

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1569 Session of  
1976

INTRODUCED BY HANKINS, HESS, MELLOW, HAGER, SMITH, HILL, HOLL,  
ARLENE, NOSZKA AND HOBBS, JUNE 8, 1976

REFERRED TO INSURANCE, JUNE 8, 1976

AN ACT

1 Amending the act of October 15, 1975 (No.111), entitled "An act  
2 relating to the 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 the  
9 powers and duties of the administrator, changing definitions,  
10 and further providing for liability and exemptions.

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

13 Section 1. Section 103, act of October 15, 1975 (No.111),  
14 known as the "Health Care Services Malpractice Act," is amended  
15 to read:

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

17 "Administrator" means the office of Administrator for  
18 Arbitration Panels for Health Care.

19 "Arbitration panel" means Arbitration Panels for Health Care.

20 "Claims made" means a policy of professional liability  
21 insurance that would limit or restrict the liability of the  
22 insurer under the policy to only those claims made or reported

1 during the currency of the policy period and would exclude  
2 coverage for claims reported subsequent to the termination even  
3 when such claims resulted from occurrences during the currency  
4 of the policy period.

5 "Commissioner" means the Insurance Commissioner of this  
6 Commonwealth.

7 "Government" means the government of the United States, any  
8 state, any political subdivision of a state, any instrumentality  
9 of two or more states, or any agency, subdivision, or department  
10 of any such government, including any corporation or other  
11 association organized by a government for the execution of a  
12 government program and subject to control by a government, or  
13 any corporation or agency established under an interstate  
14 compact or international treaty.

15 "Health care provider" means a primary health center or a  
16 person, corporation, facility. institution or other entity  
17 licensed or approved by the Commonwealth to provide health care  
18 or professional medical services as a physician, [including a  
19 medical doctor and a doctor of osteopathy and a doctor of  
20 podiatry] an osteopathic physician or surgeon, a podiatrist,  
21 hospital, nursing home, [; health maintenance organization; or]  
22 and except as to section 701(a), an officer, employee or agent  
23 of any of them acting in the course and scope of his employment.

24 "Informed consent" means for the purposes of this act and of  
25 any proceedings arising under the provisions of this act, the  
26 consent of a patient to the performance of health care services  
27 by a physician or podiatrist: Provided, That prior to the  
28 consent having been given, the physician or podiatrist has  
29 informed the patient of the nature of the proposed procedure or  
30 treatment and of those risks and alternatives to treatment or

1 diagnosis that a reasonable patient would consider material to  
2 the decision whether or not to undergo treatment or diagnosis.  
3 No physician or podiatrist shall be liable for a failure to  
4 obtain an informed consent in the event of an emergency which  
5 prevents consulting the patient. No physician or podiatrist  
6 shall be liable for failure to obtain an informed consent if it  
7 is established by a preponderance of the evidence that  
8 furnishing the information in question to the patient would have  
9 resulted in a seriously adverse effect on the patient or on the  
10 therapeutic process to the material detriment of the patient's  
11 health.

12 "Licensure Board" means the State Board of Medical Education  
13 and Licensure, the State Board of Osteopathic Examiners, the  
14 State Board of Podiatry Examiners, the Department of Public  
15 Welfare and the Department of Health.

16 "Patient" means a natural person who receives or should have  
17 received health care from a licensed health care provider.

18 "Primary health center" means a community-based nonprofit  
19 corporation meeting standards prescribed by the Department of  
20 Health, which provides preventive, diagnostic, therapeutic, and  
21 basic emergency health care by licensed practitioners who are  
22 employees of the corporation or under contract to the  
23 corporation.

24 "Professional liability insurance" means insurance against  
25 liability on the part of a health care provider arising out of  
26 any tort or breach of contract causing injury or death  
27 [occurring in or] resulting from the furnishing of medical  
28 services which were or should have been provided.

29 Section 2. Section 307, subsection (b) of section 308,  
30 sections 309, 401 and 502 of the act are amended to read:

1       Section 307. Rules and Regulations.--(a) The administrator  
2 shall adopt and publish such uniform rules and regulations as  
3 may be necessary to carry out the provisions of this act, and  
4 shall prescribe the means, methods and practices necessary to  
5 effectuate such provisions. Such rules and regulations shall be  
6 consistent with the common and statutory law of the  
7 Commonwealth, the Pennsylvania Rules of Civil Procedure, and the  
8 Pennsylvania rules of evidence. Such rules and regulations,  
9 after consultation with the Secretary of Health, may include  
10 provisions for the use of forms which provide for the disclosure  
11 of the nature of the proposed treatment or diagnosis, risks of  
12 the proposed treatment or diagnosis, and alternate methods of  
13 treatment or diagnosis.

14       (b) The administrator shall have the power to consider and  
15 approve offers of settlement for fiduciaries, minors and  
16 incompetent parties at any time prior to the first meeting of  
17 the arbitration panel. The fund may be represented at any  
18 negotiation of settlement exceeding the basic coverage insurance  
19 carrier limit of liability.

20       (c) Prior to appointment of an arbitration panel chairman,  
21 the administrator is authorized and empowered to rule on all  
22 preliminary motions.

23       Section 308. Arbitration Panels for Health Care.--\* \* \*

24       (b) Each arbitration panel shall be composed of seven  
25 members including two health care providers, two attorneys, one  
26 of whom shall be designated as chairman by the administrator,  
27 who shall determine questions of law and three lay persons who  
28 are not health care providers nor licensed to practice law.

29       Wherever possible, the administrator shall select a hospital  
30 administrator, podiatrist, or [osteopath] osteopathic physician

1 or surgeon as one of the health care provider panel members  
2 where the claim involves a member of one of those classes of  
3 health care providers.

4 \* \* \*

5 Section 309. Jurisdiction of Arbitration Panel.--The  
6 arbitration panel shall have original exclusive jurisdiction to  
7 hear and decide any claim [for loss or damages] brought by a  
8 patient or his representative for loss or damages resulting from  
9 the furnishing of medical services which were or which should  
10 have been provided. The arbitration panel shall also have  
11 original exclusive jurisdiction to hear and decide any claim  
12 asserted against a nonhealth care provider who is made a party  
13 defendant with a health care provider.

14 Section 401. Filing of Complaint.--A patient or his  
15 representative, having a claim for loss or damages resulting  
16 from the furnishing of medical services which were or which  
17 should have been provided, shall file with the administrator a  
18 complaint or such other form, with such fees, as prescribed by  
19 the rules and regulations adopted by the administrator. The  
20 administrator shall refer the complaint to the appropriate  
21 arbitration panel. The filing of the complaint with the  
22 administrator shall toll the statute of limitations.

23 Section 502. Joinder of Additional Parties.--At any time up  
24 to the selection of the panel members, a party may join any  
25 additional party who may be necessary and proper to a just  
26 determination of the claim. The arbitration panel shall have  
27 jurisdiction over such additional parties whether they be health  
28 care providers or nonhealth care providers.

29 Section 3. Paragraph (8) of subsection (a) of section 508 of  
30 the act is amended to read:

1 Section 508. Powers and Duties of Arbitration Panel.--(a)

2 The arbitration panel is authorized and empowered to:

3 \* \* \*

4 (8) consider and approve offers of settlement [and proposals  
5 of adjustment between plaintiffs and defendants;] involving  
6 fiduciaries, minors and incompetent parties;

7 \* \* \*

8 Section 4. Section 509 of the act is amended to read:

9 Section 509. Judicial Review.--Appeals from determinations  
10 made by the arbitration panel shall be a trial de novo in the  
11 court of common pleas in accordance with the rules regarding  
12 appeals in compulsory civil arbitration and the Pennsylvania  
13 Rules of Civil Procedure except that the party seeking to file  
14 an appeal must first pay all record costs of arbitration to the  
15 prothonotary of the court in which he seeks to file his appeal.  
16 If the court of common pleas finds at the completion of the  
17 trial that the basis for the appeal was capricious, frivolous  
18 and unreasonable, then the appellant shall be liable for all  
19 costs of arbitration and trial, including record costs,  
20 arbitrator's compensation, discovery costs, and fees and  
21 expenses of the arbitration panel's expert witnesses.

22 Section 5. Section 605 of the act is amended to read:

23 Section 605. Statute of Limitations.--All claims for  
24 recovery pursuant to this act must be commenced within the  
25 existing applicable statutes of limitation. In the event that  
26 any claim is [filed] made against a health care provider subject  
27 to the provisions of Article VII more than four years after the  
28 breach of contract or tort occurred which is filed within the  
29 statute of limitations such claim shall be defended and paid by  
30 the Medical Professional Liability Catastrophe Loss Fund

1 established pursuant to section 701. If such claim is made after  
2 four years because of the [wilfull] willful concealment [of] by  
3 the health care provider or his insurer, the fund shall have the  
4 right of full indemnity including defense costs from such health  
5 care provider or his insurer. A filing pursuant to section 401  
6 shall toll the running of the limitations contained herein.

7 Section 6. Section 701 of the act is amended to read:

8 Section 701. Professional Liability Insurance and Fund.--(a)  
9 Every health care provider [subject to the provisions of this  
10 act] as defined in this act, practicing medicine or podiatry or  
11 otherwise providing health care services in the Commonwealth  
12 shall insure his [liability by purchasing] professional  
13 liability [insurance in the amount of \$100,000 per occurrence  
14 and \$300,000 per annual aggregate, hereinafter known as "basic  
15 coverage insurance." General and special hospitals may maintain  
16 professional liability insurance in the amount of \$1,000,000.  
17 Upon certification by the administrator, of the aforementioned  
18 amount of insurance maintained by all general and special  
19 hospitals, all such hospitals shall be exempt from the  
20 provisions of this article.] or provide proof of self-insurance  
21 in accordance with this section.

22 (1) A health care provider, other than hospitals, who  
23 conducts more than 50% of his health care business or practice  
24 within the Commonwealth of Pennsylvania shall insure or self-  
25 insure his professional liability in the amount of \$100,000 per  
26 occurrence and \$300,000 per annual aggregate, and hospitals  
27 located in the Commonwealth shall insure or self-insure their  
28 professional liability in the amount of \$100,000 per occurrence,  
29 and \$1,000,000 per annual aggregate, hereinafter known as "basic  
30 coverage insurance" and they shall be entitled to participate in

1 the fund.

2 (2) A health care provider who conducts 50% or less of his  
3 health care business or practice within the Commonwealth shall  
4 insure or self-insure his professional liability in the amount  
5 of \$200,000 per occurrence and \$600,000 per annual aggregate and  
6 shall not be required to contribute to or be entitled to  
7 participate in the fund set forth in Article VII of this act or  
8 the plan set forth in Article VIII of this act.

9 (3) For the purposes of this section, "health care business  
10 or practice" shall mean the number of patients to whom health  
11 care services are rendered by a health care provider within an  
12 annual period.

13 (4) All self-insurance plans shall be submitted with such  
14 information as the commissioner shall require for approval and  
15 shall be approved by the commissioner upon his finding that the  
16 plan constitutes protection equivalent to the insurance  
17 requirements of a health care provider.

18 (5) A fee shall be charged by the Insurance Department to  
19 all self-insurers for examination and approval of their plans.

20 (6) Self-insured health care providers and hospitals if  
21 exempt from this act shall submit the information required under  
22 section 809 to the commissioner.

23 (b) No insurer providing professional liability insurance  
24 [to a health care provider pursuant to the provisions of section  
25 701(a)] shall be liable for payment of any claim against a  
26 health care provider for any loss or damages awarded in a  
27 professional liability action in excess of \$100,000 per  
28 occurrence and \$300,000 per annual aggregate for each health  
29 care provider against whom an award is made unless the health  
30 care provider's professional liability policy or self-insurance



1 plan provides for a higher annual aggregate limit.

2 (c) A government may satisfy its obligations pursuant to  
3 this act, as well as the obligations of its employees to the  
4 extent of their employment, by either purchasing insurance or  
5 assuming such obligation as a self-insurer.

6 ~~[(c)]~~ (d) There is hereby created a contingency fund for the  
7 purpose of paying all awards for loss or damages against a  
8 health care provider as a consequence of any [medical  
9 malpractice] professional liability action [which are in excess  
10 of \$100,000] brought under this act to the extent any health  
11 care provider's share exceeds his basic insurance coverage. Such  
12 fund shall be known as the "Medical Professional Liability  
13 Catastrophe Loss Fund," in this Article VII called the "fund."  
14 The limit of liability of the fund shall be \$1,000,000 for each  
15 occurrence for each health care provider and \$3,000,000 per  
16 annual aggregate for each health care provider.

17 ~~[(d)]~~ (e) The fund shall be funded by the levying of an  
18 annual surcharge on all health care providers except as provided  
19 for in subsection (a)(2). The surcharge shall be determined by  
20 the director appointed pursuant to section 702 based upon  
21 actuarial principles and subject to the prior approval of the  
22 commissioner. The surcharge shall not exceed 10% of the cost to  
23 each health care provider for maintenance of professional  
24 liability insurance or \$100, whichever is greater. Health care  
25 providers having approved self-insurance plans shall be  
26 surcharged an amount equal to the surcharge imposed on a health  
27 care provider of like class, size, risk and kind as determined  
28 by the director. The fund and all income from the fund shall be  
29 held in trust, deposited in a segregated account, invested and  
30 reinvested by the director, and shall not become a part of the

1 General Fund of the Commonwealth. If the total fund exceeds the  
2 sum of \$15,000,000 at the end of any calendar year after the  
3 payment of all claims and expenses, including the expenses of  
4 operation of the office of the director, the director shall  
5 reduce the surcharge provided in this section in order to  
6 maintain the fund at an approximate level of \$15,000,000. All  
7 claims shall be computed on December 31 of the year in which the  
8 claim becomes final. All such claims shall be paid within two  
9 weeks thereafter. If the fund would be exhausted by the payment  
10 in full of all claims allowed during any calendar year, then the  
11 amount paid to each claimant shall be prorated. Any amounts due  
12 and unpaid shall be paid in the following calendar year. The  
13 annual surcharge on health care providers and any income  
14 realized by investment or reinvestment shall constitute the sole  
15 and exclusive sources of funding for the fund. No claims or  
16 expenses against the fund shall be deemed to constitute a debt  
17 of the Commonwealth or a charge against the General Fund of the  
18 Commonwealth. The director shall issue rules and regulations  
19 consistent with this section regarding the establishment and  
20 operation of the fund including all procedures and the levying,  
21 payment and collection of the surcharges. A fee shall be charged  
22 by the Catastrophe Loss Fund Director to all self-insurers for  
23 examination and approval of their plans.

24 [(e)] (f) The failure of any health care provider to comply  
25 with any of the provisions of this section or any of the rules  
26 and regulations issued by the director shall result in the  
27 suspension or revocation of the health care provider's license  
28 by the licensure board.

29 (g) Any physician who exclusively practices the specialty of  
30 forensic pathology shall be exempt from the provisions of this

1 act.

2 (h) All health care providers who are members of the  
3 Pennsylvania military forces are exempt from the provisions of  
4 this act while in the performance of their assigned duty in the  
5 Pennsylvania military forces under orders.

6 Section 7. Subsections (a), (c), (d), (e) and (f) of section  
7 702 of the act are amended to read:

8 Section 702. Director and Administration of Fund.--(a) The  
9 fund shall be administered by a director who shall be appointed  
10 by the Governor and whose salary shall be fixed by the Executive  
11 Board. The director may employ and fix the compensation of such  
12 clerical and other assistants as may be deemed necessary and may  
13 promulgate rules and regulations relating to procedures for the  
14 reporting of claims to the fund.

15 \* \* \*

16 (c) The basic coverage insurance carrier or self-insured  
17 provider shall promptly notify the director of any case where it  
18 reasonably believes that the value of the claim exceeds the  
19 basic insurer's coverage or self-insurance plan or falls under  
20 section 605. Such information shall be confidential,  
21 notwithstanding the act of July 19, 1974 (P.L.486, No.175)  
22 referred to as the Public Agency Open Meeting Law, and act of  
23 June 21, 1957 (P.L.390, No.212) referred to as the Right-to-Know  
24 Law. Failure to so notify the director shall make the basic  
25 coverage insurance carrier or self-insured provider responsible  
26 for the payment of the entire award or verdict, provided that  
27 the fund has been prejudiced by the failure of notice.

28 (d) The basic coverage insurance carrier or self-insured  
29 provider shall [at all times] be responsible to provide a  
30 defense [for the insured health care provider] to the claim,

1 including defense of the fund, except as provided for in section  
2 605. In such instances where the director has been notified in  
3 accordance with subsection (c), the director may, at his option,  
4 join in the defense and be represented by counsel.

5 (e) In the event that the basic coverage insurance carrier  
6 or self-insured provider enters into a settlement with the  
7 claimant to the full extent of its liability as provided above,  
8 it may obtain a release from the claimant to the extent of its  
9 payment, which payment shall have no effect upon any excess  
10 claim against the fund or its duty to continue the defense of  
11 the claim.

12 (f) The director is authorized to defend, litigate, settle  
13 [and] or compromise any claim [in excess of the basic coverage  
14 hereinbefore provided.] payable by the fund.

15 \* \* \*

16 Section 8. The act is amended by adding a section to read:

17 Section 705. Liability of Excess Carriers.--(a) No insurer  
18 providing excess professional liability insurance to any health  
19 care provider eligible for coverage under the Medical Profession  
20 Liability Catastrophe Loss Fund shall be liable for payment of  
21 any claim against a health care provider for any loss or damages  
22 except those in excess of the limits of liability provided by  
23 the Medical Professional Liability Catastrophe Loss Fund.

24 (b) No carrier providing excess professional liability  
25 insurance for a health care provider covered by the Medical  
26 Profession Catastrophe Loss Fund shall be liable for any loss  
27 resulting from the insolvency or dissolution of the Catastrophe  
28 Loss Fund.

29 Section 9. Section 1002 of the act is amended to read:

30 Section 1002. Cancellation of Insurance Policy.--Any

1 termination of a professional liability insurance policy by  
2 cancellation, except for suspension or revocation of the  
3 insured's license or approval by the Commonwealth to provide  
4 health care services or for reason of nonpayment of premium, is  
5 not effective against the insured covered thereby, unless notice  
6 of cancellation shall have been given within 60 days after the  
7 issuance of such contract of insurance against the insured  
8 covered thereunder and no cancellation shall take effect unless  
9 a written notice stating the reasons for the cancellation and  
10 the date and time upon which termination becomes effective has  
11 been received by the [administrator] commissioner at his office.  
12 Mailing of such notice to the [administrator] commissioner at  
13 his principal office address shall constitute notice to the  
14 [administrator] commissioner.

15 Section 10. This act shall take effect immediately and be  
16 retroactive to January 13, 1976.