

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1802

Session of
2001

INTRODUCED BY MICOZZIE, DeLUCA, ADOLPH, BEBKO-JONES, BUXTON, FICHTER, GANNON, GODSHALL, LAWLESS, McGILL, MELIO, PIPPY, SATHER, SCHRODER, WASHINGTON, ZUG, ALLEN, ARGALL, M. BAKER, BARD, BROWNE, BUTKOVITZ, CAPPELLI, CIVERA, L. I. COHEN, COLAFELLA, COLEMAN, CORRIGAN, COY, DALEY, DALLY, FAIRCHILD, FEESE, FRANKEL, GABIG, GORDNER, HARHAI, HASAY, HERMAN, HESS, HORSEY, JAMES, LAUGHLIN, LEH, LESCOVITZ, MACKERETH, MAHER, MARKOSEK, McCALL, McILHATTAN, McILHINNEY, S. MILLER, READSHAW, ROBINSON, ROHRER, RUBLEY, SAINATO, SAYLOR, SCHULER, SEMMEL, SHANER, SOLOBAY, STEIL, STERN, T. STEVENSON, E. Z. TAYLOR, THOMAS, TIGUE, TRICH, WATSON, J. WILLIAMS, WILT, WOGAN, M. WRIGHT, YOUNGBLOOD, FLICK, C. WILLIAMS, BENNINGHOFF, WOJNAROSKI, GEIST, ARMSTRONG, GEORGE, LEWIS AND BASTIAN, JUNE 19, 2001

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 30, 2001

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 the
9 payment of the unfunded liabilities of the Medical
10 Professional Liability Catastrophe Loss Fund; repealing
11 provisions related to the Medical Professional Liability
12 Insurance Catastrophe Loss Fund Advisory Board; and creating
13 the Pennsylvania Medical Professional Liability Catastrophe
14 Loss Authority and providing for its governance and powers.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. The definition of "director" in section 103 of

1 the act of October 15, 1975 (P.L.390, No.111), known as the
2 Health Care Services Malpractice Act, amended November 26, 1996
3 (P.L.776, No.135), is amended and the section is amended by
4 adding definitions to read:

5 Section 103. Definitions.--As used in this act:

6 "Aggregate unfunded liability" means the costs of
7 administering, paying, defending, settling, litigating,
8 financing and estimating authority claims.

9 "Assessments" means the annual assessments levied by the
10 authority pursuant to section 701.1(q)(2).

11 "Authority" means the Pennsylvania Medical Professional
12 Liability Catastrophe Loss Authority created in Article VII.

13 "Authority buyout fund" means the fund established in section
14 701.2(h)(5).

15 "Authority claims" means those claims set forth in section
16 701.1(q).

17 "Basic insurance coverage" means the minimum professional
18 liability insurance or self-insurance requirements as set forth
19 in section 701(a).

20 "Board" or "governing board" means the governing board of the
21 authority established under section 701.1(c).

22 "Bond" means and includes a note, bond, bond anticipation
23 note, refunding note and bond, interim certificate, debenture
24 and other evidence of indebtedness or obligation, other than a
25 revenue anticipation note, which the authority is authorized to
26 issue pursuant to this act.

27 "Bond or revenue anticipation note payment account" means the
28 account or accounts established pursuant to section 701.2(h)(3).

29 * * *

30 "Debt service reserve fund" means the fund or funds

1 established pursuant to section 701.2(h)(2).

2 ["Director" means the Director of the Medical Professional
3 Liability Catastrophe Loss Fund.]

4 "Executive director" means the executive director of the
5 authority appointed pursuant to section 701.1(h)(2).

6 "Financial plan" means the plan required to be adopted by the
7 authority pursuant to section 701.1(n).

8 * * *

9 "Government agency" means the Governor, departments, boards,
10 commissions, authorities and other officers and agencies of the
11 Commonwealth, including, but not limited to, those which are not
12 subject to the policy supervision and control of the Governor.
13 The term does not include any court or other officer or agency
14 of the unified judicial system or the General Assembly or its
15 officers and agencies.

16 * * *

17 "Medical Professional Liability Catastrophe Loss Fund" means
18 the fund transferred to the authority by this act, the unfunded
19 liability of which will, upon its termination pursuant to this
20 act, be transferred to the authority and paid from the authority
21 buyout fund.

22 "Minimum reserve fund requirement" means that amount defined
23 as the minimum debt service reserve fund requirement for such
24 fund or funds as specified in a resolution or resolutions of the
25 authority authorizing the issuance of bonds.

26 * * *

27 "Political subdivision" means any county, city, borough,
28 incorporated town, township, school district or vocational
29 school district.

30 * * *

1 "Refund" means, together with its variations, with regard to
2 bonds, the issuance and sale of bonds, the proceeds of which are
3 used or are to be used, either now or in the future, after
4 investment in an escrow account, for the payment of principal or
5 interest on, or the redemption of, outstanding bonds of the
6 authority either at maturity or upon prior redemption.

7 "Revenue anticipation notes" means notes issued by the
8 authority pursuant to section 701.2(g) in anticipation of the
9 receipt of revenues from assessments levied under section
10 701.1(g).

11 "Right-to-Know Law" means the act of June 21, 1957 (P.L.390,
12 No.212), referred to as the Right-to-Know Law.

13 "Sunshine Act" means 65 Pa.C.S. Ch. 7 (relating to open
14 meetings).

15 "Surplus assessment fund" means the fund or funds established
16 pursuant to section ~~701.2(h)(5)(i)~~ 701.2(H)(6).

<—

17 Section 2. Sections 605 and 701 of the act, amended November
18 26, 1996 (P.L.776, No.135), are amended to read:

19 Section 605. Statute of Limitations.--(a) All claims for
20 recovery pursuant to this act must be commenced within the
21 existing applicable statutes of limitation. In the event that
22 any claim is made against a health care provider subject to the
23 provisions of Article VII more than four years after the breach
24 of contract or tort occurred which is filed within the statute
25 of limitations, such claim shall be defended and paid by the
26 [fund] authority if the [fund] authority has received a written
27 request for indemnity and defense within 180 days of the date on
28 which notice of the claim is given to the health care provider
29 or his insurer. For these claims, the limit of liability of the
30 authority shall be \$1,000,000 for each occurrence for each

1 health care provider. Where multiple treatments or consultations
2 took place less than four years before the date on which the
3 health care provider or his insurer received notice of the
4 claim, the claim shall be deemed, for purposes of this section,
5 to have occurred less than four years prior to the date of
6 notice and shall be defended by the insurer pursuant to section
7 702(d). If such claim is made after four years because of the
8 willful concealment by the health care provider or his insurer,
9 the [fund] authority shall have the right of full indemnity
10 including defense costs from such health care provider or his
11 insurer. [A filing pursuant to section 401 shall toll the
12 running of the limitations contained herein.]

13 (b) For policies issued or renewed in the calendar year
14 2007, and each year thereafter, the limit of liability of the
15 authority under this section shall be \$0 for each occurrence, ON <—
16 OR AFTER THE DATE OF ISSUE OR RENEWAL, for each health care
17 provider and per annual aggregate for each health care provider
18 and the authority shall not be responsible for defense of claims
19 under this section.

20 Section 701. Professional Liability Insurance [and Fund].--

21 (a) Every health care provider as defined in this act,
22 practicing medicine or podiatry or otherwise providing health
23 care services in the Commonwealth shall insure his professional
24 liability only with an insurer licensed or approved by the
25 Commonwealth of Pennsylvania, or provide proof of self-insurance
26 in accordance with this section.

27 (1) (i) For policies issued or renewed in the calendar
28 years 1997 [through] and 1998, a health care provider, other
29 than hospitals, who conducts more than 50% of its health care
30 business or practice within the Commonwealth of Pennsylvania

1 shall annually insure or self-insure its professional liability
2 in the amount of \$300,000 per occurrence and \$900,000 per annual
3 aggregate, and hospitals located in the Commonwealth shall
4 insure or self-insure their professional liability in the amount
5 of \$300,000 per occurrence, and \$1,500,000 per annual aggregate,
6 hereinafter known as ["basic coverage insurance"] basic
7 insurance coverage, and they shall be entitled to participate in
8 the [fund] authority.

9 (ii) For policies issued or renewed in the calendar years
10 1999 [through 2000] and 2000, the basic insurance coverage for a
11 health care provider, other than hospitals, who conducts more
12 than 50% of its health care business or practice within this
13 Commonwealth shall [annually insure or self-insure its
14 professional liability], on an annual basis, be in the amount of
15 \$400,000 per occurrence and \$1,200,000 per annual aggregate, and
16 for hospitals located in this Commonwealth [shall insure or
17 self-insure their professional liability] the basic, insurance
18 coverage, on an annual basis, shall be in the amount of \$400,000
19 per occurrence and \$2,000,000 per annual aggregate, and they
20 shall be entitled to participate in the authority.

21 (iii) For policies issued or renewed in the calendar year
22 2001[, and each year thereafter,] and 2002, the basic insurance
23 coverage for a health care provider, other than hospitals, who
24 conducts more than 50% of its health care, business or practice
25 within this Commonwealth shall [annually insure or self-insure
26 its professional liability], on an annual basis, be in the
27 amount of \$500,000 per occurrence and \$1,500,000 per annual
28 aggregate, and for hospitals located in this Commonwealth [shall
29 insure or self-insure their professional liability] the basic
30 insurance coverage, on an annual basis, shall be in the amount

1 of \$500,000 per occurrence and \$2,500,000 per annual
2 aggregate[.], and they shall be entitled to participate in the
3 authority.

4 (iv) For policies issued or renewed in the calendar year
5 2003 and 2004, the basic insurance coverage for a health care
6 provider, other than hospitals, who conducts more than 50% of
7 its health care business or practice within this Commonwealth
8 shall, on an annual basis, be in the amount of \$700,000 per
9 occurrence, and \$2,100,000 per annual aggregate, and for
10 hospitals located in this Commonwealth the basic insurance
11 coverage, on an annual basis, shall be in the amount of \$700,000
12 per occurrence, and \$3,100,000 per annual aggregate, and they
13 shall be entitled to participate in the authority.

14 (v) For policies issued or renewed in the calendar year 2005
15 and 2006, the basic insurance coverage for a health care
16 provider, other than hospitals, who conducts more than 50% of
17 its health care business or practice within this Commonwealth
18 shall, on an annual basis, be in the amount of \$900,000 per
19 occurrence, and \$2,700,000 per annual aggregate, and for
20 hospitals located in this Commonwealth the basic insurance
21 coverage, on an annual basis, shall be in the amount of \$900,000
22 per occurrence, and \$3,700,000 per annual aggregate, and they
23 shall be entitled to participate in the authority.

24 (vi) For policies issued or renewed in the calendar year
25 2007, and each year thereafter, the basic insurance coverage for
26 a health care provider, other than hospitals, who conducts more
27 than 50% of its health care business or practice within this
28 Commonwealth shall, on an annual basis, be in the amount of
29 \$1,200,000 per occurrence, and \$3,600,000 per annual aggregate,
30 and for hospitals located in this Commonwealth the basic

1 insurance coverage, on an annual basis, shall be in the amount
2 of \$1,200,000 per occurrence, and \$4,600,000 per annual
3 aggregate, and they shall be entitled to participate in the
4 authority.

5 (2) (i) A health care provider who conducts 50% or less of
6 its health care business or practice within the Commonwealth
7 shall insure or self-insure its professional liability in the
8 amounts listed in subparagraphs (ii)[, (iii) and (iv)] through
9 (vii) and shall not be required to contribute to or be entitled
10 to participate in the [fund] authority set forth in Article VII
11 of this act or the plan set forth in Article VIII of this act.

12 (ii) For policies issued or renewed in calendar years 1997
13 through 1998, basic insurance coverage shall, on an annual
14 basis, be in the amount of \$300,000 per occurrence and \$900,000
15 per annual aggregate.

16 (iii) For policies issued or renewed in calendar years 1999
17 through 2000, basic insurance coverage shall, on an annual
18 basis, be in the amount of \$400,000 per occurrence and
19 \$1,200,000 per annual aggregate.

20 (iv) For policies issued or renewed in calendar year 2001[,
21 and each year thereafter] and 2002, basic insurance coverage
22 shall, on an annual basis, be in the amount of \$500,000 per
23 occurrence and \$1,500,000 per annual aggregate.

24 (v) For policies issued or renewed in calendar year 2003 and
25 2004, basic insurance coverage shall, on an annual basis, be in
26 the amount of \$700,000 per occurrence and \$2,100,000 per annual
27 aggregate.

28 (vi) For policies issued or renewed in calendar year 2005
29 and 2006, basic insurance coverage shall, on an annual basis, be
30 in the amount of \$900,000 per occurrence and \$2,700,000 per

1 annual aggregate.

2 (vii) For policies issued or renewed in the calendar year
3 2007, and each year thereafter, basic insurance coverage shall,
4 on an annual basis, be in the amount of \$1,000,000 per
5 occurrence, and \$3,000,000 per annual aggregate.

6 (3) For the purposes of this section, "health care business
7 or practice" shall mean the number of patients to whom health
8 care services are rendered by a health care provider within an
9 annual period.

10 (4) All self-insurance plans shall be submitted with such
11 information as the commissioner shall require for approval and
12 shall be approved by the commissioner upon his finding that the
13 plan constitutes protection equivalent to the insurance
14 requirements of a health care provider.

15 (5) A fee shall be charged by the Insurance Department to
16 all self-insurers for examination and approval of their plans.

17 (6) Self-insured health care providers and hospitals if
18 exempt from this act shall submit the information required under
19 section 809 to the commissioner.

20 (b) (1) No insurer providing professional liability
21 insurance shall be liable for payment of any claim against a
22 health care provider for any loss or damages awarded in a
23 professional liability action in excess of the basic coverage
24 insurance, as provided in subsection (a)(1) for each health care
25 provider against whom an award is made unless the health care
26 provider's professional liability policy or self-insurance plan
27 provides for a higher annual aggregate limit.

28 (2) If a claim exceeds the aggregate limits of an insurer or
29 a self-insurance plan, the [fund] authority shall be responsible
30 for the payment of the claim up to the [fund] authority coverage

1 limits.

2 (c) A government may satisfy its obligations pursuant to
3 this act, as well as the obligations of its employees to the
4 extent of their employment, by either purchasing insurance or
5 assuming such obligation as a self-insurer and including the
6 payment of all [surcharges] assessments under this act.

7 [(d) There is hereby created a contingency fund for the
8 purpose of paying all awards, judgments and settlements for loss
9 or damages against a health care provider entitled to
10 participate in the fund as a consequence of any claim for
11 professional liability brought against such health care provider
12 as a defendant or an additional defendant to the extent such
13 health care provider's share exceeds its basic coverage
14 insurance in effect at the time of occurrence as provided in
15 subsection (a)(1). The limit of liability of the fund shall be
16 as follows:

17 (1) For calendar years 1997 through 1998, the limit of
18 liability of the fund shall be \$900,000 for each occurrence for
19 each health care provider and \$2,700,000 per annual aggregate
20 for each health care provider.

21 (2) For calendar years 1999 through 2000, the limit of
22 liability of the fund shall be \$800,000 for each occurrence for
23 each health care provider and \$2,400,000 per annual aggregate
24 for each health care provider.

25 (3) For calendar year 2001, and each year thereafter, the
26 limit of liability of the fund shall be \$700,000 for each
27 occurrence for each health care provider and \$2,100,000 per
28 annual aggregate for each health care provider.

29 (e) (1) After December 31, 1996, the fund shall be funded
30 by the levying of an annual surcharge on or after January 1 of

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

13 (2) The Joint Underwriting Association shall file updated
14 rates for all health care providers with the commissioner by May
15 1 of each year.

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

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

30 (5) For health care providers that do not engage in direct

1 clinical practice on a full-time basis, the prevailing primary
2 premium rate shall be adjusted by the fund to reflect the lower
3 risk associated with the less-than-full-time direct clinical
4 practice.

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

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

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

28 (9) Notwithstanding the above provisions relating to an
29 annual surcharge, the commissioner shall have the authority,
30 during September of each year, if the fund would be exhausted by

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

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

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

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

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

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

11 (f) The failure of any health care provider to comply with
12 any of the provisions of this section or any of the rules and
13 regulations issued by the director shall result in the
14 suspension or revocation of the health care provider's license
15 by the licensure board.

16 (g) Any physician who exclusively practices the specialty of
17 forensic pathology shall be exempt from the provisions of this
18 act.

19 (h) All health care providers who are members of the
20 Pennsylvania military forces are exempt from the provisions of
21 this act while in the performance of their assigned duty in the
22 Pennsylvania military forces under orders.]

23 Section 3. The act is amended by adding sections to read:

24 Section 701.1. Pennsylvania Medical Professional Liability
25 Catastrophe Loss Authority.--(a) The Pennsylvania Medical
26 Professional Liability Catastrophe Loss Fund shall be terminated
27 on January 1, 2002. Upon appointment of the initial members of
28 the board as provided in subsection (c)(1), the following shall
29 occur:

30 (1) The operation, management and control of the fund until

its termination date as set forth herein shall be vested in the authority.

(2) All allocations, appropriations, equipment, claims and other files, contracts, agreements, obligations and other materials which are used, employed or expended by the Pennsylvania Medical Professional Liability Catastrophe Loss Fund shall be and are hereby transferred to the authority as if these contracts, agreements and obligations had been incurred or entered into by the authority.

(3) The director of the Medical Professional Liability Catastrophe Loss Fund shall have no authority, duties or responsibilities pursuant to this act, shall continue to serve at the pleasure of the board and shall exercise only that authority and those duties or responsibilities specifically assigned to him or her by the board. Upon termination of the Pennsylvania Medical Professional Liability Catastrophe Loss Fund, the authority shall assume and pay the unfunded liability of the fund pursuant to this act. Claim files transferred to the authority pursuant to this subsection shall be confidential and shall not be subject to the "Right-to-Know law."

(b) There is hereby created a body corporate and politic to be known as the Pennsylvania Medical Professional Liability Catastrophe Loss Authority for the purpose of paying all awards, judgments and settlements for loss or damages against a health care provider entitled to participate in the authority as a consequence of any claim for professional liability brought against such health care provider as a defendant or an additional defendant to the extent such health care provider's liability exceeds its basic insurance coverage as required in section 701(a)(1) and consistent with section 605 and subsection

(d). The authority shall be a public authority and instrumentality of the Commonwealth, exercising public powers of the Commonwealth as an agency and instrumentality thereof. The exercise by the authority of the powers conferred by this act is hereby declared to be and shall for all purposes be deemed and held to be the performance of an essential public function.

(c) The following provisions shall apply to the governing board:

(1) The powers and duties of the authority shall be exercised by a governing board composed of five members to be appointed as follows:

(i) One member shall be appointed by the Governor.

(ii) Four members shall be appointed by the Majority Leader of the Senate, the Minority Leader of the Senate, the Majority Leader of the House of Representatives, and the Minority Leader of the House of Representatives, each of whom shall make one appointment. Initial appointments to the board shall be made within ten days following the effective date of this section.

Members of the governing ~~authority~~ board shall have qualifications or experience in banking, finance or insurance.

No member of the board shall be an individual, or represent individuals or organizations, that participate in the ~~CAT Fund~~

AUTHORITY. No member of the board shall be an attorney representing claimants or health care providers in medical malpractice litigation subject to the provisions of this act. No member of the board shall be an employee, or a representative, of a firm which represents claimants or health care providers in medical malpractice litigation subject to the provisions of this act. No member of the board shall seek or hold any position as any other public official within the Commonwealth or as any

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national, state, or local political party officer nor shall any member of the board seek election as a public official or as a national, state, or local political party officer for a period of one year following his or her service on the board.

(2) The term of a member of the board shall begin on the date of appointment. ~~A member's term shall be coterminous with that of his or her appointing authority, provided that the~~ THE MEMBER APPOINTED BY THE GOVERNOR SHALL HAVE AN INITIAL TERM OF FOUR YEARS; MEMBERS APPOINTED BY THE MAJORITY LEADERS SHALL HAVE AN INITIAL TERM OF FOUR YEARS; AND MEMBERS APPOINTED BY THE MINORITY LEADERS SHALL HAVE AN INITIAL TERM OF TWO YEARS. ALL SUBSEQUENT APPOINTMENTS SHALL BE FOR THREE-YEAR TERMS. THE member's term shall continue until his or her replacement is appointed, but in no event longer than six months from the expiration of the member's term. A board member may be reappointed to serve an additional term or terms. ~~Board members shall serve at the pleasure of their appointing authority.~~ Whenever a vacancy occurs prior to the end of a member's term, the appointing authority who originally appointed the board member whose seat has become vacant shall appoint a successor member within 30 days of the vacancy. A member appointed to fill a vacancy prior to the expiration of a term shall serve the unexpired term and shall subsequently be eligible for appointment to a full term.

(3) The appointee of the Governor shall set a date, time and place for the initial organizational meeting of the board within ten days of the appointment of all of the initial members of the board. The members shall elect from among themselves a chairperson, vice-chairperson, secretary, treasurer and such other officers as they, in their sole discretion, shall

determine. A member may hold more than one office of the board at any time.

(4) The board shall meet as frequently as it deems appropriate but at least once during each quarter of the fiscal year. In addition, a meeting of the board shall be called by the chairperson if a request for a meeting is submitted to the chairperson in writing by at least two members of the board. A majority of the full board shall constitute a quorum for the purpose of conducting the business of the board and for all other purposes. A board member must be physically present to be counted toward the quorum. All actions of the board shall be taken by a simple majority of the board majority.

(5) Board members shall not receive compensation or remuneration for their service on the board, but shall be entitled to reimbursement for all reasonable and necessary actual expenses in connection with their attendance at meetings and the performance of their duties under this act.

(d) The limit of liability of the authority shall be as follows:

(1) For policies issued or renewed in the calendar years 1997 and 1998, the limit of liability of the authority shall be \$900,000 for each occurrence, ON OR AFTER THE DATE OF ISSUE OR RENEWAL, for each health care provider and \$2,700,000 per annual aggregate for each health care provider, in excess of the basic insurance coverage.

(2) For policies issued or renewed in the calendar years 1999 and 2000, the limit of liability of the authority shall be \$800,000 for each occurrence, ON OR AFTER THE DATE OF ISSUE OR RENEWAL, for each health care provider and \$2,400,000 per annual aggregate for each health care provider, in excess of the basic

1 insurance coverage.

2 (3) For policies issued or renewed in the calendar years
3 2001 and 2002, the limit of liability of the authority shall be
4 \$700,000 for each occurrence, ON OR AFTER THE DATE OF ISSUE OR <—
5 RENEWAL, for each health care provider and \$2,100,000 per annual
6 aggregate for each health care provider, in excess of the basic
7 insurance coverage.

8 (4) For policies issued or renewed in the calendar years
9 2003 and 2004, the limit of liability of the authority shall be
10 \$500,000 for each occurrence, ON OR AFTER THE DATE OF ISSUE OR <—
11 RENEWAL, for each health care provider and \$1,500,000 per annual
12 aggregate for each health care provider, in excess of the basic
13 insurance coverage.

14 (5) For policies issued or renewed in the calendar years
15 2005 and 2006, the limit of liability of the authority shall be
16 \$300,000 for each occurrence, ON OR AFTER THE DATE OF ISSUE OR <—
17 RENEWAL, for each health care provider and \$900,000 per annual
18 aggregate for each health care provider, in excess of the basic
19 insurance coverage.

20 (6) For policies issued or renewed in the calendar year
21 2007, and each year thereafter, the limit of liability of the
22 authority shall be \$0 for each occurrence, ON OR AFTER THE DATE <—
23 OF ISSUE OR RENEWAL, for each health care provider and \$0 per
24 annual aggregate for each health care provider.

25 (e) With regard to disposition of authority claims, the
26 board shall appoint a claims committee whose members shall be
27 representatives of the health care provider classes entitled to
28 participate in the authority in substantially the same
29 proportion as those health care provider classes pay assessments
30 to the authority, BUT IN NO CASE SHALL A PROVIDER CLASS HAVE <—

1 LESS THAN ONE REPRESENTATIVE ON THE CLAIMS COMMITTEE. The claims
2 committee shall review and advise the authority on the
3 disposition of all claims. Acting through the claims committee,
4 the authority shall have the following rights, powers, duties
5 and responsibilities, in addition to all other rights, powers,
6 duties and responsibilities imposed by this act or other acts,
7 rules or regulations applicable thereto:

8 (1) The executive director shall be promptly notified, in
9 writing, by a basic insurance coverage carrier or by a self-
10 insurance plan, of any case involving an authority claim where
11 such insurance carrier or self-insurance plan reasonably
12 believes that the value of the claim exceeds 50% of the basic
13 insurer's coverage or self-insurance plan or falls under the
14 provisions of section 605 or subsection (d). The executive
15 director shall prescribe the form of such notification. Any and
16 all information provided to the executive director pursuant to
17 this paragraph shall be confidential and shall not be subject to
18 the "Right-to-Know Law."

19 (2) The basic insurance coverage carrier or self-insurance
20 plan shall be responsible to provide a defense for authority
21 claims, including defense of the authority buyout fund, except
22 as provided in section 605 and subsection (d). In all instances
23 where the executive director has received proper notice in
24 accordance with paragraph (1), the authority may, but shall not
25 be obligated to, join in the defense and be represented by
26 counsel.

27 (3) In the event that the basic insurance coverage carrier
28 or self-insurance ~~carrier~~ PLAN enters into a settlement with the <—
29 claimant to the full extent of its liability as provided above,
30 it may obtain a release from the claimant to the extent of its

1 payment, which payment shall not have any effect upon any claim
2 against the authority buyout fund or the duty of the authority
3 to continue the defense of the claim.

4 (4) The authority, acting through the executive director or
5 any other authorized agent, is authorized, empowered and
6 directed to do any and all acts and things as it may determine
7 to be necessary to defend, litigate, settle or compromise any
8 claim made against the authority buyout fund. A health care
9 provider's basic insurance coverage carrier or self-insurance
10 plan shall have the right to approve any settlement entered into
11 by the ~~executive director~~ AUTHORITY on behalf of the insured <—
12 health care provider; provided, however, that the settlement
13 shall be deemed approved by the basic insurance coverage carrier
14 or self-insurance plan if such carrier OR PLAN fails to notify <—
15 the executive director of its disapproval, in writing, within
16 five days of the receipt of written notice from the executive
17 director of intent to approve the settlement. In the event that
18 more than one health care provider is party to a settlement,
19 each health care ~~providers~~ PROVIDER'S basic insurance coverage <—
20 carrier or self-insurance plan shall have the right to approve
21 only that portion of the settlement which is contributed on
22 behalf of its insured health care provider.

23 (5) The authority is hereby authorized and empowered to use
24 all or any portion of moneys on deposit in the authority buyout
25 fund, or otherwise available to the authority and not otherwise
26 required for the payment of debt service requirements or
27 operating expenses, to contract with one or more licensed
28 insurers for the payment of any and all awards, judgments or
29 settlements for loss or damage arising out of, and to
30 administer, defend, settle, litigate or compromise, any

1 authority claim.

2 (6) Nothing in this act shall preclude the ~~executive~~ <—
3 ~~director~~ AUTHORITY from adjusting or paying for the adjustment <—
4 of authority claims, provided that such payment or adjustment is
5 consistent with the financial plan adopted by the authority and
6 in place at such time.

7 (7) Upon the request of a party to a case within the
8 authority buyout fund coverage limits, the authority may provide
9 for a mediator in instances where multiple carriers disagree on
10 the disposition or settlement of a case. Upon the consent of all
11 parties to any proceeding hereunder that mediation shall be
12 binding, the parties shall be bound by the conclusions of the
13 mediator. The authority shall promulgate such rules and
14 regulations as are necessary, proper or desirable to implement
15 this provision. Proceedings conducted under this subsection
16 shall be confidential and shall not be subject to the "Sunshine
17 Act" and information provided during or as a result of such
18 proceedings shall not be considered public information subject
19 to disclosure under the "Right-to-Know Law."

20 (8) Delay damages and postjudgment interest applicable to
21 the liability of the authority buyout fund may be paid by the
22 authority from amounts on deposit in or allocable to the
23 authority buyout fund and shall not be charged against the
24 health care ~~providers~~ PROVIDER'S annual aggregate limits. The <—
25 basic insurance coverage carrier or self-insurance plan shall be
26 responsible for its proportionate share of delay damages and
27 postjudgment interest.

28 (9) THE AUTHORITY MAY AUTHORIZE ANY HEALTH CARE PROVIDER TO <—
29 MANAGE THEIR CLAIMS.

30 ~~(9)~~ (10) The executive director shall, at each meeting of <—

1 the board, report in summary form on adjustments or settlements
2 of claims under paragraphs (4), (5) and (6).

3 (f) Statutes applicable to authority.--Unless otherwise
4 expressly provided in this act, the provisions of the following
5 acts shall apply to the authority:

6 (1) the "Right-to-Know law";

7 (2) the "Sunshine Act";

8 (3) the act of July 19, 1957 (P.L.1017, No.451), known as
9 the "State Adverse Interest Act"; and

10 (4) 65 Pa.C.S., Ch. 11 (relating to ethic standards and
11 financial disclosure).

12 (g) The authority is established for the purposes, without
13 limitation, by itself or by agreement and in cooperation with
14 others, of providing reinsurance, management and financing and
15 refinancing through purchase, sale or otherwise, of claims
16 accrued or to be accrued against the Pennsylvania Medical
17 Professional Liability Catastrophe Loss Fund through and
18 including December 31, 2006, and against the authority
19 consistent with Section 605 and subsection (d). The authority
20 shall have all powers necessary, proper or desirable to effect
21 the purposes of this act, including, but not limited to, the
22 following:

23 (1) To commission a study to reliably estimate the amount of
24 moneys, including costs of administration, defense, financing,
25 insurance, reinsurance, settlement, litigation and otherwise,
26 which will be required to pay all awards, judgments and
27 settlements for loss and damages against health care providers
28 entitled to participate in the Medical Professional Liability
29 Catastrophe Loss Fund as a consequence of any claim for
30 professional liability which arises out of an occurrence

1 occurring prior to January 1, 2007, to the extent that:

2 (i) such health care ~~providers~~ PROVIDER'S liability exceeds <—
3 its basic insurance coverage as provided in section 701(a)(1);

4 (ii) such award, judgment or settlement is within the limits
5 of liability of the authority set forth in Section 605 and
6 subsection (d); and

7 (iii) the claim for recovery which is the basis for such
8 award, judgment or settlement is commenced within the existing
9 applicable statute of limitations.

10 (2) To commission updates to such study, at least once every
11 two years, to determine if the estimate of the aggregate
12 unfunded liability is accurate and to adjust, as needed, such
13 estimate to more accurately reflect the aggregate unfunded
14 liability based on the information obtained since the initial
15 study or previous update, as applicable. The initial study and
16 each update conducted in accordance with this paragraph shall
17 specify all relevant assumptions upon which the determinations
18 were based, and shall be submitted in a report to the Governor,
19 the Majority and Minority Chairpersons of the Senate Banking and
20 Insurance Committee and the Majority and Minority Chairpersons
21 of the House Insurance Committee.

22 (3) To pay all awards, judgments and settlements for loss or
23 damages against a health care provider entitled to participate
24 in the authority as a consequence of any authority claim as they
25 become final, such payment to be made solely from moneys on
26 deposit in the authority buyout fund.

27 (4) To enter into any and all contracts, agreements or other
28 instruments necessary, proper or desirable to conduct its
29 business and fulfill its duties and obligations hereunder.

30 (5) To sue and be sued, implead and be impleaded, complain

1 and defend in all courts.

2 (6) To adopt, use and alter at will a corporate seal.

3 (7) To adopt bylaws for the management and regulation of its
4 affairs and to adopt rules and policies and to promulgate
5 regulations in connection with the performance of its functions
6 and duties which, notwithstanding any other provision of law to
7 the contrary, shall be submitted as final-omitted regulations
8 pursuant to the act of June 25, 1982 (P.L.633, No.181), known as
9 the "Regulatory Review Act"; provided, however, that, at least
10 ten days prior to submission of any final-omitted regulation,
11 the authority shall provide each basic insurance coverage
12 insurance carrier and self-insurance plan with a summary of the
13 final-omitted regulation and a notice setting forth the subject
14 of the final-omitted regulation and the date on which the final-
15 omitted regulation will be submitted to the Independent
16 Regulatory Review Commission and the standing committees, and
17 cause a copy of the foregoing notice to be published in the
18 Pennsylvania Bulletin.

19 (8) To appoint officers, agents, employees and servants and
20 to prescribe their duties and obligations and to fix their
21 compensation as set forth herein or otherwise required to
22 fulfill its duties and obligations hereunder.

23 (8.1) ANY PERSON WHO IS AN EMPLOYEE OF THE FUND ON THE
24 EFFECTIVE DATE OF THIS SECTION AND WHO BECOMES AN EMPLOYEE OF
25 THE AUTHORITY SHALL REMAIN A MEMBER OF AND CONTINUE TO BE
26 ELIGIBLE TO PARTICIPATE UNDER THE STATE EMPLOYEES' RETIREMENT
27 SYSTEM.

28 (9) To retain outside counsel, auditors and such other
29 professional advisors and consultants as it may determine to be
30 necessary, proper or desirable to render such professional and

1 advisory services as the authority deems appropriate.

2 (10) To cooperate with any Federal or state agency.

3 (11) To acquire by gift or otherwise, purchase, hold,
4 receive, lease, sublease and use any franchise, license or
5 personal property or any interest therein. The authority shall
6 not purchase real property and shall lease or sublease real
7 property solely for the purpose of providing office space in
8 which the authority will conduct its business.

9 (12) To sell, transfer, convey or otherwise dispose of any
10 property or any interest therein.

11 (13) To enter into any contracts for group insurance and to
12 contribute to retirement plans for the benefit of its employees
13 and to enroll its employees in an existing retirement system of
14 a government agency.

15 (14) To accept, purchase or borrow equipment, supplies,
16 services or other things necessary, proper or desirable to the
17 work of the authority from other government agencies, and all
18 government agencies are hereby authorized and empowered to
19 contract with the authority for, and to sell, lend or grant to
20 the authority, such equipment, supplies, services or other
21 things necessary, proper or desirable to fulfill the duties of
22 the authority hereunder.

23 (15) To borrow money for the purpose of fulfilling its
24 duties and obligations hereunder and to evidence the same
25 through the execution and delivery of bonds and revenue
26 anticipation notes hereunder; to secure payment of such bonds,
27 or any part thereof, by pledge of or security interest in all or
28 any part of its revenues, receipts, accounts, tangible personal
29 property and contract rights; to secure payment of such revenue
30 anticipation notes as provided in section 701.2; to make such

1 agreements with purchasers or holders of such bonds and revenue
2 anticipation notes or with any other obligees of the authority,
3 which agreements shall be in such form and contain such terms
4 and conditions as shall be necessary, proper or desirable to
5 effect the purposes of the authority hereunder, and shall
6 constitute contracts with the holders of such bonds and revenue
7 anticipation notes; to obtain such credit enhancement or
8 liquidity facilities in connection with any such bond or revenue
9 anticipation note as the authority shall determine to be
10 advantageous; and in general, to provide for the security for
11 any such bonds and revenue anticipation notes and the rights of
12 the owners or holders thereof. The authority shall use the most
13 cost-effective financing methods available.

14 (16) To negotiate the terms and conditions of, and to enter
15 into any agreements with, insurance companies and others
16 relating to the sale, transfer, assignment, payment and/or
17 management of any claims or losses associated with any authority
18 claim, which terms, conditions and agreements shall be
19 determined by the authority to be necessary, proper or desirable
20 to effect the purposes of the authority hereunder.

21 (17) To invest any funds of the authority in investments
22 approved by the board from time to time in accordance with the
23 provisions of this act.

24 (18) To receive and hold assets, moneys and funds from any
25 source, including, but not limited to, appropriations, grants,
26 gifts and assessments made pursuant to the provisions of this
27 act.

28 (19) To procure such insurance, reinsurance, guarantees,
29 sureties and other insurance and financial products as the
30 authority may determine to be necessary, proper or desirable to

1 fulfill its purposes hereunder.

2 (20) To pledge the credit of the authority in the manner
3 provided by this act.

4 (21) To do all acts and things necessary, proper or
5 desirable to fulfill its duties and obligations hereunder.

6 (h) The following provisions shall apply to employees and
7 agents of the authority:

8 (1) The board shall fix and determine the number of
9 employees of the authority and their respective compensation and
10 duties. The board may contract for or receive the loan of
11 services of persons in the employ of other government agencies,
12 and other government agencies shall be authorized to make such
13 employees available. No employee of the authority, except for
14 any person in the employment of another government agency who is
15 made available to the authority pursuant to this paragraph,
16 shall seek or hold any position as a public official within this
17 Commonwealth or as any national, State or local political party
18 officer while in the service of the authority. Except as
19 provided in paragraph (2) with regard to the executive director,
20 employees of the authority may serve as appointive public
21 officials at any time following their service with the
22 authority.

23 (2) The board shall retain an executive director upon the
24 vote of a majority of the full board. The board shall, upon the
25 approval of a majority of the full board, delegate to the
26 executive director such powers of the board as the board shall
27 deem necessary, proper or desirable to carry out the purposes of
28 the authority, subject in every case to the supervision and
29 control of the board. Subject to any limitations imposed by the
30 board, and consistent with the requirements of this act, the

1 executive director: (i) shall administer all funds and accounts
2 of the authority; (ii) may employ and fix the compensation of
3 such clerical and other assistants as he or she may determine to
4 be necessary, proper or desirable to fulfill the purposes of the
5 authority hereunder; and (iii) may promulgate rules and shall
6 not seek election as a public official or as a national, State
7 or local party officer for a period of one year following his or
8 her service with the authority.

9 (3) The board shall, by the vote of a majority of the full
10 board, hire a general counsel to the authority. The board may
11 employ such other counsel, in addition to the general counsel,
12 as it, in its sole discretion, shall determine. For purposes of
13 the general counsel and other counsel employed by the board, the
14 authority shall not be considered either an executive agency or
15 an independent agency for the purpose of the act of October 15,
16 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys
17 Act," but shall possess the same status for such purpose as the
18 Auditor General, State Treasurer and the Pennsylvania Public
19 Utility Commission; except that the provisions of section 204(f)
20 of the "Commonwealth Attorneys Act" shall not apply to the
21 authority and that, notwithstanding the provisions of section
22 221(1) of the act of October 5, 1980 (P.L.693, No.142), known as
23 the "JARA Continuation Act of 1980," the authority, through its
24 legal counsel, shall defend actions brought against the
25 authority or its members, officers, officials and employees when
26 acting within the scope of their official duties.

27 (i) Notwithstanding any purpose or general or specific power
28 granted to the authority by this act or any other act, whether
29 express or implied:

30 (1) The authority shall have no power or authority to pledge

1 the credit or taxing powers of the Commonwealth or any political
2 subdivision, except the credit of the authority created by this
3 act, nor shall any bonds or revenue anticipation notes of the
4 authority be deemed a debt or liability of the Commonwealth or
5 any political subdivision.

6 (2) The Commonwealth, any government agency, or any
7 political subdivision shall not be liable for such payment OF <—
8 PRINCIPAL, INTEREST, OR PREMIUM ON ANY AUTHORITY BONDS OR
9 REVENUE ANTICIPATION NOTES. Liability shall be the sole
10 responsibility of the authority.

11 (3) Notwithstanding any provision of this or any other law
12 to the contrary, or of any implication that may be drawn
13 therefrom, the Commonwealth and its political subdivisions shall
14 have no legal or moral obligation for the payment of any
15 expenses or obligations of the authority, including, but not
16 limited to, bond or revenue anticipation note principal and
17 interest, the funding or refunding of any reserves and any
18 administrative or operating expenses whatsoever, other than for
19 the appropriation of funds for initial operating expenses of the
20 authority contained in subsection (q)(1).

21 (4) Bonds and revenue anticipation notes issued by the
22 authority shall contain a prominent statement of the limitations
23 set forth in this subsection and shall further recite that
24 obligees of the authority shall have no recourse, either legal
25 or moral, to the Commonwealth or to any political subdivision
26 for any payment of any amounts with respect to such bonds or
27 revenue anticipation notes.

28 (j) The authority shall have continuing existence and
29 succession for a term not to exceed one year after final payment
30 and discharge of all of its liabilities, including without

limitation, its bonds and revenue anticipation notes. Upon the termination of the existence of the authority, all of its rights in and to any property, including any funds remaining in any debt service reserve fund, shall be repaid to those providers who:

(1) on the termination date of the authority are subject to this act; and

(2) have paid assessments for all or some portion of the last five full fiscal years of the authority in a manner and proportion to be determined by the authority consistent with the historic manner and average proportion by which such providers were assessed over the last five full fiscal years of the authority. Any determination made by the authority pursuant to this subsection shall be deemed to be final and conclusive absent a showing of gross negligence or fraud.

(k) The fiscal year of the authority shall be established by the authority by adoption of a resolution, and may be changed by the authority in the same manner.

(1) The initial operating budget of the authority shall be adopted by the board within 120 days following the initial meeting of the board as convened pursuant to subsection (c). Thereafter, the board shall, at least 60 days prior to the beginning of each fiscal year, adopt an operating budget for the authority by the vote of a majority of the full board. Such operating budget shall set forth in reasonable detail the projected expenses of operation of the authority for the ensuing fiscal year including, without limitation, the salary and benefits of the executive director and any other employees of the authority, the cost and expenses of any legal and other professionals employed or retained by the authority, and the

projected revenues of the authority to be derived from investment earnings and assessments and any other moneys of the authority which are reasonably estimated to be available to pay the operating expenses set forth in the operating budget. The following information shall be included in the authority's operating budget:

(i) the total amount of debt service to become due on authority bonds or revenue anticipation notes for such ensuing fiscal year, including payments of principal and interest, maturity value or sinking fund payments;

(ii) the amount, if any, due to any provider of any credit or liquidity facility representing payments made by such provider on behalf of the authority as set forth in the applicable resolution, credit or liquidity facility agreement or trust indenture as a result of any previous failure of the authority to make any such payment provided for in the applicable resolution, credit or liquidity facility agreement or trust indenture, including any related reasonable interest, fees or charges in connection therewith;

(iii) the amount, if any, required to restore the debt service reserve fund to the level required under section 701.2(h)(2) and the resolutions of the authority adopted in connection with the issuance of any bonds or revenue anticipation notes; and

(iv) the amount, if any, required to be rebated to the United States to provide for continued Federal tax exemption, if applicable, with respect to any bonds or revenue anticipation notes.

Authority operating expenses shall be budgeted and paid first from the revenues derived from the investment income of the

1 authority and then from other moneys of the authority as
2 provided in the authority's annual operating budget. The
3 authority shall repay the initial amounts allocated to the
4 authority under subsection (q)(1) from such sources or from the
5 proceeds of the initial issuance of bonds or revenue
6 anticipation notes of the authority. The Commonwealth shall not
7 be responsible for funding the annual operating budget of the
8 authority.

9 (m) Annually, within 45 days of receipt of the audit
10 required by this subsection, the authority shall file a report
11 with the Governor, the Majority and Minority Chairpersons of the
12 Appropriations Committee of the Senate, and the Majority and
13 Minority Chairpersons of the Appropriations Committee of the
14 House of Representatives, which shall make provision for the
15 accounting of revenues and expenses for the fiscal year. The
16 authority shall have its books, accounts and records audited
17 annually in accordance with generally accepted auditing
18 standards by an independent auditor who shall be a certified
19 public accountant and a copy of the audit report shall be
20 attached to and made a part of the authority's annual report. A
21 concise financial statement of the authority shall be published
22 annually in the Pennsylvania Bulletin.

23 (n) Prior to the initial issuance of any bonds or revenue
24 anticipation notes by the authority hereunder, the authority
25 shall adopt a financial plan which will provide for the payment
26 of:

27 (i) any authority claims;

28 (ii) any and all debt service requirements with respect to
29 any bonds or revenue anticipation notes issued or to be issued
30 by the authority to fund the program required by this act;

1 (iii) all administrative and financing costs and expenses,
2 as well as liquidity and insurance costs, if any, associated
3 with any bonds or revenue anticipation notes issued or to be
4 issued by the authority; and

5 (iv) all operating costs of the authority as set forth in
6 and required by the annual operating budget.

7 The financial plan of the authority shall be reviewed and
8 updated at least annually in connection with the preparation and
9 publication of the authority's annual operating budget and shall
10 at all times provide for the payment of all amounts due and
11 payable or to become due and payable by the authority to others.

12 (o) Members of the board shall not be liable personally on
13 any obligations of the authority, including, without limitation,
14 bonds and revenue anticipation notes of the authority. It is
15 hereby declared to be the intent of the General Assembly that
16 the authority created by this act and its members, officers,
17 officials, agents and employees shall enjoy sovereign and
18 official immunity, as provided in 1 Pa.C.S. section 2310
19 (relating to sovereign immunity reaffirmed; specific waiver),
20 and shall remain immune from suit except as provided by and
21 subject to the provisions of 42 Pa.C.S. sections 8501 (relating
22 to definitions) through 8528 (relating to limitations on
23 damages).

24 (p) The authority shall comply in all respects with the
25 nondiscrimination and contract compliance plans used by the
26 Department of General Services to assure that all persons are
27 accorded equality of opportunity in employment and contracting
28 by the authority and its contractors, subcontractors, assignees,
29 lessees, agents, vendors and suppliers.

30 (q) The following provisions shall apply to authorized

1 funding:

2 ~~(1) The sum of \$500,000 is hereby appropriated to the~~ <—
3 ~~authority for the fiscal year running from July 1, 2000, to June~~
4 ~~30, 2001, for the purpose of providing operating funds for the~~
5 ~~authority. Funds appropriated pursuant to this paragraph which~~
6 ~~remain unencumbered and unexpended as of June 30, 2001, shall be~~
7 ~~considered to be nonlapsing. The appropriation in this paragraph~~
8 ~~is an advance which shall be repaid by the authority from the~~
9 ~~sources described in subsection (1) as soon as is practicable~~
10 ~~and in no event later than June 30, 2002. The General Assembly~~
11 ~~hereby declares that the advance of funds appropriated by this~~
12 ~~section is the absolute limit of the legal and moral obligation~~
13 ~~of the Commonwealth to the authority for any of its obligations~~
14 ~~or expenses.~~

15 (1) UPON THE EFFECTIVE DATE OF THIS ACT, ALL ASSETS AND <—
16 LIABILITIES OF THE PENNSYLVANIA MEDICAL PROFESSIONAL LIABILITY
17 CATASTROPHE LOSS FUND BECOME THE ASSETS AND LIABILITIES OF THE
18 PENNSYLVANIA MEDICAL PROFESSIONAL LIABILITY CATASTROPHE LOSS
19 AUTHORITY.

20 (2) After December 31, 2001, the authority shall be funded
21 by the levying of an annual assessment on or after January 1 of
22 every year on all health care providers, except those exempted
23 under section 701(a)(2) and subsection (s). The assessment shall
24 be determined by the authority, filed with the commissioner and
25 communicated to all basic insurance coverage carriers and self-
26 insurance plans. The assessment shall be based on the prevailing
27 primary premium for each health care provider in effect during
28 the calendar year 2000 for maintenance of professional liability
29 insurance and shall be the appropriate percentage thereof,
30 necessary to produce an amount sufficient to provide for the

payment of claims, any and all debt service requirements with respect to any bonds and revenue anticipation notes issued or to be issued by the authority, all operating, administrative and financing costs and expenses, as well as liquidity and insurance costs, if any, associated with any bonds and revenue anticipation notes issued or to be issued by the authority, under the financial plan adopted by the authority, provided, however, that in calendar years 2002 through 2011 2008 the aggregate annual assessment shall not exceed 50 percent of the surcharge imposed for calendar year 2000.

<—

(3) The Joint Underwriting Association shall file an updated schedule of occurrence rates for all health care providers with the commissioner by May 1 of each year.

(4) The authority shall:

(i) review and may adjust the prevailing primary premium in line with any applicable changes to the schedule of occurrence rates made in filings by the Joint Underwriting Association and approved by the commissioner; and

(ii) review and may adjust the applicable prevailing primary premium of any hospital, including a hospital associated with a university or other educational institution, through an increase or decrease in the individual ~~hospitals~~ HOSPITAL'S prevailing primary premium not to exceed 20% for any one year. Any such adjustment shall be based on the frequency and severity of claims paid by the authority on behalf of other hospitals of similar class, size, risk and kind within the same defined region during the past five most recent claims periods. All prevailing primary premium adjustments pursuant to this paragraph shall require the approval of the commissioner.

<—

(5) For health care providers that do not engage in direct

clinical practice on a full-time basis, the prevailing primary premium shall be prorated, based on the proportionate share of direct clinical practice to non-clinical practice, by the authority to reflect the lower risk associated with the less than full-time direct clinical practice.

(6) The authority shall adjust the annual assessment downward for new physicians, certified nurse midwives and podiatrists who enter practice in this Commonwealth after December 31, 2006. The elimination or discount shall not increase the cost of the annual assessment to existing health care providers. The basic ~~limits~~ COVERAGE for new physicians, certified nurse midwives and podiatrists shall be the same as all other health care providers as prescribed in section 701(a)(1)(vi).

<—

(7) The assessment provided in paragraph (2) shall be reviewed by the commissioner within 30 days of submission. After review, the commissioner may only disapprove an assessment if it is inadequate or excessive under the financial plan adopted by the authority. If so disapproved, the authority shall make an adjustment to the assessment calculation to reflect the appropriate increase or decrease.

(8) When a health care provider changes the term of its basic insurance coverage, the assessment shall be calculated on an annual base and shall reflect the assessment percentages in effect for all the assessment periods over which the policy is in effect.

(9) Health care providers having approved self-insurance plans shall be assessed an amount equal to the assessment imposed on a health care provider of like class, size, risk and kind as determined by the authority.

1 (10) All claims shall be computed on August 31 for all
2 claims which became final between that date and September 1 of
3 the preceding year. All such claims shall be paid on the last
4 business day on or before December 31 following the August 31 by
5 which they became final.

6 (11) The annual assessments on health care providers, any
7 proceeds of any sale of bonds and revenue anticipation notes,
8 and any income realized by investment or reinvestment shall
9 constitute the sole and exclusive sources of funding for the
10 authority. No claims or expenses against the authority shall be
11 deemed to constitute a debt of the Commonwealth or a charge
12 against the General Fund of the Commonwealth.

13 (12) The authority shall, WITHIN TWO YEARS OF THE EFFECTIVE <—
14 DATE OF THIS ACT, MUST be empowered to and shall arrange for the
15 separate retirement of the liabilities associated with the
16 following classes of health care providers:

- 17 (i) primary health centers;
- 18 (ii) certified nurse midwives;
- 19 (iii) podiatrists;
- 20 (iv) nursing homes; and
- 21 (v) birth centers.

22 Such arrangements shall be on terms and conditions proportionate
23 to the individual liability of each class of health care
24 provider. Such arrangements may result in assessments for
25 primary health centers, certified nurse midwives, podiatrists,
26 nursing homes and birth centers different than provided for
27 under section 701(e) 701.1(Q). Upon satisfaction of such <—
28 arrangements, primary health centers, certified nurse midwives,
29 podiatrists, nursing homes and birth centers shall not be
30 required to contribute to or be entitled to participate in the

1 authority set forth in Article VII. IN CASES WHERE A PROVIDER <—
2 CLASS REJECTS SUCH AN ARRANGEMENT, THE AUTHORITY SHALL PRESENT
3 TO SUCH PROVIDER CLASS NEW TERM ARRANGEMENTS AT LEAST ONCE IN
4 EVERY TWO-YEAR PERIOD.

5 (13) NOTWITHSTANDING THE ABOVE PROVISIONS RELATING TO AN
6 ANNUAL ASSESSMENT, THE COMMISSIONER SHALL HAVE THE AUTHORITY,
7 DURING SEPTEMBER OF EACH YEAR, IF THE AUTHORITY WOULD BE
8 EXHAUSTED BY THE PAYMENT IN FULL OF ALL CLAIMS WHICH HAVE BECOME
9 FINAL AND THE EXPENSES OF THE AUTHORITY, TO DETERMINE AND LEVY
10 AN EMERGENCY ASSESSMENT ON ALL HEALTH CARE PROVIDERS THEN
11 ENTITLED TO PARTICIPATE IN THE AUTHORITY. SUCH EMERGENCY
12 ASSESSMENT SHALL BE THE APPROPRIATE PERCENTAGE OF THE COST TO
13 EACH HEALTH CARE PROVIDER FOR MAINTENANCE OF PROFESSIONAL
14 LIABILITY INSURANCE NECESSARY TO PRODUCE AN AMOUNT SUFFICIENT TO
15 ALLOW THE AUTHORITY TO PAY IN FULL ALL CLAIMS DETERMINED TO BE
16 FINAL AS OF AUGUST 31 OF EACH YEAR, DEBT SERVICE, AND THE
17 EXPENSES OF THE AUTHORITY AS OF DECEMBER 31 OF EACH YEAR.

18 (r) The failure of any health care provider to comply with
19 any of the provisions OF THIS ACT or any of the rules and <—
20 regulations issued by the authority shall result in the
21 suspension or revocation of the health care ~~providers~~ PROVIDER'S <—
22 license by the applicable licensure board.

23 (s) The following providers are exempt from the provisions
24 of this act:

25 (1) any physician who exclusively practices the specialty of
26 forensic pathology;

27 (2) retired licensed practitioners who provide care to
28 immediate family members; and

29 (3) all health care providers who are members of the
30 Pennsylvania military forces while in the performance of their

1 assigned duty in the Pennsylvania military forces under orders.

2 Section ~~701.2~~ 701.2. Bonds, Revenue Anticipation Notes and <—
3 Funds of Authority.--

4 (a) Any bonds or revenue anticipation notes issued by the
5 authority under this act shall be limited revenue obligations of
6 the authority, payable solely from the funds and accounts of the
7 authority, including the revenues pledged for the payment and
8 security therefor. The authority shall not have any power or
9 authority at any time or in any manner to pledge the credit or
10 taxing power of the Commonwealth or any of its political
11 subdivisions and no obligation of the authority shall be deemed
12 to be an obligation of the Commonwealth or any of its political
13 subdivisions. Neither the Commonwealth nor any of its political
14 subdivisions shall be liable for the payment of any principal or
15 interest, or any other amounts, with respect to any bonds or
16 revenue anticipation notes of the authority. The issuance of
17 bonds and revenue anticipation notes by the authority under the
18 provisions of this act shall not directly or indirectly obligate
19 the Commonwealth or any of its political subdivisions to levy or
20 pledge any form of taxation whatever therefor or to make any
21 appropriation for their payment, except as may be expressly
22 permitted by this act. The authority's bonds and revenue
23 anticipation notes shall not constitute a charge, lien or
24 encumbrance, legal or equitable, upon any property of the
25 Commonwealth or of its political subdivisions, except the
26 authority buyout fund, the other funds and accounts established
27 hereunder and under the provisions of any resolution or trust
28 indenture authorizing any indebtedness, and the revenues pledged
29 or otherwise encumbered under the provisions of such resolutions
30 or trust indentures and for the purposes of issuing the bonds

1 and revenue anticipation notes and fulfilling the purposes of
2 the authority hereunder. The substance of this limitation shall
3 be plainly stated on the face of every bond and revenue
4 anticipation note delivered by the authority. Bonds and revenue
5 anticipation notes issued by the authority shall not be subject
6 to any statutory limitation on the indebtedness of the
7 Commonwealth nor shall they be included in computing the
8 aggregate indebtedness of the Commonwealth in respect to, and to
9 the extent of, any such limitation. As part of the contract of <—
10 the Commonwealth with the owners of the bonds and revenue
11 anticipation notes, all ALL amounts necessary for the punctual <—
12 payment of debt service requirements on the bonds and revenue
13 anticipation notes shall be deemed appropriated, but only from
14 the limited sources specifically pledged therefor pursuant to
15 this act.

16 (b) The following provisions shall apply to the issuance of
17 bonds or revenue anticipation notes:

18 (1) Any bonds or revenue anticipation notes issued by the
19 authority and reciting in substance that such bond or revenue
20 anticipation note has been issued by the authority to accomplish
21 the public purposes of this act shall be conclusively deemed in
22 any suit, action or proceeding involving the validity or
23 enforceability of such bonds or revenue anticipation notes or
24 any security therefor to have been issued for such purposes.

25 (2) The authority shall cause a copy of any resolution
26 authorizing the issuance of bonds or revenue anticipation notes
27 to be filed for public inspection at its principal place of
28 business.

29 (3) After the issuance of bonds and revenue anticipation
30 notes by the authority, all such bonds and revenue anticipation

1 notes shall be conclusively presumed to be fully and properly
2 authorized and issued in accordance with all laws of the
3 Commonwealth, and any person shall be estopped from questioning
4 or challenging their authorization, sale, execution or delivery
5 by the authority.

6 (c) Any pledge or grant of a security interest in revenues
7 or property of the authority shall be valid and binding from the
8 time when such pledge or grant is made; the revenues or other
9 property so pledged and thereafter received by the authority
10 shall immediately be subject to the lien of any such pledge or
11 security interest without physical delivery thereof or further
12 act, and the lien of any such pledge or security interest shall
13 be valid and binding as against all parties having claims of any
14 kind in tort, contract or otherwise against the authority
15 irrespective of whether such parties have notice thereof.
16 Neither the resolution nor any other instrument of the authority
17 by which a pledge or security interest is created need be
18 recorded or filed to perfect such pledge or security interest,
19 but the authority shall nonetheless cause such recording or
20 filing to be made as is usual and customary in such cases.

21 (d) The following provisions shall apply to the
22 Commonwealth:

23 (1) The Commonwealth does hereby pledge to and agree with
24 each and every owner of authority bonds that the Commonwealth
25 will not limit or alter the rights hereby vested in the
26 authority or otherwise created by this act in any manner which
27 impairs or is inconsistent with the obligations of the authority
28 to such bondholder until all such bonds, together with the
29 interest thereon, shall have been fully paid and discharged.

30 (2) The Commonwealth does hereby pledge to and agree with

each and every person who, as owner thereof, leases or subleases property, or rights to property, to or from the authority, that the Commonwealth will not limit or alter the rights hereby vested in the authority or otherwise created by this act in any manner which impairs or is inconsistent with the obligations of the authority to such persons until all such obligations of the authority under the lease or sublease shall have been fully met, paid and discharged.

(3) If and to the extent that the authority pledges as security for any bonds or revenue anticipation notes any revenues to be derived from charges or assessments of health care providers, the Commonwealth does hereby pledge to and agree with each and every obligee of the authority acquiring bonds or revenue anticipation notes so secured, that, until all bonds or revenue anticipation notes secured by the pledge of the authority, and all interest thereon, are fully paid or provided for and until all liens created to secure such bonds or revenue anticipation notes shall have been fully paid and discharged, the Commonwealth itself will not, nor will it authorize any government agency making such assessment, to reduce the amount of such assessment beyond an amount that would provide moneys to the authority which, together with other moneys legally available to the authority, will permit the authority in any given fiscal year to pay all of the debt service on such bonds and revenue anticipation notes for such fiscal year.

(e) The holders of bonds and revenue anticipation notes of the authority shall have the right to enforce a pledge of or security interest in revenues of the authority securing payment of such bonds or revenue anticipation notes against all government agencies in possession of any such revenues at any

1 time, which revenues may be collected directly from such
2 officials upon notice by such obligees or a trustee for such
3 obligees for application to the payment of such bonds or revenue
4 anticipation notes as when due or for deposit in any sinking,
5 bond or debt service fund established by this act or established
6 by resolution of the authority with such trustee at the times
7 and in the amounts specified in such bonds or revenue
8 anticipation notes or in the resolution or indenture or trust
9 agreement securing such bonds or revenue anticipation notes. Any
10 government agency in possession of any such revenues shall make
11 payment against receipt and shall thereby be discharged from any
12 further liability or responsibility for such revenues. If such
13 payment shall be made to a holder of such bonds or revenue
14 anticipation notes, it shall be made against surrender of such
15 bonds or revenue anticipation notes to the payor for delivery to
16 the authority in the case of payment in full; otherwise, it
17 shall be made against production of such bonds or revenue
18 anticipation notes for notation thereon of the amount of the
19 payment. The provisions of this section with respect to the
20 enforceability and collection of revenues which secure bonds or
21 revenue anticipation notes shall supersede any contrary or
22 inconsistent statutory provision or rule of law. This section
23 shall be construed and applied to fulfill the legislative
24 purpose of clarifying and facilitating the financing by the
25 authority of the obligations of the Medical Professional
26 Liability Catastrophe Loss Fund by assuring to the obligees of
27 the authority the full and immediate benefit of the security for
28 the bonds or revenue anticipation notes, without delay,
29 diminution or interference based on any statute, decision,
30 ordinance or administrative rule or practice.

1 (f) The following provisions shall apply to bonds:

2 (1) Any bonds of the authority shall be authorized by a
3 resolution of the board by vote of a majority of the full board
4 and shall be of such series, bear such date or dates, bear or
5 accrue interest at such rate or rates as shall be determined by
6 the board as necessary to issue and sell in a public, private,
7 invited or negotiated sale, be in such denominations, be in such
8 form, either coupon or fully registered without coupons or in
9 certificated or book-entry-only form, carry such registration, <—
10 exchangeability and interchangeability privileges, be payable in
11 such medium of payment and at such place or places, be subject
12 to such terms of redemption and be entitled to such priorities
13 of payment in the revenues or receipts of the authority as such
14 resolution or resolutions of the board may provide. The bonds
15 shall be signed by or shall bear the facsimile signatures of
16 such officers as the board shall determine, and coupon bonds
17 shall have attached thereto interest coupons bearing the
18 facsimile signature of the treasurer of the authority, and all
19 bonds shall be authenticated by an authenticating agent, fiscal
20 agent or trustee, all as may be prescribed in such resolution or
21 resolutions. Any such bonds may be issued and delivered
22 notwithstanding that one or more of the officers whose facsimile
23 signatures shall be upon such bonds, or the treasurer whose
24 signature shall be upon the coupon, shall have ceased to be such
25 officer at the time the bonds shall actually be issued or
26 delivered.

27 (2) Bonds issued by the authority under the provisions of
28 this act shall mature no later than 30 years from their
29 respective dates of original issuance.

30 (3) Bonds issued by the authority under the provisions of

this act may be sold by the authority at public, private,
invited or negotiated sale for such price or prices and at such
rate or rates of interest as the authority shall determine.
Bonds issued by the authority under the provisions of this act
may be sold by the authority at a private sale by negotiation
for such price or prices and at such rate or rates of interest
as the authority shall determine. Pending the preparation of
definitive bonds, interim receipts may be issued to the
purchaser or purchasers of such bonds, and may contain such
terms and conditions as the authority may determine.

(4) Bonds issued by the authority shall have the qualities
of negotiable instruments under 13 Pa.C.S (relating to the
commercial code).

(5) The proceeds of an issue of bonds issued by the
authority pursuant to the provisions of this act may be used to:

(i) pay the costs of issuance of such bonds and to otherwise
provide for the security therefor, including, without
limitation, costs of liquidity and credit enhancement;

(ii) pay administrative costs and expenses of the authority
associated with performing its duties and responsibilities
hereunder;

(iii) fund required reserves for the bonds, or otherwise
required by the authority to perform its duties and obligations
hereunder, and to otherwise fulfill the legislative purposes of
this act;

(iv) capitalize interest on such bonds for a period to be
determined by the authority; and

(v) fund the program or programs contemplated by the
financial plan of the authority.

Proceeds of the initial issue of bonds to be undertaken by

1 the authority may be applied to reimburse the Commonwealth for
2 the appropriation contained in section 701.1 (g)(1) and to fund
3 up to \$500,000 of initial operating expenses of the authority.

4 (6) Subject to the provisions of the outstanding bonds of
5 the authority and the provisions of this act, the authority
6 shall have the right and power to refund or otherwise refinance
7 any outstanding bonds of the authority, whether such debt
8 represents principal or interest, in whole or in part at any
9 time. The term of any refunding bonds shall not extend to a
10 final maturity date that could not have been included in the
11 original issue of bonds being refunded. A refunding or
12 refinancing may result in an increase in the total principal
13 amount of outstanding indebtedness, but the total amount of
14 principal and interest payments in any year may not be increased
15 as a result of such refunding or refinancing EXCEPT WHEN <—
16 REFUNDING A VARIABLE RATE OBLIGATION TO A FIXED RATE FINANCING.

17 (7) The effectuation of the authorized purposes of the
18 authority shall and will be in all respects for the benefit of
19 the people of this Commonwealth, for the increase of their
20 commerce and prosperity and for the improvement of their health,
21 safety, welfare and living conditions; and since the authority
22 will, as a public instrumentality of the Commonwealth, be
23 performing essential government functions in effectuating such
24 purposes, the authority shall not be required to pay any taxes
25 or assessments upon any property acquired or used or permitted
26 to be used by the authority for such purposes; and the bonds
27 issued by the authority, their transfer and the income
28 therefrom, including any profits made on the sale thereof,
29 shall, at all times, be free from State and local taxation
30 within this Commonwealth. This exemption shall not extend to

1 gift, estate, succession or inheritance taxes or any other taxes
2 not levied directly on the bonds, THE TRANSFER THEREOF, the
3 income therefrom or the realization of profits on the sale
4 thereof.

5 (8) In connection with the issuance of bonds and in order to
6 secure the payment of such bonds, the authority, in addition to
7 its other powers, but in all events, subject to the further
8 limitations imposed by this act, shall have the right and power
9 to:

10 (i) pledge or grant a security interest in all or any part
11 of its gross or net revenues, including, specifically without
12 limitation any and all amounts received or to be received with
13 respect to assessments established pursuant to section 701.1 of
14 this act;

15 (ii) grant a security interest in all or any part of its
16 property then owned or thereafter acquired;

17 (iii) covenant against pledging or granting a security
18 interest in all or any part of its revenues or all or any part
19 of its property to which its right or title exists or may
20 thereafter come into existence, or against permitting or
21 suffering any lien on such revenues or property;

22 (iv) covenant as to which other or additional debts or
23 obligations may be incurred by it;

24 (v) covenant as to the bonds to be issued, and as to the
25 issuance of such bonds, in escrow or otherwise, and as to the
26 use and disposition of the proceeds thereof;

27 (vi) provide for the replacement of lost, destroyed or
28 mutilated bonds;

29 (vii) covenant against extending the time for the payment of
30 bonds, or interest thereon, and to covenant for the redemption

1 of any such bonds and to provide the terms and conditions
2 thereof;

3 (viii) covenant as to the amount of revenues to be received
4 in each fiscal year or other period of time by the authority, as
5 well as to the use and disposition to be made thereof, create or
6 authorize the creation of special funds or reserves for debt
7 service or other purposes and covenant as to the use and
8 disposition of the moneys held in such funds;

9 (ix) prescribe the procedure, if any, by which the terms of
10 any contract with bondholders may be amended or abrogated, and
11 the amount of bonds the holders of which must consent thereto,
12 and the manner in which such consent may be given;

13 (x) covenant as to the use of any or all of its property,
14 warrant as to the authority's title to such property, and
15 covenant as to the maintenance of its property, the replacement
16 thereof, the insurance to be carried thereon and the use and
17 disposition of insurance proceeds;

18 (xi) covenant as to the rights, liabilities, powers and
19 duties arising upon the breach by it of any covenant, condition
20 or obligation, provided that the authority shall not be
21 permitted to covenant that upon such breach any or all of its
22 bonds shall become or may be declared due before their stated
23 maturity or scheduled prior mandatory redemption;

24 (xii) vest in a trustee or holders of bonds, or any
25 proportion of them, the right to enforce the payment of the
26 bonds, or to enforce any covenants securing or relating thereto;

27 (xiii) vest in a trustee the right, in the event of default
28 in payments of interest or on principal of bonds of the
29 authority, to take possession and use of any property of the
30 authority and to collect the revenues and receipts of the

authority and to dispose of such moneys in accordance with any obligation of the authority with or to a trustee pursuant to a resolution or trust indenture;

(xiv) provide for the powers and duties of a trustee and to limit the liabilities thereof, as well as to provide the terms and conditions upon which a trustee or holders of bonds, or any proportion thereof, may enforce any covenant or right securing or relating to the bonds;

(xv) enter into interest rate exchange agreements, interest rate cap and floor agreements and other similar agreements which in the judgment of the authority will assist the authority in managing its interest costs;

(xvi) obtain letters of credit, bond insurance and other facilities for credit enhancement and liquidity; and

(xvii) exercise all or any part or combination of the powers granted in this act, make covenants expressly authorized in this act, make such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, ~~notes or other evidences of indebtedness, or,~~ in the absolute discretion of the authority, as will tend to accomplish the purposes of this act, by making the bonds, ~~notes or other evidence of indebtedness~~ more marketable, notwithstanding that such covenants, acts or things may not be specifically enumerated by this act.

The revenues of the authority and the property of the authority shall be pledged or otherwise encumbered only as expressly provided in this section and except to the extent necessary to effectuate such pledge or encumbrance, shall not be subject to attachment nor levied upon by execution or otherwise.

(9) Bondholders shall have the right, in addition to all

other rights which may be conferred on such bondholders subject only to any binding contractual restrictions:

(i) by mandamus, suit, action or proceeding at law or in equity, to compel the authority and the members of the board, officers, agents or employees thereof:

(A) to perform each and every term, provision and covenant contained in any bond, or any contract, agreement or trust indenture of the authority, which term, provision or covenant was for the benefit of such obligee;

(B) to require the carrying out of any or all such terms, provisions or covenants, and such bonds, contracts, agreements or trust indentures; and

(C) to require the fulfillment of all duties imposed upon the authority by this act.

(ii) by proceeding in equity, to obtain an injunction against any acts or things which may be unlawful or the violation of any of the rights of such bondholders.

(iii) to require the authority to account as if it were the trustee of an express trust for the bondholders for any pledged revenues received.

(10) Except as otherwise provided in any resolution of the authority authorizing or awarding bonds, the terms of such resolution and any agreement authorized by such resolution and the terms of this act as in effect when such bonds were authorized shall constitute a contract between the authority and the obligees from time to time of the authority, subject to modification by the affirmative vote of the holders of such amount of bonds as the resolution or applicable agreements or trust indentures shall provide.

(11) Bonds issued by the authority pursuant to this act are

1 hereby made securities in which all government agencies, all
2 insurance companies, trust companies, banking associations,
3 banking corporations, savings banks, investment companies,
4 executors, the trustees of any retirement, pension or annuity
5 fund or system of the Commonwealth or of a ~~city~~ ANY POLITICAL <—
6 SUBDIVISION, trustees and other fiduciaries may properly and
7 legally invest funds, including capital, deposits or other funds
8 in their control or belonging to them. Such bonds are hereby
9 made securities which may properly and legally be deposited with
10 and received by any government agency for any purpose for which
11 the deposit of bonds or other obligations of the Commonwealth
12 now or may hereafter be authorized by law.

13 (12) Subject to the requirements and conditions of this act,
14 the first series of bonds issued by the authority shall be
15 issued in such manner and time as shall be determined by the
16 authority, so that net proceeds of the bonds will be available
17 on or before December 15, 2001, or as soon as practicable
18 thereafter, in an amount not less than the amount determined as
19 necessary, proper or desirable by the authority to effectuate
20 the purposes of this act and to implement the financial plan,
21 though in no event in an amount greater than that provided for
22 in paragraph (14).

23 (13) Subject to the requirements and conditions of this act,
24 one or more additional series of bonds, other than temporary
25 financing as provided for in subsection (g) and the initial
26 issuance of bonds as provided in paragraph (12), shall be issued
27 in such manner and time as shall be determined by the authority,
28 so that net proceeds of the bonds will be available on or before
29 the dates when such moneys are needed by the authority to
30 effectuate the purposes of this act and to implement the

1 financial plan adopted pursuant to this act. Except for a
2 refunding permitted by paragraph (6), and for the issuance of
3 temporary ~~funding notes~~ FINANCING permitted by the provisions of <—
4 subsection (g), no bonds shall be issued by the authority for
5 any purpose on a date later than December 31, 2031. The
6 limitations of this section shall not apply to any bond to be
7 issued by the authority to refund or refinance any other bond
8 issued under this act, and to pay any costs and expenses
9 associated with such refunding or refinancing.

10 (14) Except as expressly provided for in paragraph (5) or
11 (6), the authority may not issue bonds in amounts that would
12 cause the total amount of outstanding indebtedness to exceed, at
13 the time of issuance, the most recent actuarial estimate of the
14 aggregate unfunded liability, plus necessary reserves and
15 contingencies, all as shall be set forth in the most recent
16 financial plan of the authority.

17 (g) The following provisions shall apply to revenue
18 anticipation notes:

19 (1) Notwithstanding any other provision of law, the
20 authority shall have the power and authority, by resolution
21 adopted by a majority of the full board, to borrow money from
22 time to time in anticipation of the receipt of revenues from
23 assessments, to evidence such indebtedness by issuance of
24 revenue anticipation notes, and to authorize, issue and sell
25 such notes in the manner and subject to the limitations set
26 forth in this section. Any such notes authorized and issued in
27 accordance with this section shall be designated revenue
28 anticipation notes. The power set forth in this section to
29 borrow from time to time shall include, but not be limited to,
30 the power to make a single authorization and then issue and sell

portions of such amount of authorized notes whenever desired or needed. This section shall be construed and applied to fulfill the legislative purpose of clarifying and facilitating temporary borrowings of the authority in anticipation of the receipt of revenues from assessments, and to provide assurance to holders of such notes that they shall have the full and immediate benefit of the security therefor without delay, diminishment or interference based on any statute, court or administrative decision, ordinance or administrative rule or practice.

(2) The authority shall not, at any time, authorize or issue revenue anticipation notes which, when issued and delivered as provided herein, will, in the aggregate, together with all other revenue anticipation notes then issued and outstanding, exceed 85% of the amount of revenues certified by the authority in accordance with paragraph (6) to be collected or received during the remainder of the period during which the notes are to be issued and outstanding. ~~The certificate of the authority shall be as of a date not more than thirty days prior to and no later than the date of the adoption of the resolution of the board authorizing the issuance and sale of such revenue anticipation notes.~~ In computing the aggregate amount of revenue anticipation notes outstanding at any time during the period for the purpose of the limitation imposed by this subsection, allowance shall be made for such notes as have already been paid and for amounts, if any, already paid into a sinking fund or trust fund established for payment of such notes.

(3) No revenue anticipation notes shall be stated to mature beyond twelve months after the date on which such revenue anticipation notes are issued. Interest on revenue anticipation notes from the date thereof shall be due and payable at the

maturity of such notes or in installments at such earlier dates
and at such annual rate or rates, fixed or variable, as shall be
set forth in the resolution of the board authorizing their
issuance.

(4) Revenue anticipation notes shall be issued in such
denominations, shall be subject to such rights of prior
redemption, shall have such privileges of interchange and
registration, shall be dated, shall be stated to mature on such
dates and in such amounts, shall be in registered or bearer form
with or without coupons or in certified or book-entry-only form,
shall be payable in such medium of payment and shall be payable
at such place or places, all as set forth in the resolution of
the board authorizing their issuance.

(5) All revenue anticipation notes issued by the authority
in a single fiscal year shall be equally and ratably secured by
a pledge of, security interest in, and a lien and charge on, the
revenues to be collected or received during the period when the
notes will be outstanding. Such pledge, lien and charge shall be
fully perfected against the authority, all creditors thereof and
all third parties in accordance with the terms of the
authorizing resolution from and after the filing of a financing
statement or statements in accordance with 13 Pa.C.S. For the
purpose of such filing, the sinking fund depositary or trustee
of a trust fund for note payments, if any, or otherwise the
fiscal agent or paying agent designated in the notes, may act as
the representative of noteholders and, in such capacity, shall
execute and file the financing statement and any continuation or
termination statements as secured party. The authorizing
resolution may establish one or more sinking funds or trust
funds for payment of notes and provide for periodic or other

1 deposits therein and may contain such covenants or other
2 provisions as the authority may determine. No revenues pledged
3 to secure bonds of the authority shall be pledged to secure
4 revenue anticipation notes unless such pledge is, by its express
5 terms, subordinate in all respects to the pledge of such
6 revenues to secure such prior outstanding bonds. The holder of
7 such subordinated notes, or a sinking fund depository or trustee
8 acting on its behalf, shall have no right to enforce such pledge
9 in the manner described in subsection (e) unless all payments
10 due and payable with respect to such ~~senior~~ bonds shall have <—
11 been made or provided for.

12 (6) Prior to each authorization of revenue anticipation
13 notes, the authority shall certify its best estimate of the
14 moneys to be received during the period when such notes will be
15 outstanding. Such estimate of revenues shall take into account
16 past and anticipated collection experience of the authority and
17 current economic conditions as well as all other known facts.
18 Such estimate shall be certified as of a date not more than
19 thirty days prior to and no later than the date of the adoption
20 of the resolution of the board authorizing the issuance and sale
21 of such revenue anticipation notes, and shall be filed with the
22 proceedings authorizing the revenue anticipation notes with the
23 trustee for the notes of the authority, as provided in paragraph
24 (8).

25 (7) Revenue anticipation notes may be sold at public,
26 private, invited or negotiated sale and at such price or prices
27 as the board, by a majority of all its members, shall determine.
28 At the time of delivery of each issue, series or subseries of
29 revenue anticipation notes, the authority, by its duly qualified
30 officers and executive director, shall certify to the original

purchasers thereof that the amount of all such notes to be
outstanding will not exceed the limitations of paragraph (2)
calculated from the date of such certificate to the respective
maturity dates of all such notes to remain outstanding. Such
certificate shall be retained by the authority until all revenue
anticipation notes issued during the fiscal year shall have been
paid in full.

(8) Prior to the delivery of any revenue anticipation notes
to the original purchasers thereof, the authority shall file
with the trustee for such revenue anticipation notes:

(i) the transcript of proceedings authorizing the issuance
of the revenue anticipation notes, which proceedings shall
include, without limitation, the resolution authorizing the
revenue anticipation notes;

(ii) the certificate required by paragraph (6) as to the
amount of revenues to be collected during the term of the
revenue anticipation notes; and

(iii) the certificate required by paragraph (7) and A TRUE
COPY OF THE ACCEPTED PROPOSAL FOR PURCHASE OF THE REVENUE
ANTICIPATION notes.

No approval of the trustee is required for the authority to
issue such revenue anticipation notes.

(9) If the authority fails to pay principal or interest on
any of its revenue anticipation notes as the same become due and
payable whether at the stated maturity or upon a mandatory or
unrevoked call for prior redemption and such failure shall
continue for 30 days, the holder thereof shall, subject to the
priorities created under this act and the provisions of any
outstanding bonds of the authority, and subject to any
limitation upon individual rights of action included in the

<—

1 resolution authorizing the revenue anticipation notes, have the
2 right to recover the amount due in accordance with section
3 701.3. The judgment recovered shall have an appropriate priority
4 upon the moneys next received by the authority.

5 (h) The following provisions shall apply to authority funds.

6 (1) All funds of the authority received from any source
7 shall be delivered to or upon the order of the treasurer of the
8 authority or to such other agent of the authority as the board
9 may designate. Such funds received by the authority shall be
10 promptly deposited in a bank or banks in this Commonwealth as
11 chosen by a ~~qualified majority of the~~ MAJORITY OF THE FULL <—
12 board. The moneys in such account or accounts may be paid by the
13 treasurer of the authority or other designated agent of the
14 authority on warrant of the treasurer of the authority or by
15 such persons as the board may authorize to make such warrants.
16 All such deposits of moneys may, if required by the authority,
17 be secured by obligations of the United States or of the
18 Commonwealth of a market value equal, determined at least
19 weekly, to the amount of the deposit, and all banks and trust
20 companies are authorized to give such security for such
21 deposits.

22 Subject to the provisions of any agreements with obligees of
23 the authority, all funds of the authority, including the
24 proceeds of any bonds and revenue anticipation notes which are
25 not required for immediate use, shall be invested by or on
26 behalf of the authority in obligations of the Federal Government
27 or of the Commonwealth or obligations which are legal
28 investments for Commonwealth funds. All such investments shall
29 be fully secured in such manner, and shall be made upon such
30 terms and conditions, as shall be required from time to time for

1 moneys of the Commonwealth.

2 The proceeds realized from any assessment made for authority
3 purposes or made available for use by the authority to secure
4 its bonds and revenue anticipation notes shall be transferred to
5 the authority at the times provided by this act and otherwise by
6 law, subject to any limitations or restrictions, and otherwise
7 in the manner set forth in any resolution of the authority
8 authorizing any bonds or revenue anticipation notes. Subject to
9 any limitations as may be provided for in this section or in any
10 resolution authorizing the issuance of bonds or revenue
11 anticipation notes, any such transfers shall be made first, to
12 the bond or revenue anticipation note payment account
13 established pursuant to paragraph (4), second, to any debt
14 service reserve fund established pursuant to paragraph (2),
15 third, to the authority for the payment of operating expenses in
16 the amounts permitted pursuant to section 701.1(1), and finally
17 to the surplus assessment fund established pursuant to paragraph
18 (6).

19 (2) ~~Funds~~ ONE OR MORE DEBT SERVICE RESERVE FUNDS into which <—
20 it shall deposit, or cause to be deposited:

21 (i) the proceeds of any assessment made for authority
22 purposes or made available for use by the authority in excess of
23 amounts required to be deposited in the bond payment account
24 pursuant to paragraph ~~(3)~~ (4); <—

25 (ii) the proceeds of any sale of bonds to the extent
26 provided in the resolution or resolutions authorizing such
27 bonds; and

28 (iii) any other moneys made available to the authority from
29 any source for such purpose.

30 All moneys at any time held in any debt service reserve fund,

1 except as provided hereafter, shall be used when required solely
2 for the payment of (A) the principal amount of any bonds secured <—
3 in whole or in part by such fund; (B) the sinking fund payments,
4 if any, required with respect to such bonds; (C) the purchase or
5 redemption of such bonds; (D) interest with respect to such
6 bonds; or (E) any redemption premium required to be paid with
7 respect to any such bonds when they are redeemed prior to
8 maturity. FOR THE PAYMENT OF: <—

9 (A) THE PRINCIPAL AMOUNT OF ANY BONDS SECURED IN WHOLE OR IN
10 PART BY SUCH FUND;

11 (B) THE SINKING FUND PAYMENTS, IF ANY, REQUIRED WITH RESPECT
12 TO SUCH BONDS;

13 (C) THE PURCHASE OR REDEMPTION OF SUCH BONDS;

14 (D) INTEREST WITH RESPECT TO SUCH BONDS; OR

15 (E) ANY REDEMPTION PREMIUM REQUIRED TO BE PAID WITH RESPECT
16 TO ANY SUCH BONDS WHEN THEY ARE REDEEMED PRIOR TO MATURITY.

17 Any debt service reserve fund established pursuant to this
18 subsection shall be a trust fund held for the benefit and
19 security of the obligees of the authority whose bonds are
20 secured by such fund. Moneys in a debt service reserve fund
21 shall not be withdrawn from the fund at any time in an amount
22 that would reduce the amount of the fund to less than the
23 minimum reserve fund requirement established for such fund in
24 the resolution of the authority creating such fund, except for
25 withdrawals for the purpose of making payments when due of
26 principal, interest, redemption premium and sinking fund
27 payments, if any, with respect to such bonds for the payment of
28 which other moneys of the authority are not available. Any
29 income or interest earned by, or increments to, any debt service
30 reserve fund due to the investment thereof may be transferred by

1 the authority to other funds or accounts of the authority to the
2 extent that such transfer does not reduce the amount of the debt
3 service reserve fund below the minimum reserve fund requirements
4 established for such fund. Moneys transferred to other funds or
5 accounts in accordance with this subsection may be used for
6 whatever purposes the authority deems appropriate so long as
7 such purposes are consistent with this act and the contracts of
8 the authority with obligees of the authority.

9 (3) The authority shall not at any time issue bonds which
10 would be secured in whole or in part by a debt service reserve
11 fund if the issuance of such bonds would cause the amount in the
12 debt service reserve fund to fall below the minimum reserve
13 requirement for such fund, unless the authority at the time of
14 the issuance of such bonds shall deposit in the debt service
15 reserve fund an amount, from the proceeds of such bonds to be
16 issued or from other sources, which when added to the amount
17 already on deposit in such fund will cause the total amount on
18 deposit in such debt service reserve fund to equal or exceed the
19 minimum reserve fund requirement.

20 (4) Pursuant to any resolution authorizing the issuance of
21 bonds or revenue anticipation notes, the authority shall
22 establish a bond or revenue anticipation note payment account,
23 as applicable, to be used by the authority, or by a trustee
24 acting on behalf of the authority, to make payments of
25 principal, redemption premium, sinking fund payments, if any,
26 and interest on any such bonds or revenue anticipation notes to
27 be issued by the authority, or to make payments to banks or
28 financial institutions to reimburse them for payments made by or
29 on behalf of the authority with respect to such outstanding
30 bonds or revenue anticipation notes. Revenues shall be deposited

1 into the bond or revenue anticipation note payment account in
2 the amounts, in the manner and at the times set forth in
3 paragraph (1). All such deposits shall be made prior to any
4 other payments or disbursements of such revenues to any other
5 funds or for any other purposes.

6 The bond or revenue anticipation note payment account shall
7 constitute a trust fund held for the exclusive and equal and
8 ratable benefit of the holders of any bonds or revenue
9 anticipation notes issued by the authority, in accordance with
10 the terms and conditions of this act and the resolution or
11 resolutions authorizing the issuance of such bonds or revenue
12 anticipation notes. In connection with the issuance of any such
13 bonds or revenue anticipation notes, the authority shall
14 establish and file with the trustee for such bonds or revenue
15 anticipation notes, a schedule of debt service payments and a
16 corresponding schedule of deposits of revenues to be made from
17 moneys collected from the required assessments under this act.

18 The authority, or the trustee acting on behalf of the authority,
19 shall be authorized to withdraw moneys form the bond or revenue
20 anticipation note payment account (A) at the times and in the <—
21 manner and amounts sufficient to pay all debt service
22 requirements with respect to the outstanding bonds or revenue
23 anticipation notes, as set forth in such bonds or revenue
24 anticipation notes and in the resolutions and agreements
25 authorizing such indebtedness and by which it is secured, and
26 (B) with regard only to bonds, after such amounts have been paid

27 ACCOUNT: <—

28 (A) AT THE TIMES AND IN THE MANNER AND AMOUNTS SUFFICIENT TO
29 PAY ALL DEBT SERVICE REQUIREMENTS WITH RESPECT TO THE
30 OUTSTANDING BONDS OR REVENUE ANTICIPATION NOTES, AS SET FORTH IN

1 SUCH BONDS OR REVENUE ANTICIPATION NOTES AND IN THE RESOLUTIONS
2 AND AGREEMENTS AUTHORIZING SUCH INDEBTEDNESS AND BY WHICH IT IS
3 SECURED; AND

4 (B) WITH REGARD ONLY TO BONDS, AFTER SUCH AMOUNTS HAVE BEEN
5 PAID or provided for debt service, any excess moneys shall be
6 transferred, first, to any debt service ~~reserve fund~~ RESERVE <—
7 FUND established for such bonds under paragraph (2), to the
8 extent of any deficiency therein, second, to the authority for
9 the payment of operating expenses subject to the provisions and
10 limitations of section 701.1(1), and finally, to the surplus
11 assessment fund established pursuant to paragraph (6) of this
12 subsection.

13 (5) There is hereby established an authority buyout fund to
14 be held, administered, invested and applied by the authority in
15 accordance with the provisions of, and to further the purposes
16 of, this act to pay or provide for the payment of all awards,
17 judgments or settlements for loss or damages against a health
18 care provider entitled to participate in the authority as a
19 consequence of any authority claim. The authority buyout fund
20 shall be funded by the authority with the net proceeds of one or
21 more series of bonds issued by the authority in accordance with
22 this act. The authority buyout fund may be divided into multiple
23 accounts to provide separate accounting for the payment of
24 authority claims of health care providers which are tax-exempt
25 organizations under Federal law and for the payment of authority
26 claims of health care providers which are not tax-exempt
27 organizations under Federal law. The authority may determine to
28 issue separate series of bonds so that a separate accounting of
29 the uses of such indebtedness can be made.

30 The authority buyout fund shall constitute a trust fund held

1 for the exclusive and equal and ratable benefit of the holders
2 of any bonds issued by the authority, in accordance with the
3 terms and conditions of this act and the resolution or
4 resolutions authorizing the issuance of such bonds. The
5 investments and all moneys from time to time on deposit in the
6 authority buyout fund shall be devoted to, and used exclusively
7 for, the payment of the claims against the authority, as set
8 forth herein, and to the extent not needed therefor, may be
9 applied to the payment of debt service accruing on the bonds of
10 the authority, as may be set forth in the resolution, indenture
11 or trust instrument securing such bonds.

12 (6) Pursuant to any resolution authorizing the issuance of
13 bonds, the authority shall establish a surplus assessment fund
14 to be held, invested and applied by the authority, or by a
15 trustee acting on behalf of the authority, to fulfill the
16 provisions of this act. Revenues shall be deposited into the
17 surplus assessment fund in the amounts, in the manner and at the
18 times set forth in paragraph (1), or by or on behalf of the
19 authority as set forth in paragraph (4). Amounts from time to
20 time on deposit in the surplus assessment fund shall be invested
21 in accordance with the provisions of this act. Amounts from time
22 to time on deposit in the surplus assessment fund shall be
23 applied, as needed, first, to cure any deficiency in the bond or
24 revenue anticipation note payment account required to permit the
25 authority, or the trustee acting on behalf of the authority, to
26 make any required payments of debt service with respect to
27 outstanding bonds or revenue anticipation notes of the
28 authority, second, to the debt service reserve fund established
29 under paragraph (2), to the extent of any deficiency therein,
30 and finally, to the authority for the payment of operating

expenses subject to the provisions and limitations of section 701.1(1).

The authority shall create such other funds and accounts as it may determine to be necessary, proper or desirable to effectuate its corporate purposes and shall pay into each such fund or account any moneys of the authority available for such purpose or any moneys made available to the authority by another person for the purposes of such fund or account. No other provision of this act shall be construed to prohibit the authority from creating within any fund one or more accounts that may be used or pledged by the authority for a special purpose.

(7) Any moneys deposited by or on behalf of the authority into any fund or account created by the authority in accordance with the provisions of this act and to be used or available to pay debt service with respect to any issued bonds or revenue anticipation notes of the authority, including, without limitation, the bond or revenue anticipation note payment account, any debt service reserve fund or sinking fund, the surplus assessment fund, and all investments and proceeds of investments from time to time held therein or accountable thereto shall, without further action or filing, be subjected to a perfected security interest for the obligees of the authority for whom such fund is held until such moneys or investments shall be properly disbursed by or on behalf of the authority in accordance with the provisions of this act and with the terms and conditions of the resolutions, trust indentures and other contracts or agreements with, or for the benefit of such obligees.

Section 701.3. Original and Exclusive Jurisdiction of

1 Supreme Court.--The Pennsylvania Supreme Court shall have
2 exclusive jurisdiction to hear any challenge to or to render a
3 declaratory judgment concerning the constitutionality of this
4 article, the contractual rights of the parties relating to bonds
5 and revenue anticipation notes to be issued pursuant to this
6 article, or any action of the authority in issuing or attempting
7 to issue bonds and revenue anticipation notes, whether with
8 respect to the validity of the bonds or revenue anticipation
9 notes, proper authorization with respect thereto, or otherwise.
10 The Supreme Court is authorized to take any action it deems
11 appropriate, consistent with the Supreme Court retaining
12 jurisdiction over such a matter, to find facts or to expedite a
13 final judgment in connection with such a challenge or request
14 for declaratory relief.

15 Section 701.4. No Impairment of Rights and Obligations.--
16 Except as expressly set forth herein, nothing in this act shall
17 limit the rights or impair the obligations of any person with
18 respect to any obligation set forth in any contract, agreement,
19 settlement or judgment in effect as of the effective date of
20 this act.

21 Section 701.5. Construction of Act.--The provisions of this
22 act providing for security for and rights and remedies of
23 obligees of the authority shall be liberally construed to
24 achieve the purposes stated and provided for by this act.

25 Section 4. Section 702 of the act is repealed.

26 Section 5. Sections 705, 706, 803, 809, 811 and 841-A of the
27 act, amended or added November 26, 1996 (P.L.776, No.135), are
28 amended to read:

29 Section 705. Liability of Excess Carriers.--(a) No insurer
30 providing excess professional liability insurance to any health

1 care provider eligible for coverage under the [fund] authority
2 shall be liable for payment of any claim against a health care
3 provider for any loss or damages except those in excess of the
4 [fund] authority coverage limits.

5 (b) No carrier providing excess professional liability
6 insurance for a health care provider covered by the [fund]
7 authority shall be liable for any loss resulting from the
8 insolvency or dissolution of the [fund] authority.

9 Section 706. Advisory Board.--(a) There is hereby
10 established an advisory board of eleven members to be known as
11 the [Medical Professional Liability Insurance Catastrophe Loss
12 Fund] Authority Advisory Board.

13 (b) The authority advisory board shall be comprised of the
14 following persons:

15 (1) The Insurance Commissioner.

16 (2) Four members, one each to be appointed by the President
17 pro tempore of the Senate, the Minority Leader of the Senate,
18 the Speaker of the House of Representatives and the Minority
19 Leader of the House of Representatives. These members shall have
20 experience in the areas of law, health care, liability
21 insurance, finance or actuarial analysis.

22 (3) Six members appointed by the Governor as follows:

23 (i) One physician, who shall be appointed for a three-year
24 term.

25 (ii) One representative of a hospital provider, who shall be
26 appointed for a three-year term.

27 (iii) One representative of a casualty insurer with 1% or
28 less share of the medical professional liability insurance
29 market in this Commonwealth, who shall be appointed for a two-
30 year term.

1 (iv) One podiatrist [or] AND one representative of a nursing <—
2 home, who shall be appointed for a three-year term. The
3 podiatrist and the representative of a nursing home shall
4 alternate terms.

5 (v) Two representatives of the public-at-large, one of whom
6 shall be appointed for a two-year term and the other for a one-
7 year term.

8 (c) After the initial terms under this paragraph have been
9 completed, all terms shall be for a period of three years.

10 (d) The members of the authority advisory board shall serve
11 without compensation, but shall be reimbursed for their actual
12 and necessary traveling and other expenses in connection with
13 attendance at meetings.

14 (e) The members of the authority advisory board shall [have
15 the following powers and duties:

16 (1) To review procedures and operations of the fund.

17 (2) To commission audits to be paid for by the fund, not to
18 exceed more than one every two years.

19 (3) To adopt reasonable standards for prompt investigation
20 and settlement of claims arising under this act to include, but
21 not be limited to:

22 (i) Prompt acknowledgment of pertinent communications with
23 respect to claims.

24 (ii) Reasonable standards for prompt investigation and
25 settlement of claims.

26 (iii) Prompt and reasonable settlement of claims in which
27 liability has become reasonably clear.

28 (iv) Fair settlement of all claims.

29 (v) Prevention of duplication in formal proof of loss and
30 subsequent verification.

(vi) Provision of reasonable and accurate explanations of basis for claims denials or settlement offers.

(f) The board shall make annual reports to the Governor and the General Assembly which shall include recommendations regarding management and legislative changes.

(g) The board shall undertake a study of the operations and structure of the fund and shall report to the Governor and the General Assembly, not later than September 1, 1997, its recommendations concerning the future of the fund, including, but not limited to, an opt-out provision for doctors and hospitals, total elimination or phaseout of the fund and other provisions for providing adequate medical professional liability insurance, including evaluation of the unfunded liability and financing options to retire any unfunded liabilities. The report shall recommend measures to be taken by the General Assembly.

(h) As used in this section, the term "board" means the Medical Professional Liability Insurance Catastrophe Loss Fund Advisory Board.] provide counsel and ADVICE AND MAKE recommendations to the authority board.

<—

Section 803. Plan Operation, Rates and Deficits.--(a) Subject to the supervision and approval of the commissioner, insurers may consult and agree with each other and with other appropriate persons as to the organization, administration and operation of the plan and as to rates and rate modifications for insurance coverages provided under the plan. Rates and rate modifications adopted or changed for insurance coverages provided under the plan shall be approved by the commissioner in accordance with the act of June 11, 1947 (P.L.538, No.246), known as "The Casualty and Surety Rate Regulatory Act," except as may be inconsistent with subsection (c).

1 (b) In the event that the Joint Underwriting Association
2 suffers a deficit in any calendar year, the board of directors
3 of the Joint Underwriting Association shall so certify to the
4 executive director of the [fund] authority and the commissioner.
5 Such certification shall be subject to the review and approval
6 of the commissioner. Within 60 days following such certification
7 and approval the executive director of the [fund] authority
8 shall make sufficient payment to the Joint Underwriting
9 Association to compensate for said deficit. A deficit shall
10 exist whenever the sum of the earned premiums collected by the
11 Joint Underwriting Association and the investment income
12 therefrom is exhausted by virtue of payment of or allocation for
13 the Joint Underwriting Association's necessary administrative
14 expenses, taxes, losses, loss adjustment expenses and reserves,
15 including reserves for: (1) losses incurred, (2) losses incurred
16 but not reported, (3) loss adjustment expenses, (4) unearned
17 premiums.

18 (c) Within 60 days following the certification that the
19 Joint Underwriting Association has suffered a deficit, as set
20 forth in subsection (b), the board of directors of the Joint
21 Underwriting Association shall file with the commissioner. The
22 commissioner shall approve a premium increase sufficient to
23 generate the requisite income to:

24 (1) reimburse the [fund] authority for any payment made by
25 the [fund] authority to compensate for said deficit; and

26 (2) increase premiums to a level actuarially sufficient to
27 avoid an operating deficit by the Joint Underwriting Association
28 during the following 12 months.

29 The Joint Underwriting Association shall reimburse the [fund]
30 authority with interest at a rate equal to that earned by the

1 [fund] authority on its invested assets within one year of any
2 payment made by the [fund] authority as compensation for any
3 deficit incurred by the Joint Underwriting Association.

4 (D) UPON DISSOLUTION OF THE AUTHORITY, THE AUTHORITY SHALL <—
5 NO LONGER BE OBLIGATED TO MAKE PAYMENT TO THE JOINT UNDERWRITING
6 ASSOCIATION IN THE EVENT THAT THE JOINT UNDERWRITING ASSOCIATION
7 SUFFERS A DEFICIT.

8 Section 809. Reports to Commissioner and Claims

9 Information.--(a) By October 15 of each year, basic coverage
10 insurance carriers and self-insured providers shall report to
11 the [fund] authority the claims information specified in
12 subsection (b).

13 (b) Sixty days after the end of any calendar year, the
14 [fund] authority shall prepare a report for the commissioner.
15 The report shall contain the total amount of claims paid and
16 expenses incurred therewith, the total amount of reserve set
17 aside for future claims, the date and place in which each claim
18 arose, the amounts paid, if any, and the disposition of each
19 claim, judgment of court, settlement or otherwise, and such
20 additional information as the commissioner shall require. For
21 final claims at the end of any calendar year, the report shall
22 include details by basic coverage insurance carriers and self-
23 insured providers of the amount of 【surcharge】 ASSESSMENT <—
24 collected, the number of reimbursements paid and the amount of
25 reimbursements paid.

26 (c) A copy of any report prepared pursuant to this section
27 shall be submitted to the chairman and minority chairman of the
28 Banking and Insurance Committee of the Senate and the chairman
29 and minority chairman of the Insurance Committee of the House of
30 Representatives.

1 Section 811. Professional Corporations, Professional
2 Associations and Partnerships.--(a) The Joint Underwriting
3 Association shall offer [basic coverage insurance] basic
4 insurance coverage to such professional corporations,
5 professional associations and partnerships entirely owned by
6 health care providers who cannot conveniently obtain insurance
7 through ordinary methods at rates not in excess of those
8 applicable to similarly situated professional corporations,
9 professional associations and partnerships.

10 (b) In the event that a professional corporation,
11 professional association or partnership entirely owned by health
12 care providers elects to be covered by [basic coverage
13 insurance] basic insurance coverage and upon payment of the
14 annual [surcharge] assessments as required by section [701(e)]
15 701.1(q), the professional corporation, professional association
16 or partnership shall be entitled to such excess coverage from
17 the [fund] authority as is provided in this act.

18 (c) Any professional corporation, professional association,
19 or partnership which acquires [basic coverage insurance] basic
20 insurance coverage from the Joint Underwriting Association
21 pursuant to subsection (a) or from an insurer licensed or
22 approved by the Commonwealth [of Pennsylvania] shall be required
23 to participate in and contribute to the [fund] authority as
24 provided in this act.

25 (d) Any professional corporation, professional association
26 or partnership which participates in or contributes to the
27 [fund] authority shall be subject to all other provisions of
28 this act.

29 Section 841-A. Mandatory Reporting.--(a) Each malpractice
30 insurer, including the [Medical Professional Liability

1 Catastrophe Loss Fund] authority established by this act, which
2 makes payment under a policy of insurance in settlement, or in
3 partial settlement of, or in satisfaction of a judgment in a
4 medical malpractice action or claim shall provide to the
5 appropriate licensure board a true and correct copy of the
6 report required to be filed with the Federal Government by
7 section 421 of the Health Care Quality Improvement Act of 1986
8 (Public Law 99-660, 42 U.S.C. § 11131). The copy of the report
9 required by this section shall be filed simultaneously with the
10 report required by section 421 of the Health Care Quality
11 Improvement Act of 1986. The Insurance Department shall monitor
12 and enforce compliance with this section. The Bureau of
13 Professional and Occupational Affairs and the licensure boards
14 shall have access to information pertaining to compliance.

15 (b) A malpractice insurer or person who reports under
16 subsection (a) in good faith and without malice shall be immune
17 from civil or criminal liability arising from the report.

18 (c) Information received under this subsection shall not be
19 considered public information for the purposes of the [act of
20 June 21, 1957 (P.L.390, No.212), referred to as the] Right-to-
21 Know Law or [the act of July 3, 1986 (P.L.388, No.84), known as
22 the "Sunshine Act,"] 65 Pa.C.S. Ch. 7 (relating to open
23 meetings) until used in a formal disciplinary proceeding.

24 (d) Each licensure board shall submit a report not later
25 than March 1 of each year to the chairman and the minority
26 chairman of the Consumer Protection and Professional Licensure
27 Committee of the Senate and to the chairman and minority
28 chairman of the Professional Licensure Committee of the House of
29 Representatives. The report shall include, but not be limited
30 to, the number of reports received under subsection (a), the

1 status of the investigations of those reports, any disciplinary
2 action which has been taken and the length of time from the
3 receipt of each report to final licensure board action.

4 SECTION 6. ANY PERSON WHO IS AN EMPLOYEE OF THE MEDICAL <—
5 PROFESSIONAL LIABILITY CATASTROPHE LOSS FUND ON THE EFFECTIVE
6 DATE OF THIS ACT SHALL BE GIVEN PRIORITY CONSIDERATION FOR
7 EMPLOYMENT TO FILL VACANCIES WITH EXECUTIVE AGENCIES UNDER THE
8 GOVERNOR'S JURISDICTION.

9 Section ~~6~~ 7. Existing regulations of the Medical <—
10 Professional Liability Catastrophe Loss Fund shall remain in
11 full force and effect until amended or repealed by the
12 Pennsylvania Medical Professional Liability Catastrophe Loss
13 Authority.

14 ~~Section 7. This act shall take effect as follows:~~ <—

15 ~~(1) The addition of section 701.1(a) and (b) of the act~~
16 ~~shall take effect immediately.~~

17 ~~(2) The remaining provisions of this act shall take effect~~
18 ~~upon the initial appointment of all board members pursuant to~~
19 ~~section 701.1(b) of the act or in ten days, whichever occurs~~
20 ~~first.~~

21 ~~(3) This section shall take effect immediately.~~

22 SECTION 8. A HEALTH CARE PROVIDER COVERED UNDER THIS ACT MAY <—
23 MAKE APPLICATION TO THE INSURANCE DEPARTMENT FOR CERTIFICATION
24 OF ANY ESTABLISHED PATIENT SAFETY PLAN WHICH INCLUDES
25 PARTICIPATION IN A REGIONAL, STATE OR NATIONAL PROGRAM DEVELOPED
26 FOR THE PURPOSE OF A REDUCTION IN MEDICAL ERRORS AND PROMOTION
27 OF ERROR PREVENTION. THE DEPARTMENT SHALL DEVELOP THE CRITERIA
28 FOR SUCH CERTIFICATION. UPON RECEIPT OF THE CERTIFICATION BY THE
29 DEPARTMENT, A HEALTH CARE PROVIDER SHALL RECEIVE A DISCOUNT IN
30 THE RATE OR THE RATES APPLICABLE FOR BOTH BASIC COVERAGE AND THE

1 AUTHORITY'S ASSESSMENT FOR THE NEXT APPLICABLE POLICY YEAR, WITH
2 THE LEVEL OF SUCH DISCOUNT TO BE DETERMINED BY THE DEPARTMENT.
3 SECTION 9. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.