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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 678**      Session of  
2007

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INTRODUCED BY ORIE, CORMAN, EARLL, C. WILLIAMS, FONTANA, BROWNE,  
STACK AND WONDERLING, MARCH 23, 2007

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REFERRED TO JUDICIARY, MARCH 23, 2007

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AN ACT

1 Establishing and evaluating an administrative medical liability  
2 system to restore fairness and reliability to the medical  
3 justice system; and promoting patient safety by fostering  
4 alternatives to current medical tort litigation.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the  
9 Administrative Medical Liability System Demonstration Act.

10 Section 2. Purpose.

11 The purpose of this act is to authorize the establishment of  
12 a demonstration program to examine an administrative medical  
13 liability system in this Commonwealth. The program is intended  
14 to help determine whether the implementation of such a system  
15 would confer the following benefits:

16 (1) Reduce the time necessary to make payments to  
17 injured patients.

18 (2) Expand the number of patients that may receive

1 compensation for a medical injury.

2 (3) Establish fair, more predictable and more uniform  
3 payments for patients with similar medical injuries.

4 (4) Encourage better exchange between health care  
5 providers and patients regarding preventable medical errors,  
6 consistent with the goals of enhancing patient safety.

7 (5) Reduce legal fees and administrative costs.

8 (6) Promote patient safety by identifying avoidable  
9 errors and developing changes to reduce their incidence in  
10 the future.

11 Section 3. Definitions.

12 The following words and phrases when used in this act shall  
13 have the meanings given to them in this section unless the  
14 context clearly indicates otherwise:

15 "Adjudicatory panel." A panel established under section  
16 6(d).

17 "Administrative Medical Liability System Commission." The  
18 commission established under this act that is responsible for  
19 the demonstration program.

20 "Affiliated physicians." The physicians that have privileges  
21 with participating providers.

22 "Avoidable medical error." An injury resulting from  
23 medically justified services that could have been prevented.

24 "Commission." The Administrative Medical Liability System  
25 Commission established under section 4 of this act.

26 "Health care services." Any services provided by a health  
27 care provider or by any individual working under the supervision  
28 of a health care provider that relate to:

29 (1) The diagnosis, prevention or treatment of any human  
30 disease or impairment.

1 (2) The assessment of the health of human beings.

2 "Hospital." Any health care facility providing clinical or  
3 related health services, including, but not limited to, a  
4 general or special hospital, including psychiatric hospitals,  
5 rehabilitation hospitals, ambulatory surgical facilities, long-  
6 term care nursing facilities, cancer treatment centers using  
7 radiation therapy on an ambulatory basis and inpatient drug and  
8 alcohol treatment facilities, both profit and nonprofit and  
9 including those operated by an agency or State or local  
10 government. The term shall also include a hospice. The term  
11 shall not include an office used primarily for the private or  
12 group practice by health care practitioners where no reviewable  
13 clinically related health service is offered, a facility  
14 providing treatment solely on the basis of prayer or spiritual  
15 means in accordance with the tenets of any church or religious  
16 denomination or a facility conducted by a religious organization  
17 for the purpose of providing health care services exclusively to  
18 clergy or other persons in a religious profession who are  
19 members of the religious denominations conducting the facility.

20 "Participating providers." The hospitals and their  
21 affiliated physicians who participate in the demonstration  
22 program.

23 "Physician." An individual licensed under the laws of this  
24 Commonwealth to engage in the practice of medicine and surgery  
25 in all of its branches within the scope of the act of October 5,  
26 1978 (P.L.1109, No.261), known as the Osteopathic Medical  
27 Practice Act, or the act of December 20, 1985 (P.L.457, No.112),  
28 known as the Medical Practice Act of 1985.

29 "Program." The demonstration program established under this  
30 act.

1 "Review panel." The review panel provided for under section  
2 8(b).

3 Section 4. Administrative Medical Liability System Commission.

4 (a) Membership.--The commission shall consist of the  
5 following members:

6 (1) The Chief Justice of the Supreme Court or a  
7 designee.

8 (2) The Attorney General or a designee, who shall serve  
9 as the chairperson of the commission.

10 (3) The Insurance Commissioner.

11 (4) Two individuals with academic and research expertise  
12 in medical liability systems, appointed by the Governor.

13 (5) Four individuals, one each appointed by the:

14 (i) President pro tempore of the Senate.

15 (ii) Minority Leader of the Senate.

16 (iii) Speaker of the House of Representatives.

17 (iv) Minority Leader of the House of  
18 Representatives.

19 (b) Responsibilities of the commission.--The commission  
20 shall have the following responsibilities:

21 (1) Administer the demonstration program.

22 (2) Award demonstration grants according to section 5.

23 (3) Seek funding in support of the program.

24 (4) Terminate or modify the grant to any participants in  
25 violation with the program.

26 The commission shall cease following the conclusion of the  
27 demonstration program.

28 (c) Staff and support.--The Joint State Government  
29 Commission shall provide staff and technical support.

30 (d) Responsibilities of the Joint State Government

1 Commission.--The Joint State Government Commission shall have  
2 the following responsibilities:

3 (1) Provide staff and administrative support to the  
4 Administrative Medical Liability System Commission.

5 (2) Contract with outside agencies or entities for  
6 expertise or staff support.

7 Section 5. Demonstration program to evaluate administrative  
8 medical liability system.

9 (a) General rule.--The commission is authorized to award  
10 demonstration grants to hospitals who meet the criteria in  
11 subsection (c) for the development, implementation and  
12 evaluation of alternatives to current tort litigation for  
13 resolving disputes over injuries allegedly caused by hospitals  
14 or physicians.

15 (b) Duration.--The commission may award up to three grants,  
16 and each grant awarded may not exceed a period of five years.

17 (c) Conditions for demonstration grants.--Any hospital may  
18 participate in the program by meeting the following criteria:

19 (1) The hospital's primary coverage is self-insured.

20 (2) The hospital and its affiliated physicians and  
21 medical staff agree to disclosure of incidents and serious  
22 events in accordance with current law.

23 (3) The hospital and its affiliated physicians and  
24 medical staff agree to participate in a uniform and  
25 comprehensive risk management plan.

26 (4) The hospital and its affiliated physicians and  
27 medical staff agree to a joint defense agreement.

28 (5) The hospital and physicians' insurance carriers,  
29 including risk retention groups and similar organizations,  
30 agree to participate in the program.

1 Section 6. Description.

2 (a) Compensation to patients.--All patients who suffer  
3 temporary or permanent injury as a result of an avoidable  
4 medical error by a participating provider shall be compensated  
5 for economic and noneconomic damages in accordance with the  
6 provisions of this act. Independent medical experts shall be  
7 consulted in specific cases to determine compensable injuries.  
8 The independent medical experts shall meet the qualification  
9 requirements of the act of March 20, 2002 (P.L.154, No.13),  
10 known as the Medical Care Availability and Reduction of Error  
11 (Mcare) Act, and Pa.R.C.P. No. 1042.26 (relating to medical  
12 professional liability actions. Expert reports.)

13 (b) Determination of compensation.--Participating hospitals  
14 and physicians and patients shall agree to a uniform schedule of  
15 compensation for injuries based on type of injury, severity of  
16 the injury, age, life expectancy, past and future medical costs  
17 not covered under other programs and lost past and future wages.  
18 Eligible claims shall be paid in a timely and uniform manner  
19 using a fixed benefits schedule and shall include compensation  
20 for both economic and noneconomic losses.

21 (c) Early mediation.--Participating health care providers  
22 shall offer early mediation following disclosure of an avoidable  
23 error.

24 (d) Adjudicatory panel.--Each eligible claim shall be  
25 submitted to an independent adjudicatory panel. Each panel shall  
26 be composed of three individuals selected at random from an  
27 approved list. If any of the selected panel members has a  
28 relationship with the patient or a health care provider involved  
29 in the particular case, he or she shall be disqualified, and  
30 another panel member shall be selected at random. The commission

1 shall determine qualifications of eligible panelists. Each panel  
2 will consult one or more qualified medical experts from the  
3 approved list to determine if the patient is eligible for  
4 compensation. If there is disagreement among the medical  
5 experts, the panel shall make a final ruling consistent with  
6 generally accepted medical standards and practices. All  
7 decisions of the independent panel shall be in written form.

8 (e) Administration.--Participating providers shall appoint  
9 an independent administrator. The independent administrator is  
10 responsible for the following:

11 (1) Recruitment and maintenance of the qualified medical  
12 experts.

13 (2) Recruitment and maintenance of the qualified  
14 adjudicatory panelists.

15 (3) Collection of documents needed to determine if a  
16 claim is compensable.

17 (4) Selection of the independent panel.

18 (5) Determination of compensation based on the opinion  
19 of the adjudicatory panel and the adopted uniform schedule of  
20 compensation.

21 (6) Ensuring proper payments are made to the claimant.

22 (7) Approval of any agreement for binding arbitration  
23 between the patient and the participating health care  
24 providers.

25 (8) Developing analysis and feedback to the  
26 participating providers for improving care processes and  
27 reducing the incidence of avoidable errors.

28 (9) Administration of the arbitration program.

29 (f) Patient participation.--Patients may opt in to the  
30 program prior to or at the point of care. The opt-in process

1 shall become an integral part of participating providers'  
2 existing informed consent policies and procedures. A patient may  
3 choose to be compensated under the program by executing a  
4 written agreement to that effect. The agreement must disclose in  
5 conspicuous type that the patient agrees to accept the  
6 determination of the adjudicatory panel.

7 (g) Incentives.--The Commonwealth should ensure that all  
8 participating providers are held harmless for incurring any  
9 costs that exceed a predetermined amount prior to the start of  
10 the program. The commission shall develop such incentives.

11 (h) Term.--All participating physicians and hospitals must  
12 agree to participate for a minimum of three years. The  
13 demonstration period should be at least five years.

14 (i) Costs.--The participants and the Commonwealth will share  
15 the costs of operating the administrative system during the  
16 demonstration period. If the program continues beyond the  
17 demonstration period, all costs are the responsibility of the  
18 participating health care providers. Compensation to patients is  
19 the responsibility of the participating physicians and  
20 hospitals' health care providers.

21 (j) Attorney fees.--Fees to any attorneys retained by a  
22 participating patient shall be limited to 20% of the total  
23 award.

#### 24 Section 7. Requirements.

25 (a) General rule.--Each entity desiring a grant may  
26 establish a scope of jurisdiction, such as a designated  
27 geographic region, a designated area of health care practice or  
28 a designated group of health care providers or health care  
29 organizations, for the proposed alternative to current tort  
30 litigation that is sufficient to evaluate the effects of the

1 alternative.

2 (b) Notification of patients.--An entity proposing a scope  
3 of jurisdiction shall demonstrate how patients would be notified  
4 that they are receiving health care services that fall within  
5 such scope.

6 Section 8. Application.

7 (a) General rule.--Each entity desiring a grant under  
8 section 4 shall submit to the commission an application, at such  
9 time, in such manner and containing such information as the  
10 commission may require.

11 (b) Review panel.--

12 (1) In reviewing applications under subsection (a), the  
13 commission shall consult with a review panel composed of  
14 relevant experts appointed by the commission.

15 (2) The panel shall be composed as follows:

16 (i) The commission shall solicit nominations from  
17 the public for individuals to serve on the review panel.

18 (ii) The commission shall appoint at least 11 but  
19 not more than 15 highly qualified and knowledgeable  
20 individuals to serve on the review panel and shall ensure  
21 that the following entities receive fair representation  
22 on the panel:

23 (A) Patient advocates.

24 (B) Health care providers and health care  
25 organizations.

26 (C) Attorneys with expertise in representing  
27 patients and health care providers.

28 (D) Insurers.

29 (E) State officials.

30 (c) Chairperson.--A person designated by the commission

1 shall be the chairperson of the review panel.

2 (d) Availability of information.--The commission shall make  
3 available to the review panel such information, personnel and  
4 administrative services and assistance as the review panel may  
5 reasonably require to carry out its duties.

6 (e) Information from agencies.--The review panel may request  
7 directly from any department or agency of the Commonwealth any  
8 information that such panel considers necessary to carry out its  
9 duties. To the extent consistent with applicable laws and  
10 regulations, such department or agency shall furnish the  
11 requested information to the review panel.

12 (f) Report.--Each entity receiving a grant under subsection  
13 (a) shall submit to the commission a report evaluating the  
14 effectiveness of activities funded with grants awarded under  
15 subsection (a) at such time and in such manner as the commission  
16 may require.

17 (g) Technical assistance.--The Joint State Government  
18 Commission shall provide or contract for technical assistance to  
19 the entities awarded grants under this act. Technical assistance  
20 shall include:

21 (1) The development of a defined payment schedule for  
22 noneconomic damages, including guidance on the consideration  
23 of individual facts and circumstances in determining  
24 appropriate payment, the development of classes of avoidable  
25 injuries and guidance on early disclosure to patients of  
26 adverse events.

27 (2) The development of common definitions, formats and  
28 data collection infrastructure for participating providers  
29 receiving grants under this section to use in reporting to  
30 facilitate aggregation and analysis of data Statewide.

1 Section 9. Evaluation.

2 (a) General rule.--The commission, in consultation with the  
3 review panel established under this act, shall enter into a  
4 contract with an appropriate research organization to conduct an  
5 overall evaluation of the effectiveness of grants awarded under  
6 this act and to annually prepare and submit a report to the  
7 appropriate committees of the General Assembly. Such an  
8 evaluation shall begin not later than 18 months following the  
9 date of implementation of the first program funded by a grant  
10 under this act.

11 (b) Contents.--The evaluation under subsection (a) shall  
12 include:

13 (1) An analysis of the effect of the alternative system  
14 on the number, nature and costs of health care liability  
15 claims.

16 (2) A comparison of the claim and cost information of  
17 each entity receiving a grant.

18 (3) A comparison between entities receiving a grant  
19 under this section and entities that did not receive such a  
20 grant, matched to ensure similar legal and health care  
21 environments and to determine the effects of the grants and  
22 subsequent reforms on:

23 (i) The liability environment.

24 (ii) Health care quality.

25 (iii) Patient safety.

26 (iv) Patient and health care provider satisfaction  
27 with the reforms.

28 Section 10. Expiration of commission.

29 The existence of the Administrative Medical Liability System  
30 Commission shall cease following the conclusion of the program

1 established under this act, unless otherwise provided by law.

2 Section 11. Medical Care Availability and Reduction of Error  
3 Fund (Mcare Fund).

4 Program participating providers shall continue to participate  
5 in the Mcare Fund in the same manner as nonparticipating  
6 providers. For participating providers, the Mcare Fund shall  
7 accept the independent panel decisions and pay its assigned  
8 share of damages up to its statutory incident and aggregate  
9 limits.

10 Section 12. Confidentiality.

11 Disclosure of documents used in the program shall be  
12 protected. All participating health care providers shall be  
13 provided maximum protections to conduct peer review.

14 Section 13. Authorization of appropriations.

15 There is authorized to be appropriated to carry out this  
16 section such sums as may be necessary. Amounts appropriated  
17 pursuant to this section shall remain available until expended.  
18 The commission may seek and accept Federal and private funds to  
19 carry out the purposes of this act.

20 Section 14. Effective date.

21 This act shall take effect immediately.