

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2772 Session of
1998

INTRODUCED BY SERAFINI, DRUCE, COLAIZZO, GEORGE, MARKOSEK,
NAILOR, CHADWICK, SANTONI, FARGO, LEDERER, CARONE, RUBLEY,
BROWNE, J. TAYLOR, M. N. WRIGHT, WAUGH, SHANER, BATTISTO,
WILT, MUNDY, PLATTS, TIGUE, CLYMER, STEELMAN, SAYLOR,
C. WILLIAMS, ALLEN, GORDNER, CAPPABIANCA, MASLAND, MARSICO,
STERN, STABACK, SAINATO, McCALL, ITKIN, ROSS, BENNINGHOFF,
E. Z. TAYLOR, MELIO, HARHAI, BOSCOLA, SCRIMENTI, MAHER,
HASAY, HALUSKA, McILHINNEY AND COLAFELLA, SEPTEMBER 14, 1998

REFERRED TO COMMITTEE ON INSURANCE, SEPTEMBER 14, 1998

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 liability insurance and the Medical Professional Liability
10 Catastrophe Loss Fund.

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

13 Section 1. Section 701(e) of the act of October 15, 1975
14 (P.L.390, No.111), known as the Health Care Services Malpractice
15 Act, amended November 26, 1996 (P.L.776, No.135), is amended to
16 read:

17 Section 701. Professional Liability Insurance and Fund.--* *

18 *

19 (e) (1) After December 31, 1996, the fund shall be funded

1 by the levying of an annual surcharge on or after January 1 of
2 every year on all health care providers entitled to participate
3 in the fund. The surcharge shall be determined by the fund,
4 filed with the commissioner and communicated to all basic
5 insurance coverage carriers and self-insured providers. The
6 surcharge shall be based on the prevailing primary premium for
7 each health care provider for maintenance of professional
8 liability insurance and shall be the appropriate percentage
9 thereof, necessary to produce an amount sufficient to reimburse
10 the fund for the payment of final claims and expenses incurred
11 during the preceding claims period and to provide an amount
12 necessary to maintain an additional 15% of the final claims and
13 expenses incurred during the preceding claims period.

14 (2) The Joint Underwriting Association shall file updated
15 rates for all health care providers with the commissioner by May
16 1 of each year.

17 (3) The fund shall review and may adjust the prevailing
18 primary premium in line with any applicable changes to the
19 prevailing primary premium made in filings by the Joint
20 Underwriting Association and approved by the commissioner.

21 (4) The fund may adjust the applicable prevailing primary
22 premium of any hospital, including a hospital associated with a
23 university or other education institution, through an increase
24 or decrease in the individual hospital's prevailing primary
25 premium not to exceed 20%. Any such adjustment shall be based
26 upon the frequency and severity of claims paid by the fund on
27 behalf of other hospitals of similar class, size, risk and kind
28 within the same defined region during the past five most recent
29 claims periods. All premium adjustments pursuant to this
30 subsection shall require the approval of the commissioner.

1 (5) For health care providers that do not engage in direct
2 clinical practice on a full-time basis, the prevailing primary
3 premium rate shall be adjusted by the fund to reflect the lower
4 risk associated with the less-than-full-time direct clinical
5 practice.

6 (6) The surcharge provided in paragraph (1) shall be
7 reviewed by the commissioner within 30 days of submission. After
8 review, the commissioner may only disapprove a surcharge if it
9 is inadequate or excessive. If so disapproved, the fund shall
10 make an adjustment to the next surcharge calculation to reflect
11 the appropriate increase or decrease.

12 (7) When a health care provider changes the term of its
13 professional liability coverage, the surcharge shall be
14 calculated on an annual base and shall reflect the surcharge
15 percentages in effect for all the surcharge periods over which
16 the policy is in effect.

17 (8) Health care providers having approved self-insurance
18 plans shall be surcharged an amount equal to the surcharge
19 imposed on a health care provider of like class, size, risk and
20 kind as determined by the director. The fund and all income from
21 the fund shall be held in trust, deposited in a segregated
22 account, invested and reinvested by the director, and shall not
23 become a part of the General Fund of the Commonwealth. All
24 claims shall be computed on August 31 for all claims which
25 became final between that date and September 1 of the preceding
26 year. All such claims shall be paid on or before December 31
27 following the August 31 by which they became final, as provided
28 above.

29 (9) Notwithstanding the above provisions relating to an
30 annual surcharge, the commissioner shall have the authority,

1 during September of each year, if the fund would be exhausted by
2 the payment in full of all claims which have become final and
3 the expenses of the fund, to determine and levy an emergency
4 surcharge on all health care providers then entitled to
5 participate in the fund. Such emergency surcharge shall be the
6 appropriate percentage of the cost to each health care provider
7 for maintenance of professional liability insurance necessary to
8 produce an amount sufficient to allow the fund to pay in full
9 all claims determined to be final as of August 31 of each year
10 and the expenses of the fund as of December 31 of each year.

11 (10) The annual and emergency surcharges on health care
12 providers and any income realized by investment or reinvestment
13 shall constitute the sole and exclusive sources of funding for
14 the fund. No claims or expenses against the fund shall be deemed
15 to constitute a debt of the Commonwealth or a charge against the
16 General Fund of the Commonwealth.

17 (11) The director shall issue rules and regulations
18 consistent with this section regarding the establishment and
19 operation of the fund including all procedures and the levying,
20 payment and collection of the surcharges except that the
21 commissioner shall issue rules and regulations regarding the
22 imposition of the emergency surcharge.

23 (12) Upon the effective date of this section, the fund shall
24 immediately notify all insurers writing professional liability
25 insurance of the schedule of occurrence rates approved by the
26 commissioner and in effect for the Joint Underwriting
27 Association.

28 (13) Within 20 days of the effective date of this section,
29 the fund shall recalculate the surcharge for health care
30 providers for the surcharge period beginning January 1, 1997,

1 based upon the prevailing primary premium.

2 (14) A health care provider may elect to pay the annual
3 surcharge in equal installments, not exceeding four, if the
4 health care provider informs the primary carrier of the option
5 to pay in installments and the entire annual surcharge is
6 collected and remitted to the fund by December 10, with four
7 equal installments commencing 60 days from the date of policy
8 inception or renewal with payment due each 60 days thereafter
9 until the full remittance is paid. This paragraph shall apply to
10 surcharges for 1997. This paragraph shall expire January 1,
11 1998.

12 (15) A health care provider may elect to pay the annual
13 surcharge in equal installments, not exceeding four, if the
14 health care provider informs the primary carrier of the option
15 to pay in installments and the entire annual surcharge is
16 collected and remitted to the fund by December 31.

17 * * *

18 Section 2. This act shall take effect immediately.