

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 349 Session of 2013

INTRODUCED BY FOLMER, MENSCH, WHITE, ALLOWAY AND BAKER,
JANUARY 30, 2013

REFERRED TO BANKING AND INSURANCE, JANUARY 30, 2013

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 the Medical Care
17 Availability and Reduction of Error Fund; and establishing
18 the Health Care Provider Rate Stabilization Fund.

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

21 Section 1. Section 711(d) (3) and (4) of the act of March 20,
22 2002 (P.L.154, No.13), known as the Medical Care Availability
23 and Reduction of Error (Mcare) Act, are amended to read:

24 Section 711. Medical professional liability insurance.

25 * * *

26 (d) Basic coverage limits.--A health care provider shall

insure or self-insure medical professional liability in
accordance with the following:

* * *

(3) [Unless the commissioner finds pursuant to section 745(a) that additional basic insurance coverage capacity is not available, for] For policies issued or renewed in calendar [year 2006 and each year thereafter] years 2013, 2014, 2015 and 2016 subject to paragraph (4), the basic insurance coverage shall be:

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

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

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

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

(4) [Unless the commissioner finds pursuant to section 745(b) that additional basic insurance coverage capacity is not available, for] For policies issued or renewed [three years after the increase in coverage limits required by

paragraph (3)] in year 2017 and for each year thereafter, the basic insurance coverage shall be:

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

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

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

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

* * *

Section 2. Section 712(d) of the act is amended by adding a paragraph to read:

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

* * *

(d) Assessments.--

* * *

(4) For calendar year 2017 and for each calendar year thereafter, all assessments shall cease and the fund shall be funded in accordance with section 5102.1.

1 * * *

2 Section 3. The act is amended by adding a section to read:

3 Section 5102.1. Health Care Provider Rate Stabilization Fund.

4 (a) Declaration of policy.--The General Assembly finds and
5 declares as follows:

6 (1) Adequate numbers of health care providers for access
7 to quality health care must be available.

8 (2) Health care providers must be encouraged to practice
9 in this Commonwealth.

10 (3) The maintenance of a health care medical malpractice
11 marketplace is essential to these goals.

12 (4) The financial impact to health care providers as a
13 result of the transition to a private medical malpractice
14 marketplace must be mitigated.

15 (b) Establishment.--Beginning January 1, 2013, the Health
16 Care Provider Rate Stabilization Fund is established in the
17 State Treasury. Money in the fund shall be used for the
18 following purposes:

19 (1) Payment of any obligations as described under this
20 chapter.

21 (2) Beginning January 1, 2017, payment of claims against
22 any participating providers for losses or damages awarded in
23 medical liability actions against them in accordance with
24 section 712(c).

25 (3) Payment of premiums and assessments for insurance
26 coverage as required under sections 711(d) and 712(c) in
27 effect for calendar year 2013 and each year thereafter until
28 all liabilities of the fund have been eliminated, to the
29 degree that the premiums and assessments are greater than
30 110% of the premiums and assessments in effect during the

1 previous calendar year. The commissioner shall determine the
2 amount available for this purpose.

3 (4) Payment of the patient safety discount as
4 established under section 312. The amount available for this
5 purpose shall be determined by the commissioner and shall
6 only be authorized if there are sufficient funds available
7 after satisfying the obligations under paragraphs (1), (2)
8 and (3).

9 (c) Responsibilities of commissioner.--In order to carry out
10 this section, the commissioner shall:

11 (1) Certify classes of health care providers by
12 specialty, subspecialty or type of health care provider
13 within a geographic classification, whose average medical
14 malpractice premium, as a class, on or after January 1, 2013,
15 is in excess of an amount per year as determined by the
16 commissioner in accordance with subsection (b) (3).

17 (2) Establish a methodology and procedures for
18 determining eligibility for and providing payments from the
19 fund in accordance with subsection (b) (3).

20 (3) Upon certification of eligibility, the commission
21 shall notify and send to the applicable health care
22 provider's insurance carrier or self-insured program the
23 appropriate amount from the fund, and the insurance carrier
24 or self-insured provider shall provide a rebate or credit
25 equal to the payment.

26 (4) Take all necessary action to recover the cost of the
27 subsidy provided to a health care provider that the
28 commissioner determines to have been incorrectly provided.

29 (d) Requirements of health care providers.--

30 (1) A health care provider that fails to comply with the

1 provisions of this section shall be required to repay to the
2 commissioner the amount of the subsidy, in whole or in part,
3 as determined by the commissioner.

4 (2) A health care provider who has been subject to a
5 disciplinary action or civil penalty by the practitioner's
6 respective licensing board is not eligible for a subsidy from
7 the fund.

8 (e) Transfer of assets--The money in the Tobacco Settlement
9 Fund is transferred to the fund beginning January 1, 2014.

10 Section 4. This act shall take effect immediately.