3           (iii) Section 2101.

4           (2) The remainder of this act shall take effect in 60  
5       days.