

No. 2003-44

AN ACT

HB 44

Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An act to consolidate, editorially revise, and codify the public welfare laws of the Commonwealth," exempting certain persons from Federal law relating to public assistance; establishing the Health Care Provider Retention Account and the Health Care Provider Retention Program; and repealing provisions related to physician discounts on assessments and certain health care provider medical professional liability insurance.

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

Section 1. Section 405.1 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, is amended by adding a subsection to read:

Section 405.1. Establishment of RESET.—* * *

(i) Pursuant to the authorization provided to the states under section 115(d)(1)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193, 21 U.S.C. § 862a(d)(1)(A)), the Commonwealth elects to exempt all individuals domiciled in this Commonwealth from application of section 115(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (21 U.S.C. § 862a(a)). After approval of benefits, the department shall refer all affected individuals for assessment and treatment under the act of April 14, 1972 (P.L.221, No.63), known as the "Pennsylvania Drug and Alcohol Abuse Control Act." This subsection shall not be construed to alter or supersede any other provision of this section.

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

Section 443.7. Health Care Provider Retention Account.—(a) There is established within the General Fund a special account to be known as the Health Care Provider Retention Account. Funds in the account shall be subject to an annual appropriation by the General Assembly to the department. The department shall administer funds appropriated under this section consistent with its duties under section 201(1).

(b) By December 31 of each year, the Secretary of the Budget shall transfer from the Medical Care Availability and Reduction of Error (Mcare) Fund established in section 712(a) of the act of March 20, 2002 (P.L.154, No.13), known as the "Medical Care Availability and Reduction of Error (Mcare) Act," to the Health Care Provider Retention Account an amount equal to the difference between the amount deposited under section 712(m) of the Medical Care Availability and Reduction of Error (Mcare) Act and the amount granted as discounts under section 712(e)(2)

of the Medical Care Availability and Reduction of Error (Mcare) Act, for that calendar year.

(c) The department may deposit any other funds received by the department which it deems appropriate in the Health Care Provider Retention Account.

(d) The Insurance Department shall provide assistance to the department in administering the Health Care Provider Retention Account.

Section 3. The act is amended by adding an article to read:

**ARTICLE XIII-A
HEALTH CARE PROVIDER RETENTION PROGRAM**

Section 1301-A. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Account.” The Health Care Provider Retention Account established in section 443.7.

“Applicant.” A health care provider who resides in or practices in this Commonwealth and who applies for an abatement under section 1304-A.

“Assessment.” The assessment imposed under section 712(d) of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act.

“Emergency physician.” A physician who is certified by the American Board of Emergency Medicine and who is either employed full time by a trauma center or is working under an exclusive contract with a trauma center.

“Health care provider.” An individual who is all of the following:

(1) A physician or certified nurse midwife.

(2) A participating health care provider as defined in section 702 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act.

“Mcare Act.” The act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act.

“Program.” The Health Care Provider Retention Program established in section 1302-A.

“Trauma center.” A hospital accredited by the Pennsylvania Trauma Systems Foundation as a Level I or Level II Trauma Center.

Section 1302-A. Abatement program.

There is hereby established within the Insurance Department a program to be known as the Health Care Provider Retention Program. The Insurance Department, in conjunction with the department, shall administer the program. The program shall provide assistance in the form of assessment abatements to health care providers for calendar years 2003 and 2004.

Section 1303-A. Eligibility.

A health care provider shall not be eligible for assessment abatement under the program if any of the following apply:

(1) The health care provider's license has been revoked in any state within the ten most recent years.

(2) The health care provider's ability, if any, to dispense or prescribe drugs or medication has been revoked in this Commonwealth or any other state within the ten most recent years.

(3) The health care provider has had three or more medical liability claims in the past five most recent years in which a judgment was entered against the health care provider or a settlement was paid on behalf of the health care provider, in an amount equal to or exceeding \$500,000 per claim.

(4) The health care provider has been convicted of or has entered a plea of guilty or no contest to an offense which is required to be reported under section 903(3) or (4) of the Mcare Act within the ten most recent years.

(5) The health care provider has an unpaid surcharge under the Mcare Act.

Section 1304-A. Procedure.

(a) Application.—A health care provider may apply to the Insurance Department for an abatement of the assessment imposed for the previous calendar year. The application must be submitted by February 15 of the current calendar year and be on the form required by the Insurance Department. In addition to a completed application, an applicant shall submit all of the following supporting information:

(1) A statement of the applicant's field of practice, including any specialty.

(2) Any proof of payment of the applicant's assessment for the preceding calendar year.

(3) A copy of, and proof of payment of, the applicant's premium for medical professional liability insurance for the preceding, if applicable, and the current calendar years. The proof of payment shall indicate the amount of premium paid.

(4) Except for physicians enrolled in an approved residency or fellowship program, a signed certificate of retention.

(5) A signed certification that the health care provider is an eligible applicant under section 1303-A for the program.

(6) Such other information as the Insurance Department may require.

(b) Review.—Upon receipt of a complete application, the Insurance Department shall review the applicant's information and grant a complete or partial abatement of the assessment for the previous calendar year in accordance with all of the following:

(1) The Insurance Department shall notify the department that the applicant is entitled to a 100% abatement of the imposed assessment if the health care provider was assessed under section 712(d) of the Mcare Act as:

- (i) a physician who is assessed as a member of one of the four highest rate classes of the prevailing primary premium;**
- (ii) an emergency physician;**
- (iii) a physician who routinely provides obstetrical services in rural areas as designated by the Insurance Department; or**
- (iv) a certified nurse midwife.**

(2) The Insurance Department shall notify the department that the applicant is entitled to a 50% abatement of the imposed assessment if the health care provider was assessed under section 712(d) of the Mcare Act as a physician but does not qualify for an abatement under paragraph (1).

(c) Refund.—If a health care provider paid the assessment for calendar year 2003 prior to applying for an abatement under subsection (a), the health care provider may, in addition to the completed application required by subsection (a), submit a request for a refund. The request shall be submitted by February 15, 2004, and be on the form required by the Insurance Department. If the Insurance Department grants the health care provider an abatement of the assessment for calendar year 2003 in accordance with subsection (b), the Insurance Department shall refund to the health care provider the portion of the assessment which was abated.
Section 1305-A. Certificate of retention.

(a) Certificate.—The Insurance Department shall prepare a certificate of retention form. The form shall require a health care provider seeking an abatement under the program to attest that the health care provider will continue to provide health care services in this Commonwealth for at least one full calendar year following the year for which an abatement was received pursuant to this article.

(b) Repayment.—

(1) Except as provided in paragraph (2), if a health care provider receives an abatement but, prior to the end of the retention period, ceases providing health care services in this Commonwealth, the health care provider shall repay to the Commonwealth 100% of the abatement received plus administrative and legal costs, if applicable.

(2) Paragraph (1) shall not apply to a health care provider who is any of the following:

- (i) A physician who is enrolled in an approved residency or fellowship program.**
- (ii) A physician who dies prior to the end of the retention period.**
- (iii) A physician who is disabled and unable to practice prior to the end of the retention period.**

(iv) A physician who is called to active military duty prior to the end of the retention period.

(v) A physician who retires and who is at least 70 years of age prior to the end of the retention period.

(c) Tax.—An amount owed the Commonwealth under subsection (b) shall be considered a tax under section 1401 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code. The Department of Revenue shall provide assistance to the Insurance Department in any collection effort.

Section 1306-A. Reporting.

(a) Report.—By May 15, 2004, the Insurance Department shall submit a report to the Governor, the chairperson and the minority chairperson of the Banking and Insurance Committee of the Senate and the chairperson and the minority chairperson of the Insurance Committee of the House of Representatives regarding the program. The report shall include all of the following:

(1) The number of health care providers who applied for abatement under the program.

(2) The number of health care providers granted 100% abatement under the program.

(3) The number of health care providers granted 50% abatement under the program.

(4) Based upon available information, the number of health care providers who have left this Commonwealth after receiving abatement under the program.

(5) The number of and reason for any unapproved applications.

(6) Any other information relevant to assessing the success of the program.

(b) Exception.—The report shall not release information which could reasonably be expected to reveal the individual identity of a health care provider.

Section 1307-A. Cooperation.

Notwithstanding any law to the contrary, all departments under the jurisdiction of the Governor shall cooperate with the Insurance Department in its administration of the program.

Section 1308-A. Confidentiality.

Any information submitted by an applicant to the Insurance Department under this article shall be confidential by law and privileged and shall not be deemed a public record under the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

Section 1309-A. Violations.

The following shall apply:

(1) Any person who willfully submits false or fraudulent information under section 1304-A commits a violation of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) and shall,

upon conviction, be subject to punishment as provided by law. Any penalty imposed for violating 18 Pa.C.S. § 4904 shall be in addition to any penalty imposed in accordance with this article.

(2) Any person who willfully divulges or makes known individual specific information submitted under this article, permits individual specific information to be seen or examined by any person or prints, publishes or makes known in any manner individual specific information commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine not exceeding \$2,500 and the costs of prosecution or to undergo imprisonment for not more than one year, or both.

Section 1310-A. Expiration.

The Health Care Provider Retention Program established under this article shall expire December 31, 2005.

Section 4. (a) The following acts and parts of acts are repealed to the extent specified:

Section 712(e)(2) and (3) of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act, insofar as it relates to physicians and certified nurse midwives.

Subchapters A and B of Chapter 7 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act, insofar as it relates to health care providers that conduct less than 50% of their health care business or practice within this Commonwealth.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 5. This act shall take effect as follows:

- (1) This section shall take effect immediately.
- (2) The addition of section 405.1(i) of the act shall take effect in 60 days.
- (3) The remainder of this act shall take effect January 1, 2004.

APPROVED—The 23rd day of December, A.D. 2003.

EDWARD G. RENDELL