

No. 1980-165

AN ACT

HB 2204

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 an increase in basic coverage insurance for health care providers; for the method of determining the method of funding the Medical Professional Liability Catastrophe Loss Fund; settlements of claims; and granting authority to the commissioner to determine and levy emergency surcharges under certain conditions.

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

Section 1. Subsections (a), (b) and (c) of section 701, act of October 15, 1975 (P.L.390, No.111), known as the "Health Care Services Malpractice Act," amended July 15, 1976 (P.L.1028, No.207) and November 26, 1978 (P.L.1324, No.320), are amended to read:

Section 701. Professional Liability Insurance and Fund.—

(a) Every health care provider as defined in this act, practicing medicine or podiatry or otherwise providing health care services in the Commonwealth shall insure his professional liability only with an insurer licensed or approved by the Commonwealth of Pennsylvania, or provide proof of self-insurance in accordance with this section.

(1) (i) A health care provider, other than hospitals, who conducts more than 50% of his health care business or practice within the Commonwealth of Pennsylvania shall insure or self-insure his professional liability in the amount of \$100,000 per occurrence and \$300,000 per annual aggregate, and hospitals located in the Commonwealth shall insure or self-insure their professional liability in the amount of \$100,000 per occurrence, and \$1,000,000 per annual aggregate, hereinafter known as "basic coverage insurance" and they shall be entitled to participate in the fund. *In the event that amounts which shall become payable by the fund shall exceed the amount of \$20,000,000 in any year following calendar year 1980, basic coverage insurance commencing in the ensuing year shall become \$150,000 per occurrence and \$450,000 per annual aggregate for health care providers other than hospitals for which basic coverage insurance shall become \$150,000 per occurrence and \$1,000,000 per annual aggregate.*

(ii) *In the event that amounts which shall become payable by the fund shall exceed the amount of \$30,000,000 in any year following calendar year 1982, basic coverage insurance commencing in the ensuing year shall become \$200,000 per occurrence and \$600,000 per*

annual aggregate for health care providers other than hospitals for which basic coverage insurance shall become \$200,000 per occurrence and \$1,000,000 per annual aggregate.

(2) A health care provider who conducts 50% or less of his health care business or practice within the Commonwealth shall insure or self-insure his professional liability in the amount of \$200,000 per occurrence and \$600,000 per annual aggregate and shall not be required to contribute to or be entitled to participate in the fund set forth in Article VII of this act or the plan set forth in Article VIII of this act.

(3) For the purposes of this section, "health care business or practice" shall mean the number of patients to whom health care services are rendered by a health care provider within an annual period.

(4) All self-insurance plans shall be submitted with such information as the commissioner shall require for approval and shall be approved by the commissioner upon his finding that the plan constitutes protection equivalent to the insurance requirements of a health care provider.

(5) A fee shall be charged by the Insurance Department to all self-insurers for examination and approval of their plans.

(6) Self-insured health care providers and hospitals if exempt from this act shall submit the information required under section 809 to the commissioner.

(b) No insurer providing professional liability insurance shall be liable for payment of any claim against a health care provider for any loss or damages awarded in a professional liability action in excess of **[\$100,000 per occurrence and \$300,000 per annual aggregate]** *the basic coverage insurance, as provided in subsection (a)(1)* for each health care provider against whom an award is made unless the health care provider's professional liability policy or self-insurance plan provides for a higher annual aggregate limit.

(c) A government may satisfy its obligations pursuant to this act, as well as the obligations of its employees to the extent of their employment, by either purchasing insurance or assuming such obligation as a self-insurer.

* * *

Section 2. Subsection (d) of section 701 of the act, amended July 15, 1976 (P.L.1028, No.207), is amended to read:

Section 701. Professional Liability Insurance and Fund.—* * *

(d) There is hereby created a contingency fund for the purpose of paying all awards, *judgments and settlements* for loss or damages against a health care provider *entitled to participate in the fund* as a consequence of any *claim for* professional liability [action] brought [under this act] *against such health care provider as a defendant or an additional defendant* to the extent [any] *such* health care provider's share exceeds his basic [insurance coverage] *coverage insurance in*

effect at the time of occurrence as provided in subsection (a)(1). Such fund shall be known as the "Medical Professional Liability Catastrophe Loss Fund," in this Article VII called the "fund." The limit of liability of the fund shall be \$1,000,000 for each occurrence for each health care provider and \$3,000,000 per annual aggregate for each health care provider.

* * *

Section 3. Subsections (e), (f), (g) and (h) of section 701 of the act, amended July 15, 1976 (P.L.1028, No.207), are amended to read:

Section 701. Professional Liability Insurance and Fund.—* * *

(e) (1) The fund shall be funded by the levying of an annual surcharge *on or after January 1 of every year* on all health care providers [except as provided for in subsection (a)(2)] *entitled to participate in the fund.* The surcharge shall be determined by the director appointed pursuant to section 702 [based upon actuarial principles] and subject to the prior approval of the commissioner. The surcharge shall [not exceed 10% of] *be based on* the cost to each health care provider for maintenance of professional liability insurance [or \$100, whichever is greater] *and shall be the appropriate percentage thereof, necessary to produce an amount sufficient to reimburse the fund for the payment of all claims paid and expenses incurred during the preceding calendar year and to provide an amount necessary to maintain an additional \$15,000,000.*

(2) Health care providers having approved self-insurance plans shall be surcharged an amount equal to the surcharge imposed on a health care provider of like class, size, risk and kind as determined by the director. The fund and all income from the fund shall be held in trust, deposited in a segregated account, invested and reinvested by the director, and shall not become a part of the General Fund of the Commonwealth. [If the total fund exceeds the sum of \$15,000,000 at the end of any calendar year after the payment of all claims and expenses, including the expenses of operation of the office of the director, the director shall reduce the surcharge provided in this section in order to maintain the fund at an approximate level of \$15,000,000.] All claims shall be computed on [December 31 of the year in which the claim becomes final] *August 31, 1981 for all claims which become final between January 1, 1981 and August 31, 1981 and annually thereafter on August 31 for all claims which became final between that date and September 1 of the preceding year.* All such claims shall be paid [within two weeks thereafter. If the fund would be exhausted by the payment in full of all claims allowed during any calendar year, then the amount paid to each claimant shall be prorated. Any amounts due and unpaid shall be paid in the following calendar year.] *on or before December 31 following the August 31 by which they became final, as provided above. All claims which become final between January 1, 1980 and the effective date of this amendatory act shall be computed on the effective date of this amendatory act and shall be paid on or before December 31, 1980.*

(3) Notwithstanding the above provisions relating to an annual surcharge, the commissioner shall have the authority, during September 1981 and during September of each year thereafter, if the fund would be exhausted by the payment in full of all claims which have become final and the expenses of the office of the director, to determine and levy an emergency surcharge on all health care providers then entitled to participate in the fund. Such emergency surcharge shall be the appropriate percentage of the cost to each health care provider for maintenance of professional liability insurance necessary to produce an amount sufficient to allow the fund to pay in full all claims determined to be final as of August 31, 1981 and August 31 of each year thereafter and the expenses of the office of the director, as of December 31, 1980 and December 31 of each year thereafter.

(4) The annual [surcharge] and emergency surcharges on health care providers and any income realized by investment or reinvestment shall constitute the sole and exclusive sources of funding for the fund. No claims or expenses against the fund shall be deemed to constitute a debt of the Commonwealth or a charge against the General Fund of the Commonwealth. The director shall issue rules and regulations consistent with this section regarding the establishment and operation of the fund including all procedures and the levying, payment and collection of the surcharges *except that the commissioner shall issue rules and regulations regarding the imposition of the emergency surcharge.* A fee shall be charged by the [catastrophe loss fund] director to all self-insurers for examination and approval of their plans.

(f) The failure of any health care provider to comply with any of the provisions of this section or any of the rules and regulations issued by the director shall result in the suspension or revocation of the health care provider's license by the licensure board.

(g) Any physician who exclusively practices the specialty of forensic pathology shall be exempt from the provisions of this act.

(h) All health care providers who are members of the Pennsylvania military forces are exempt from the provisions of this act while in the performance of their assigned duty in the Pennsylvania military forces under orders.

Section 4. Subsection (f) of section 702 of the act, amended July 15, 1976 (P.L.1028, No.207), is amended to read:

Section 702. Director and Administration of Fund.—* * *

(f) The director is authorized to defend, litigate, settle or compromise any claim payable by the fund. *A health care provider's basic insurance coverage carrier shall have the right to approve any settlement entered into by the director on behalf of its insured health care provider. If the basic insurance coverage carrier does not disapprove a settlement prior to execution by the director, it shall be deemed approved by the basic insurance coverage carrier. In the event that*

more than one health care provider defendant is party to a settlement, the health care provider's basic insurance coverage carrier shall have the right to approve only that portion of the settlement which is contributed on behalf of its insured health care provider.

* * *

Section 5. Sections 703 and 704 of the act are repealed.

Section 6. Section 803 of the act is amended to read:

Section 803. Plan Operation, Rates and Deficits.—(a) Subject to the supervision and approval of the commissioner, insurers may consult and agree with each other and with other appropriate persons as to the organization, administration and operation of the plan and as to rates and rate modifications for insurance coverages provided under the plan. Rates and rate modifications adopted or changed for insurance coverages provided under the plan shall be approved by the commissioner in accordance with the act of June 11, 1947 (P.L.538, No.246), known as "The Casualty and Surety Rate Regulatory [Act." *Act,*" *except as may be inconsistent with subsection (c).*

(b) In the event that the Joint Underwriting Association suffers a deficit in any calendar year, the board of directors of the Joint Underwriting Association shall so certify to the director of the Catastrophe Loss Fund and the Insurance Commissioner. Such certification shall be subject to the review and approval of the Insurance Commissioner. Within 60 days following such certification and approval the director of the fund shall make sufficient payment to the Joint Underwriting Association to compensate for said deficit. A deficit shall exist whenever the sum of the earned premiums collected by the Joint Underwriting Association and the investment income therefrom is exhausted by virtue of payment of or allocation for the Joint Underwriting Association's necessary administrative expenses, taxes, losses, loss adjustment expenses and reserves, including reserves for: (1) losses incurred, (2) losses incurred but not reported, (3) loss adjustment expenses, (4) unearned premiums.

(c) *Within 60 days following the certification that the Joint Underwriting Association has suffered a deficit, as set forth in subsection (b), the board of directors of the Joint Underwriting Association shall file with the Insurance Commissioner and the Insurance Commissioner shall approve a premium increase sufficient to generate the requisite income to:*

(1) *reimburse the fund for any payment made by the fund to compensate for said deficit; and*

(2) *increase premiums to a level actuarially sufficient to avoid an operating deficit by the Joint Underwriting Association during the following 12 months.*

The Joint Underwriting Association shall reimburse the fund with interest at a rate equal to that earned by the fund on its invested assets within one year of any payment made by the fund as compensation for any deficit incurred by the Joint Underwriting Association.

Section 7. This act shall take effect immediately and section 2 shall be retroactive to January 13, 1976.

APPROVED—The 15th day of October, A. D. 1980.

DICK THORNBURGH