## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 902

Session of 2011

INTRODUCED BY WARD, M. WHITE, BROWNE, D. WHITE AND ORIE, MARCH 25, 2011

REFERRED TO BANKING AND INSURANCE, MARCH 25, 2011

## AN ACT

Amending the act of March 20, 2002 (P.L.154, No.13), entitled "An act reforming the law on medical professional liability; 2 providing for patient safety and reporting; establishing the Patient Safety Authority and the Patient Safety Trust Fund; 3 4 abrogating regulations; providing for medical professional 5 liability informed consent, damages, expert qualifications, 6 limitations of actions and medical records; establishing the 7 Interbranch Commission on Venue; providing for medical 8 professional liability insurance; establishing the Medical 9 Care Availability and Reduction of Error Fund; providing for 10 medical professional liability claims; establishing the Joint 11 Underwriting Association; regulating medical professional 12 liability insurance; providing for medical licensure 13 regulation; providing for administration; imposing penalties; 14 and making repeals," further providing for the Medical Care 15 16 Availability and Reduction of Error Fund. 17 The General Assembly of the Commonwealth of Pennsylvania 18 hereby enacts as follows: 19 Section 1. Section 712(d) of the act of March 20, 2002 20 (P.L.154, No.13), known as the Medical Care Availability and 21 Reduction of Error (Mcare) Act, is amended and the section is 22 amended by adding a subsection to read: 23 Section 712. Medical Care Availability and Reduction of Error 24 Fund.

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- 1 (d) Assessments.--
- 2 (1) For calendar year 2003 and for each year thereafter,
- 3 the fund shall be funded by an assessment on each
- 4 participating health care provider. Assessments shall be
- 5 levied by the department on or after January 1 of each year.
- 6 The assessment shall be based on the prevailing primary
- 7 premium for each participating health care provider and
- 8 shall, in the aggregate, produce an amount [sufficient to do
- 9 all of the following] equal to the sum of the following
- 10 <u>amounts minus the estimated fund balance at the close of the</u>
- 11 calendar year preceding the assessment year:
- 12 (i) [Reimburse the fund for the payment of] <u>The</u>
  13 reported claims which became final during the preceding
- 14 claims period.
- 15 (ii) [Pay] <u>The</u> expenses of the fund incurred during
- 16 the preceding claims period.
- 17 (iii) [Pay] <u>The outstanding</u> principal and interest
- on moneys transferred into the fund in accordance with
- 19 section 713(c).
- 20 (iv) [Provide a reserve that shall be 10%] <u>Ten</u>
- 21 percent of the sum of subparagraphs (i), (ii) and (iii).
- 22 (2) The department shall notify all basic insurance
- coverage insurers and self-insured participating health care
- 24 providers of the assessment by November 1 for the succeeding
- 25 calendar year.
- 26 (3) Any appeal of the assessment shall be filed with the
- 27 department.
- 28 (d.1) Payment of assessment.--
- 29 <u>(1) A basic coverage insurer shall bill and collect the</u>
- 30 assessments on its insureds and remit collected assessments

Τ	to the lund. The following deadlines shall apply, unless the
2	commissioner grants an extension by providing notice in the
3	Pennsylvania Bulletin:
4	(i) A basic coverage insurer shall bill the
5	assessment no later than 30 days after the inception date
6	or renewal date, as applicable, of the basic insurance
7	coverage policy.
8	(ii) A health care provider, professional
9	corporation, professional association and partnership
_0	shall pay its assessment to its basic coverage insurer
1	within 60 days of the inception date or renewal date of
2	its basic insurance coverage policy or 30 days from
_3	billing, whichever is later.
4	(iii) A basic coverage insurer shall remit collected
_5	assessments to the fund within 60 days of the inception
6	date or renewal date, as applicable, of the basic
_7	insurance coverage policy or within 30 days of receipt,
8	whichever is later.
_9	(2) Except as provided in paragraph (3), a health care
20	provider, professional corporation, professional association
21	and partnership shall be provided basic insurance coverage
22	from the inception date or renewal date, as applicable, of
23	its basic insurance coverage policy, regardless of whether
24	its assessment has been remitted to the fund.
25	(3) A health care provider, professional corporation,
26	professional association or partnership that does not pay its
27	assessment to its basic coverage insurer within the time
28	frame set forth in paragraph (1)(ii) shall not be provided
29	basic insurance coverage for a claim unless its assessment
30	for the basic insurance coverage policy was paid prior to

- 1 <u>reasonable notice of the claim.</u>
- 2 \* \* \*
- 3 Section 2. The amendment or addition of section 712(d) and
- 4 (d.1) of the act is not intended to validate or refute any
- 5 position advanced by any party in proceedings challenging the
- 6 2009, 2010 and 2011 assessments. The outcome of those
- 7 proceedings shall be based upon the statutory language in effect
- 8 at the time and appropriate indicia as to the legislative intent
- 9 of that language.
- 10 Section 3. This act shall take effect in 60 days.