

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2225 Session of
2001

INTRODUCED BY BARD, GODSHALL, TURZAI, SCHRODER, ARMSTRONG,
BENNINGHOFF, CREIGHTON, FAIRCHILD, FLICK, GABIG, KENNEY,
MACKERETH, McILHATTAN, RUBLEY, SATHER, SEMMEL, STERN, WILT,
M. WRIGHT AND YOUNGBLOOD, DECEMBER 11, 2001

REFERRED TO COMMITTEE ON INSURANCE, DECEMBER 11, 2001

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 the
9 payment of the unfunded liabilities of the Medical
10 Professional Liability Catastrophe Loss Fund; repealing
11 provisions related to the Medical Professional Liability
12 Insurance Catastrophe Loss Fund Advisory Board; and creating
13 the Pennsylvania Medical Professional Liability Catastrophe
14 Loss Authority and providing for its governance and powers.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. The definition of "director" in section 103 of
18 the act of October 15, 1975 (P.L.390, No.111), known as the
19 Health Care Services Malpractice Act, amended November 26, 1996
20 (P.L.776, No.135), is amended and the section is amended by
21 adding definitions to read:

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

23 "Aggregate unfunded liability" means the costs of

administering, paying, defending, settling, litigating,
financing and estimating authority claims.

"Assessments" means the annual assessments levied by the
authority pursuant to section 701.1(q)(2).

"Authority" means the Pennsylvania Medical Professional
Liability Catastrophe Loss Authority created in Article VII.

"Authority buyout fund" means the fund established in section
701.2(h)(5).

"Authority claims" means those claims set forth in section
701.1(q).

"Basic insurance coverage" means the minimum professional
liability insurance or self-insurance requirements as set forth
in section 701(a).

"Board" or "governing board" means the governing board of the
authority established under section 701.1(c).

"Bond" means and includes a note, bond, bond anticipation
note, refunding note and bond, interim certificate, debenture
and other evidence of indebtedness or obligation, other than a
revenue anticipation note, which the authority is authorized to
issue pursuant to this act.

"Bond or revenue anticipation note payment account" means the
account or accounts established pursuant to section 701.2(h)(3).

* * *

"Debt service reserve fund" means the fund or funds
established pursuant to section 701.2(h)(2).

["Director" means the Director of the Medical Professional
Liability Catastrophe Loss Fund.]

"Executive director" means the executive director of the
authority appointed pursuant to section 701.1(h)(2).

"Financial plan" means the plan required to be adopted by the

1 authority pursuant to section 701.1(n).

2 * * *

3 "Government agency" means the Governor, departments, boards,
4 commissions, authorities and other officers and agencies of the
5 Commonwealth, including, but not limited to, those which are not
6 subject to the policy supervision and control of the Governor.
7 The term does not include any court or other officer or agency
8 of the unified judicial system or the General Assembly or its
9 officers and agencies.

10 * * *

11 "Medical Professional Liability Catastrophe Loss Fund" means
12 the fund transferred to the authority by this act, the unfunded
13 liability of which will, upon its termination pursuant to this
14 act, be transferred to the authority and paid from the authority
15 buyout fund.

16 "Minimum reserve fund requirement" means that amount defined
17 as the minimum debt service reserve fund requirement for such
18 fund or funds as specified in a resolution or resolutions of the
19 authority authorizing the issuance of bonds.

20 * * *

21 "Political subdivision" means any county, city, borough,
22 incorporated town, township, school district or vocational
23 school district.

24 * * *

25 "Refund" means, together with its variations, with regard to
26 bonds, the issuance and sale of bonds, the proceeds of which are
27 used or are to be used, either now or in the future, after
28 investment in an escrow account, for the payment of principal or
29 interest on, or the redemption of, outstanding bonds of the
30 authority either at maturity or upon prior redemption.

1 "Revenue anticipation notes" means notes issued by the
2 authority pursuant to section 701.2(g) in anticipation of the
3 receipt of revenues from assessments levied under section
4 701.1(g).

5 "Right-to-Know Law" means the act of June 21, 1957 (P.L.390,
6 No.212), referred to as the Right-to-Know Law.

7 "Sunshine Act" means 65 Pa.C.S. Ch. 7 (relating to open
8 meetings).

9 "Surplus assessment fund" means the fund or funds established
10 pursuant to section 701.2(h)(6).

11 Section 2. Sections 605 and 701 of the act, amended November
12 26, 1996 (P.L.776, No.135), are amended to read:

13 Section 605. Statute of Limitations.--(a) All claims for
14 recovery pursuant to this act must be commenced within the
15 existing applicable statutes of limitation. In the event that
16 any claim is made against a health care provider subject to the
17 provisions of Article VII more than four years after the breach
18 of contract or tort occurred which is filed within the statute
19 of limitations, such claim shall be defended and paid by the
20 [fund] authority if the [fund] authority has received a written
21 request for indemnity and defense within 180 days of the date on
22 which notice of the claim is given to the health care provider
23 or his insurer. For these claims, the limit of liability of the
24 authority shall be \$1,000,000 for each occurrence for each
25 health care provider. Where multiple treatments or consultations
26 took place less than four years before the date on which the
27 health care provider or his insurer received notice of the
28 claim, the claim shall be deemed, for purposes of this section,
29 to have occurred less than four years prior to the date of
30 notice and shall be defended by the insurer pursuant to section

1 702(d). If such claim is made after four years because of the
2 willful concealment by the health care provider or his insurer,
3 the [fund] authority shall have the right of full indemnity
4 including defense costs from such health care provider or his
5 insurer. [A filing pursuant to section 401 shall toll the
6 running of the limitations contained herein.]

7 (b) For policies issued or renewed in the calendar year
8 2003, and each year thereafter, the limit of liability of the
9 authority under this section shall be \$0 for each occurrence, on
10 or after the date of issue or renewal, for each health care
11 provider and per annual aggregate for each health care provider
12 and the authority shall not be responsible for defense of claims
13 under this section.

14 Section 701. Professional Liability Insurance [and Fund].--

15 (a) Every health care provider as defined in this act,
16 practicing medicine or podiatry or otherwise providing health
17 care services in the Commonwealth shall insure his professional
18 liability only with an insurer licensed or approved by the
19 Commonwealth of Pennsylvania, or provide proof of self-insurance
20 in accordance with this section.

21 (1) (i) For policies issued or renewed in the calendar
22 years 1997 [through] and 1998, a health care provider, other
23 than hospitals, who conducts more than 50% of its health care
24 business or practice within the Commonwealth of Pennsylvania
25 shall annually insure or self-insure its professional liability
26 in the amount of \$300,000 per occurrence and \$900,000 per annual
27 aggregate, and hospitals located in the Commonwealth shall
28 insure or self-insure their professional liability in the amount
29 of \$300,000 per occurrence, and \$1,500,000 per annual aggregate,
30 hereinafter known as ["basic coverage insurance"] basic

1 insurance coverage, and they shall be entitled to participate in
2 the [fund] authority.

3 (ii) For policies issued or renewed in the calendar years
4 1999 [through 2000] and 2000, the basic insurance coverage for a
5 health care provider, other than hospitals, who conducts more
6 than 50% of its health care business or practice within this
7 Commonwealth shall [annually insure or self-insure its
8 professional liability], on an annual basis, be in the amount of
9 \$400,000 per occurrence and \$1,200,000 per annual aggregate, and
10 for hospitals located in this Commonwealth [shall insure or
11 self-insure their professional liability] the basic, insurance
12 coverage, on an annual basis, shall be in the amount of \$400,000
13 per occurrence and \$2,000,000 per annual aggregate, and they
14 shall be entitled to participate in the authority.

15 (iii) For policies issued or renewed in the calendar year
16 2001[, and each year thereafter,] and 2002, the basic insurance
17 coverage for a health care provider, other than hospitals, who
18 conducts more than 50% of its health care, business or practice
19 within this Commonwealth shall [annually insure or self-insure
20 its professional liability], on an annual basis, be in the
21 amount of \$500,000 per occurrence and \$1,500,000 per annual
22 aggregate, and for hospitals located in this Commonwealth [shall
23 insure or self-insure their professional liability] the basic
24 insurance coverage, on an annual basis, shall be in the amount
25 of \$500,000 per occurrence and \$2,500,000 per annual
26 aggregate[.], and they shall be entitled to participate in the
27 authority.

28 (iv) For policies issued or renewed in the calendar year
29 2003 and thereafter, the basic insurance coverage for a health
30 care provider, other than hospitals, who conducts more than 50%

1 of its health care business or practice within this Commonwealth
2 shall, on an annual basis, be in the amount of \$250,000 per
3 occurrence, and \$750,000 per annual aggregate, and for hospitals
4 located in this Commonwealth the basic insurance coverage, on an
5 annual basis, shall be in the amount of \$250,000 per occurrence,
6 and \$1,250,000 per annual aggregate, and they shall be entitled
7 to participate in the authority.

8 (2) (i) A health care provider who conducts 50% or less of
9 its health care business or practice within the Commonwealth
10 shall insure or self-insure its professional liability in the
11 amounts listed in subparagraphs (ii)[, (iii) and (iv)] through
12 (v) and shall not be required to contribute to or be entitled to
13 participate in the [fund] authority set forth in Article VII of
14 this act or the plan set forth in Article VIII of this act.

15 (ii) For policies issued or renewed in calendar years 1997
16 through 1998, basic insurance coverage shall, on an annual
17 basis, be in the amount of \$300,000 per occurrence and \$900,000
18 per annual aggregate.

19 (iii) For policies issued or renewed in calendar years 1999
20 through 2000, basic insurance coverage shall, on an annual
21 basis, be in the amount of \$400,000 per occurrence and
22 \$1,200,000 per annual aggregate.

23 (iv) For policies issued or renewed in calendar year 2001[,
24 and each year thereafter] and 2002, basic insurance coverage
25 shall, on an annual basis, be in the amount of \$500,000 per
26 occurrence and \$1,500,000 per annual aggregate.

27 (v) For policies issued or renewed in calendar year 2003 and
28 thereafter, basic insurance coverage shall, on an annual basis,
29 be in the amount of \$250,000 per occurrence and \$750,000 per
30 annual aggregate.

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

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

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

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

(b) (1) No insurer providing professional liability insurance shall be liable for payment of any claim against a health care provider for any loss or damages awarded in a professional liability action in excess of the basic coverage insurance, as provided in subsection (a)(1) for each health care provider against whom an award is made unless the health care provider's professional liability policy or self-insurance plan provides for a higher annual aggregate limit.

(2) If a claim exceeds the aggregate limits of an insurer or a self-insurance plan, the [fund] authority shall be responsible for the payment of the claim up to the [fund] authority coverage limits.

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

1 payment of all [surcharges] assessments under this act.

2 [(d) There is hereby created a contingency fund for the
3 purpose of paying all awards, judgments and settlements for loss
4 or damages against a health care provider entitled to
5 participate in the fund as a consequence of any claim for
6 professional liability brought against such health care provider
7 as a defendant or an additional defendant to the extent such
8 health care provider's share exceeds its basic coverage
9 insurance in effect at the time of occurrence as provided in
10 subsection (a)(1). The limit of liability of the fund shall be
11 as follows:

12 (1) For calendar years 1997 through 1998, the limit of
13 liability of the fund shall be \$900,000 for each occurrence for
14 each health care provider and \$2,700,000 per annual aggregate
15 for each health care provider.

16 (2) For calendar years 1999 through 2000, the limit of
17 liability of the fund shall be \$800,000 for each occurrence for
18 each health care provider and \$2,400,000 per annual aggregate
19 for each health care provider.

20 (3) For calendar year 2001, and each year thereafter, the
21 limit of liability of the fund shall be \$700,000 for each
22 occurrence for each health care provider and \$2,100,000 per
23 annual aggregate for each health care provider.

24 (e) (1) After December 31, 1996, the fund shall be funded
25 by the levying of an annual surcharge on or after January 1 of
26 every year on all health care providers entitled to participate
27 in the fund. The surcharge shall be determined by the fund,
28 filed with the commissioner and communicated to all basic
29 insurance coverage carriers and self-insured providers. The
30 surcharge shall be based on the prevailing primary premium for

1 each health care provider for maintenance of professional
2 liability insurance and shall be the appropriate percentage
3 thereof, necessary to produce an amount sufficient to reimburse
4 the fund for the payment of final claims and expenses incurred
5 during the preceding claims period and to provide an amount
6 necessary to maintain an additional 15% of the final claims and
7 expenses incurred during the preceding claims period.

8 (2) The Joint Underwriting Association shall file updated
9 rates for all health care providers with the commissioner by May
10 1 of each year.

11 (3) The fund shall review and may adjust the prevailing
12 primary premium in line with any applicable changes to the
13 prevailing primary premium made in filings by the Joint
14 Underwriting Association and approved by the commissioner.

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

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

30 (6) The surcharge provided in paragraph (1) shall be

1 reviewed by the commissioner within 30 days of submission. After
2 review, the commissioner may only disapprove a surcharge if it
3 is inadequate or excessive. If so disapproved, the fund shall
4 make an adjustment to the next surcharge calculation to reflect
5 the appropriate increase or decrease.

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

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

23 (9) Notwithstanding the above provisions relating to an
24 annual surcharge, the commissioner shall have the authority,
25 during September of each year, if the fund would be exhausted by
26 the payment in full of all claims which have become final and
27 the expenses of the fund, to determine and levy an emergency
28 surcharge on all health care providers then entitled to
29 participate in the fund. Such emergency surcharge shall be the
30 appropriate percentage of the cost to each health care provider

1 for maintenance of professional liability insurance necessary to
2 produce an amount sufficient to allow the fund to pay in full
3 all claims determined to be final as of August 31 of each year
4 and the expenses of the fund as of December 31 of each year.

5 (10) The annual and emergency surcharges on health care
6 providers and any income realized by investment or reinvestment
7 shall constitute the sole and exclusive sources of funding for
8 the fund. No claims or expenses against the fund shall be deemed
9 to constitute a debt of the Commonwealth or a charge against the
10 General Fund of the Commonwealth.

11 (11) The director shall issue rules and regulations
12 consistent with this section regarding the establishment and
13 operation of the fund including all procedures and the levying,
14 payment and collection of the surcharges except that the
15 commissioner shall issue rules and regulations regarding the
16 imposition of the emergency surcharge.

17 (12) Upon the effective date of this section, the fund shall
18 immediately notify all insurers writing professional liability
19 insurance of the schedule of occurrence rates approved by the
20 commissioner and in effect for the Joint Underwriting
21 Association.

22 (13) Within 20 days of the effective date of this section,
23 the fund shall recalculate the surcharge for health care
24 providers for the surcharge period beginning January 1, 1997,
25 based upon the prevailing primary premium.

26 (14) A health care provider may elect to pay the annual
27 surcharge in equal installments, not exceeding four, if the
28 health care provider informs the primary carrier of the option
29 to pay in installments and the entire annual surcharge is
30 collected and remitted to the fund by December 10, with four

1 equal installments commencing 60 days from the date of policy
2 inception or renewal with payment due each 60 days thereafter
3 until the full remittance is paid. This paragraph shall apply to
4 surcharges for 1997. This paragraph shall expire January 1,
5 1998.

6 (f) The failure of any health care provider to comply with
7 any of the provisions of this section or any of the rules and
8 regulations issued by the director shall result in the
9 suspension or revocation of the health care provider's license
10 by the licensure board.

11 (g) Any physician who exclusively practices the specialty of
12 forensic pathology shall be exempt from the provisions of this
13 act.

14 (h) All health care providers who are members of the
15 Pennsylvania military forces are exempt from the provisions of
16 this act while in the performance of their assigned duty in the
17 Pennsylvania military forces under orders.]

18 Section 3. The act is amended by adding sections to read:

19 Section 701.1. Pennsylvania Medical Professional Liability
20 Catastrophe Loss Authority.--(a) The Pennsylvania Medical
21 Professional Liability Catastrophe Loss Fund shall be terminated
22 on January 1, 2003. Upon appointment of the initial members of
23 the board as provided in subsection (c)(1), the following shall
24 occur:

25 (1) The operation, management and control of the fund until
26 its termination date as set forth herein shall be vested in the
27 authority.

28 (2) All allocations, appropriations, equipment, claims and
29 other files, contracts, agreements, obligations and other
30 materials which are used, employed or expended by the

Pennsylvania Medical Professional Liability Catastrophe Loss Fund shall be and are hereby transferred to the authority as if these contracts, agreements and obligations had been incurred or entered into by the authority.

(3) The director of the Medical Professional Liability Catastrophe Loss Fund shall have no authority, duties or responsibilities pursuant to this act, shall continue to serve at the pleasure of the board and shall exercise only that authority and those duties or responsibilities specifically assigned to him or her by the board. Upon termination of the Pennsylvania Medical Professional Liability Catastrophe Loss Fund, the authority shall assume and pay the unfunded liability of the fund pursuant to this act. Claim files transferred to the authority pursuant to this subsection shall be confidential and shall not be subject to the "Right-to-Know law."

(b) There is hereby created a body corporate and politic to be known as the Pennsylvania Medical Professional Liability Catastrophe Loss Authority for the purpose of paying all awards, judgments and settlements for loss or damages against a health care provider entitled to participate in the authority as a consequence of any claim for professional liability brought against such health care provider as a defendant or an additional defendant to the extent such health care provider's liability exceeds its basic insurance coverage as required in section 701(a)(1) and consistent with section 605 and subsection (d). The authority shall be a public authority and instrumentality of the Commonwealth, exercising public powers of the Commonwealth as an agency and instrumentality thereof. The exercise by the authority of the powers conferred by this act is hereby declared to be and shall for all purposes be deemed and

1 held to be the performance of an essential public function.

2 (c) The following provisions shall apply to the governing
3 board:

4 (1) The powers and duties of the authority shall be
5 exercised by a governing board composed of five members to be
6 appointed as follows:

7 (i) One member shall be appointed by the Governor.

8 (ii) Four members shall be appointed by the Majority Leader
9 of the Senate, the Minority Leader of the Senate, the Majority
10 Leader of the House of Representatives, and the Minority Leader
11 of the House of Representatives, each of whom shall make one
12 appointment. Initial appointments to the board shall be made
13 within ten days following the effective date of this section.
14 Members of the governing board shall have qualifications or
15 experience in banking, finance or insurance. No member of the
16 board shall be an individual, or represent individuals or
17 organizations, that participate in the authority. No member of
18 the board shall be an attorney representing claimants or health
19 care providers in medical malpractice litigation subject to the
20 provisions of this act. No member of the board shall be an
21 employee, or a representative, of a firm which represents
22 claimants or health care providers in medical malpractice
23 litigation subject to the provisions of this act. No member of
24 the board shall seek or hold any position as any other public
25 official within the Commonwealth or as any national, state, or
26 local political party officer nor shall any member of the board
27 seek election as a public official or as a national, state, or
28 local political party officer for a period of one year following
29 his or her service on the board.

30 (2) The term of a member of the board shall begin on the

date of appointment. The member appointed by the Governor shall have an initial term of four years; members appointed by the majority leaders shall have an initial term of four years; and members appointed by the minority leaders shall have an initial term of two years. All subsequent appointments shall be for three-year terms. The member's term shall continue until his or her replacement is appointed, but in no event longer than six months from the expiration of the member's term. A board member may be reappointed to serve an additional term or terms. Whenever a vacancy occurs prior to the end of a member's term, the appointing authority who originally appointed the board member whose seat has become vacant shall appoint a successor member within 30 days of the vacancy. A member appointed to fill a vacancy prior to the expiration of a term shall serve the unexpired term and shall subsequently be eligible for appointment to a full term.

(3) The appointee of the Governor shall set a date, time and place for the initial organizational meeting of the board within ten days of the appointment of all of the initial members of the board. The members shall elect from among themselves a chairperson, vice-chairperson, secretary, treasurer and such other officers as they, in their sole discretion, shall determine. A member may hold more than one office of the board at any time.

(4) The board shall meet as frequently as it deems appropriate but at least once during each quarter of the fiscal year. In addition, a meeting of the board shall be called by the chairperson if a request for a meeting is submitted to the chairperson in writing by at least two members of the board. A majority of the full board shall constitute a quorum for the

1 purpose of conducting the business of the board and for all
2 other purposes. A board member must be physically present to be
3 counted toward the quorum. All actions of the board shall be
4 taken by a simple majority of the board majority.

5 (5) Board members shall not receive compensation or
6 remuneration for their service on the board, but shall be
7 entitled to reimbursement for all reasonable and necessary
8 actual expenses in connection with their attendance at meetings
9 and the performance of their duties under this act.

10 (d) The limit of liability of the authority shall be as
11 follows:

12 (1) For policies issued or renewed in the calendar years
13 1997 and 1998, the limit of liability of the authority shall be
14 \$900,000 for each occurrence, on or after the date of issue or
15 renewal, for each health care provider and \$2,700,000 per annual
16 aggregate for each health care provider, in excess of the basic
17 insurance coverage.

18 (2) For policies issued or renewed in the calendar years
19 1999 and 2000, the limit of liability of the authority shall be
20 \$800,000 for each occurrence, on or after the date of issue or
21 renewal, for each health care provider and \$2,400,000 per annual
22 aggregate for each health care provider, in excess of the basic
23 insurance coverage.

24 (3) For policies issued or renewed in the calendar years
25 2001 and 2002, the limit of liability of the authority shall be
26 \$700,000 for each occurrence, on or after the date of issue or
27 renewal, for each health care provider and \$2,100,000 per annual
28 aggregate for each health care provider, in excess of the basic
29 insurance coverage.

30 (4) For policies issued or renewed in the calendar year

1 2003, and each year thereafter, the limit of liability of the
2 authority shall be \$0 for each occurrence, on or after the date
3 of issue or renewal, for each health care provider and \$0 per
4 annual aggregate for each health care provider.

5 (e) With regard to disposition of authority claims, the
6 board shall appoint a claims committee whose members shall be
7 representatives of the health care provider classes entitled to
8 participate in the authority in substantially the same
9 proportion as those health care provider classes pay assessments
10 to the authority, but in no case shall a provider class have
11 less than one representative on the claims committee. The claims
12 committee shall review and advise the authority on the
13 disposition of all claims. Acting through the claims committee,
14 the authority shall have the following rights, powers, duties
15 and responsibilities, in addition to all other rights, powers,
16 duties and responsibilities imposed by this act or other acts,
17 rules or regulations applicable thereto:

18 (1) The executive director shall be promptly notified, in
19 writing, by a basic insurance coverage carrier or by a self-
20 insurance plan, of any case involving an authority claim where
21 such insurance carrier or self-insurance plan reasonably
22 believes that the value of the claim exceeds 50% of the basic
23 insurer's coverage or self-insurance plan or falls under the
24 provisions of section 605 or subsection (d). The executive
25 director shall prescribe the form of such notification. Any and
26 all information provided to the executive director pursuant to
27 this paragraph shall be confidential and shall not be subject to
28 the "Right-to-Know Law."

29 (2) The basic insurance coverage carrier or self-insurance
30 plan shall be responsible to provide a defense for authority

claims, including defense of the authority buyout fund, except as provided in section 605 and subsection (d). In all instances where the executive director has received proper notice in accordance with paragraph (1), the authority may, but shall not be obligated to, join in the defense and be represented by counsel.

(3) In the event that the basic insurance coverage carrier or self-insurance plan enters into a settlement with the claimant to the full extent of its liability as provided above, it may obtain a release from the claimant to the extent of its payment, which payment shall not have any effect upon any claim against the authority buyout fund or the duty of the authority to continue the defense of the claim.

(4) The authority, acting through the executive director or any other authorized agent, is authorized, empowered and directed to do any and all acts and things as it may determine to be necessary to defend, litigate, settle or compromise any claim made against the authority buyout fund. A health care provider's basic insurance coverage carrier or self-insurance plan shall have the right to approve any settlement entered into by the authority on behalf of the insured health care provider; provided, however, that the settlement shall be deemed approved by the basic insurance coverage carrier or self-insurance plan if such carrier or plan fails to notify the executive director of its disapproval, in writing, within five days of the receipt of written notice from the executive director of intent to approve the settlement. In the event that more than one health care provider is party to a settlement, each health care provider's basic insurance coverage carrier or self-insurance plan shall have the right to approve only that portion of the

settlement which is contributed on behalf of its insured health care provider.

(5) The authority is hereby authorized and empowered to use all or any portion of moneys on deposit in the authority buyout fund, or otherwise available to the authority and not otherwise required for the payment of debt service requirements or operating expenses, to contract with one or more licensed insurers for the payment of any and all awards, judgments or settlements for loss or damage arising out of, and to administer, defend, settle, litigate or compromise, any authority claim.

(6) Nothing in this act shall preclude the authority from adjusting or paying for the adjustment of authority claims, provided that such payment or adjustment is consistent with the financial plan adopted by the authority and in place at such time.

(7) Upon the request of a party to a case within the authority buyout fund coverage limits, the authority may provide for a mediator in instances where multiple carriers disagree on the disposition or settlement of a case. Upon the consent of all parties to any proceeding hereunder that mediation shall be binding, the parties shall be bound by the conclusions of the mediator. The authority shall promulgate such rules and regulations as are necessary, proper or desirable to implement this provision. Proceedings conducted under this subsection shall be confidential and shall not be subject to the "Sunshine Act" and information provided during or as a result of such proceedings shall not be considered public information subject to disclosure under the "Right-to-Know Law."

(8) Delay damages and postjudgment interest applicable to

1 the liability of the authority buyout fund may be paid by the
2 authority from amounts on deposit in or allocable to the
3 authority buyout fund and shall not be charged against the
4 health care provider's annual aggregate limits. The basic
5 insurance coverage carrier or self-insurance plan shall be
6 responsible for its proportionate share of delay damages and
7 postjudgment interest.

8 (9) The authority may authorize any health care provider to
9 manage their claims.

10 (10) The executive director shall, at each meeting of the
11 board, report in summary form on adjustments or settlements of
12 claims under paragraphs (4), (5) and (6).

13 (f) Statutes applicable to authority.--Unless otherwise
14 expressly provided in this act, the provisions of the following
15 acts shall apply to the authority:

16 (1) the "Right-to-Know law";

17 (2) the "Sunshine Act";

18 (3) the act of July 19, 1957 (P.L.1017, No.451), known as
19 the "State Adverse Interest Act"; and

20 (4) 65 Pa.C.S., Ch. 11 (relating to ethic standards and
21 financial disclosure).

22 (g) The authority is established for the purposes, without
23 limitation, by itself or by agreement and in cooperation with
24 others, of providing reinsurance, management and financing and
25 refinancing through purchase, sale or otherwise, of claims
26 accrued or to be accrued against the Pennsylvania Medical
27 Professional Liability Catastrophe Loss Fund through and
28 including December 31, 2006, and against the authority
29 consistent with Section 605 and subsection (d). The authority
30 shall have all powers necessary, proper or desirable to effect

the purposes of this act, including, but not limited to, the following:

(1) To commission a study to reliably estimate the amount of moneys, including costs of administration, defense, financing, insurance, reinsurance, settlement, litigation and otherwise, which will be required to pay all awards, judgments and settlements for loss and damages against health care providers entitled to participate in the Medical Professional Liability Catastrophe Loss Fund as a consequence of any claim for professional liability which arises out of an occurrence occurring prior to January 1, 2003, to the extent that:

(i) such health care provider's liability exceeds its basic insurance coverage as provided in section 701(a)(1);

(ii) such award, judgment or settlement is within the limits of liability of the authority set forth in Section 605 and subsection (d); and

(iii) the claim for recovery which is the basis for such award, judgment or settlement is commenced within the existing applicable statute of limitations.

(2) To commission updates to such study, at least once every two years, to determine if the estimate of the aggregate unfunded liability is accurate and to adjust, as needed, such estimate to more accurately reflect the aggregate unfunded liability based on the information obtained since the initial study or previous update, as applicable. The initial study and each update conducted in accordance with this paragraph shall specify all relevant assumptions upon which the determinations were based, and shall be submitted in a report to the Governor, the Majority and Minority Chairpersons of the Senate Banking and Insurance Committee and the Majority and Minority Chairpersons

1 of the House Insurance Committee.

2 (3) To pay all awards, judgments and settlements for loss or
3 damages against a health care provider entitled to participate
4 in the authority as a consequence of any authority claim as they
5 become final, such payment to be made solely from moneys on
6 deposit in the authority buyout fund.

7 (4) To enter into any and all contracts, agreements or other
8 instruments necessary, proper or desirable to conduct its
9 business and fulfill its duties and obligations hereunder.

10 (5) To sue and be sued, implead and be impleaded, complain
11 and defend in all courts.

12 (6) To adopt, use and alter at will a corporate seal.

13 (7) To adopt bylaws for the management and regulation of its
14 affairs and to adopt rules and policies and to promulgate
15 regulations in connection with the performance of its functions
16 and duties which, notwithstanding any other provision of law to
17 the contrary, shall be submitted as final-omitted regulations
18 pursuant to the act of June 25, 1982 (P.L.633, No.181), known as
19 the "Regulatory Review Act"; provided, however, that, at least
20 ten days prior to submission of any final-omitted regulation,
21 the authority shall provide each basic insurance coverage
22 insurance carrier and self-insurance plan with a summary of the
23 final-omitted regulation and a notice setting forth the subject
24 of the final-omitted regulation and the date on which the final-
25 omitted regulation will be submitted to the Independent
26 Regulatory Review Commission and the standing committees, and
27 cause a copy of the foregoing notice to be published in the
28 Pennsylvania Bulletin.

29 (8) To appoint officers, agents, employees and servants and
30 to prescribe their duties and obligations and to fix their

compensation as set forth herein or otherwise required to
fulfill its duties and obligations hereunder.

(8.1) Any person who is an employee of the fund on the
effective date of this section and who becomes an employee of
the authority shall remain a member of and continue to be
eligible to participate under the State Employees' Retirement
System.

(9) To retain outside counsel, auditors and such other
professional advisors and consultants as it may determine to be
necessary, proper or desirable to render such professional and
advisory services as the authority deems appropriate.

(10) To cooperate with any Federal or state agency.

(11) To acquire by gift or otherwise, purchase, hold,
receive, lease, sublease and use any franchise, license or
personal property or any interest therein. The authority shall
not purchase real property and shall lease or sublease real
property solely for the purpose of providing office space in
which the authority will conduct its business.

(12) To sell, transfer, convey or otherwise dispose of any
property or any interest therein.

(13) To enter into any contracts for group insurance and to
contribute to retirement plans for the benefit of its employees
and to enroll its employees in an existing retirement system of
a government agency.

(14) To accept, purchase or borrow equipment, supplies,
services or other things necessary, proper or desirable to the
work of the authority from other government agencies, and all
government agencies are hereby authorized and empowered to
contract with the authority for, and to sell, lend or grant to
the authority, such equipment, supplies, services or other

things necessary, proper or desirable to fulfill the duties of the authority hereunder.

(15) To borrow money for the purpose of fulfilling its duties and obligations hereunder and to evidence the same through the execution and delivery of bonds and revenue anticipation notes hereunder; to secure payment of such bonds, or any part thereof, by pledge of or security interest in all or any part of its revenues, receipts, accounts, tangible personal property and contract rights; to secure payment of such revenue anticipation notes as provided in section 701.2; to make such agreements with purchasers or holders of such bonds and revenue anticipation notes or with any other obligees of the authority, which agreements shall be in such form and contain such terms and conditions as shall be necessary, proper or desirable to effect the purposes of the authority hereunder, and shall constitute contracts with the holders of such bonds and revenue anticipation notes; to obtain such credit enhancement or liquidity facilities in connection with any such bond or revenue anticipation note as the authority shall determine to be advantageous; and in general, to provide for the security for any such bonds and revenue anticipation notes and the rights of the owners or holders thereof. The authority shall use the most cost-effective financing methods available.

(16) To negotiate the terms and conditions of, and to enter into any agreements with, insurance companies and others relating to the sale, transfer, assignment, payment and/or management of any claims or losses associated with any authority claim, which terms, conditions and agreements shall be determined by the authority to be necessary, proper or desirable to effect the purposes of the authority hereunder.

1 (17) To invest any funds of the authority in investments
2 approved by the board from time to time in accordance with the
3 provisions of this act.

4 (18) To receive and hold assets, moneys and funds from any
5 source, including, but not limited to, appropriations, grants,
6 gifts and assessments made pursuant to the provisions of this
7 act.

8 (19) To procure such insurance, reinsurance, guarantees,
9 sureties and other insurance and financial products as the
10 authority may determine to be necessary, proper or desirable to
11 fulfill its purposes hereunder.

12 (20) To pledge the credit of the authority in the manner
13 provided by this act.

14 (21) To do all acts and things necessary, proper or
15 desirable to fulfill its duties and obligations hereunder.

16 (h) The following provisions shall apply to employees and
17 agents of the authority:

18 (1) The board shall fix and determine the number of
19 employees of the authority and their respective compensation and
20 duties. The board may contract for or receive the loan of
21 services of persons in the employ of other government agencies,
22 and other government agencies shall be authorized to make such
23 employees available. No employee of the authority, except for
24 any person in the employment of another government agency who is
25 made available to the authority pursuant to this paragraph,
26 shall seek or hold any position as a public official within this
27 Commonwealth or as any national, State or local political party
28 officer while in the service of the authority. Except as
29 provided in paragraph (2) with regard to the executive director,
30 employees of the authority may serve as appointive public

officials at any time following their service with the authority.

(2) The board shall retain an executive director upon the vote of a majority of the full board. The board shall, upon the approval of a majority of the full board, delegate to the executive director such powers of the board as the board shall deem necessary, proper or desirable to carry out the purposes of the authority, subject in every case to the supervision and control of the board. Subject to any limitations imposed by the board, and consistent with the requirements of this act, the executive director: (i) shall administer all funds and accounts of the authority; (ii) may employ and fix the compensation of such clerical and other assistants as he or she may determine to be necessary, proper or desirable to fulfill the purposes of the authority hereunder; and (iii) may promulgate rules and shall not seek election as a public official or as a national, State or local party officer for a period of one year following his or her service with the authority.

(3) The board shall, by the vote of a majority of the full board, hire a general counsel to the authority. The board may employ such other counsel, in addition to the general counsel, as it, in its sole discretion, shall determine. For purposes of the general counsel and other counsel employed by the board, the authority shall not be considered either an executive agency or an independent agency for the purpose of the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," but shall possess the same status for such purpose as the Auditor General, State Treasurer and the Pennsylvania Public Utility Commission; except that the provisions of section 204(f) of the "Commonwealth Attorneys Act" shall not apply to the

1 authority and that, notwithstanding the provisions of section
2 221(1) of the act of October 5, 1980 (P.L.693, No.142), known as
3 the "JARA Continuation Act of 1980," the authority, through its
4 legal counsel, shall defend actions brought against the
5 authority or its members, officers, officials and employees when
6 acting within the scope of their official duties.

7 (i) Notwithstanding any purpose or general or specific power
8 granted to the authority by this act or any other act, whether
9 express or implied:

10 (1) The authority shall have no power or authority to pledge
11 the credit or taxing powers of the Commonwealth or any political
12 subdivision, except the credit of the authority created by this
13 act, nor shall any bonds or revenue anticipation notes of the
14 authority be deemed a debt or liability of the Commonwealth or
15 any political subdivision.

16 (2) The Commonwealth, any government agency, or any
17 political subdivision shall not be liable for such payment of
18 principal, interest, or premium on any authority bonds or
19 revenue anticipation notes. Liability shall be the sole
20 responsibility of the authority.

21 (3) Notwithstanding any provision of this or any other law
22 to the contrary, or of any implication that may be drawn
23 therefrom, the Commonwealth and its political subdivisions shall
24 have no legal or moral obligation for the payment of any
25 expenses or obligations of the authority, including, but not
26 limited to, bond or revenue anticipation note principal and
27 interest, the funding or refunding of any reserves and any
28 administrative or operating expenses whatsoever, other than for
29 the appropriation of funds for initial operating expenses of the
30 authority contained in subsection (q)(1).

1 (4) Bonds and revenue anticipation notes issued by the
2 authority shall contain a prominent statement of the limitations
3 set forth in this subsection and shall further recite that
4 obligees of the authority shall have no recourse, either legal
5 or moral, to the Commonwealth or to any political subdivision
6 for any payment of any amounts with respect to such bonds or
7 revenue anticipation notes.

8 (j) The authority shall have continuing existence and
9 succession for a term not to exceed one year after final payment
10 and discharge of all of its liabilities, including without
11 limitation, its bonds and revenue anticipation notes. Upon the
12 termination of the existence of the authority, all of its rights
13 in and to any property, including any funds remaining in any
14 debt service reserve fund, shall be repaid to those providers
15 who:

16 (1) on the termination date of the authority are subject to
17 this act; and

18 (2) have paid assessments for all or some portion of the
19 last five full fiscal years of the authority in a manner and
20 proportion to be determined by the authority consistent with the
21 historic manner and average proportion by which such providers
22 were assessed over the last five full fiscal years of the
23 authority. Any determination made by the authority pursuant to
24 this subsection shall be deemed to be final and conclusive
25 absent a showing of gross negligence or fraud.

26 (k) The fiscal year of the authority shall be established by
27 the authority by adoption of a resolution, and may be changed by
28 the authority in the same manner.

29 (1) The initial operating budget of the authority shall be
30 adopted by the board within 120 days following the initial

1 meeting of the board as convened pursuant to subsection (c).
2 Thereafter, the board shall, at least 60 days prior to the
3 beginning of each fiscal year, adopt an operating budget for the
4 authority by the vote of a majority of the full board. Such
5 operating budget shall set forth in reasonable detail the
6 projected expenses of operation of the authority for the ensuing
7 fiscal year including, without limitation, the salary and
8 benefits of the executive director and any other employees of
9 the authority, the cost and expenses of any legal and other
10 professionals employed or retained by the authority, and the
11 projected revenues of the authority to be derived from
12 investment earnings and assessments and any other moneys of the
13 authority which are reasonably estimated to be available to pay
14 the operating expenses set forth in the operating budget. The
15 following information shall be included in the authority's
16 operating budget:

17 (i) the total amount of debt service to become due on
18 authority bonds or revenue anticipation notes for such ensuing
19 fiscal year, including payments of principal and interest,
20 maturity value or sinking fund payments;

21 (ii) the amount, if any, due to any provider of any credit
22 or liquidity facility representing payments made by such
23 provider on behalf of the authority as set forth in the
24 applicable resolution, credit or liquidity facility agreement or
25 trust indenture as a result of any previous failure of the
26 authority to make any such payment provided for in the
27 applicable resolution, credit or liquidity facility agreement or
28 trust indenture, including any related reasonable interest, fees
29 or charges in connection therewith;

30 (iii) the amount, if any, required to restore the debt

service reserve fund to the level required under section 701.2(h)(2) and the resolutions of the authority adopted in connection with the issuance of any bonds or revenue anticipation notes; and

(iv) the amount, if any, required to be rebated to the United States to provide for continued Federal tax exemption, if applicable, with respect to any bonds or revenue anticipation notes.

Authority operating expenses shall be budgeted and paid first from the revenues derived from the investment income of the authority and then from other moneys of the authority as provided in the authority's annual operating budget. The authority shall repay the initial amounts allocated to the authority under subsection (q)(1) from such sources or from the proceeds of the initial issuance of bonds or revenue anticipation notes of the authority. The Commonwealth shall not be responsible for funding the annual operating budget of the authority.

(m) Annually, within 45 days of receipt of the audit required by this subsection, the authority shall file a report with the Governor, the Majority and Minority Chairpersons of the Appropriations Committee of the Senate, and the Majority and Minority Chairpersons of the Appropriations Committee of the House of Representatives, which shall make provision for the accounting of revenues and expenses for the fiscal year. The authority shall have its books, accounts and records audited annually in accordance with generally accepted auditing standards by an independent auditor who shall be a certified public accountant and a copy of the audit report shall be attached to and made a part of the authority's annual report. A

concise financial statement of the authority shall be published annually in the Pennsylvania Bulletin.

(n) Prior to the initial issuance of any bonds or revenue anticipation notes by the authority hereunder, the authority shall adopt a financial plan which will provide for the payment of:

(i) any authority claims;

(ii) any and all debt service requirements with respect to any bonds or revenue anticipation notes issued or to be issued by the authority to fund the program required by this act;

(iii) all administrative and financing costs and expenses, as well as liquidity and insurance costs, if any, associated with any bonds or revenue anticipation notes issued or to be issued by the authority; and

(iv) all operating costs of the authority as set forth in and required by the annual operating budget.

The financial plan of the authority shall be reviewed and updated at least annually in connection with the preparation and publication of the authority's annual operating budget and shall at all times provide for the payment of all amounts due and payable or to become due and payable by the authority to others.

(o) Members of the board shall not be liable personally on any obligations of the authority, including, without limitation, bonds and revenue anticipation notes of the authority. It is hereby declared to be the intent of the General Assembly that the authority created by this act and its members, officers, officials, agents and employees shall enjoy sovereign and official immunity, as provided in 1 Pa.C.S. section 2310 (relating to sovereign immunity reaffirmed; specific waiver), and shall remain immune from suit except as provided by and

1 subject to the provisions of 42 Pa.C.S. sections 8501 (relating
2 to definitions) through 8528 (relating to limitations on
3 damages).

4 (p) The authority shall comply in all respects with the
5 nondiscrimination and contract compliance plans used by the
6 Department of General Services to assure that all persons are
7 accorded equality of opportunity in employment and contracting
8 by the authority and its contractors, subcontractors, assignees,
9 lessees, agents, vendors and suppliers.

10 (q) The following provisions shall apply to authorized
11 funding:

12 (1) Upon the effective date of this act, all assets and
13 liabilities of the Pennsylvania Medical Professional Liability
14 Catastrophe Loss Fund become the assets and liabilities of the
15 Pennsylvania Medical Professional Liability Catastrophe Loss
16 Authority.

17 (2) After December 31, 2002, the authority shall be funded
18 by the levying of an annual assessment on or after January 1 of
19 every year on all health care providers, except those exempted
20 under section 701(a)(2) and subsection (s). The assessment shall
21 be determined by the authority, filed with the commissioner and
22 communicated to all basic insurance coverage carriers and self-
23 insurance plans. The assessment shall be based on the prevailing
24 primary premium for each health care provider in effect during
25 the calendar year 2001 for maintenance of professional liability
26 insurance and shall be the appropriate percentage thereof,
27 necessary to produce an amount sufficient to provide for the
28 payment of claims, any and all debt service requirements with
29 respect to any bonds and revenue anticipation notes issued or to
30 be issued by the authority, all operating, administrative and

financing costs and expenses, as well as liquidity and insurance costs, if any, associated with any bonds and revenue anticipation notes issued or to be issued by the authority, under the financial plan adopted by the authority, provided, however, that in calendar years 2003 through 2009 the aggregate annual assessment shall not exceed 50 percent of the surcharge imposed for calendar year 2001.

(3) The Joint Underwriting Association shall file an updated schedule of occurrence rates for all health care providers with the commissioner by May 1 of each year.

(4) The authority shall:

(i) review and may adjust the prevailing primary premium in line with any applicable changes to the schedule of occurrence rates made in filings by the Joint Underwriting Association and approved by the commissioner; and

(ii) review and may adjust the applicable prevailing primary premium of any hospital, including a hospital associated with a university or other educational institution, through an increase or decrease in the individual hospital's prevailing primary premium not to exceed 20% for any one year. Any such adjustment shall be based on the frequency and severity of claims paid by the authority on behalf of other hospitals of similar class, size, risk and kind within the same defined region during the past five most recent claims periods. All prevailing primary premium adjustments pursuant to this paragraph shall require the approval of the commissioner.

(5) For health care providers that do not engage in direct clinical practice on a full-time basis, the prevailing primary premium shall be prorated, based on the proportionate share of direct clinical practice to non-clinical practice, by the

authority to reflect the lower risk associated with the less than full-time direct clinical practice.

(6) The authority shall adjust the annual assessment downward for new physicians, certified nurse midwives and podiatrists who enter practice in this Commonwealth after December 31, 2002. The elimination or discount shall not increase the cost of the annual assessment to existing health care providers. The basic coverage for new physicians, certified nurse midwives and podiatrists shall be the same as all other health care providers as prescribed in section 701(a)(1)(iv).

(7) The assessment provided in paragraph (2) shall be reviewed by the commissioner within 30 days of submission. After review, the commissioner may only disapprove an assessment if it is inadequate or excessive under the financial plan adopted by the authority. If so disapproved, the authority shall make an adjustment to the assessment calculation to reflect the appropriate increase or decrease.

(8) When a health care provider changes the term of its basic insurance coverage, the assessment shall be calculated on an annual base and shall reflect the assessment percentages in effect for all the assessment periods over which the policy is in effect.

(9) Health care providers having approved self-insurance plans shall be assessed an amount equal to the assessment imposed on a health care provider of like class, size, risk and kind as determined by the authority.

(10) All claims shall be computed on August 31 for all claims which became final between that date and September 1 of the preceding year. All such claims shall be paid on the last business day on or before December 31 following the August 31 by

1 which they became final.

2 (11) The annual assessments on health care providers, any
3 proceeds of any sale of bonds and revenue anticipation notes,
4 and any income realized by investment or reinvestment shall
5 constitute the sole and exclusive sources of funding for the
6 authority. No claims or expenses against the authority shall be
7 deemed to constitute a debt of the Commonwealth or a charge
8 against the General Fund of the Commonwealth.

9 (12) The authority, within two years of the effective date
10 of this act, shall be empowered to and must arrange for the
11 separate retirement of the liabilities associated with the
12 following classes of health care providers:

13 (i) primary health centers;

14 (ii) podiatrists;

15 (iii) nursing homes.

16 Such arrangements shall be on terms and conditions proportionate
17 to the individual liability of each class of health care
18 provider. Such arrangements may result in assessments for
19 primary health centers, podiatrists and nursing homes different
20 than provided for under section 701.1(q). Upon satisfaction of
21 such arrangements, primary health centers, podiatrists and
22 nursing homes shall not be required to contribute to or be
23 entitled to participate in the authority set forth in Article
24 VII. In cases where a provider class rejects such an
25 arrangement, the authority shall present to such provider class
26 new term arrangements at least once in every two-year period.

27 (13) Notwithstanding the above provisions relating to an
28 annual assessment, the commissioner shall have the authority,
29 during September of each year, if the authority would be
30 exhausted by the payment in full of all claims which have become

final and the expenses of the authority, to determine and levy an emergency assessment on all health care providers then entitled to participate in the authority. Such emergency assessment shall be the appropriate percentage of the cost to each health care provider for maintenance of professional liability insurance necessary to produce an amount sufficient to allow the authority to pay in full all claims determined to be final as of August 31 of each year, debt service, and the expenses of the authority as of December 31 of each year.

(r) The failure of any health care provider to comply with any of the provisions of this act or any of the rules and regulations issued by the authority shall result in the suspension or revocation of the health care provider's license by the applicable licensure board.

(s) The following providers are exempt from the provisions of this act:

(1) any physician who exclusively practices the specialty of forensic pathology;

(2) retired licensed practitioners who provide care to immediate family members; and

(3) all health care providers who are members of the Pennsylvania military forces while in the performance of their assigned duty in the Pennsylvania military forces under orders.

Section 701.2. Bonds, Revenue Anticipation Notes and Funds of Authority.--

(a) Any bonds or revenue anticipation notes issued by the authority under this act shall be limited revenue obligations of the authority, payable solely from the funds and accounts of the authority, including the revenues pledged for the payment and security therefor. The authority shall not have any power or

1 authority at any time or in any manner to pledge the credit or
2 taxing power of the Commonwealth or any of its political
3 subdivisions and no obligation of the authority shall be deemed
4 to be an obligation of the Commonwealth or any of its political
5 subdivisions. Neither the Commonwealth nor any of its political
6 subdivisions shall be liable for the payment of any principal or
7 interest, or any other amounts, with respect to any bonds or
8 revenue anticipation notes of the authority. The issuance of
9 bonds and revenue anticipation notes by the authority under the
10 provisions of this act shall not directly or indirectly obligate
11 the Commonwealth or any of its political subdivisions to levy or
12 pledge any form of taxation whatever therefor or to make any
13 appropriation for their payment, except as may be expressly
14 permitted by this act. The authority's bonds and revenue
15 anticipation notes shall not constitute a charge, lien or
16 encumbrance, legal or equitable, upon any property of the
17 Commonwealth or of its political subdivisions, except the
18 authority buyout fund, the other funds and accounts established
19 hereunder and under the provisions of any resolution or trust
20 indenture authorizing any indebtedness, and the revenues pledged
21 or otherwise encumbered under the provisions of such resolutions
22 or trust indentures and for the purposes of issuing the bonds
23 and revenue anticipation notes and fulfilling the purposes of
24 the authority hereunder. The substance of this limitation shall
25 be plainly stated on the face of every bond and revenue
26 anticipation note delivered by the authority. Bonds and revenue
27 anticipation notes issued by the authority shall not be subject
28 to any statutory limitation on the indebtedness of the
29 Commonwealth nor shall they be included in computing the
30 aggregate indebtedness of the Commonwealth in respect to, and to

1 the extent of, any such limitation. All amounts necessary for
2 the punctual payment of debt service requirements on the bonds
3 and revenue anticipation notes shall be deemed appropriated, but
4 only from the limited sources specifically pledged therefor
5 pursuant to this act.

6 (b) The following provisions shall apply to the issuance of
7 bonds or revenue anticipation notes:

8 (1) Any bonds or revenue anticipation notes issued by the
9 authority and reciting in substance that such bond or revenue
10 anticipation note has been issued by the authority to accomplish
11 the public purposes of this act shall be conclusively deemed in
12 any suit, action or proceeding involving the validity or
13 enforceability of such bonds or revenue anticipation notes or
14 any security therefor to have been issued for such purposes.

15 (2) The authority shall cause a copy of any resolution
16 authorizing the issuance of bonds or revenue anticipation notes
17 to be filed for public inspection at its principal place of
18 business.

19 (3) After the issuance of bonds and revenue anticipation
20 notes by the authority, all such bonds and revenue anticipation
21 notes shall be conclusively presumed to be fully and properly
22 authorized and issued in accordance with all laws of the
23 Commonwealth, and any person shall be estopped from questioning
24 or challenging their authorization, sale, execution or delivery
25 by the authority.

26 (c) Any pledge or grant of a security interest in revenues
27 or property of the authority shall be valid and binding from the
28 time when such pledge or grant is made; the revenues or other
29 property so pledged and thereafter received by the authority
30 shall immediately be subject to the lien of any such pledge or

1 security interest without physical delivery thereof or further
2 act, and the lien of any such pledge or security interest shall
3 be valid and binding as against all parties having claims of any
4 kind in tort, contract or otherwise against the authority
5 irrespective of whether such parties have notice thereof.
6 Neither the resolution nor any other instrument of the authority
7 by which a pledge or security interest is created need be
8 recorded or filed to perfect such pledge or security interest,
9 but the authority shall nonetheless cause such recording or
10 filing to be made as is usual and customary in such cases.

11 (d) The following provisions shall apply to the
12 Commonwealth:

13 (1) The Commonwealth does hereby pledge to and agree with
14 each and every owner of authority bonds that the Commonwealth
15 will not limit or alter the rights hereby vested in the
16 authority or otherwise created by this act in any manner which
17 impairs or is inconsistent with the obligations of the authority
18 to such bondholder until all such bonds, together with the
19 interest thereon, shall have been fully paid and discharged.

20 (2) The Commonwealth does hereby pledge to and agree with
21 each and every person who, as owner thereof, leases or subleases
22 property, or rights to property, to or from the authority, that
23 the Commonwealth will not limit or alter the rights hereby
24 vested in the authority or otherwise created by this act in any
25 manner which impairs or is inconsistent with the obligations of
26 the authority to such persons until all such obligations of the
27 authority under the lease or sublease shall have been fully met,
28 paid and discharged.

29 (3) If and to the extent that the authority pledges as
30 security for any bonds or revenue anticipation notes any

1 revenues to be derived from charges or assessments of health
2 care providers, the Commonwealth does hereby pledge to and agree
3 with each and every obligee of the authority acquiring bonds or
4 revenue anticipation notes so secured, that, until all bonds or
5 revenue anticipation notes secured by the pledge of the
6 authority, and all interest thereon, are fully paid or provided
7 for and until all liens created to secure such bonds or revenue
8 anticipation notes shall have been fully paid and discharged,
9 the Commonwealth itself will not, nor will it authorize any
10 government agency making such assessment, to reduce the amount
11 of such assessment beyond an amount that would provide moneys to
12 the authority which, together with other moneys legally
13 available to the authority, will permit the authority in any
14 given fiscal year to pay all of the debt service on such bonds
15 and revenue anticipation notes for such fiscal year.

16 (e) The holders of bonds and revenue anticipation notes of
17 the authority shall have the right to enforce a pledge of or
18 security interest in revenues of the authority securing payment
19 of such bonds or revenue anticipation notes against all
20 government agencies in possession of any such revenues at any
21 time, which revenues may be collected directly from such
22 officials upon notice by such obligees or a trustee for such
23 obligees for application to the payment of such bonds or revenue
24 anticipation notes as when due or for deposit in any sinking,
25 bond or debt service fund established by this act or established
26 by resolution of the authority with such trustee at the times
27 and in the amounts specified in such bonds or revenue
28 anticipation notes or in the resolution or indenture or trust
29 agreement securing such bonds or revenue anticipation notes. Any
30 government agency in possession of any such revenues shall make

1 payment against receipt and shall thereby be discharged from any
2 further liability or responsibility for such revenues. If such
3 payment shall be made to a holder of such bonds or revenue
4 anticipation notes, it shall be made against surrender of such
5 bonds or revenue anticipation notes to the payor for delivery to
6 the authority in the case of payment in full; otherwise, it
7 shall be made against production of such bonds or revenue
8 anticipation notes for notation thereon of the amount of the
9 payment. The provisions of this section with respect to the
10 enforceability and collection of revenues which secure bonds or
11 revenue anticipation notes shall supersede any contrary or
12 inconsistent statutory provision or rule of law. This section
13 shall be construed and applied to fulfill the legislative
14 purpose of clarifying and facilitating the financing by the
15 authority of the obligations of the Medical Professional
16 Liability Catastrophe Loss Fund by assuring to the obligees of
17 the authority the full and immediate benefit of the security for
18 the bonds or revenue anticipation notes, without delay,
19 diminution or interference based on any statute, decision,
20 ordinance or administrative rule or practice.

21 (f) The following provisions shall apply to bonds:

22 (1) Any bonds of the authority shall be authorized by a
23 resolution of the board by vote of a majority of the full board
24 and shall be of such series, bear such date or dates, bear or
25 accrue interest at such rate or rates as shall be determined by
26 the board as necessary to issue and sell in a public, private,
27 invited or negotiated sale, be in such denominations, be in such
28 form, either coupon or fully registered without coupons or in
29 certificated or book-entry-only form, carry such registration,
30 exchangeability and interchangeability privileges, be payable in

1 such medium of payment and at such place or places, be subject
2 to such terms of redemption and be entitled to such priorities
3 of payment in the revenues or receipts of the authority as such
4 resolution or resolutions of the board may provide. The bonds
5 shall be signed by or shall bear the facsimile signatures of
6 such officers as the board shall determine, and coupon bonds
7 shall have attached thereto interest coupons bearing the
8 facsimile signature of the treasurer of the authority, and all
9 bonds shall be authenticated by an authenticating agent, fiscal
10 agent or trustee, all as may be prescribed in such resolution or
11 resolutions. Any such bonds may be issued and delivered
12 notwithstanding that one or more of the officers whose facsimile
13 signatures shall be upon such bonds, or the treasurer whose
14 signature shall be upon the coupon, shall have ceased to be such
15 officer at the time the bonds shall actually be issued or
16 delivered.

17 (2) Bonds issued by the authority under the provisions of
18 this act shall mature no later than 30 years from their
19 respective dates of original issuance.

20 (3) Bonds issued by the authority under the provisions of
21 this act may be sold by the authority at public, private,
22 invited or negotiated sale for such price or prices and at such
23 rate or rates of interest as the authority shall determine.
24 Bonds issued by the authority under the provisions of this act
25 may be sold by the authority at a private sale by negotiation
26 for such price or prices and at such rate or rates of interest
27 as the authority shall determine. Pending the preparation of
28 definitive bonds, interim receipts may be issued to the
29 purchaser or purchasers of such bonds, and may contain such
30 terms and conditions as the authority may determine.

1 (4) Bonds issued by the authority shall have the qualities
2 of negotiable instruments under 13 Pa.C.S (relating to the
3 commercial code).

4 (5) The proceeds of an issue of bonds issued by the
5 authority pursuant to the provisions of this act may be used to:

6 (i) pay the costs of issuance of such bonds and to otherwise
7 provide for the security therefor, including, without
8 limitation, costs of liquidity and credit enhancement;

9 (ii) pay administrative costs and expenses of the authority
10 associated with performing its duties and responsibilities
11 hereunder;

12 (iii) fund required reserves for the bonds, or otherwise
13 required by the authority to perform its duties and obligations
14 hereunder, and to otherwise fulfill the legislative purposes of
15 this act;

16 (iv) capitalize interest on such bonds for a period to be
17 determined by the authority; and

18 (v) fund the program or programs contemplated by the
19 financial plan of the authority.

20 Proceeds of the initial issue of bonds to be undertaken by
21 the authority may be applied to fund up to \$500,000 of initial
22 operating expenses of the authority.

23 (6) Subject to the provisions of the outstanding bonds of
24 the authority and the provisions of this act, the authority
25 shall have the right and power to refund or otherwise refinance
26 any outstanding bonds of the authority, whether such debt
27 represents principal or interest, in whole or in part at any
28 time. The term of any refunding bonds shall not extend to a
29 final maturity date that could not have been included in the
30 original issue of bonds being refunded. A refunding or

refinancing may result in an increase in the total principal amount of outstanding indebtedness, but the total amount of principal and interest payments in any year may not be increased as a result of such refunding or refinancing except when refunding a variable rate obligation to a fixed rate financing.

(7) The effectuation of the authorized purposes of the authority shall and will be in all respects for the benefit of the people of this Commonwealth, for the increase of their commerce and prosperity and for the improvement of their health, safety, welfare and living conditions; and since the authority will, as a public instrumentality of the Commonwealth, be performing essential government functions in effectuating such purposes, the authority shall not be required to pay any taxes or assessments upon any property acquired or used or permitted to be used by the authority for such purposes; and the bonds issued by the authority, their transfer and the income therefrom, including any profits made on the sale thereof, shall, at all times, be free from State and local taxation within this Commonwealth. This exemption shall not extend to gift, estate, succession or inheritance taxes or any other taxes not levied directly on the bonds, the transfer thereof, the income therefrom or the realization of profits on the sale thereof.

(8) In connection with the issuance of bonds and in order to secure the payment of such bonds, the authority, in addition to its other powers, but in all events, subject to the further limitations imposed by this act, shall have the right and power to:

(i) pledge or grant a security interest in all or any part of its gross or net revenues, including, specifically without

limitation any and all amounts received or to be received with
respect to assessments established pursuant to section 701.1 of
this act;

(ii) grant a security interest in all or any part of its
property then owned or thereafter acquired;

(iii) covenant against pledging or granting a security
interest in all or any part of its revenues or all or any part
of its property to which its right or title exists or may
thereafter come into existence, or against permitting or
suffering any lien on such revenues or property;

(iv) covenant as to which other or additional debts or
obligations may be incurred by it;

(v) covenant as to the bonds to be issued, and as to the
issuance of such bonds, in escrow or otherwise, and as to the
use and disposition of the proceeds thereof;

(vi) provide for the replacement of lost, destroyed or
mutilated bonds;

(vii) covenant against extending the time for the payment of
bonds, or interest thereon, and to covenant for the redemption
of any such bonds and to provide the terms and conditions
thereof;

(viii) covenant as to the amount of revenues to be received
in each fiscal year or other period of time by the authority, as
well as to the use and disposition to be made thereof, create or
authorize the creation of special funds or reserves for debt
service or other purposes and covenant as to the use and
disposition of the moneys held in such funds;

(ix) prescribe the procedure, if any, by which the terms of
any contract with bondholders may be amended or abrogated, and
the amount of bonds the holders of which must consent thereto,

1 and the manner in which such consent may be given;

2 (x) covenant as to the use of any or all of its property,
3 warrant as to the authority's title to such property, and
4 covenant as to the maintenance of its property, the replacement
5 thereof, the insurance to be carried thereon and the use and
6 disposition of insurance proceeds;

7 (xi) covenant as to the rights, liabilities, powers and
8 duties arising upon the breach by it of any covenant, condition
9 or obligation, provided that the authority shall not be
10 permitted to covenant that upon such breach any or all of its
11 bonds shall become or may be declared due before their stated
12 maturity or scheduled prior mandatory redemption;

13 (xii) vest in a trustee or holders of bonds, or any
14 proportion of them, the right to enforce the payment of the
15 bonds, or to enforce any covenants securing or relating thereto;

16 (xiii) vest in a trustee the right, in the event of default
17 in payments of interest or on principal of bonds of the
18 authority, to take possession and use of any property of the
19 authority and to collect the revenues and receipts of the
20 authority and to dispose of such moneys in accordance with any
21 obligation of the authority with or to a trustee pursuant to a
22 resolution or trust indenture;

23 (xiv) provide for the powers and duties of a trustee and to
24 limit the liabilities thereof, as well as to provide the terms
25 and conditions upon which a trustee or holders of bonds, or any
26 proportion thereof, may enforce any covenant or right securing
27 or relating to the bonds;

28 (xv) enter into interest rate exchange agreements, interest
29 rate cap and floor agreements and other similar agreements which
30 in the judgment of the authority will assist the authority in

1 managing its interest costs;

2 (xvi) obtain letters of credit, bond insurance and other
3 facilities for credit enhancement and liquidity; and

4 (xvii) exercise all or any part or combination of the powers
5 granted in this act, make covenants expressly authorized in this
6 act, make such covenants and do any and all such acts and things
7 as may be necessary or convenient or desirable in order to
8 secure its bonds, or, in the absolute discretion of the
9 authority, as will tend to accomplish the purposes of this act,
10 by making the bonds more marketable, notwithstanding that such
11 covenants, acts or things may not be specifically enumerated by
12 this act.

13 The revenues of the authority and the property of the
14 authority shall be pledged or otherwise encumbered only as
15 expressly provided in this section and except to the extent
16 necessary to effectuate such pledge or encumbrance, shall not be
17 subject to attachment nor levied upon by execution or otherwise.

18 (9) Bondholders shall have the right, in addition to all
19 other rights which may be conferred on such bondholders subject
20 only to any binding contractual restrictions:

21 (i) by mandamus, suit, action or proceeding at law or in
22 equity, to compel the authority and the members of the board,
23 officers, agents or employees thereof:

24 (A) to perform each and every term, provision and covenant
25 contained in any bond, or any contract, agreement or trust
26 indenture of the authority, which term, provision or covenant
27 was for the benefit of such obligee;

28 (B) to require the carrying out of any or all such terms,
29 provisions or covenants, and such bonds, contracts, agreements
30 or trust indentures; and

1 (C) to require the fulfillment of all duties imposed upon
2 the authority by this act.

3 (ii) by proceeding in equity, to obtain an injunction
4 against any acts or things which may be unlawful or the
5 violation of any of the rights of such bondholders.

6 (iii) to require the authority to account as if it were the
7 trustee of an express trust for the bondholders for any pledged
8 revenues received.

9 (10) Except as otherwise provided in any resolution of the
10 authority authorizing or awarding bonds, the terms of such
11 resolution and any agreement authorized by such resolution and
12 the terms of this act as in effect when such bonds were
13 authorized shall constitute a contract between the authority and
14 the obligees from time to time of the authority, subject to
15 modification by the affirmative vote of the holders of such
16 amount of bonds as the resolution or applicable agreements or
17 trust indentures shall provide.

18 (11) Bonds issued by the authority pursuant to this act are
19 hereby made securities in which all government agencies, all
20 insurance companies, trust companies, banking associations,
21 banking corporations, savings banks, investment companies,
22 executors, the trustees of any retirement, pension or annuity
23 fund or system of the Commonwealth or of any political
24 subdivision, trustees and other fiduciaries may properly and
25 legally invest funds, including capital, deposits or other funds
26 in their control or belonging to them. Such bonds are hereby
27 made securities which may properly and legally be deposited with
28 and received by any government agency for any purpose for which
29 the deposit of bonds or other obligations of the Commonwealth
30 now or may hereafter be authorized by law.

1 (12) Subject to the requirements and conditions of this act,
2 the first series of bonds issued by the authority shall be
3 issued in such manner and time as shall be determined by the
4 authority, so that net proceeds of the bonds will be available
5 on or before December 15, 2002, or as soon as practicable
6 thereafter, in an amount not less than the amount determined as
7 necessary, proper or desirable by the authority to effectuate
8 the purposes of this act and to implement the financial plan,
9 though in no event in an amount greater than that provided for
10 in paragraph (14).

11 (13) Subject to the requirements and conditions of this act,
12 one or more additional series of bonds, other than temporary
13 financing as provided for in subsection (g) and the initial
14 issuance of bonds as provided in paragraph (12), shall be issued
15 in such manner and time as shall be determined by the authority,
16 so that net proceeds of the bonds will be available on or before
17 the dates when such moneys are needed by the authority to
18 effectuate the purposes of this act and to implement the
19 financial plan adopted pursuant to this act. Except for a
20 refunding permitted by paragraph (6), and for the issuance of
21 temporary financing permitted by the provisions of subsection
22 (g), no bonds shall be issued by the authority for any purpose
23 on a date later than December 31, 2032. The limitations of this
24 section shall not apply to any bond to be issued by the
25 authority to refund or refinance any other bond issued under
26 this act, and to pay any costs and expenses associated with such
27 refunding or refinancing.

28 (14) Except as expressly provided for in paragraph (5) or
29 (6), the authority may not issue bonds in amounts that would
30 cause the total amount of outstanding indebtedness to exceed, at

1 the time of issuance, the most recent actuarial estimate of the
2 aggregate unfunded liability, plus necessary reserves and
3 contingencies, all as shall be set forth in the most recent
4 financial plan of the authority.

5 (g) The following provisions shall apply to revenue
6 anticipation notes:

7 (1) Notwithstanding any other provision of law, the
8 authority shall have the power and authority, by resolution
9 adopted by a majority of the full board, to borrow money from
10 time to time in anticipation of the receipt of revenues from
11 assessments, to evidence such indebtedness by issuance of
12 revenue anticipation notes, and to authorize, issue and sell
13 such notes in the manner and subject to the limitations set
14 forth in this section. Any such notes authorized and issued in
15 accordance with this section shall be designated revenue
16 anticipation notes. The power set forth in this section to
17 borrow from time to time shall include, but not be limited to,
18 the power to make a single authorization and then issue and sell
19 portions of such amount of authorized notes whenever desired or
20 needed. This section shall be construed and applied to fulfill
21 the legislative purpose of clarifying and facilitating temporary
22 borrowings of the authority in anticipation of the receipt of
23 revenues from assessments, and to provide assurance to holders
24 of such notes that they shall have the full and immediate
25 benefit of the security therefor without delay, diminishment or
26 interference based on any statute, court or administrative
27 decision, ordinance or administrative rule or practice.

28 (2) The authority shall not, at any time, authorize or issue
29 revenue anticipation notes which, when issued and delivered as
30 provided herein, will, in the aggregate, together with all other

1 revenue anticipation notes then issued and outstanding, exceed
2 85% of the amount of revenues certified by the authority in
3 accordance with paragraph (6) to be collected or received during
4 the remainder of the period during which the notes are to be
5 issued and outstanding. In computing the aggregate amount of
6 revenue anticipation notes outstanding at any time during the
7 period for the purpose of the limitation imposed by this
8 subsection, allowance shall be made for such notes as have
9 already been paid and for amounts, if any, already paid into a
10 sinking fund or trust fund established for payment of such
11 notes.

12 (3) No revenue anticipation notes shall be stated to mature
13 beyond twelve months after the date on which such revenue
14 anticipation notes are issued. Interest on revenue anticipation
15 notes from the date thereof shall be due and payable at the
16 maturity of such notes or in installments at such earlier dates
17 and at such annual rate or rates, fixed or variable, as shall be
18 set forth in the resolution of the board authorizing their
19 issuance.

20 (4) Revenue anticipation notes shall be issued in such
21 denominations, shall be subject to such rights of prior
22 redemption, shall have such privileges of interchange and
23 registration, shall be dated, shall be stated to mature on such
24 dates and in such amounts, shall be in registered or bearer form
25 with or without coupons or in certified or book-entry-only form,
26 shall be payable in such medium of payment and shall be payable
27 at such place or places, all as set forth in the resolution of
28 the board authorizing their issuance.

29 (5) All revenue anticipation notes issued by the authority
30 in a single fiscal year shall be equally and ratably secured by

1 a pledge of, security interest in, and a lien and charge on, the
2 revenues to be collected or received during the period when the
3 notes will be outstanding. Such pledge, lien and charge shall be
4 fully perfected against the authority, all creditors thereof and
5 all third parties in accordance with the terms of the
6 authorizing resolution from and after the filing of a financing
7 statement or statements in accordance with 13 Pa.C.S. For the
8 purpose of such filing, the sinking fund depositary or trustee
9 of a trust fund for note payments, if any, or otherwise the
10 fiscal agent or paying agent designated in the notes, may act as
11 the representative of noteholders and, in such capacity, shall
12 execute and file the financing statement and any continuation or
13 termination statements as secured party. The authorizing
14 resolution may establish one or more sinking funds or trust
15 funds for payment of notes and provide for periodic or other
16 deposits therein and may contain such covenants or other
17 provisions as the authority may determine. No revenues pledged
18 to secure bonds of the authority shall be pledged to secure
19 revenue anticipation notes unless such pledge is, by its express
20 terms, subordinate in all respects to the pledge of such
21 revenues to secure such prior outstanding bonds. The holder of
22 such subordinated notes, or a sinking fund depositary or trustee
23 acting on its behalf, shall have no right to enforce such pledge
24 in the manner described in subsection (e) unless all payments
25 due and payable with respect to such bonds shall have been made
26 or provided for.

27 (6) Prior to each authorization of revenue anticipation
28 notes, the authority shall certify its best estimate of the
29 moneys to be received during the period when such notes will be
30 outstanding. Such estimate of revenues shall take into account

past and anticipated collection experience of the authority and
current economic conditions as well as all other known facts.
Such estimate shall be certified as of a date not more than
thirty days prior to and no later than the date of the adoption
of the resolution of the board authorizing the issuance and sale
of such revenue anticipation notes, and shall be filed with the
proceedings authorizing the revenue anticipation notes with the
trustee for the notes of the authority, as provided in paragraph
(8).

(7) Revenue anticipation notes may be sold at public,
private, invited or negotiated sale and at such price or prices
as the board, by a majority of all its members, shall determine.
At the time of delivery of each issue, series or subseries of
revenue anticipation notes, the authority, by its duly qualified
officers and executive director, shall certify to the original
purchasers thereof that the amount of all such notes to be
outstanding will not exceed the limitations of paragraph (2)
calculated from the date of such certificate to the respective
maturity dates of all such notes to remain outstanding. Such
certificate shall be retained by the authority until all revenue
anticipation notes issued during the fiscal year shall have been
paid in full.

(8) Prior to the delivery of any revenue anticipation notes
to the original purchasers thereof, the authority shall file
with the trustee for such revenue anticipation notes:

(i) the transcript of proceedings authorizing the issuance
of the revenue anticipation notes, which proceedings shall
include, without limitation, the resolution authorizing the
revenue anticipation notes;

(ii) the certificate required by paragraph (6) as to the

amount of revenues to be collected during the term of the
revenue anticipation notes; and

(iii) the certificate required by paragraph (7) and a true
copy of the accepted proposal for purchase of the revenue
anticipation notes.

No approval of the trustee is required for the authority to
issue such revenue anticipation notes.

(9) If the authority fails to pay principal or interest on
any of its revenue anticipation notes as the same become due and
payable whether at the stated maturity or upon a mandatory or
unrevoked call for prior redemption and such failure shall
continue for 30 days, the holder thereof shall, subject to the
priorities created under this act and the provisions of any
outstanding bonds of the authority, and subject to any
limitation upon individual rights of action included in the
resolution authorizing the revenue anticipation notes, have the
right to recover the amount due in accordance with section
701.3. The judgment recovered shall have an appropriate priority
upon the moneys next received by the authority.

(h) The following provisions shall apply to authority funds.

(1) All funds of the authority received from any source
shall be delivered to or upon the order of the treasurer of the
authority or to such other agent of the authority as the board
may designate. Such funds received by the authority shall be
promptly deposited in a bank or banks in this Commonwealth as
chosen by a majority of the full board. The moneys in such
account or accounts may be paid by the treasurer of the
authority or other designated agent of the authority on warrant
of the treasurer of the authority or by such persons as the
board may authorize to make such warrants. All such deposits of

1 moneys may, if required by the authority, be secured by
2 obligations of the United States or of the Commonwealth of a
3 market value equal, determined at least weekly, to the amount of
4 the deposit, and all banks and trust companies are authorized to
5 give such security for such deposits.

6 Subject to the provisions of any agreements with obligees of
7 the authority, all funds of the authority, including the
8 proceeds of any bonds and revenue anticipation notes which are
9 not required for immediate use, shall be invested by or on
10 behalf of the authority in obligations of the Federal Government
11 or of the Commonwealth or obligations which are legal
12 investments for Commonwealth funds. All such investments shall
13 be fully secured in such manner, and shall be made upon such
14 terms and conditions, as shall be required from time to time for
15 moneys of the Commonwealth.

16 The proceeds realized from any assessment made for authority
17 purposes or made available for use by the authority to secure
18 its bonds and revenue anticipation notes shall be transferred to
19 the authority at the times provided by this act and otherwise by
20 law, subject to any limitations or restrictions, and otherwise
21 in the manner set forth in any resolution of the authority
22 authorizing any bonds or revenue anticipation notes. Subject to
23 any limitations as may be provided for in this section or in any
24 resolution authorizing the issuance of bonds or revenue
25 anticipation notes, any such transfers shall be made first, to
26 the bond or revenue anticipation note payment account
27 established pursuant to paragraph (4), second, to any debt
28 service reserve fund established pursuant to paragraph (2),
29 third, to the authority for the payment of operating expenses in
30 the amounts permitted pursuant to section 701.1(1), and finally

1 to the surplus assessment fund established pursuant to paragraph
2 (6).

3 (2) One or more debt service reserve funds into which it
4 shall deposit, or cause to be deposited:

5 (i) the proceeds of any assessment made for authority
6 purposes or made available for use by the authority in excess of
7 amounts required to be deposited in the bond payment account
8 pursuant to paragraph (4);

9 (ii) the proceeds of any sale of bonds to the extent
10 provided in the resolution or resolutions authorizing such
11 bonds; and

12 (iii) any other moneys made available to the authority from
13 any source for such purpose.

14 All moneys at any time held in any debt service reserve fund,
15 except as provided hereafter, shall be used when required solely
16 for the payment of:

17 (A) the principal amount of any bonds secured in whole or in
18 part by such fund;

19 (B) the sinking fund payments, if any, required with respect
20 to such bonds;

21 (C) the purchase or redemption of such bonds;

22 (D) interest with respect to such bonds; or

23 (E) any redemption premium required to be paid with respect
24 to any such bonds when they are redeemed prior to maturity.

25 Any debt service reserve fund established pursuant to this
26 subsection shall be a trust fund held for the benefit and
27 security of the obligees of the authority whose bonds are
28 secured by such fund. Moneys in a debt service reserve fund
29 shall not be withdrawn from the fund at any time in an amount
30 that would reduce the amount of the fund to less than the

1 minimum reserve fund requirement established for such fund in
2 the resolution of the authority creating such fund, except for
3 withdrawals for the purpose of making payments when due of
4 principal, interest, redemption premium and sinking fund
5 payments, if any, with respect to such bonds for the payment of
6 which other moneys of the authority are not available. Any
7 income or interest earned by, or increments to, any debt service
8 reserve fund due to the investment thereof may be transferred by
9 the authority to other funds or accounts of the authority to the
10 extent that such transfer does not reduce the amount of the debt
11 service reserve fund below the minimum reserve fund requirements
12 established for such fund. Moneys transferred to other funds or
13 accounts in accordance with this subsection may be used for
14 whatever purposes the authority deems appropriate so long as
15 such purposes are consistent with this act and the contracts of
16 the authority with obligees of the authority.

17 (3) The authority shall not at any time issue bonds which
18 would be secured in whole or in part by a debt service reserve
19 fund if the issuance of such bonds would cause the amount in the
20 debt service reserve fund to fall below the minimum reserve
21 requirement for such fund, unless the authority at the time of
22 the issuance of such bonds shall deposit in the debt service
23 reserve fund an amount, from the proceeds of such bonds to be
24 issued or from other sources, which when added to the amount
25 already on deposit in such fund will cause the total amount on
26 deposit in such debt service reserve fund to equal or exceed the
27 minimum reserve fund requirement.

28 (4) Pursuant to any resolution authorizing the issuance of
29 bonds or revenue anticipation notes, the authority shall
30 establish a bond or revenue anticipation note payment account,

1 as applicable, to be used by the authority, or by a trustee
2 acting on behalf of the authority, to make payments of
3 principal, redemption premium, sinking fund payments, if any,
4 and interest on any such bonds or revenue anticipation notes to
5 be issued by the authority, or to make payments to banks or
6 financial institutions to reimburse them for payments made by or
7 on behalf of the authority with respect to such outstanding
8 bonds or revenue anticipation notes. Revenues shall be deposited
9 into the bond or revenue anticipation note payment account in
10 the amounts, in the manner and at the times set forth in
11 paragraph (1). All such deposits shall be made prior to any
12 other payments or disbursements of such revenues to any other
13 funds or for any other purposes.

14 The bond or revenue anticipation note payment account shall
15 constitute a trust fund held for the exclusive and equal and
16 ratable benefit of the holders of any bonds or revenue
17 anticipation notes issued by the authority, in accordance with
18 the terms and conditions of this act and the resolution or
19 resolutions authorizing the issuance of such bonds or revenue
20 anticipation notes. In connection with the issuance of any such
21 bonds or revenue anticipation notes, the authority shall
22 establish and file with the trustee for such bonds or revenue
23 anticipation notes, a schedule of debt service payments and a
24 corresponding schedule of deposits of revenues to be made from
25 moneys collected from the required assessments under this act.
26 The authority, or the trustee acting on behalf of the authority,
27 shall be authorized to withdraw moneys form the bond or revenue
28 anticipation note payment account:

29 (A) at the times and in the manner and amounts sufficient to
30 pay all debt service requirements with respect to the

1 outstanding bonds or revenue anticipation notes, as set forth in
2 such bonds or revenue anticipation notes and in the resolutions
3 and agreements authorizing such indebtedness and by which it is
4 secured; and

5 (B) with regard only to bonds, after such amounts have been
6 paid or provided for debt service, any excess moneys shall be
7 transferred, first, to any debt service reserve fund established
8 for such bonds under paragraph (2), to the extent of any
9 deficiency therein, second, to the authority for the payment of
10 operating expenses subject to the provisions and limitations of
11 section 701.1(1), and finally, to the surplus assessment fund
12 established pursuant to paragraph (6) of this subsection.

13 (5) There is hereby established an authority buyout fund to
14 be held, administered, invested and applied by the authority in
15 accordance with the provisions of, and to further the purposes
16 of, this act to pay or provide for the payment of all awards,
17 judgments or settlements for loss or damages against a health
18 care provider entitled to participate in the authority as a
19 consequence of any authority claim. The authority buyout fund
20 shall be funded by the authority with the net proceeds of one or
21 more series of bonds issued by the authority in accordance with
22 this act. The authority buyout fund may be divided into multiple
23 accounts to provide separate accounting for the payment of
24 authority claims of health care providers which are tax-exempt
25 organizations under Federal law and for the payment of authority
26 claims of health care providers which are not tax-exempt
27 organizations under Federal law. The authority may determine to
28 issue separate series of bonds so that a separate accounting of
29 the uses of such indebtedness can be made.

30 The authority buyout fund shall constitute a trust fund held

1 for the exclusive and equal and ratable benefit of the holders
2 of any bonds issued by the authority, in accordance with the
3 terms and conditions of this act and the resolution or
4 resolutions authorizing the issuance of such bonds. The
5 investments and all moneys from time to time on deposit in the
6 authority buyout fund shall be devoted to, and used exclusively
7 for, the payment of the claims against the authority, as set
8 forth herein, and to the extent not needed therefor, may be
9 applied to the payment of debt service accruing on the bonds of
10 the authority, as may be set forth in the resolution, indenture
11 or trust instrument securing such bonds.

12 (6) Pursuant to any resolution authorizing the issuance of
13 bonds, the authority shall establish a surplus assessment fund
14 to be held, invested and applied by the authority, or by a
15 trustee acting on behalf of the authority, to fulfill the
16 provisions of this act. Revenues shall be deposited into the
17 surplus assessment fund in the amounts, in the manner and at the
18 times set forth in paragraph (1), or by or on behalf of the
19 authority as set forth in paragraph (4). Amounts from time to
20 time on deposit in the surplus assessment fund shall be invested
21 in accordance with the provisions of this act. Amounts from time
22 to time on deposit in the surplus assessment fund shall be
23 applied, as needed, first, to cure any deficiency in the bond or
24 revenue anticipation note payment account required to permit the
25 authority, or the trustee acting on behalf of the authority, to
26 make any required payments of debt service with respect to
27 outstanding bonds or revenue anticipation notes of the
28 authority, second, to the debt service reserve fund established
29 under paragraph (2), to the extent of any deficiency therein,
30 and finally, to the authority for the payment of operating

expenses subject to the provisions and limitations of section 701.1(1).

The authority shall create such other funds and accounts as it may determine to be necessary, proper or desirable to effectuate its corporate purposes and shall pay into each such fund or account any moneys of the authority available for such purpose or any moneys made available to the authority by another person for the purposes of such fund or account. No other provision of this act shall be construed to prohibit the authority from creating within any fund one or more accounts that may be used or pledged by the authority for a special purpose.

(7) Any moneys deposited by or on behalf of the authority into any fund or account created by the authority in accordance with the provisions of this act and to be used or available to pay debt service with respect to any issued bonds or revenue anticipation notes of the authority, including, without limitation, the bond or revenue anticipation note payment account, any debt service reserve fund or sinking fund, the surplus assessment fund, and all investments and proceeds of investments from time to time held therein or accountable thereto shall, without further action or filing, be subjected to a perfected security interest for the obligees of the authority for whom such fund is held until such moneys or investments shall be properly disbursed by or on behalf of the authority in accordance with the provisions of this act and with the terms and conditions of the resolutions, trust indentures and other contracts or agreements with, or for the benefit of such obligees.

Section 701.3. Original and Exclusive Jurisdiction of

1 Supreme Court.--The Pennsylvania Supreme Court shall have
2 exclusive jurisdiction to hear any challenge to or to render a
3 declaratory judgment concerning the constitutionality of this
4 article, the contractual rights of the parties relating to bonds
5 and revenue anticipation notes to be issued pursuant to this
6 article, or any action of the authority in issuing or attempting
7 to issue bonds and revenue anticipation notes, whether with
8 respect to the validity of the bonds or revenue anticipation
9 notes, proper authorization with respect thereto, or otherwise.
10 The Supreme Court is authorized to take any action it deems
11 appropriate, consistent with the Supreme Court retaining
12 jurisdiction over such a matter, to find facts or to expedite a
13 final judgment in connection with such a challenge or request
14 for declaratory relief.

15 Section 701.4. No Impairment of Rights and Obligations.--
16 Except as expressly set forth herein, nothing in this act shall
17 limit the rights or impair the obligations of any person with
18 respect to any obligation set forth in any contract, agreement,
19 settlement or judgment in effect as of the effective date of
20 this act.

21 Section 701.5. Construction of Act.--The provisions of this
22 act providing for security for and rights and remedies of
23 obligees of the authority shall be liberally construed to
24 achieve the purposes stated and provided for by this act.

25 Section 4. Section 702 of the act is repealed.

26 Section 5. Sections 705, 706, 803, 809, 811 and 841-A of the
27 act, amended or added November 26, 1996 (P.L.776, No.135), are
28 amended to read:

29 Section 705. Liability of Excess Carriers.--(a) No insurer
30 providing excess professional liability insurance to any health

1 care provider eligible for coverage under the [fund] authority
2 shall be liable for payment of any claim against a health care
3 provider for any loss or damages except those in excess of the
4 [fund] authority coverage limits.

5 (b) No carrier providing excess professional liability
6 insurance for a health care provider covered by the [fund]
7 authority shall be liable for any loss resulting from the
8 insolvency or dissolution of the [fund] authority.

9 Section 706. Advisory Board.--(a) There is hereby
10 established an advisory board of eleven members to be known as
11 the [Medical Professional Liability Insurance Catastrophe Loss
12 Fund] Authority Advisory Board.

13 (b) The authority advisory board shall be comprised of the
14 following persons:

15 (1) The Insurance Commissioner.

16 (2) Four members, one each to be appointed by the President
17 pro tempore of the Senate, the Minority Leader of the Senate,
18 the Speaker of the House of Representatives and the Minority
19 Leader of the House of Representatives. These members shall have
20 experience in the areas of law, health care, liability
21 insurance, finance or actuarial analysis.

22 (3) Six members appointed by the Governor as follows:

23 (i) One physician, who shall be appointed for a three-year
24 term.

25 (ii) One representative of a hospital provider, who shall be
26 appointed for a three-year term.

27 (iii) One representative of a casualty insurer with 1% or
28 less share of the medical professional liability insurance
29 market in this Commonwealth, who shall be appointed for a two-
30 year term.

1 (iv) One podiatrist [or] and one representative of a nursing
2 home, who shall be appointed for a three-year term. [The
3 podiatrist and the representative of a nursing home shall
4 alternate terms.]

5 (v) Two representatives of the public-at-large, one of whom
6 shall be appointed for a two-year term and the other for a one-
7 year term.

8 (c) After the initial terms under this paragraph have been
9 completed, all terms shall be for a period of three years.

10 (d) The members of the authority advisory board shall serve
11 without compensation, but shall be reimbursed for their actual
12 and necessary traveling and other expenses in connection with
13 attendance at meetings.

14 (e) The members of the authority advisory board shall [have
15 the following powers and duties:

16 (1) To review procedures and operations of the fund.

17 (2) To commission audits to be paid for by the fund, not to
18 exceed more than one every two years.

19 (3) To adopt reasonable standards for prompt investigation
20 and settlement of claims arising under this act to include, but
21 not be limited to:

22 (i) Prompt acknowledgment of pertinent communications with
23 respect to claims.

24 (ii) Reasonable standards for prompt investigation and
25 settlement of claims.

26 (iii) Prompt and reasonable settlement of claims in which
27 liability has become reasonably clear.

28 (iv) Fair settlement of all claims.

29 (v) Prevention of duplication in formal proof of loss and
30 subsequent verification.

(vi) Provision of reasonable and accurate explanations of basis for claims denials or settlement offers.

(f) The board shall make annual reports to the Governor and the General Assembly which shall include recommendations regarding management and legislative changes.

(g) The board shall undertake a study of the operations and structure of the fund and shall report to the Governor and the General Assembly, not later than September 1, 1997, its recommendations concerning the future of the fund, including, but not limited to, an opt-out provision for doctors and hospitals, total elimination or phaseout of the fund and other provisions for providing adequate medical professional liability insurance, including evaluation of the unfunded liability and financing options to retire any unfunded liabilities. The report shall recommend measures to be taken by the General Assembly.

(h) As used in this section, the term "board" means the Medical Professional Liability Insurance Catastrophe Loss Fund Advisory Board.] provide advice and make recommendations to the authority board.

Section 803. Plan Operation, Rates and Deficits.--(a) Subject to the supervision and approval of the commissioner, insurers may consult and agree with each other and with other appropriate persons as to the organization, administration and operation of the plan and as to rates and rate modifications for insurance coverages provided under the plan. Rates and rate modifications adopted or changed for insurance coverages provided under the plan shall be approved by the commissioner in accordance with the act of June 11, 1947 (P.L.538, No.246), known as "The Casualty and Surety Rate Regulatory Act," except as may be inconsistent with subsection (c).

1 (b) In the event that the Joint Underwriting Association
2 suffers a deficit in any calendar year, the board of directors
3 of the Joint Underwriting Association shall so certify to the
4 executive director of the [fund] authority and the commissioner.
5 Such certification shall be subject to the review and approval
6 of the commissioner. Within 60 days following such certification
7 and approval the executive director of the [fund] authority
8 shall make sufficient payment to the Joint Underwriting
9 Association to compensate for said deficit. A deficit shall
10 exist whenever the sum of the earned premiums collected by the
11 Joint Underwriting Association and the investment income
12 therefrom is exhausted by virtue of payment of or allocation for
13 the Joint Underwriting Association's necessary administrative
14 expenses, taxes, losses, loss adjustment expenses and reserves,
15 including reserves for: (1) losses incurred, (2) losses incurred
16 but not reported, (3) loss adjustment expenses, (4) unearned
17 premiums.

18 (c) Within 60 days following the certification that the
19 Joint Underwriting Association has suffered a deficit, as set
20 forth in subsection (b), the board of directors of the Joint
21 Underwriting Association shall file with the commissioner. The
22 commissioner shall approve a premium increase sufficient to
23 generate the requisite income to:

24 (1) reimburse the [fund] authority for any payment made by
25 the [fund] authority to compensate for said deficit; and

26 (2) increase premiums to a level actuarially sufficient to
27 avoid an operating deficit by the Joint Underwriting Association
28 during the following 12 months.

29 The Joint Underwriting Association shall reimburse the [fund]
30 authority with interest at a rate equal to that earned by the

1 [fund] authority on its invested assets within one year of any
2 payment made by the [fund] authority as compensation for any
3 deficit incurred by the Joint Underwriting Association.

4 (d) Upon dissolution of the authority, the authority shall
5 no longer be obligated to make payment to the Joint Underwriting
6 Association in the event that the Joint Underwriting Association
7 suffers a deficit.

8 Section 809. Reports to Commissioner and Claims

9 Information.--(a) By October 15 of each year, basic coverage
10 insurance carriers and self-insured providers shall report to
11 the [fund] authority the claims information specified in
12 subsection (b).

13 (b) Sixty days after the end of any calendar year, the
14 [fund] authority shall prepare a report for the commissioner.
15 The report shall contain the total amount of claims paid and
16 expenses incurred therewith, the total amount of reserve set
17 aside for future claims, the date and place in which each claim
18 arose, the amounts paid, if any, and the disposition of each
19 claim, judgment of court, settlement or otherwise, and such
20 additional information as the commissioner shall require. For
21 final claims at the end of any calendar year, the report shall
22 include details by basic coverage insurance carriers and self-
23 insured providers of the amount of [surcharge] assessment
24 collected, the number of reimbursements paid and the amount of
25 reimbursements paid.

26 (c) A copy of any report prepared pursuant to this section
27 shall be submitted to the chairman and minority chairman of the
28 Banking and Insurance Committee of the Senate and the chairman
29 and minority chairman of the Insurance Committee of the House of
30 Representatives.

Section 811. Professional Corporations, Professional Associations and Partnerships.--(a) The Joint Underwriting Association shall offer [basic coverage insurance] basic insurance coverage to such professional corporations, professional associations and partnerships entirely owned by health care providers who cannot conveniently obtain insurance through ordinary methods at rates not in excess of those applicable to similarly situated professional corporations, professional associations and partnerships.

(b) In the event that a professional corporation, professional association or partnership entirely owned by health care providers elects to be covered by [basic coverage insurance] basic insurance coverage and upon payment of the annual [surcharge] assessments as required by section [701(e)] 701.1(q), the professional corporation, professional association or partnership shall be entitled to such excess coverage from the [fund] authority as is provided in this act.

(c) Any professional corporation, professional association, or partnership which acquires [basic coverage insurance] basic insurance coverage from the Joint Underwriting Association pursuant to subsection (a) or from an insurer licensed or approved by the Commonwealth [of Pennsylvania] shall be required to participate in and contribute to the [fund] authority as provided in this act.

(d) Any professional corporation, professional association or partnership which participates in or contributes to the [fund] authority shall be subject to all other provisions of this act.

Section 841-A. Mandatory Reporting.--(a) Each malpractice insurer, including the [Medical Professional Liability

1 Catastrophe Loss Fund] authority established by this act, which
2 makes payment under a policy of insurance in settlement, or in
3 partial settlement of, or in satisfaction of a judgment in a
4 medical malpractice action or claim shall provide to the
5 appropriate licensure board a true and correct copy of the
6 report required to be filed with the Federal Government by
7 section 421 of the Health Care Quality Improvement Act of 1986
8 (Public Law 99-660, 42 U.S.C. § 11131). The copy of the report
9 required by this section shall be filed simultaneously with the
10 report required by section 421 of the Health Care Quality
11 Improvement Act of 1986. The Insurance Department shall monitor
12 and enforce compliance with this section. The Bureau of
13 Professional and Occupational Affairs and the licensure boards
14 shall have access to information pertaining to compliance.

15 (b) A malpractice insurer or person who reports under
16 subsection (a) in good faith and without malice shall be immune
17 from civil or criminal liability arising from the report.

18 (c) Information received under this subsection shall not be
19 considered public information for the purposes of the [act of
20 June 21, 1957 (P.L.390, No.212), referred to as the] Right-to-
21 Know Law or [the act of July 3, 1986 (P.L.388, No.84), known as
22 the "Sunshine Act,"] 65 Pa.C.S. Ch. 7 (relating to open
23 meetings) until used in a formal disciplinary proceeding.

24 (d) Each licensure board shall submit a report not later
25 than March 1 of each year to the chairman and the minority
26 chairman of the Consumer Protection and Professional Licensure
27 Committee of the Senate and to the chairman and minority
28 chairman of the Professional Licensure Committee of the House of
29 Representatives. The report shall include, but not be limited
30 to, the number of reports received under subsection (a), the

1 status of the investigations of those reports, any disciplinary
2 action which has been taken and the length of time from the
3 receipt of each report to final licensure board action.

4 Section 6. Any person who is an employee of the Medical
5 Professional Liability Catastrophe Loss Fund on the effective
6 date of this act shall be given priority consideration for
7 employment to fill vacancies with executive agencies under the
8 Governor's jurisdiction.

9 Section 7. Existing regulations of the Medical Professional
10 Liability Catastrophe Loss Fund shall remain in full force and
11 effect until amended or repealed by the Pennsylvania Medical
12 Professional Liability Catastrophe Loss Authority.

13 Section 8. This act shall take effect immediately.