

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 246 Session of 2009

INTRODUCED BY MUNDY, BOYD, BRENNAN, CALTAGIRONE, CARROLL, COHEN, DeLUCA, FABRIZIO, FRANKEL, GIBBONS, GINGRICH, GOODMAN, GRUCELA, HENNESSEY, W. KELLER, KORTZ, KULA, MANDERINO, MANN, McILVAINE SMITH, MELIO, PALLONE, READSHAW, SANTONI, SIPTROTH, STABACK, STURLA, VULAKOVICH, WANSACZ AND THOMAS, FEBRUARY 4, 2009

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 4, 2009

AN ACT

1 Amending the act of March 20, 2002 (P.L.154, No.13), entitled
2 "An act reforming the law on medical professional liability;
3 providing for patient safety and reporting; establishing the
4 Patient Safety Authority and the Patient Safety Trust Fund;
5 abrogating regulations; providing for medical professional
6 liability informed consent, damages, expert qualifications,
7 limitations of actions and medical records; establishing the
8 Interbranch Commission on Venue; providing for medical
9 professional liability insurance; establishing the Medical
10 Care Availability and Reduction of Error Fund; providing for
11 medical professional liability claims; establishing the Joint
12 Underwriting Association; regulating medical professional
13 liability insurance; providing for medical licensure
14 regulation; providing for administration; imposing penalties;
15 and making repeals," further providing for declaration of
16 policy, for the Medical Care Availability and Reduction of
17 Error Fund, for medical professional liability insurance by
18 the joint underwriting association, for approval of medical
19 professional liability insurers and for administrative
20 definitions; and providing for functions of the Department of
21 Health.

22 The General Assembly of the Commonwealth of Pennsylvania

23 hereby enacts as follows:

24 Section 1. Sections 102, 712(g), 733, 741 and 902 of the act
25 of March 20, 2002 (P.L.154, No.13), known as the Medical Care

1 Availability and Reduction of Error (Mcare) Act, are amended to
2 read:

3 Section 102. Declaration of policy.

4 The General Assembly finds and declares as follows:

5 (1) It is the purpose of this act to ensure that medical
6 care is available in this Commonwealth through a
7 comprehensive and high-quality health care system.

8 (2) Access to a full spectrum of hospital services and
9 to highly trained physicians in all specialties must be
10 available across this Commonwealth.

11 (3) To maintain this system, medical professional
12 liability insurance has to be obtainable at an affordable and
13 reasonable cost in every geographic region of this
14 Commonwealth.

15 (4) A person who has sustained injury or death as a
16 result of medical negligence by a health care provider must
17 be afforded a prompt determination and fair compensation.

18 (5) Every effort must be made to reduce and eliminate
19 medical errors by identifying problems and implementing
20 solutions that promote patient safety.

21 (6) Recognition and furtherance of all of these elements
22 is essential to the public health, safety and welfare of all
23 the citizens of Pennsylvania.

24 (7) The costs of medical malpractice insurance premiums
25 are directly impacted by medical errors.

26 (8) Research shows that a vast majority of medical
27 errors are systemic rather than human errors.

28 (9) Total quality management systems implemented in
29 industry and by the United States Department of Veterans
30 Affairs hospital system have successfully reduced medical

1 errors.

2 (10) It is the purpose of this act to improve patient
3 safety, improve health care quality and lower health care
4 costs by offering medical malpractice premium discounts to
5 health care providers that institute total quality management
6 health care systems.

7 Section 712. Medical Care Availability and Reduction of Error
8 Fund.

9 * * *

10 (g) Additional adjustments of the prevailing primary
11 premium.--The department shall adjust the applicable prevailing
12 primary premium of each participating health care provider in
13 accordance with the following:

14 (1) The applicable prevailing primary premium of a
15 participating health care provider which is not a hospital
16 may be adjusted through an increase in the individual
17 participating health care provider's prevailing primary
18 premium not to exceed 20%. Any adjustment shall be based upon
19 the frequency of claims paid by the fund on behalf of the
20 individual participating health care provider during the past
21 five most recent claims periods and shall be in accordance
22 with the following:

23 (i) If three claims have been paid during the past
24 five most recent claims periods by the fund, a 10%
25 increase shall be charged.

26 (ii) If four or more claims have been paid during
27 the past five most recent claims periods by the fund, a
28 20% increase shall be charged.

29 (2) The applicable prevailing primary premium of a
30 participating health care provider which is not a hospital

1 and which has not had an adjustment under paragraph (1) may
2 be adjusted through an increase in the individual
3 participating health care provider's prevailing primary
4 premium not to exceed 20%. Any adjustment shall be based upon
5 the severity of at least two claims paid by the fund on
6 behalf of the individual participating health care provider
7 during the past five most recent claims periods.

8 (3) The applicable prevailing primary premium of a
9 participating health care provider not engaged in direct
10 clinical practice on a full-time basis may be adjusted
11 through a decrease in the individual participating health
12 care provider's prevailing primary premium not to exceed 10%.
13 Any adjustment shall be based upon the lower risk associated
14 with the less-than-full-time direct clinical practice.

15 (4) The applicable prevailing primary premium of a
16 hospital may be adjusted through an increase or decrease in
17 the individual hospital's prevailing primary premium not to
18 exceed 20%. Any adjustment shall be based upon the frequency
19 and severity of claims paid by the fund on behalf of other
20 hospitals of similar class, size, risk and kind within the
21 same defined region during the past five most recent claims
22 periods.

23 (5) A participating health care provider that
24 implements, to the satisfaction of the Department of Health,
25 a total quality management health care system approved by the
26 Department of Health shall be entitled to a 20% discount in
27 the applicable prevailing primary premium for each fiscal
28 year in which the system is implemented.

29 * * *

30 Section 733. Deficit.

1 (a) Filing.--In the event the joint underwriting association
2 experiences a deficit in any calendar year, the board of
3 directors shall file with the commissioner the deficit.

4 (b) Approval.--Within 30 days of receipt of the filing, the
5 commissioner shall approve or deny the filing. If approved, the
6 joint underwriting association is authorized to borrow funds
7 sufficient to satisfy the deficit.

8 (c) Rate filing.--Within 30 days of receiving approval of
9 its filing in accordance with subsection (b), the joint
10 underwriting association shall file a rate filing with the
11 department. The commissioner shall approve the filing if [the]:

12 (1) The premiums generate sufficient income for the
13 joint underwriting association to avoid a deficit during the
14 following 12 months and to repay principal and interest on
15 the money borrowed in accordance with subsection (b).

16 (2) There is a 20% discount in each premium for a health
17 care provider that implements, to the satisfaction of the
18 Department of Health, a total quality management health care
19 system approved by the Department of Health.

20 Section 741. Approval.

21 In order for an insurer to issue a policy of medical
22 professional liability insurance to a health care provider or to
23 a professional corporation, professional association or
24 partnership which is entirely owned by health care providers,
25 the insurer must [be] comply with all of the following:

26 (1) Be authorized to write medical professional
27 liability insurance in accordance with the act of May 17,
28 1921 (P.L.682, No.284), known as The Insurance Company Law of
29 1921.

30 (2) Offer a 20% discount in the premium for a health

care provider that implements, to the satisfaction of the
Department of Health, a total quality management health care
system approved by the Department of Health.

Section 902. Definitions.

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

"Department." The Department of Health of the Commonwealth.

"Licensure board." Either or both of the following,
depending on the licensure of the affected individual:

(1) The State Board of Medicine.

(2) The State Board of Osteopathic Medicine.

"Physician." An individual licensed under the laws of this
Commonwealth to engage in the practice of:

(1) medicine and surgery in all its branches within the scope of the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985; or

(2) osteopathic medicine and surgery within the scope of the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act.

Section 2. The act is amended by adding a section to read:

Section 911. Department of Health.

(a) Total quality management health care system approval.--

(1) A total quality management health care system may
apply to the department for approval. The application must be
on a form prescribed by the Department of Health and must be
accompanied by a fee set by regulation.

(2) Within 30 days of receipt of an application under
paragraph (1), the department shall do one of the following:

(i) If the department determines that the system

1 will successfully reduce medical errors by a health care
2 provider, approve the application.

3 (ii) If the department determines that the system
4 will not successfully reduce medical errors by a health
5 care provider, deny the application. This subparagraph is
6 subject to 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial
7 review of Commonwealth agency action).

8 (3) Failure to act within the time specified in
9 paragraph (2) shall be deemed approval of the application.

10 (b) Total quality management health care system
11 implementation.--The department shall provide health care
12 providers with certification of implementation of total quality
13 management health care systems as required by sections 712(g)
14 (5), 733(c)(2) and 741(2).

15 (c) Regulations.--The department may promulgate regulations
16 to implement this section.

17 Section 3. This act shall take effect in 60 days.