

1 Section 11. Confidentiality.

2 Section 12. Rules and regulations.

3 Section 13. Administration and funding.

4 Section 14. Expiration date.

5 Section 15. Effective date.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Medical
10 Liability Demonstration Project Act.

11 Section 2. Definitions.

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

15 "Board." The State Board of Medicine.

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

17 Section 3. Medical liability demonstration project.

18 The department and the board shall, by January 1, 1995,
19 establish a medical liability demonstration project that
20 involves the development of practice parameters and risk
21 management protocols by medical specialty advisory committees in
22 the areas of anesthesiology, emergency medicine and obstetrics
23 and gynecology. Each medical specialty advisory committee shall
24 develop practice parameters and risk management protocols in the
25 medical specialty area relating to that committee. The practice
26 parameters shall define appropriate clinical indications and
27 methods of treatment within that specialty. The risk management
28 protocols shall establish standards of practice designed to
29 avoid malpractice claims and increase the defensibility of the
30 malpractice claims that are pursued. The parameters and

1 protocols shall be consistent with appropriate standards of care
2 and levels of quality. Each advisory committee shall base its
3 recommendations, in part, upon studies of medical literature,
4 recommended standards of care from associations representing
5 that particular medical specialty area and analysis of medical
6 malpractice claims liability data. The board and the State Board
7 of Osteopathic Medicine shall review the parameters and
8 protocols and approve those parameters and protocols appropriate
9 for each medical specialty area and adopt them as regulations.
10 Section 4. Medical specialty advisory committees.

11 (a) Medical specialty advisory committees established.--The
12 Medical Specialty Advisory Committee on Anesthesiology, the
13 Medical Specialty Advisory Committee on Emergency Medicine and
14 the Medical Specialty Advisory Committee on Obstetrics and
15 Gynecology are hereby established for the purpose of advising
16 the department, the board and the State Board of Osteopathic
17 Medicine in matters related to practice parameters and risk
18 management protocols.

19 (b) Medical Specialty Advisory Committee on
20 Anesthesiology.--The Medical Specialty Advisory Committee on
21 Anesthesiology shall consist of nine members, seven of whom
22 shall be currently accredited and actively practicing in the
23 field of anesthesiology. The remaining two members shall be
24 public members. The composition of the advisory committee shall
25 be as follows:

26 (1) An anesthesiologist who practices in a tertiary
27 hospital, appointed by the board from nominations submitted
28 by the Pennsylvania Society of Anesthesiologists.

29 (2) An anesthesiologist who practices in a medium-sized
30 hospital, appointed by the board from nominations submitted

1 by the Pennsylvania Society of Anesthesiologists.

2 (3) An anesthesiologist who practices primarily in a
3 rural area, appointed by the board from nominations submitted
4 by the Pennsylvania Society of Anesthesiologists.

5 (4) Two practicing anesthesiologists, appointed by the
6 Governor in consultation with the board.

7 (5) Two currently accredited and actively practicing
8 nurse anesthetists, appointed by the board from nominations
9 submitted by the Pennsylvania Association of Nurse
10 Anesthetists.

11 (6) Two public members:

12 (i) one representing the interests of payors of
13 medical costs, appointed by the President pro tempore of
14 the Senate; and

15 (ii) one representing the interests of consumers,
16 appointed by the Speaker of the House of Representatives.

17 (c) Medical Specialty Advisory Committee on Emergency
18 Medicine.--The Medical Specialty Advisory Committee on Emergency
19 Medicine shall consist of nine members, seven of whom shall be
20 currently accredited and actively practicing in the field of
21 emergency medicine. The remaining two members shall be public
22 members. The composition of the advisory committee shall be as
23 follows:

24 (1) One licensed emergency room physician who practices
25 in a tertiary hospital, appointed by the board from
26 nominations submitted by the Pennsylvania Medical Society.

27 (2) One licensed emergency room physician, appointed by
28 the board from nominations submitted by the Pennsylvania
29 Osteopathic Association.

30 (3) One licensed emergency room physician who practices

1 primarily in a rural area, appointed by the board from
2 nominations submitted by the Pennsylvania Medical Society.

3 (4) Two licensed emergency room physicians, appointed by
4 the Governor in consultation with the Pennsylvania Academy of
5 Emergency Room Physicians.

6 (5) Two licensed emergency room nurses, appointed by the
7 board from nominations submitted by the Pennsylvania Nurses
8 Association.

9 (6) Two public members:

10 (i) one representing the interests of payors of
11 medical costs, appointed by the President pro tempore of
12 the Senate; and

13 (ii) one representing the interests of consumers,
14 appointed by the Speaker of the House of Representatives.

15 (d) Medical Specialty Advisory Committee on Obstetrics and
16 Gynecology.--The Medical Specialty Advisory Committee on
17 Obstetrics and Gynecology shall consist of nine members, seven
18 of whom shall be currently accredited and actively practicing in
19 the field of obstetrics and gynecology. The remaining two
20 members shall be public members. The composition of the advisory
21 committee shall be as follows:

22 (1) One licensed obstetrics and gynecology physician who
23 practices in a tertiary hospital, appointed by the board from
24 nominations submitted by the Pennsylvania Medical Society.

25 (2) One licensed obstetrics and gynecology physician who
26 practices in a medium-sized hospital, appointed by the board
27 from nominations submitted by the Pennsylvania Osteopathic
28 Association.

29 (3) One licensed obstetrics and gynecology physician who
30 practices primarily in a rural area, appointed by the board

1 from nominations submitted by the Pennsylvania Medical
2 Society.

3 (4) One licensed obstetrics and gynecology physician who
4 practices primarily in a tertiary hospital, appointed by the
5 board from nominations submitted by the Pennsylvania
6 Osteopathic Association.

7 (5) One licensed obstetrics and gynecology physician who
8 practices in a medium-sized hospital, appointed by the board
9 from nominations submitted by the Pennsylvania Medical
10 Society.

11 (6) Two licensed obstetrics and gynecology physicians,
12 appointed by the Governor in consultation with the
13 Pennsylvania Chapter of the American College of Obstetricians
14 and Gynecologists.

15 (7) Two public members:

16 (i) one representing the interests of payors of
17 medical costs, appointed by the President pro tempore of
18 the Senate; and

19 (ii) one representing the interests of consumers,
20 appointed by the Speaker of the House of Representatives.

21 (e) Terms of office.--Each member shall serve a term of
22 three years.

23 (f) Expenses.--Committee members shall receive no
24 compensation for their services, but shall be reimbursed for
25 their actual and necessary expenses, including travel expenses,
26 incurred in the discharge of their duties.

27 Section 5. Report to General Assembly.

28 By March 1, 1994, each medical specialty advisory committee
29 shall provide a report to the Judiciary Committee and the Public
30 Health and Welfare Committee of the Senate and the Judiciary

1 Committee and the Health and Welfare Committee of the House of
2 Representatives setting forth the practice parameters and risk
3 management protocols developed by that medical specialty
4 advisory committee and adopted by the board and the State Board
5 of Osteopathic Medicine. The medical specialty advisory
6 committees also shall report the extent to which the risk
7 management protocols reduce the practice of defensive medicine.
8 Section 6. Application to professional negligence claims.

9 (a) Introduction by defendant.--In any claim for
10 professional negligence against a physician or the employer of a
11 physician participating in the medical liability demonstration
12 project in which a violation of a standard of care is alleged,
13 only the physician or the physician's employer may introduce
14 into evidence, as an affirmative defense, the existence of the
15 practice parameters and risk management protocols developed and
16 adopted under section 3 for that medical specialty area.

17 (b) Burden of proof.--Any physician or physician's employer
18 who pleads compliance with the practice parameters and risk
19 management protocols as an affirmative defense to a claim for
20 professional negligence has the burden of proving that the
21 physician's conduct was consistent with those parameters and
22 protocols in order to rely upon the affirmative defense as the
23 basis for a determination that the physician's conduct did not
24 constitute professional negligence. If the physician or the
25 physician's employer introduces at trial evidence of compliance
26 with the parameters and protocols, then the plaintiff may
27 introduce evidence on the issue of compliance. This subsection
28 does not affect the plaintiff's burden to prove the plaintiff's
29 cause of action by a preponderance of the evidence as otherwise
30 provided by law. Nothing in this act alters the burdens of proof

1 in existence as of December 31, 1994, in professional negligence
2 proceedings.

3 (c) Application.--This section applies to causes of action
4 accruing between January 1, 1995, and December 31, 1999.

5 Section 7. Physician participation.

6 Any physician practicing in a medical specialty area for
7 which practice parameters and risk management protocols have
8 been developed and adopted under section 3 shall file written
9 notice with the board or the State Board of Osteopathic Medicine
10 prior to November 1, 1994, indicating whether he elects to
11 participate in the medical liability demonstration project. A
12 physician's participation in the demonstration project entails
13 agreement by the physician to treat all patients according to
14 the practice parameters developed. The medical liability
15 demonstration project authorized by this act does not begin with
16 respect to a medical specialty area unless at least 50% of the
17 physicians licensed in this Commonwealth and practicing in that
18 specialty area elect to participate. Continuation of a
19 demonstration project is not dependent on the level of
20 participation.

21 Section 8. Evidence and inadmissibility.

22 Unless independently developed from a source other than the
23 medical liability demonstration project, the practice parameters
24 and risk management protocols are not admissible in evidence in
25 a lawsuit against any physician who is not a participant in the
26 demonstration project or against any physician participating in
27 the demonstration project who is defending against a cause of
28 action accruing before January 1, 1995, or after December 31,
29 1999.

30 Section 9. Information and reports.

1 (a) Reports by insurers.--Any insurance company providing
2 professional, malpractice or any other form of liability
3 insurance for any physician practicing in a medical specialty
4 area for which a medical specialty advisory committee has been
5 established under section 4 or for any hospital in which that
6 practice has taken place shall provide to the department in a
7 format established by the department the following:

8 (1) A report of each claim alleging malpractice during
9 the five-year period ending December 31, 1994, involving any
10 physician practicing in a medical specialty area for which a
11 medical specialty advisory committee has been established
12 under section 4. Each report shall include the name of the
13 insured, policy number, classification of risk, medical
14 specialty, date of claim and the results of the claim,
15 including defense costs and indemnity payments as a result of
16 settlement or verdict, as well as any awards paid in excess
17 of policy limits. For any claim still open, the report must
18 include the amount of any funds allocated as reserve or paid
19 out. The insurance company shall annually report on any
20 claims that have remained open. These reports shall be
21 provided not less than semiannually according to a schedule
22 established by the department. At the discretion of the
23 department, reports shall be provided until all claims are
24 closed.

25 (2) For the five-year period ending December 31, 1994,
26 an annualized breakdown of the medical liability premiums
27 earned for physicians practicing in a medical specialty area
28 for which a medical specialty advisory committee has been
29 established under section 4. This information shall be
30 provided according to a schedule established by the

1 department.

2 (3) A report of each claim brought against any physician
3 practicing in a medical specialty area for which a medical
4 specialty advisory committee has been established under
5 section 4, alleging malpractice as a result of incidents
6 occurring on or after January 1, 1995, and before January 1,
7 2000, that includes, but is not limited to, the name of the
8 insured, policy number, classification of risk, medical
9 specialty, date of claim and the results of each claim,
10 including defense costs and indemnity payments as a result of
11 settlement or verdict, any awards or amounts paid in excess
12 of policy limits and any finding, if made, of whether the
13 physician's practice was consistent with the practice
14 parameters and risk management protocols developed and
15 adopted under section 3.

16 (4) An annualized breakdown of the medical liability
17 premiums earned, as of January 1, 1995, for physicians
18 practicing in a medical specialty area for which a medical
19 specialty advisory committee has been established under
20 section 4. This information shall be provided according to a
21 schedule established by the department.

22 (b) Reports by department and board.--The department and the
23 board shall report the results of the medical liability
24 demonstration project to the Governor and to the Banking and
25 Insurance Committee and the Judiciary Committee of the Senate
26 and the Insurance Committee and the Judiciary Committee of the
27 House of Representatives by December 1, 2000 as follows:

28 (1) The department shall report the following:

29 (i) The number of claims brought against physicians
30 participating in the demonstration project alleging

malpractice as a result of incidents occurring on or after January 1, 1995.

(ii) The results of any closed claims described in this section, including defense costs and indemnity payments as a result of settlement or verdict.

(iii) The status of all open claims described in this section, including defense costs, indemnity payments and any amounts held in reserve.

(iv) The effect of the demonstration project on the medical liability claims experience and premiums of those physicians participating in the demonstration project.

(2) The board shall quantify and report on any identifiable impact of the demonstration project on the cost of the practice of defensive medicine. The board shall establish an economic advisory committee to establish the methodology for evaluating the effect of the demonstration project on the cost, utilization and the practice of defensive medicine. The economic advisory committee shall report the methodology developed to the board by January 1, 1995.

Section 10. Immunity.

All insurers reporting under section 9 and their agents or employees are immune from liability for any action taken by them under this act.

Section 11. Confidentiality.

Reports made to the department and report records kept by the department are not subject to discovery and are not admissible in any trial, civil or criminal, other than proceedings brought before or by the board or the State Board of Osteopathic Medicine. The department shall maintain the reports filed in

1 accordance with this act and all information derived from the
2 reports that identifies or permits identification of the insured
3 or the incident for which a claim was made as strictly
4 confidential records. Information derived from reports filed in
5 accordance with this act that does not identify or permit
6 identification of any insured or incident for which a claim was
7 made may be released by the department or otherwise made
8 available to the public.

9 Section 12. Rules and regulations.

10 The department and the board may promulgate rules and
11 regulations to administer and enforce this act.

12 Section 13. Administration and funding.

13 The board shall allocate funds for the operational and
14 administrative support of the medical specialty advisory
15 committees. The board may accept funds from the State Board of
16 Osteopathic Medicine and the professional medical associations
17 and organizations which participated in the selection of the
18 medical specialty advisory committees under section 4 to help
19 finance the operation of the medical specialty advisory
20 committees.

21 Section 14. Expiration date.

22 This act shall expire December 31, 2000, unless otherwise
23 extended by an act of the General Assembly.

24 Section 15. Effective date.

25 This act shall take effect in 60 days.