

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 11

Session of
2003

INTRODUCED BY STACK, MELLOW, O'PAKE, MUSTO, KUKOVICH, KITCHEN,
SCHWARTZ, COSTA, WOZNIAK, LOGAN, TARTAGLIONE, LAVALLE,
BOSCOLA, KASUNIC AND HUGHES, JANUARY 23, 2003

REFERRED TO BANKING AND INSURANCE, JANUARY 23, 2003

AN ACT

1 Amending the act of March 20, 2002 (P.L.154, No.13), entitled
2 "An act reforming the law on medical professional liability;
3 providing for patient safety and reporting; establishing the
4 Patient Safety Authority and the Patient Safety Trust Fund;
5 abrogating regulations; providing for medical professional
6 liability informed consent, damages, expert qualifications,
7 limitations of actions and medical records; establishing the
8 Interbranch Commission on Venue; providing for medical
9 professional liability insurance; establishing the Medical
10 Care Availability and Reduction of Error Fund; providing for
11 medical professional liability claims; establishing the Joint
12 Underwriting Association; regulating medical professional
13 liability insurance; providing for medical licensure
14 regulation; providing for administration; imposing penalties;
15 and making repeals," establishing the Health Care Assurance
16 Program and the Health Care Assurance Program Authority;
17 providing for powers and duties of the authority; and
18 establishing the Health Care Assurance Program Fund.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 Section 1. Chapter 7 of the act of March 20, 2002 (P.L.154,
22 No.13), known as the Medical Care Availability and Reduction of
23 Error (Mcare) Act, is amended by adding a subchapter to read:

24 SUBCHAPTER E

25 HEALTH CARE ASSURANCE PROGRAM

1 Section 751. Definitions.

2 The following words and phrases when used in this subchapter
3 shall have the meanings given to them in this section unless the
4 context clearly indicates otherwise:

5 "Authority." The Health Care Assurance Program Authority
6 established in section 753.

7 "Claims experience." Includes, but is not limited to,
8 information regarding the settlement of or payment of any
9 judgment of damages that are alleged in or the result of any
10 civil action in this Commonwealth, any other state, the United
11 States or any of its territories.

12 "Program." The Health Care Assurance Program, also to be
13 known as HealthCAP, established in section 752.

14 Section 752. Establishment of program.

15 (a) General rule.--There is hereby established a medical
16 professional liability insurance program for participating
17 health care providers which shall provide claims-made insurance
18 coverage for medical professional liability known as the Health
19 Care Assurance Program or HealthCAP.

20 (b) Type of insurance coverage.--The insurance described in
21 subsection (a) shall provide coverage for any act or omission
22 resulting in injury or death arising out of medical professional
23 liability. Coverage shall apply to damages, except for punitive
24 damages, arising from a medical professional liability action.

25 (c) Limitation on insurance coverage.--The medical
26 professional liability insurance provided pursuant to this
27 subchapter shall offer limits for each health care provider in
28 the following amounts:

29 (1) \$1,000,000 per occurrence and \$3,000,000 annual
30 aggregate for a participating health care provider; or

1 (2) \$1,000,000 per occurrence and \$4,500,000 annual
2 aggregate for a hospital.

3 (d) Eligibility for program participation.--Eligibility to
4 participate in the program shall be determined by underwriting
5 criteria approved by the authority. Participation may not be
6 limited based on geographic location or specialty, but may be
7 limited based on the following list of criteria:

8 (1) Indemnity loss history.

9 (2) Number of patient exposures.

10 (3) Severity of patient exposures.

11 (4) Any other criteria deemed appropriate by the
12 authority.

13 (e) Participant duties.--Every participant in the program
14 shall:

15 (1) Maintain a policy of not excluding patients whose
16 health care coverage is provided through any federally funded
17 or State-funded program.

18 (2) Agree, as part of the coverage policy, that the
19 authority may assign the policy, individually or
20 collectively, to a third party if the third party coverage is
21 comparable in price and coverage as determined by the
22 authority.

23 (3) Consent to provide information concerning the claims
24 experience of the participant for the past five years.

25 (f) Annual review for continued participation.--The
26 authority shall annually review the qualifications for continued
27 participation in the program and may deny coverage to any
28 participant as set forth in regulations promulgated by the
29 authority.

30 (g) Rates.--The authority shall establish rates that are

1 sufficient to maintain capital to do the following:

2 (1) Reimburse the fund for the payment of reported
3 claims that became final during the preceding claims period.

4 (2) Pay expenses of the fund incurred during the
5 preceding claims period.

6 (3) Pay principal and interest on moneys transferred
7 into the fund.

8 (4) Provide a reserve that shall be 10% of the sum of
9 paragraphs (1), (2) and (3).

10 (5) Meet solvency requirements that are required by
11 State law for similar insurers.

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

23 (i) Rate review by commissioner.--

24 (1) The rate provided in subsection (g) shall be
25 reviewed by the commissioner within 30 days of submission.
26 After review, the commissioner may only disapprove a rate if
27 it is inadequate or excessive. If so disapproved, the
28 authority shall make an adjustment to the next rate
29 calculation to reflect the appropriate increase or decrease.

30 (2) If a health care provider changes the term of its

1 professional liability coverage, the surcharge shall be
2 calculated on an annual base and shall reflect the surcharge
3 percentages in effect for all the surcharge periods over
4 which the policy is in effect.

5 (j) Discount rate.--The authority shall offer the following
6 discounted rates to health care professionals:

7 (1) 5% if the insured has no claims experience under
8 this subchapter for the prior year.

9 (2) 10% if the insured has no claims experience under
10 this subchapter for the prior two years.

11 (3) 15% if the insured has no claims experience under
12 this subchapter for the prior three years.

13 Section 753. Health Care Assurance Program Authority.

14 (a) Establishment.--The Health Care Assurance Program
15 Authority is hereby established to administer the program.

16 (b) Membership.--The authority shall consist of the
17 following members:

18 (1) The commissioner.

19 (2) The Physician General.

20 (3) The Secretary of Health.

21 (4) Four members, one each to be appointed by the
22 President pro tempore of the Senate, the Minority Leader of
23 the Senate, the Speaker of the House of Representatives and
24 the Minority Leader of the House of Representatives. These
25 members shall have experience in the areas of law, health
26 care, liability insurance, finance or actuarial analysis.

27 (c) Terms of office.--Except for those members serving by
28 virtue of their public office, all terms shall be for a period
29 of three years. The members of the authority shall serve without
30 compensation, but shall be reimbursed for their actual and

1 necessary traveling and other expenses in connection with
2 attendance at meetings.

3 Section 754. Powers and duties.

4 The authority shall have the following powers and duties:

5 (1) To review procedures and operations of the program.

6 (2) To defend all claims against the authority in
7 medical professional liability actions.

8 (3) To commission audits, to be performed by the Auditor
9 General, not to exceed more than one every two years.

10 (4) To provide reasonable standards for prompt
11 investigation and fair settlement of all claims.

12 (5) To prevent duplication in formal proof of loss and
13 subsequent verification.

14 (6) To provide reasonable and accurate explanations of
15 basis for denial of claims or settlement offers.

16 (7) To appoint an executive director, staff and counsel
17 as needed to satisfy the provisions of this subchapter.

18 Section 755. Annual reports.

19 The authority shall make annual reports to the Governor and
20 the General Assembly which shall include, but not be limited to,
21 recommendations regarding management of and legislative changes
22 necessary for the program.

23 Section 756. Health Care Assurance Program Fund.

24 The authority shall be funded by a separate account known as
25 the Health Care Assurance Program Fund, which is hereby
26 established in the State Treasury. The fund shall consist of
27 premium surcharges imposed pursuant to this subchapter. In
28 addition to those funds, the program shall receive a transfer of
29 funds on a monthly basis equal to 10% of the revenue generated
30 by the insurance premiums tax imposed under Article IX of the

1 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
2 of 1971. Insurance under this subchapter shall be exempted from
3 any premium surcharges imposed under Article IX of the Tax
4 Reform Code of 1971.

5 Section 757. Regulations.

6 The authority shall promulgate regulations to implement and
7 administer the provisions of this subchapter.

8 Section 758. Employment preference.

9 (a) General rule.--Employees of the Medical Professional
10 Liability Catastrophe Loss Fund and the Medical Care
11 Availability and Reduction of Error Fund on the effective date
12 of this subchapter shall be given preference in employment for
13 the administration of the fund subject to the powers and duties
14 of the authority.

15 (b) Expiration.--This section shall expire December 31,
16 2003.

17 Section 759. Expiration.

18 This subchapter shall expire five years after the effective
19 date of this subchapter.

20 Section 2. This act shall take effect in 60 days.