

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2617 Session of
1992

INTRODUCED BY KOSINSKI, KRUSZEWSKI, TRICH, RICHARDSON, JOSEPHS,
SALOOM, OLASZ, ITKIN, WOGAN AND VROON, APRIL 7, 1992

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, APRIL 7, 1992

AN ACT

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

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

13 Section 1. The title of the act of October 15, 1975
14 (P.L.390, No.111), known as the Health Care Services Malpractice
15 Act, is amended to read:

AN ACT

17 Relating to medical and health related malpractice insurance,
18 prescribing the powers and duties of the Insurance
19 Department; providing for a joint underwriting plan; the
20 [Arbitration Panels for Health Care] Administrator for Health
21 Care Conciliation, compulsory screening of claims; collateral
22 sources requirement; limitation on contingent fee

1 compensation; establishing a Catastrophe Loss Fund; and
2 prescribing penalties.

3 Section 2. The definitions of "administrator" and
4 "arbitration panel" in section 103 of the act, amended July 15,
5 1976 (P.L.1028, No.207), are amended and the section is amended
6 by adding definitions to read:

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

8 "Administrator" means the office of Administrator for
9 [Arbitration Panels for] Health Care Conciliation.

10 ["Arbitration panel" means Arbitration Panels for Health
11 Care.]

12 * * *

13 "Health care conciliation" means settlement conferences held
14 by the administrator pursuant to court order in furtherance of
15 the provisions of this act.

16 * * *

17 "Panel" means that structure or organization utilized by the
18 administrator for conducting settlement conferences in an
19 attempt to achieve health care conciliation.

20 * * *

21 Section 3. Section 301 of the act is amended to read:

22 Section 301. Appointment and Compensation of
23 Administrator.--There is established within the [Department of
24 Justice the office of Administrator for Arbitration Panels for
25 Health Care] Office of General Counsel, the Office of
26 Administrator for Health Care Conciliation to be appointed by
27 the Governor. The salary of the administrator shall be set by
28 the Executive Board.

29 Section 4. Section 304 of the act is repealed.

30 Section 5. The act is amended by adding a section to read:

1 Section 304.1. Health Care Conciliation Fee.--(a) The
2 administration of this act shall be funded in part by health
3 care conciliation fees established by the administrator. The
4 amount of each fee would be based on the costs incurred by the
5 participants in the health care conciliation process.

6 (b) Moneys derived from the fees established by this section
7 shall be collected by the administrator and deposited into the
8 General Fund and shall be credited to the annual appropriation
9 of this panel.

10 Section 6. Section 307 of the act, amended July 15, 1976
11 (P.L.1028, No.207), is amended to read:

12 Section 307. Rules and Regulations.--(a) The administrator
13 shall adopt and publish such uniform rules and regulations as
14 may be necessary to carry out the provisions of this act, and
15 shall prescribe the means, methods and practices necessary to
16 effectuate such provisions. Such rules and regulations shall be
17 consistent with the common and statutory law of the
18 Commonwealth, the Pennsylvania Rules of Civil Procedure, and the
19 Pennsylvania rules of evidence. Such rules and regulations,
20 after consultation with the Secretary of Health, may include
21 provisions for the use of forms which provide for the disclosure
22 of the nature of the proposed treatment or diagnosis, risks of
23 the proposed treatment or diagnosis, and alternate methods of
24 treatment or diagnosis.

25 (b) The administrator shall have the power to consider and
26 approve offers of settlement for fiduciaries, minors and
27 incompetent parties at any time prior to the first meeting of
28 the [arbitration] panel. The fund may be represented at any
29 negotiation of settlement exceeding the basic coverage insurance
30 carrier limit of liability.

1 (c) Prior to appointment of [an arbitration] a panel
2 chairman, the administrator is authorized and empowered to rule
3 on all preliminary motions.

4 Section 7. Section 308 of the act, amended December 14, 1979
5 (P.L.562, No.128), is amended to read:

6 Section 308. [Arbitration] Panels for Health Care.--(a) The
7 administrator shall establish and maintain a pool from which he
8 shall select [arbitration] panels to hear claims made under this
9 act. Appointments to the pool of panel members shall be made by
10 the administrator with due consideration given to persons
11 recommended by appropriate recognized professional or lay
12 organizations.

13 (b) Each [arbitration] panel selected by the administrator
14 shall be composed of three members, including one attorney, who
15 shall be designated as chairperson and who shall determine
16 questions of law, one health care provider and one lay person
17 who is neither a health care provider nor an attorney. The
18 administrator may select a hospital administrator, podiatrist or
19 osteopathic physician or surgeon as the health care provider
20 panel member where the claim involves a member of one of those
21 classes of health care providers.

22 (c) Any [arbitration] panel member selected by the
23 administrator shall be subject to challenge for cause by any
24 party. All challenges for cause shall be determined by the
25 administrator. Each party shall also be entitled to one
26 peremptory challenge.

27 (d) The parties shall not be restricted to [arbitration]
28 panels drawn from the pool. If all parties mutually agree upon
29 [an arbitration] panelist or panelists, the panelist or
30 panelists shall be invited to serve by the administrator. A

1 panel mutually agreed upon by the parties shall be composed of
2 three members: one attorney, one health care provider and one
3 lay person.

4 (e) The attorney members of the [arbitration] panel pool
5 shall be admitted to practice before the Supreme Court of the
6 Commonwealth. The health care provider members of the
7 [arbitration] panel pool who are subject to licensure shall be
8 licensed by the Commonwealth.

9 (f) [Arbitration panel] Panel members shall be paid at a
10 daily or annual salary rate fixed by the Executive Board, plus
11 actual and necessary expenses incurred in the performance of
12 their official duties. The administrator shall provide for all
13 other necessary expenses of the [arbitration] panels.

14 (g) No member shall participate in a case in which he may
15 have an interest.

16 Section 8. Sections 309 and 401 of the act, amended July 15,
17 1976 (P.L.1028, No.207), are amended to read:

18 Section 309. Jurisdiction of [Arbitration] Panel.--The
19 [arbitration] panel shall have [original exclusive]
20 jurisdiction, with the consent of all parties, to hear and
21 decide any claim brought by a patient or his representative for
22 loss or damages resulting from the furnishing of medical
23 services which were or which should have been provided. The
24 [arbitration] panel shall also have [original exclusive]
25 jurisdiction to hear and decide any claim asserted against a
26 nonhealth care provider who is made a party defendant with a
27 health care provider.

28 Section 401. Filing of Complaint.--A patient or his
29 representative, having a claim for loss or damages resulting
30 from the furnishing of medical services which were or which

1 should have been provided, shall file with the administrator a
2 complaint or such other form, with such fees, as prescribed by
3 the rules and regulations adopted by the administrator. The
4 administrator shall refer the complaint to the appropriate
5 [arbitration] panel. The filing of the complaint with the
6 administrator shall toll the statute of limitations.

7 Section 9. Section 402 of the act is amended to read:

8 Section 402. Hearing and Determination of Claim.--Upon
9 assignment of a claim to [an arbitration panel, said arbitration
10 panel] a panel, that panel shall expeditiously hear and
11 determine the claim in accordance with the rules and regulations
12 adopted by the administrator.

13 Section 10. Section 403 of the act, added December 14, 1979
14 (P.L.562, No.128), is amended to read:

15 Section 403. Transfer to Common Pleas Court.--If [an
16 arbitration] a panel is not selected by the administrator within
17 90 days after the filing of a certificate of readiness as
18 provided for in the applicable rules and regulations, in such
19 event the administrator shall forthwith transfer the case to the
20 common pleas court having venue over the case for pretrial and
21 trial as in other civil cases.

22 Section 11. The heading of Article V and section 501 of the
23 act are amended to read:

24 ARTICLE V

25 Procedure Before the [Arbitration] Panel [for Health Care]

26 Section 501. Location of Hearings.--[Arbitration panel]
27 Panel hearings shall be conducted in the county where the cause
28 of action arose, but may, within the discretion of the
29 administrator, be held in any other place.

30 Section 12. Section 502 of the act, amended July 15, 1976

1 (P.L.1028, No.207), is amended to read:

2 Section 502. Joinder of Additional Parties.--At any time up
3 to the selection of the panel members, a party may join any
4 additional party who may be necessary and proper to a just
5 determination of the claim. The [arbitration] panel shall have
6 jurisdiction over such additional parties whether they be health
7 care providers or nonhealth care providers.

8 Section 13. Sections 503, 505, 506 and 507 of the act are
9 amended to read:

10 Section 503. Service of Complaints and Hearing Notices.--
11 Service of complaints and notice of all hearings and proceedings
12 before the [arbitration] panel, unless otherwise directed, shall
13 be made personally or given by certified mail, and proof of the
14 mailing of notice shall be prima facie evidence of service.

15 Section 505. Vote Required for Deciding Matters.--A majority
16 vote of the full [arbitration] panel shall be required to decide
17 all matters except questions of law before it.

18 Section 506. Applicability of Laws, Rules and Evidence.--
19 Except as provided in this act, the [arbitration] panel is bound
20 by the common and statutory law of the Commonwealth, the
21 Pennsylvania Rules of Civil Procedure, and the Pennsylvania
22 rules of evidence.

23 Section 507. Appointment of Expert Witnesses.--The
24 [arbitration] panel may, upon the application of either party or
25 upon its own motion, appoint a disinterested and qualified
26 expert to make any necessary professional or expert examination
27 of the claimant or relevant evidentiary matter and to testify as
28 a witness in respect thereto. Such an expert witness shall be
29 allowed necessary expenses and a reasonable fee to be fixed and
30 paid by the [arbitration] panel.

Section 14. Section 508 of the act, amended July 15, 1976 (P.L.1028, No.207), is amended to read:

Section 508. Powers and Duties of [Arbitration] Panel.--(a) The [arbitration] panel is authorized and empowered to:

(1) examine the relevant facts to determine if a case exists for recovery;

(2) make findings of fact;

(3) take depositions and testimony;

(4) assure both parties full access to the facts;

(5) make available to the parties the norms, standards and criteria employed by health care providers in the Professional Standards Review Organization region;

(6) subpoena witnesses, and administer oaths;

(7) apply to the court of common pleas to enforce the attendance and testimony of witnesses and the production and examination of books, papers and records;

(8) consider and approve offers of settlement involving fiduciaries, minors and incompetent parties; ((8) amended July 15, 1976, P.L.1028, No.207)

(9) make determinations as to liability and award of damages; and

(10) exercise all other powers and duties conferred upon it by law.

(b) A copy of the [arbitration] panel's decision shall be sent to each party at the same time it is submitted to the administrator.

Section 15. Section 509 of the act, amended July 15, 1976 (P.L.1028, No.207) and repealed in part April 28, 1978 (P.L.202, No.53), is amended to read:

Section 509. Judicial Review.--Appeals from determinations

1 made by the [arbitration] panel shall be a trial de novo in the
2 court of common pleas in accordance with the rules regarding
3 appeals in compulsory civil arbitration and the Pennsylvania
4 Rules of Civil Procedure.

5 Section 16. Section 510 of the act is amended to read:

6 Section 510. Admissibility of Record on Appeal.--Where an
7 appeal is taken the decision, and findings of fact, if any, of
8 the [arbitration] panel shall be admissible as evidence before
9 the court; provided, however, that any award of damages shall
10 not be admissible as evidence.

11 Section 17. Section 511 of the act, repealed in part April
12 28, 1978 (P.L.202, No.53), is amended to read:

13 Section 511. Transfer and Enforcement of Judgment.--(a) If
14 an appeal is not entered within the prescribed time, the party
15 in whose favor the award shall have been made may request the
16 administrator to transfer the record and judgment to the court
17 of common pleas in the district where the plaintiff or defendant
18 resides, for execution. It shall be the duty of the
19 prothonotary, at the request of the party in whose favor the
20 award shall have been made, and upon receipt and filing of the
21 [arbitration] award from the administrator, to issue execution,
22 or such other process as may be necessary and proper, to carry
23 into effect the judgment entered upon such award, subject to the
24 provisions of law concerning the stay of execution upon
25 judgments.

26 (b) After judgment, the plaintiff may proceed upon said
27 transferred record and judgment for the collection thereof, in
28 like manner as if the same were a judgment of the court to which
29 it has been transferred.

30 Section 18. Sections 514, 601, 603, 809 and 1001 of the act

1 are amended to read:

2 Section 514. Submission of Findings to Licensing Boards.--In
3 the event that the [arbitration] panel finds that the injury or
4 death of the patient was the result in whole or in part of tort
5 or breach of contract by a health care provider, and such
6 decision is not overturned on appeal, the [arbitration] panel
7 shall report such findings to the licensure board and the
8 Professional Standards Review Organization. The appropriate
9 board of licensure shall promptly investigate the report and
10 take such disciplinary action as may be appropriate.

11 Section 601. Right of Recovery of Damages.--Upon a finding
12 by the [arbitration] panel that the defendant's conduct was
13 tortious or constituted a breach of contract, the plaintiff
14 shall have the same rights of recovery for damages as are now
15 provided by law.

16 Section 603. Award of Punitive Damages.--In the event the
17 [arbitration] panel finds that the injury or damage to the
18 patient was caused in whole or in part by the wilful or wanton
19 misconduct of any of the defendants, the panel may award such
20 punitive damages against the defendant as may be awarded at law.

21 Section 809. Annual Reports to Insurance Commissioner.--The
22 plan shall report to the commissioner annually on a date and, on
23 a form prescribed by the commissioner the total amount of
24 premium dollars collected, the total amount of claims paid and
25 expenses incurred therewith, the total amount of reserve set
26 aside for future claims, the nature and substance of each claim,
27 the date and place in which each claim arose, the amounts paid,
28 if any, and the disposition of each claim (judgment of
29 [arbitration] panel, judgment of court, settlement or
30 otherwise), and such additional information as the commissioner

1 shall require.

2 Section 1001. Immunity from Liability for Official
3 Actions.--There shall be no liability on the part of and no
4 cause of action for libel or slander shall arise against any
5 member insurer, the State Board of Medical Education and
6 Licensure, the State Board of Osteopathic Examiners, the State
7 Board of Podiatry Examiners, the [Arbitration Panels] panels,
8 the administrator or the commissioner or his representatives for
9 any action taken by any of them in the performance of their
10 respective powers and duties under this act.

11 Section 19. Section 1006 of the act, amended November 26,
12 1978 (P.L.1324, No.320), is amended to read:

13 Section 1006. Joint Committee.--There is hereby created a
14 committee to consist of the commissioner as chairman, the
15 Secretary of Health and two members of the Senate, one member of
16 each party, to be appointed by the President pro tempore and two
17 members of the House of Representatives, one member of each
18 party, to be appointed by the Speaker of the House of
19 Representatives. The committee shall study the distribution of
20 professional liability insurance costs as among the various
21 classes of physicians and health care providers and shall report
22 its findings and recommendations to the General Assembly within
23 one year of the effective date of this act. The committee shall
24 also study all phases and the financial impact of the operations
25 of the Medical Professional Liability Catastrophe Loss Fund and
26 shall report its findings and recommendations to the General
27 Assembly on or before July 1, 1977. This committee shall also
28 study actual or potential problems of conflicts of interest
29 which exist or may exist among members of the [arbitration]
30 panel with each other and with other persons appearing before

1 the [arbitration] panel or having their interests represented
2 before the [arbitration] panel. The committee shall promulgate a
3 proposed Code of Ethics with suggested legal sanctions to deal
4 with any violators of the Code of Ethics on or before July 1,
5 1976. This committee shall study the act, its application and
6 operation to determine if any changes in the present act are
7 necessary or advisable. This study shall include consideration
8 of the advisability and potential effect of the application of
9 the act to mental health/mental retardation facilities. The
10 committee shall report on this study on or before July 1, 1979
11 and each year thereafter.

12 Section 20. Section 610-A of the act of April 9, 1929
13 (P.L.177, No.175), known as The Administrative Code of 1929, is
14 repealed.

15 Section 21. This act shall take effect in 60 days.