

No. 1979-128

## AN ACT

SB 846

Amending the act of October 15, 1975 (P.L.390, No.111), entitled "An act relating to medical and health related malpractice insurance, prescribing the powers and duties of the Insurance Department; providing for a joint underwriting plan; the Arbitration Panels for Health Care, compulsory screening of claims; collateral sources requirement; limitation on contingent fee compensation; establishing a Catastrophe Loss Fund; and prescribing penalties," further providing for arbitration panels for health care and providing for severability.

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

Section 1. Section 308, act of October 15, 1975 (P.L.390, No.111), known as the "Health Care Services Malpractice Act," subsection (b) amended July 15, 1976 (P.L.1028, No.207), is amended and sections are added to read:

Section 308. Arbitration Panels for Health Care.—**[(a) The administrator shall establish a separate arbitration panel for each claim; and after each panel renders its decision on the claim it shall be disbanded.**

**(b) Each arbitration panel shall be composed of seven members including two health care providers, two attorneys, one of whom shall be designated as chairman by the administrator, who shall determine questions of law and three lay persons who are not health care providers nor licensed to practice law. Wherever possible, the administrator shall select a hospital administrator, podiatrist, or osteopathic physician or surgeon as one of the health care provider panel members where the claim involves a member of one of those classes of health care providers.**

**(c) Arbitration panel candidates shall be selected from a pool of candidates generated by the administrator. The rules and regulations promulgated by the administrator pertaining to the selection of arbitrators shall provide that the administrator shall send simultaneously to each party an identical list of five arbitration panel candidates in each of the three categories together with a brief biographical statement on each candidate. A party may strike from the list any two names which are unacceptable in each category. Any mutually agreeable candidate may be invited by the administrator to serve. Where insufficient mutually agreeable candidates are selected for any category a second list of that category shall be sent by the administrator. If a complete arbitration panel is not selected by mutual agreement of the parties the administrator shall appoint the remainder of the arbitration panel. Any appointment by the administrator shall be subject to challenge by any party for cause. A request to strike an arbitrator for cause shall be determined by the administrator. The parties shall not be restricted to the arbitration panel candidates submitted for consideration; but, if all parties mutually agree upon an arbitration panelist within a designated category, the panelist shall be invited to serve.**

(d) The attorney and health care provider members of each arbitration panel shall be or have been practicing members of their respective professions.

(e) Arbitration panel members shall be paid on a per diem or salary basis as fixed by the Executive Board plus actual and necessary expenses incurred in the performance of their official duties. The administrator shall provide for all other necessary expenses of the arbitration panels.

(f) No member shall participate in a case in which he may have an interest.]

*(a) The administrator shall establish and maintain a pool from which he shall select arbitration panels to hear claims made under this act. Appointments to the pool of panel members shall be made by the administrator with due consideration given to persons recommended by appropriate recognized professional or lay organizations.*

*(b) Each arbitration panel selected by the administrator shall be composed of three members, including one attorney, who shall be designated as chairperson and who shall determine questions of law, one health care provider and one lay person who is neither a health care provider nor an attorney. The administrator may select a hospital administrator, podiatrist or osteopathic physician or surgeon as the health care provider panel member where the claim involves a member of one of those classes of health care providers.*

*(c) Any arbitration panel member selected by the administrator shall be subject to challenge for cause by any party. All challenges for cause shall be determined by the administrator. Each party shall also be entitled to one peremptory challenge.*

*(d) The parties shall not be restricted to arbitration panels drawn from the pool. If all parties mutually agree upon an arbitration panelist or panelists, the panelist or panelists shall be invited to serve by the administrator. A panel mutually agreed upon by the parties shall be composed of three members: one attorney, one health care provider and one lay person.*

*(e) The attorney members of the arbitration panel pool shall be admitted to practice before the Supreme Court of the Commonwealth. The health care provider members of the arbitration panel pool who are subject to licensure shall be licensed by the Commonwealth.*

*(f) Arbitration panel members shall be paid at a daily or annual salary rate fixed by the Executive Board, plus actual and necessary expenses incurred in the performance of their official duties. The administrator shall provide for all other necessary expenses of the arbitration panels.*

*(g) No member shall participate in a case in which he may have an interest.*

*Section 403. Transfer to Common Pleas Court.—If an arbitration panel is not selected by the administrator within 90 days after the filing of a certificate of readiness as provided for in the applicable rules and regulations, in such event the administrator shall forthwith transfer the*

*case to the common pleas court having venue over the case for pretrial and trial as in other civil cases.*

***Section 1007.1. Severability.—If any provision or clause of this act or the application thereof to any person or situation is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.***

Section 2. This act shall take effect in 60 days and shall be applicable to all claims filed in the Office of Arbitration Panels for health care including claims filed prior to the effective date of this amendatory act in which no chairperson has been appointed prior to such effective date.

APPROVED—The 14th day of December, A. D. 1979.

DICK THORNBURGH