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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 908 Session of  
2017

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INTRODUCED BY FOLMER, MENSCH, MARTIN AND STEFANO,  
SEPTEMBER 26, 2017

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REFERRED TO BANKING AND INSURANCE, SEPTEMBER 26, 2017

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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," in insurance, further providing for  
16 medical professional liability insurance and for the Medical  
17 Care Availability and Reduction of Error Fund; and, in  
18 miscellaneous provisions, establishing the Health Care  
19 Provider Rate Stabilization Fund.

20 The General Assembly of the Commonwealth of Pennsylvania

21 hereby enacts as follows:

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

25 Section 711. Medical professional liability insurance.

26 \* \* \*

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

4 \* \* \*

5 (3) [Unless the commissioner finds pursuant to section  
6 745(a) that additional basic insurance coverage capacity is  
7 not available, for] For policies issued or renewed in  
8 calendar [year 2006 and each year thereafter] years 2017,  
9 2018, 2019 and 2020 subject to paragraph (4), the basic  
10 insurance coverage shall be:

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

14 (ii) \$1,000,000 per occurrence or claim and  
15 \$3,000,000 per annual aggregate for a nonparticipating  
16 health care provider.

17 (iii) \$750,000 per occurrence or claim and  
18 \$3,750,000 per annual aggregate for a hospital.

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

28 (4) [Unless the commissioner finds pursuant to section  
29 745(b) that additional basic insurance coverage capacity is  
30 not available, for] For policies issued or renewed [three

1 years after the increase in coverage limits required by  
2 paragraph (3)] in year 2021 and for each year thereafter, the  
3 basic insurance coverage shall be:

4 (i) \$1,000,000 per occurrence or claim and  
5 \$3,000,000 per annual aggregate for a participating  
6 health care 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) \$1,000,000 per occurrence or claim and  
11 \$4,500,000 per annual aggregate for a hospital.

12 [If the commissioner finds pursuant to section 745(b) 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 (3); 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 \* \* \*

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

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

26 \* \* \*

27 (d) Assessments.--

28 \* \* \*

29 (4) For calendar year 2021 and for each calendar year  
30 thereafter, all assessments shall cease and the fund shall be

1 funded in accordance with section 5102.1.

2 \* \* \*

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

4 Section 5102.1. Health Care Provider Rate Stabilization Fund.

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

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

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

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

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

16 (b) Establishment.--Beginning January 1, 2018, the Health  
17 Care Provider Rate Stabilization Fund is established in the  
18 State Treasury. Money in the fund shall be used for the  
19 following purposes:

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

22 (2) Beginning January 1, 2018, payment of claims against  
23 any participating providers for losses or damages awarded in  
24 medical liability actions against them in accordance with  
25 section 712(c).

26 (3) Payment of premiums and assessments for insurance  
27 coverage as required under sections 711(d) and 712(c) in  
28 effect for calendar year 2017 and each year thereafter until  
29 all liabilities of the fund have been eliminated, to the  
30 degree that the premiums and assessments are greater than

1 110% of the premiums and assessments in effect during the  
2 previous calendar year. The commissioner shall determine the  
3 amount available for this purpose.

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

6 (1) Certify classes of health care providers by  
7 specialty, subspecialty or type of health care provider  
8 within a geographic classification, whose average medical  
9 malpractice premium, as a class, on or after January 1, 2017,  
10 is in excess of an amount per year as determined by the  
11 commissioner in accordance with subsection (b) (3).

12 (2) Establish a methodology and procedures for  
13 determining eligibility for and providing payments from the  
14 fund in accordance with subsection (b) (3).

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

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

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

25 (1) A health care provider that fails to comply with the  
26 provisions of this section shall be required to repay to the  
27 commissioner the amount of the subsidy, in whole or in part,  
28 as determined by the commissioner.

29 (2) A health care provider who has been subject to a  
30 disciplinary action or civil penalty by the practitioner's

1 respective licensing board is not eligible for a subsidy from  
2 the fund.

3 (e) Transfer of assets--The money in the Tobacco Settlement  
4 Fund is transferred to the fund beginning January 1, 2018.

5 Section 4. This act shall take effect immediately.