

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1280 Session of 2010

INTRODUCED BY RAFFERTY, ERICKSON, ORIE, WARD, ARGALL, KASUNIC,  
WASHINGTON, ALLOWAY, GREENLEAF, LEACH, TOMLINSON, PIPPY,  
MENSCH, BOSCOLA, O'PAKE, BAKER, STACK, LOGAN AND FONTANA,  
MARCH 19, 2010

REFERRED TO BANKING AND INSURANCE, MARCH 19, 2010

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," further providing for medical  
16 professional liability insurance, for Medical Care  
17 Availability and Reduction of Error Fund and for actuarial  
18 data.

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

21 Section 1. Sections 711(d), 712(c)(2) and (e)(3) and 745 of  
22 the act of March 20, 2002 (P.L.154, No.13), known as the Medical  
23 Care Availability and Reduction of Error (Mcare) Act, are  
24 amended to read:

25 Section 711. Medical professional liability insurance.

1       \* \* \*

2       (d) Basic coverage limits.--A health care provider shall  
3 insure or self-insure medical professional liability in  
4 accordance with the following:

5           (1) For policies issued or renewed in the calendar year  
6 2002, the basic insurance coverage shall be:

7               (i) \$500,000 per occurrence or claim and \$1,500,000  
8 per annual aggregate for a health care provider who  
9 conducts more than 50% of its health care business or  
10 practice within this Commonwealth and that is not a  
11 hospital.

12              (ii) \$500,000 per occurrence or claim and \$1,500,000  
13 per annual aggregate for a health care provider who  
14 conducts 50% or less of its health care business or  
15 practice within this Commonwealth.

16              (iii) \$500,000 per occurrence or claim and  
17 \$2,500,000 per annual aggregate for a hospital.

18           (2) For policies issued or renewed in the calendar years  
19 2003, 2004 and 2005, and each year thereafter, the basic  
20 insurance coverage shall be:

21               (i) \$500,000 per occurrence or claim and \$1,500,000  
22 per annual aggregate for a participating health care  
23 provider that is not a hospital.

24              (ii) \$1,000,000 per occurrence or claim and  
25 \$3,000,000 per annual aggregate for a nonparticipating  
26 health care provider.

27              (iii) \$500,000 per occurrence or claim and  
28 \$2,500,000 per annual aggregate for a hospital.

29           [(3) Unless the commissioner finds pursuant to section  
30 745(a) that additional basic insurance coverage capacity is

1 not available, for policies issued or renewed in calendar  
2 year 2006 and each year thereafter subject to paragraph (4),  
3 the basic insurance coverage shall be:

4 (i) \$750,000 per occurrence or claim and \$2,250,000  
5 per annual aggregate for a participating health care  
6 provider that is not a hospital.

7 (ii) \$1,000,000 per occurrence or claim and  
8 \$3,000,000 per annual aggregate for a nonparticipating  
9 health care provider.

10 (iii) \$750,000 per occurrence or claim and  
11 \$3,750,000 per annual aggregate for a hospital.

12 If the commissioner finds pursuant to section 745(a) that  
13 additional basic insurance coverage capacity is not  
14 available, the basic insurance coverage requirements shall  
15 remain at the level required by paragraph (2); and the  
16 commissioner shall conduct a study every two years until the  
17 commissioner finds that additional basic insurance coverage  
18 capacity is available, at which time the commissioner shall  
19 increase the required basic insurance coverage in accordance  
20 with this paragraph.

21 (4) Unless the commissioner finds pursuant to section  
22 745(b) that additional basic insurance coverage capacity is  
23 not available, for policies issued or renewed three years  
24 after the increase in coverage limits required by paragraph  
25 (3) and for each year thereafter, the basic insurance  
26 coverage shall be:

27 (i) \$1,000,000 per occurrence or claim and  
28 \$3,000,000 per annual aggregate for a participating  
29 health care provider that is not a hospital.

30 (ii) \$1,000,000 per occurrence or claim and

1           \$3,000,000 per annual aggregate for a nonparticipating  
2           health care provider.

3           (iii)   \$1,000,000 per occurrence or claim and  
4           \$4,500,000 per annual aggregate for a hospital.

5   If the commissioner finds pursuant to section 745(b) that  
6   additional basic insurance coverage capacity is not  
7   available, the basic insurance coverage requirements shall  
8   remain at the level required by paragraph (3); and the  
9   commissioner shall conduct a study every two years until the  
10   commissioner finds that additional basic insurance coverage  
11   capacity is available, at which time the commissioner shall  
12   increase the required basic insurance coverage in accordance  
13   with this paragraph.]

14       \* \* \*

15   Section 712.   Medical Care Availability and Reduction of Error  
16                   Fund.

17       \* \* \*

18       (c)   Fund liability limits.--

19           \* \* \*

20           (2)   The limit of liability of the fund for each  
21   participating health care provider shall be [as follows:

22               (i)   For calendar year 2003 and each year thereafter,  
23           the limit of liability of the fund shall be] \$500,000 for  
24           each occurrence and \$1,500,000 per annual aggregate.

25               [(ii)   If the basic insurance coverage requirement is  
26           increased in accordance with section 711(d)(3) and,  
27           notwithstanding subparagraph (i), for each calendar year  
28           following the increase in the basic insurance coverage  
29           requirement, the limit of liability of the fund shall be  
30           \$250,000 for each occurrence and \$750,000 per annual

1 aggregate.

2 (iii) If the basic insurance coverage requirement is  
3 increased in accordance with section 711(d)(4) and,  
4 notwithstanding subparagraphs (i) and (ii), for each  
5 calendar year following the increase in the basic  
6 insurance coverage requirement, the limit of liability of  
7 the fund shall be zero.]

8 \* \* \*

9 (e) Discount on surcharges and assessments.--

10 \* \* \*

11 [(3) For calendar years 2005 and thereafter, if the  
12 basic insurance coverage requirement is increased in  
13 accordance with section 711(d)(3) or (4), the department may  
14 discount the aggregate assessment imposed under subsection  
15 (d) by an amount not to exceed the aggregate sum to be  
16 deposited in the fund in accordance with subsection (m).]

17 \* \* \*

18 [Section 745. Actuarial data.

19 (a) Initial study.--The following shall apply:

20 (1) No later than April 1, 2005, each insurer providing  
21 medical professional liability insurance in this Commonwealth  
22 shall file loss data as required by the commissioner. For  
23 failure to comply, the commissioner shall impose an  
24 administrative penalty of \$1,000 for every day that this data  
25 is not provided in accordance with this paragraph.

26 (2) By July 1, 2005, the commissioner shall conduct a  
27 study regarding the availability of additional basic  
28 insurance coverage capacity. The study shall include an  
29 estimate of the total change in medical professional  
30 liability insurance loss-cost resulting from implementation

1 of this act prepared by an independent actuary. The fee for  
2 the independent actuary shall be borne by the fund. In  
3 developing the estimate, the independent actuary shall  
4 consider all of the following:

5 (i) The most recent accident year and ratemaking  
6 data available.

7 (ii) Any other relevant factors within or outside  
8 this Commonwealth in accordance with sound actuarial  
9 principles.

10 (b) Additional study.--The following shall apply:

11 (1) Three years following the increase of the basic  
12 insurance coverage requirement in accordance with section  
13 711(d)(3), each insurer providing medical professional  
14 liability insurance in this Commonwealth shall file loss data  
15 with the commissioner upon request. For failure to comply,  
16 the commissioner shall impose an administrative penalty of  
17 \$1,000 for every day that this data is not provided in  
18 accordance with this paragraph.

19 (2) Three months following the request made under  
20 paragraph (1), the commissioner shall conduct a study  
21 regarding the availability of additional basic insurance  
22 coverage capacity. The study shall include an estimate of the  
23 total change in medical professional liability insurance  
24 loss-cost resulting from implementation of this act prepared  
25 by an independent actuary. The fee for the independent  
26 actuary shall be borne by the fund. In developing the  
27 estimate, the independent actuary shall consider all of the  
28 following:

29 (i) The most recent accident year and ratemaking  
30 data available.

1                   (ii) Any other relevant factors within or outside  
2           this Commonwealth in accordance with sound actuarial  
3           principles.]

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