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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 846**

Session of  
1979

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INTRODUCED BY HANKINS AND HAGER, JUNE 20, 1979

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AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
DECEMBER 3, 1979

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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 arbitration panels for health care AND PROVIDING FOR ←  
10 SEVERABILITY.

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

13 Section 1. Section 308, act of October 15, 1975 (P.L.390,  
14 No.111), known as the "Health Care Services Malpractice Act,"  
15 subsection (b) amended July 15, 1976 (P.L.1028, No.207), is  
16 amended AND SECTIONS ARE ADDED to read: ←

17 Section 308. Arbitration Panels for Health Care.--[(a) The  
18 administrator shall establish a separate arbitration panel for  
19 each claim; and after each panel renders its decision on the  
20 claim it shall be disbanded.

21 (b) Each arbitration panel shall be composed of seven

1 members including two health care providers, two attorneys, one  
2 of whom shall be designated as chairman by the administrator,  
3 who shall determine questions of law and three lay persons who  
4 are not health care providers nor licensed to practice law.  
5 Wherever possible, the administrator shall select a hospital  
6 administrator, podiatrist, or osteopathic physician or surgeon  
7 as one of the health care provider panel members where the claim  
8 involves a member of one of those classes of health care  
9 providers.

10 (c) Arbitration panel candidates shall be selected from a  
11 pool of candidates generated by the administrator. The rules and  
12 regulations promulgated by the administrator pertaining to the  
13 selection of arbitrators shall provide that the administrator  
14 shall send simultaneously to each party an identical list of  
15 five arbitration panel candidates in each of the three  
16 categories together with a brief biographical statement on each  
17 candidate. A party may strike from the list any two names which  
18 are unacceptable in each category. Any mutually agreeable  
19 candidate may be invited by the administrator to serve. Where  
20 insufficient mutually agreeable candidates are selected for any  
21 category a second list of that category shall be sent by the  
22 administrator. If a complete arbitration panel is not selected  
23 by mutual agreement of the parties the administrator shall  
24 appoint the remainder of the arbitration panel. Any appointment  
25 by the administrator shall be subject to challenge by any party  
26 for cause. A request to strike an arbitrator for cause shall be  
27 determined by the administrator. The parties shall not be  
28 restricted to the arbitration panel candidates submitted for  
29 consideration; but, if all parties mutually agree upon an  
30 arbitration panelist within a designated category, the panelist

1 shall be invited to serve.

2 (d) The attorney and health care provider members of each  
3 arbitration panel shall be or have been practicing members of  
4 their respective professions.

5 (e) Arbitration panel members shall be paid on a per diem or  
6 salary basis as fixed by the Executive Board plus actual and  
7 necessary expenses incurred in the performance of their official  
8 duties. The administrator shall provide for all other necessary  
9 expenses of the arbitration panels.

10 (f) No member shall participate in a case in which he may  
11 have an interest.]

12 (a) The administrator shall establish and maintain a pool of ←  
13 full and part time panel members from which he shall select  
14 arbitration panels to hear claims made under this act.  
15 Appointments to the pool of panel members shall be made by the  
16 administrator with due consideration given to persons  
17 recommended by appropriate recognized professional or lay  
18 organizations.

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

28 (c) Any arbitration panel member selected by the  
29 administrator shall be subject to challenge for cause by any  
30 party. All challenges for cause shall be determined by the

1 administrator. Each party shall also be entitled to one  
2 peremptory challenge.

3 (d) The parties shall not be restricted to arbitration  
4 panels drawn from the pool of full and part time panel members. <—  
5 If all parties mutually agree upon an arbitration panelist or  
6 panelists, the panelist or panelists shall be invited to serve  
7 by the administrator. A panel mutually agreed upon by the  
8 parties shall be composed of three members: one attorney, one  
9 health care provider and one lay person.

10 (e) The attorney members of the arbitration panel pool shall  
11 be admitted to practice before the Supreme Court of the  
12 Commonwealth. The health care provider members of the  
13 arbitration panel pool who are subject to licensure shall be  
14 licensed by the Commonwealth.

15 (f) Arbitration panel members shall be paid at a daily or  
16 annual salary rate fixed by the Executive Board, plus actual and  
17 necessary expenses incurred in the performance of their official  
18 duties. The administrator shall provide for all other necessary  
19 expenses of the arbitration panels.

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

22 ~~(h) The administrator's appointees to the pool of panel~~ <—  
23 ~~members shall serve for a term of three years and may be~~  
24 ~~reappointed by the administrator in his discretion, after~~  
25 ~~consultation with appropriate recognized professional or lay~~  
26 ~~organizations.~~

27 SECTION 403. TRANSFER TO COMMON PLEAS COURT.--IF AN <—  
28 ARBITRATION PANEL IS NOT SELECTED BY THE ADMINISTRATOR WITHIN 90  
29 DAYS AFTER THE FILING OF A CERTIFICATE OF READINESS AS PROVIDED  
30 FOR IN THE APPLICABLE RULES AND REGULATIONS, IN SUCH EVENT THE

1 ADMINISTRATOR SHALL FORTHWITH TRANSFER THE CASE TO THE COMMON  
2 PLEAS COURT HAVING VENUE OVER THE CASE FOR PRETRIAL AND TRIAL AS  
3 IN OTHER CIVIL CASES.

4 SECTION 1007.1. SEVERABILITY.--IF ANY PROVISION OR CLAUSE OF  
5 THIS ACT OR THE APPLICATION THEREOF TO ANY PERSON OR SITUATION  
6 IS HELD INVALID, SUCH INVALIDITY SHALL NOT AFFECT OTHER  
7 PROVISIONS OR APPLICATIONS OF THE ACT WHICH CAN BE GIVEN EFFECT  
8 WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END  
9 THE PROVISIONS OF THIS ACT ARE DECLARED TO BE SEVERABLE.

10 Section 2. This act shall take effect in 60 days AND SHALL <—  
11 BE APPLICABLE TO ALL CLAIMS FILED IN THE OFFICE OF ARBITRATION  
12 PANELS FOR HEALTH CARE INCLUDING CLAIMS FILED PRIOR TO THE  
13 EFFECTIVE DATE OF THIS AMENDATORY ACT IN WHICH NO CHAIRPERSON  
14 HAS BEEN APPOINTED PRIOR TO SUCH EFFECTIVE DATE.