

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2122 Session of
1995

INTRODUCED BY CHADWICK, TRICH, MASLAND, NAILOR, FAIRCHILD,
BATTISTO, LEH, LEDERER, STERN, CLARK, S. H. SMITH,
STRITTMATTER, JAROLIN, JADLOWIEC, COY, GODSHALL,
D. W. SNYDER, HERSHEY, E. Z. TAYLOR, SEMMEL, SAYLOR, McCALL,
TRELLO, FLEAGLE, MILLER, KING, BARLEY, DRUCE, ALLEN, CORNELL,
CORRIGAN, FARMER, COLAFELLA, TULLI, FARGO, GLADECK, TRUE,
MARSICO, CONTI, STAIRS, SATHER, GEIST, M. N. WRIGHT, BIRMELIN
AND MAJOR, OCTOBER 23, 1995

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 23, 1995

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 disclosure by physicians, for damages, for liability and
10 practice and procedure in medical malpractice actions and for
11 professional liability.

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

14 Section 1. Section 102 of the act of October 15, 1975
15 (P.L.390, No.111), known as the Health Care Services Malpractice
16 Act, is amended to read:

17 [Section 102. Purpose.--It is the purpose of this act to
18 make available professional liability insurance at a reasonable
19 cost, and to establish a system through which a person who has

1 sustained injury or death as a result of tort or breach of
2 contract by a health care provider can obtain a prompt
3 determination and adjudication of his claim and the
4 determination of fair and reasonable compensation.]

5 Section 102. Declaration of Policy.--The General Assembly
6 finds and declares as follows:

7 (1) There are serious problems with the current system for
8 resolving the claims of individuals who believe themselves to
9 have been injured by the medical negligence of health care
10 providers. Those problems include, but are not limited to, the
11 following:

12 (i) The cost of resolving those medical negligence claims is
13 rapidly increasing and is becoming an increasingly large and
14 important component of the cost of health care and of the
15 expenses incurred by health care consumers.

16 (ii) The current system further increases costs by inducing
17 health care providers to engage in defensive health care
18 practices, such as the conduct of tests and procedures primarily
19 to produce protection against legal actions.

20 (iii) The current system unnecessarily increases costs by
21 allowing individuals to receive compensation for expenses for
22 which they have already been, or are entitled to be,
23 compensated.

24 (iv) These costs are ultimately borne by consumers of health
25 care in this Commonwealth, increasing the costs they must pay
26 for health care.

27 (v) The current system also inefficiently resolves medical
28 negligence claims in that an excessive period of time elapses
29 between the filing of a claim in court and its resolution.

30 (vi) The imposition of damages for delays in the resolution

1 of claims, unless imposed as a sanction for dilatory, obdurate
2 or vexatious conduct, is unfair and adversely affects the
3 substantive rights of the individuals against whom they are
4 imposed.

5 (2) It is necessary to take actions to:

6 (i) Seek to limit the costs of the present system while
7 increasing its efficiency and equity.

8 (ii) Make professional liability insurance readily
9 available.

10 Section 2. The definitions of "health care provider" and
11 "licensure board" in section 103 of the act, amended July 15,
12 1976 (P.L.1028, No.207) and November 6, 1985 (P.L.311, No.78),
13 are amended and the section is amended by adding definitions to
14 read:

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

16 * * *

17 "Director" means the director of the fund.

18 "Fund" means the Medical Professional Liability Catastrophe
19 Loss Fund established in Article VII.

20 * * *

21 "Health care provider" means a primary health center or a
22 person, corporation, facility, institution or other entity
23 licensed or approved by the Commonwealth to provide health care
24 or professional medical services as a [physician, an osteopathic
25 physician or surgeon, a certified nurse midwife, a podiatrist,
26 hospital, nursing home, birth center, and except as to section
27 701(a), an officer, employee or agent of any of them acting in
28 the course and scope of his employment.] medical doctor, an
29 osteopath, a certified nurse midwife, a podiatrist, hospital
30 nursing home or birth center.

1 * * *

2 "Licensure Board" means the [State Board of Medical
3 Education and Licensure, the State Board of Osteopathic
4 Examiners, the State Board of Podiatry Examiners, the Department
5 of Public Welfare and the Department of Health.] State Board of
6 Medicine, the State Board of Osteopathic Medicine, the State
7 Board of Podiatry, the Department of Public Welfare and the
8 Department of Health.

9 * * *

10 Section 3. Articles II, III IV, V and VI of the act are
11 repealed.

12 Section 4. The act is amended by adding articles to read:

13 ARTICLE II-A

14 Professional Liability Claims

15 Section 201-A. Informed Consent.--(a) Except in emergencies
16 and in other situations as the court deems appropriate, a
17 physician owes a duty to a patient to obtain the informed
18 consent of the patient or his or her authorized representative
19 prior to performing a major invasive procedure.

20 (b) Consent is informed if the patient has been given a
21 description of the procedure and the risks and alternatives that
22 a physician acting in accordance with accepted medical standards
23 of medical practice would provide.

24 (c) Written consent to a procedure shall create a
25 presumption that the following is true:

26 (1) The patient consented to the procedure.

27 (2) The patient was apprised of all risks or alternatives to
28 the procedure that a physician acting in accordance with
29 accepted medical standards of medical practice would provide.

30 (d) The presumption under subsection (c) shall only be

1 overcome by clear and convincing evidence.

2 (e) Nothing in this section shall be construed as imposing a
3 duty on a physician to apprise a patient of information:

4 (1) the patient knows or should know;

5 (2) the patient has requested not to be revealed to him; or

6 (3) which would be detrimental to the patient's health if it
7 were known by the patient.

8 (f) A physician shall not be held to a higher duty to obtain
9 a patient's consent than provided in this section in the absence
10 of a written contract with the patient which expressly imposes
11 the higher duty on the physician.

12 (g) Expert testimony is required to determine whether the
13 procedure was a major invasive procedure and to identify the
14 risks of a procedure, the alternatives to a procedure and the
15 risks of these alternatives as well as the causal connection
16 between the conduct and the injury.

17 (h) A health care provider is liable for failure to obtain
18 the informed consent only if the health care provider had a duty
19 to do so, failed to do so and it is shown that a reasonable
20 patient would not have agreed to the treatment or procedure had
21 he or she been fully informed. An action alleging failure to
22 obtain informed consent shall sound in negligence only.

23 Section 202-A. Absence of Warranty.--A health care provider
24 is neither a warrantor nor a guarantor of a cure or an effective
25 treatment to an individual in the absence of a written contract
26 with the individual expressly imposing such a duty on the health
27 care provider.

28 Section 203-A. Collateral Source.--(a) Public benefits
29 which a claimant has received prior to trial, or which a
30 claimant will receive in the future, as a consequence of the

1 injury which gives rise to the claim at issue shall not be
2 recoverable as an item of damage.

3 (b) Group benefits that a claimant has received prior to
4 trial, or will receive in the future, from a group hospital,
5 medical or disability program as a consequence of the injury
6 which gives rise to the claim at issue shall not be recoverable
7 as an item of damage.

8 (c) Following the rendering of a verdict by the trier of
9 fact, the court shall deduct from said verdict all amounts of
10 public and group benefits as set forth in subsections (a) and
11 (b).

12 (1) The court shall be advised of the existence of
13 provisions for subrogation in a contract applicable to amounts
14 recovered by the plaintiff.

15 (2) The trier of fact shall be directed by special
16 interrogatory to identify each element of damages and the dollar
17 amount allocated to each element of damages to enable the court
18 to enter appropriate offsets as required hereunder.

19 (d) The partial abrogation of the collateral source in
20 subsections (a) and (b) do not apply to the following:

21 (1) A financial benefit that a claimant has received or may
22 receive by virtue of an insurance policy or other benefits
23 program for which the premium was paid out-of-pocket by the
24 claimant, a member of the claimant's family residing in the same
25 household or a person obligated by law to provide support to the
26 claimant.

27 (2) Life insurance, pension or profit-sharing plans or other
28 deferred compensation plans.

29 (3) Public benefits paid or payable under a program which,
30 under Federal statute, provides a right of reimbursement that

1 supersedes State law for the amount of benefits paid from a
2 verdict or settlement and which right of reimbursement
3 supersedes State law.

4 (e) As used in this section:

5 "Group benefits" means compensation or benefits, the cost of
6 which has been paid by the employer of the claimant, a member of
7 the claimant's household or an individual legally responsible
8 for the claimant.

9 "Public benefits" means compensation or benefits paid,
10 payable or required by the Federal Government, a State
11 government or a local government and any other public programs
12 providing medical benefits, including, but not limited to,
13 Social Security and workers' compensation.

14 Section 204-A. Punitive Damages.--(a) Punitive damages may
15 be awarded over and above compensatory damages only where there
16 is a showing, by clear and convincing evidence, that the tort-
17 feasor's conduct was outrageous because:

18 (1) the tort-feasor acted with an evil motive; or

19 (2) the tort-feasor knew or had reason to know of facts
20 creating a high degree of risk of physical harm to another
21 person and acted or failed to act in conscious disregard of or
22 indifference to the risk.

23 (b) A showing of gross negligence is insufficient to support
24 an award of punitive damages.

25 (c) Punitive damages shall not exceed 200% of the
26 compensatory damages awarded.

27 (d) Punitive damages shall not be awarded against a party
28 who is only vicariously liable for the actions of its agent
29 which caused the injury unless it can be shown, by clear and
30 convincing evidence, that the party knew of and endorsed the

1 conduct by its agent which resulted in the award of punitive
2 damages.

3 (e) Where punitive damages are claimed, the trier of fact
4 shall first state only whether or not punitive damages shall be
5 awarded subject to the standards set forth in subsection (a). In
6 any action where a defendant has been found liable for punitive
7 damages, the trier of fact shall separately determine the amount
8 of such damages. Evidence of a defendant's wealth or financial
9 condition shall be discoverable or admissible only after a
10 finding of liability for punitive damages has been made under
11 this subsection.

12 (f) If a claim for punitive damages is found by the court to
13 be without a reasonable basis to support a good faith belief
14 that a punitive damage claim exists, the court, upon motion or
15 upon its own initiative, shall impose upon the person who signed
16 the pleading or a representative party, or both, an appropriate
17 sanction which may include an order to pay to the other party
18 the amount of the reasonable expenses incurred because of the
19 claim being filed, including a reasonable attorney fee.

20 Section 205-A. Statute of Limitations.--(a) Except as
21 provided in subsection (b) or (c), an action asserting a medical
22 negligence claim must be commenced within two years of the date
23 the injured individual knew, or should have known by using
24 reasonable diligence, of the injury and its cause or within four
25 years from the date of the breach of duty or other event causing
26 the injury, whichever is earlier.

27 (b) If the injury is, or was, caused by a foreign object
28 left in the individual's body, the four-year limitation in
29 subsection (a) shall not apply.

30 (c) If the injured individual is a minor under eight years

1 of age, the action must be commenced within four years after the
2 minor's parent or guardian knew, or should have known by using
3 reasonable diligence, of the injury and its cause or within four
4 years from the minor's eighth birthday, whichever is earlier.

5 (d) If the claim is brought under 42 Pa.C.S. § 8301
6 (relating to death action) or 8302 (relating to survival
7 action), the action must be commenced within the time period set
8 forth in subsections (a), (b) and (c) or within two years after
9 the death, whichever is earlier.

10 (e) No cause of action barred prior to the effective date of
11 this section shall be revived by reason of the enactment of this
12 section.

13 (f) If the basic coverage insurance carrier receives notice
14 of a complaint filed against a health care provider subject to
15 Article VII more than four years after the breach of duty or
16 other event causing the injury occurred which complaint is filed
17 within the time limits set forth in this section, the action
18 shall be defended and paid by the fund. If the complaint is
19 filed after four years because of the willful concealment by the
20 health care provider or the provider's basic coverage insurance
21 carrier, the fund shall have the right of full indemnity,
22 including defense costs, from the health care provider or the
23 insurance carrier.

24 Section 206-A. Dilatory or Frivolous Motions, Claims and
25 Defenses.--(a) On a pleading, motion or other paper filed in an
26 action, the signature of an attorney or party constitutes a
27 certification of all of the following:

28 (1) The attorney or party has read the document that is
29 being signed.

30 (2) To the best of the attorney's or party's knowledge,

1 information and belief formed after reasonable inquiry, the
2 document is well grounded in fact.

3 (3) Claims or defenses are warranted by existing law or by a
4 good faith argument for the extension, modification or reversal
5 of existing law. This paragraph applies only to a signature by
6 an attorney.

7 (4) The document is not being filed for purposes of delay or
8 of needless increase in the cost of the litigation.

9 (b) If a pleading, motion or other paper filed in an action
10 is not signed, it shall be stricken unless it is signed promptly
11 after the omission is called to the attention of the party.

12 (c) If a certification under subsection (a) is false, the
13 court, upon motion or upon its own initiative, shall impose upon
14 the person who signed the document or a represented party, or
15 both, an appropriate sanction. A sanction under this subsection
16 may include an order to pay to the other party the amount of the
17 reasonable expenses incurred because of the filing, including a
18 reasonable attorney fee.

19 ARTICLE III-A

20 Pretrial Procedure

21 Section 301-A. Complaint.--(a) A complaint of a plaintiff
22 represented by an attorney shall be signed by at least one
23 attorney of record in the attorney's individual name. The
24 attorney's address shall be stated. The signature of an attorney
25 constitutes a certificate that the attorney has read the
26 pleading; that the attorney has performed a reasonable
27 investigation of the facts and applicable law; and that, based
28 upon that investigation, there is good ground to support the
29 alleged facts and each cause of action asserted against a
30 defendant.

1 (b) If a complaint alleges that a defendant deviated from a
2 standard of care, the signature of an attorney further
3 constitutes certification that the attorney has a report from a
4 qualified expert which states the standard of care; the expert's
5 opinion that, based upon the information available after
6 reasonable investigation, there is reason to believe the
7 defendant deviated from that standard; and the information upon
8 which the expert bases the opinion.

9 (c) If a certification under subsections (a) and (b) is
10 false or if the expert in subsection (b) is not qualified, the
11 court, upon motion or upon its own initiative, shall impose upon
12 the person who signed the document or a represented party, or
13 both, an appropriate sanction. A sanction under this section may
14 include dismissal of the action with prejudice, or an order to
15 pay to the other party the amount of the reasonable expenses
16 incurred because of the filing, including a reasonable attorney
17 fee.

18 Section 302-A. Limitation on Discovery.--Discovery shall be
19 completed within one year after a claim is commenced. Discovery
20 may be extended for an additional period of up to 180 days upon
21 filing of a petition with the court showing good cause for
22 extension within one year after a claim is commenced.

23 Section 303-A. Expert Reports.--No party shall be permitted
24 to have a witness testify as an expert unless the other parties
25 have been provided with a trial expert report as required by
26 section 301-A(b). A plaintiff shall distribute trial expert
27 reports within three months after commencement of the action. A
28 defendant shall distribute trial expert reports within six
29 months after commencement of the action. The trial expert report
30 shall state the substance of the facts and opinions to which the

1 expert will testify and summarize the grounds for each opinion.
2 A party may be exempted from the requirements of this section
3 upon the filing of a petition showing good cause for the
4 exemption.

5 Section 304-A. Discovery Conference.--(a) At any time after
6 commencement of the action, the court may direct the attorneys
7 for the parties to appear for a conference on the subject of
8 discovery. The court shall do so upon motion by the attorney for
9 any party if the motion includes all of the following:

10 (1) A statement of the issues as they then appear.

11 (2) A proposed plan and schedule of discovery.

12 (3) Any limitations proposed to be placed on discovery.

13 (4) Any other proposed orders with respect to discovery.

14 (5) A statement showing that the attorney making the motion
15 has made a reasonable effort to reach agreement with opposing
16 attorneys on the matters set forth in the motion.

17 (b) Each party and each attorney are under a duty to
18 participate in good faith in the framing of a discovery plan.
19 Notice of the motion shall be served on all parties. Objections
20 of additions to matters set forth in the motion shall be served
21 not later than ten days after service of the motion.

22 (c) Following the discovery conference, the court shall
23 enter an order tentatively identifying the issues for discovery
24 purposes, establishing a plan and schedule for discovery;
25 setting limitations on discovery, if any; and determining such
26 other matters, including the allocation of expenses, as are
27 necessary for the proper management of discovery in the action.
28 An order may be altered or amended whenever justice so requires.

29 (d) Subject to the right of a party who properly moves for a
30 discovery conference to prompt convening of the conference, the

1 court may combine the discovery conference with a pretrial
2 conference required by section 307-A.

3 Section 305-A. Conciliation Schedule.--(a) Within 90 days
4 after the conclusion of the discovery period set forth in
5 section 302-A, the court shall hold at least one mandatory
6 conciliation conference. The procedure for the conciliation
7 conference shall be set forth in the Pennsylvania Rules of Civil
8 Procedure.

9 (b) Any party may file a petition requesting that a
10 conciliation conference be held prior to or after the conclusion
11 of the discovery period. The petition shall certify that the
12 parties agree the claim is ready for a conciliation conference
13 and that meaningful settlement discussions would be helpful. The
14 court may schedule a conference in this event.

15 Section 306-A. Priority.--After the time for discovery under
16 section 302-A and for the mandatory conciliation conference
17 under section 305-A(a) has passed, medical negligence claims
18 shall be given civil calendar priority and handled
19 expeditiously.

20 Section 307-A. Pretrial Conference.--(a) At least 30 days
21 prior to trial, the court shall direct the attorneys for the
22 parties to appear before it for a conference to consider:

23 (1) The simplification of the issues.

24 (2) The necessity or desirability of amendments to the
25 pleadings.

26 (3) The possibility of obtaining admissions of fact and of
27 documents which will avoid unnecessary proof.

28 (4) The limitation of the number of expert witnesses.

29 (5) Such other matters as may aid in the disposition of the
30 action.

1 (b) The court shall make an order which recites the action
2 taken at the conference, the amendments allowed to the pleadings
3 and the agreements made by the parties as to any of the matters
4 considered and which limits the issues for trial to those not
5 disposed of by admissions or agreements of counsel. The order
6 controls the subsequent course of the action unless it is
7 modified to prevent manifest injustice. The court, in its
8 discretion, may establish, by rule, a pretrial calendar on which
9 actions may be placed for consideration.

10 Section 308-A. Affidavit of Noninvolvement.--The court shall
11 dismiss without prejudice a defendant who files with the court
12 an affidavit verifying that the defendant did not treat the
13 patient, does not employ a person who treated the patient, and
14 did not supervise a person while that person was engaged in the
15 treatment of the patient. In any action which involves more than
16 one defendant, a codefendant shall have the right to challenge
17 an affidavit of noninvolvement by submitting an affidavit of
18 challenge setting forth fact which contradict the assertion that
19 the moving physician did not treat the patient, did not employ a
20 person who treated the patient, and did not supervise a person
21 while that person was engaged in the treatment of the patient.
22 In the event that a defendant falsely files an affidavit of
23 noninvolvement or a codefendant makes false statements in the
24 affidavit of challenge, the court, upon motion or upon its own
25 initiative, shall impose upon the person who signed the
26 affidavit or represented party, or both, an appropriate
27 sanction, including an order to pay to the other party the
28 amount of the reasonable expenses incurred because of the
29 filing, including a reasonable attorney fee.

30

ARTICLE IV-A

1 Trial Procedure

2 Section 401-A. Qualifications of Expert.--No person shall
3 testify as a medical expert unless such person has educational
4 and professional knowledge as a general foundation for his
5 testimony, is duly licensed in any state of the United States
6 and, in addition, has had personal experience and practical
7 familiarity with the medical subject that is being considered
8 and has been actively engaged in direct patient care in the
9 practice of the medical subject about which he will testify. No
10 person shall testify as a medical expert against a defendant
11 board-certified specialist unless such person is board
12 certified.

13 Section 402-A. Advance Payments.--(a) No advance payment
14 made by the defendant health care provider or his professional
15 liability insurer to or for the plaintiff shall be construed as
16 an admission of liability for injuries or damages suffered by
17 the plaintiff. Evidence of an advance payment shall not be
18 admissible in a proceeding.

19 (b) A final award in favor of the plaintiff shall be reduced
20 to the extent of an advance payment. The advance payment shall
21 insure to the exclusive benefit of the defendant or the insurer
22 making the payment.

23 Section 403-A. Delay Damages.--Except as a sanction imposed
24 by the court on a finding of dilatory, obdurate or vexatious
25 conduct, no damages for delay shall be awarded; and no interest
26 shall accrue prior to judgment.

27 Section 404-A. Periodic Payment of Future Damages.--(a) In
28 any action in which a final verdict has been reached and which
29 final verdict includes an award of future damages, the courts
30 shall include in the judgment a requirement that future damages

1 be paid by periodic or installment payments if the amount of
2 future damages exceeds \$200,000 or if, irrespective of the
3 amount of the future damages, all parties concerned petition the
4 court for payment of future damages by periodic or installment
5 payments.

6 (b) In entering a judgment ordering the payment of future
7 damages by periodic payments, the courts shall make a specific
8 finding as to the amount of periodic payments which will
9 compensate the judgment creditor for future damages.

10 (c) As a condition to authorizing periodic payments of
11 future damages, the courts shall require the judgment debtor to
12 post security or to purchase an annuity adequate to assure full
13 payment of future damages awarded by the judgment.

14 (d) Money damages awarded for loss of future earnings shall
15 not be reduced, nor payments terminated, by reason of the death
16 of the judgment creditor. The payments shall continue to be made
17 to individuals to whom the judgment creditor owed a duty of
18 support immediately prior to death. If the judgment creditor
19 dies without dependents, the obligation of the judgment debtor
20 shall cease; and remaining security, or any remaining portion of
21 the annuity purchased, shall revert to the judgment debtor.

22 (e) Notwithstanding contrary provisions set forth in this
23 section, a plaintiff may elect to accept payment of future
24 damages reduced to its present value in lieu of any judgment for
25 periodic payments.

26 ARTICLE V-A

27 Mandatory Reporting

28 Section 501-A. Reporting by Malpractice Insurers.--Each
29 malpractice insurer which makes payment under a policy of
30 insurance in settlement (or partial settlement) of, or in

1 satisfaction of a judgment in, a medical malpractice action or
2 claim shall provide to the appropriate State board a true and
3 correct copy of the report required to be filed with the Federal
4 Government by section 421 of the Health Care Quality Improvement
5 Act of 1986 (Public Law 99-660, 42 U.S.C. § 11101 et seq.). The
6 copy of the report required by this section shall be filed
7 simultaneously with the report required by section 421 of the
8 Health Care Quality Improvement Act of 1986. The Insurance
9 Department shall monitor and enforce compliance with this
10 section. The Bureau of Professional and Occupational Affairs and
11 the professional licensure boards shall have access to
12 information pertaining to compliance.

13 Section 502-A. Immunity for Reporting.--A malpractice
14 insurer or person who reports under section 501-A in good faith
15 and without malice shall be immune from a civil or criminal
16 liability arising from the report.

17 Section 503-A. Action by Professional Licensure Boards.--
18 Upon receipt of a report under section 501-A, the appropriate
19 professional licensure board and the Bureau of Professional and
20 Occupational Affairs shall review the report and conduct an
21 investigation. If the information obtained through the
22 investigation warrants, the board shall promptly initiate a
23 disciplinary proceeding against the health care provider.
24 Information received under this article shall not be considered
25 public information for the purposes of the act of June 21, 1957
26 (P.L.390, No.212), referred to as the Right-to-Know Law, and the
27 act of July 3, 1986 (P.L.388, No.84), known as the "Sunshine
28 Act," until used in a formal disciplinary proceeding.

29 Section 504-A. Annual Reports to General Assembly.--Each
30 professional licensure board shall submit annually a report to

1 the Consumer Protection and Professional Licensure Committee of
2 the Senate and the Professional Licensure Committee of the House
3 of Representatives. The report shall contain the number of
4 reports received under section 501-A, the status of the
5 investigations of those reports, any disciplinary action which
6 has been taken and the length of time from receipt of each
7 report to final board action.

8 ARTICLE VI-A

9 Arbitration Agreements

10 Section 601-A. Valid Written Agreement.--A written agreement
11 with a health care provider for binding arbitration of claims
12 arising out of medical treatment entered into before, during or
13 following the treatment is valid and enforceable.

14 Section 602-A. Additional Parties.--A person, corporation or
15 entity not a signatory to the agreement may join in the
16 arbitration at the request of any party with all the rights and
17 obligations of the original parties. No signatory may refuse to
18 arbitrate because of the participation of such additional party.
19 An additional participant shall execute a written statement to
20 be bound by the arbitration proceedings and agreement or sign
21 the agreement, and shall then be treated as a party.

22 Section 603-A. Employees.--The employees of a health care
23 provider shall be deemed to be parties to every health care
24 arbitration agreement signed by their employer. An arbitration
25 agreement will bar an action at law against any health care
26 provider based upon the conduct of any employee.

27 Section 604-A. Minor Parties.--A minor child shall be bound
28 by a health care arbitration agreement executed on behalf of the
29 child by any parent, irrespective of whether that parent is also
30 a minor. An agreement so executed shall not be voidable because

1 of the minority of the parent, and for such purposes a minor who
2 is a parent shall be deemed to have the full legal capacity as
3 if that parent were above the age of majority.

4 Section 605-A. Conditions.--Every health care arbitration
5 agreement shall be subject to the following conditions:

6 (1) The agreement is not a condition to the rendering of
7 health care services by any party and the agreement has been
8 executed by the recipient of health care services at the
9 inception of, during or following the term of provision of
10 services by a health care provider.

11 (2) A person receiving emergency care may execute an
12 arbitration agreement after the emergency care is completed.

13 (3) The agreement is a separate instrument complete in
14 itself and not a part of any other contract or instrument.

15 (4) The agreement may not limit, impair or waive any
16 substantive rights or defenses of any party, including the
17 statute of limitations.

18 (5) The agreement shall not limit, impair or waive the
19 procedural rights to be heard, to present material evidence, to
20 cross-examine witnesses, and to be represented by an attorney,
21 or other procedural rights of due process of any party.

22 (6) The patient or, if appropriate, members of his family
23 must be given a copy of the health care arbitration agreement.

24 Section 606-A. Mandatory Provisions.--(a) Every health care
25 arbitration agreement shall be clearly captioned "Health Care
26 Arbitration Agreement."

27 (b) Every health care arbitration agreement in relation to
28 health care services rendered during hospitalization shall
29 specify the date of commencement of hospitalization. Every
30 health care arbitration agreement in relation to health care

1 services not rendered during hospitalization shall state the
2 nature of the services being provided.

3 (c) Every health care arbitration agreement may be canceled
4 by any signatory within 30 days of its execution. However, no
5 health care arbitration agreement shall be valid after three
6 years from the date of its execution. An employee of a health
7 care provider who is not a signatory to an agreement may cancel
8 such agreement as to himself until 30 days following his
9 notification that he is a party to a dispute or issue on which
10 arbitration has been demanded pursuant to such agreement. If any
11 person executing a health care arbitration agreement dies before
12 the period of cancellation as outlined above, the personal
13 representative of the decedent shall have the right to cancel
14 the health care arbitration agreement within 30 days of the date
15 of his appointment as the legal representative of the decedent's
16 estate. Provided, that if no legal representative is appointed
17 within six months of the death of said decedent the next of kin
18 of such decedent shall have the right to cancel the health care
19 arbitration agreement within eight months from the date of
20 death.

21 (d) Every health care arbitration agreement shall contain
22 immediately above the signature lines, in upper case type in
23 printed letters of at least 3/16 inch in height, a caption and
24 paragraphs as follows:

25 "AGREEMENT TO ARBITRATE HEALTH CARE

26 NEGLIGENCE CLAIMS

27 NOTICE TO PATIENT

28 YOU CANNOT BE REQUIRED TO SIGN THIS AGREEMENT IN ORDER TO
29 RECEIVE TREATMENT. BY SIGNING THIS AGREEMENT, YOUR RIGHT
30 TO TRIAL BY A JURY OR A JUDGE IN A COURT WILL BE BARRED

1 AS TO ANY DISPUTE RELATING TO INJURIES THAT MAY RESULT
2 FROM NEGLIGENCE DURING YOUR TREATMENT OR CARE, AND WILL
3 BE REPLACED BY AN ARBITRATION PROCEDURE. THIS AGREEMENT
4 MAY BE CANCELED WITHIN 30 DAYS OF SIGNING. THIS AGREEMENT
5 PROVIDES THAT ANY CLAIMS WHICH MAY ARISE OUT OF YOUR
6 HEALTH CARE WILL BE SUBMITTED TO A PANEL OF ARBITRATORS,
7 RATHER THAN TO A COURT FOR DETERMINATION. THIS AGREEMENT
8 REQUIRES ALL PARTIES SIGNING IT TO ABIDE BY THE DECISION
9 OF THE ARBITRATION PANEL."

10 Section 607-A. Commencement of Proceedings.--Arbitration
11 proceedings shall be commenced by serving a notice of demand for
12 arbitration together with a complaint on all parties to the
13 arbitration agreement from whom damages are sought. The serving
14 of the complaint shall toll the statute of limitations as to all
15 parties named in the notice and complaint.

16 Section 608-A. Service of Complaints.--Service of complaints
17 shall be made personally or by certified mail, and proof of the
18 mailing of notice shall be prima facie evidence of service.

19 Section 609-A. Applicability of Laws, Rules of Evidence.--
20 Except as provided herein, the arbitration proceedings and the
21 panel are bound by the common and statutory law of the
22 Commonwealth, the Pennsylvania Rules of Civil Procedure and the
23 Pennsylvania Rules of Evidence.

24 Section 610-A. Discovery.--After selection of the
25 arbitration panel, the parties may exercise all discovery
26 rights, remedies and procedures available if the matter were
27 pending in the court of common pleas. Discovery shall be
28 completed within six months from the date of service of the
29 demand for arbitration. A party may be granted an extension of
30 time to complete discovery by the arbitration panel upon a

1 showing of good cause.

2 Section 611-A. Appointment of Expert Witness.--The
3 arbitration panel may, upon the application of either party or
4 upon its own motion, appoint a disinterested and qualified
5 expert to make any necessary professional or expert examination
6 of the claimant or relevant evidentiary matter and to testify as
7 a witness in respect thereto. Such an expert witness shall be
8 allowed necessary expenses and a reasonable fee to be fixed by
9 the arbitration panel and paid by the parties.

10 Section 612-A. Powers and Duties of Arbitration Panel.--The
11 arbitration panel is authorized and empowered to:

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

14 (2) make findings of fact;

15 (3) take depositions and testimony;

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

17 (5) subpoena witnesses and administer oaths;

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

21 (7) consider and approve offers of settlement involving
22 fiduciaries, minors and incompetent parties;

23 (8) make determination as to liability and award of damages;

24 and

25 (9) exercise all other powers and duties conferred upon it
26 by law.

27 Section 613-A. Vote Required for Deciding Matters.--A
28 majority vote of the full arbitration panel shall be required to
29 decide all matters.

30 Section 614-A. Selection of Arbitrators.--Unless the parties

1 agree in writing to the selection of a single arbitration, the
2 arbitration proceeding shall be conducted by a panel of three
3 arbitrators. Each side of the proceeding shall select one
4 arbitrator and the two arbitrators thus selected shall agree and
5 select the third neutral arbitrator. The neutral arbitrator
6 shall be the chair at the arbitration hearing and shall decide
7 evidentiary and procedural questions during the hearing.

8 Section 615-A. Compensation of Arbitrators.--If there is a
9 single arbitrator, the parties shall share equally in the
10 payment of the arbitrator's compensation and expenses. If there
11 are three arbitrators, each side shall pay the compensation and
12 expenses of the arbitrator selected by the side and the parties
13 shall share equally in payment of the compensation and expenses
14 of the third neutral arbitrator.

15 Section 5. Section 1001 of the act is amended to read:

16 Section 1001. Immunity from Liability for Official
17 Actions.--There shall be no liability on the part of and no
18 cause of action for libel or slander shall arise against any
19 member insurer, [the State Board of Medical Education and
20 Licensure, the State Board of Osteopathic Examiners, the State
21 Board of Podiatry Examiners, the Arbitration Panels, the
22 administrator or the commissioner or his representatives for any
23 action taken by any of them in the performance of their
24 respective powers and duties under this act.] the State Board of
25 Medicine, the State Board of Osteopathic Medicine, the State
26 Board of Podiatry, the director or the commissioner or his
27 representatives for any action taken by any of them in the
28 performance of their respective powers and duties under this
29 act.

30 Section 6. Sections 1005, 1006 and 1007 of the act are

1 repealed.

2 Section 7. The act is amended by adding sections to read:

3 Section 1007.2. Mandatory Risk Management Programs.--(a)
4 Hospitals, nursing homes and public health centers qualifying as
5 a health care provider as defined in this act shall submit to
6 the Insurance Commissioner for review and approval an
7 institutional plan of risk management.

8 (b) Every insurance company or exchange or self-insurance
9 plan providing professional liability coverage to individuals
10 defined as health care providers in this act shall submit to the
11 Insurance Department for review and approval a program of risk
12 management to be offered to all such individuals.

13 Section 1007.3. Waiver of Consent to Settle.--A health care
14 provider who insures in accordance with the requirements of this
15 act and who does not retain a contractual right of prior
16 approval before permitting its basic coverage insurance carrier
17 and the fund to enter into settlement negotiations, shall not be
18 liable for payment of any claim for any loss or damages in
19 excess of the coverage afforded the provider by the basic
20 coverage and/or fund coverage. Insurers providing professional
21 liability insurance must offer such a policy at a premium rate
22 5% lower than the premium for a policy which contains the
23 contractual right of prior approval to enter into settlement
24 negotiations.

25 Section 1007.4. Rates.--(a) All professional liability
26 insurers and the Joint Underwriting Association must file for
27 new professional liability insurance rates within 90 days of the
28 effective date of this act.

29 (b) The rates charged by insurers under the filing required
30 by subsection (a) shall be reduced by at least 10% from the

1 total premium for the same selection of coverage and coverage
2 limits on the effective date of this act.

3 (c) No professional liability insurers may increase rates
4 between the effective date of this act and January 1, 1996 by
5 greater than 5% per annum.

6 (d) An insurer aggrieved by the rate reductions or rate
7 increase limitations mandated in this section may seek relief
8 from the commissioner, which relief may be granted when the
9 commissioner deems necessary in extraordinary circumstances.

10 (e) In the event that all sections of this act remain in
11 full force and effect for five years from its effective date,
12 companies providing professional liability insurance must
13 provide a premium rate reduction of 5% within 60 days of that
14 date.

15 Section 8. The provisions of this act are nonseverable. If
16 any provision of this act or its application to any person or
17 circumstance is held invalid, the remaining provisions or
18 applications of this act are void.

19 Section 9. All acts and parts of acts are repealed insofar
20 as they are inconsistent with this act.

21 Section 10. This act shall take effect in 60 days.