

4446

2011-2012 Regular Sessions

I N   S E N A T E

April 5, 2011

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Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend chapter 266 of the laws of 1986, amending the civil practice law and rules and other laws relating to malpractice and professional medical conduct, in relation to terms of insurance coverage

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Paragraph (a) of subdivision 1 of section 18 of chapter 266  
2     of the laws of 1986, amending the civil practice law and rules and other  
3     laws relating to malpractice and professional medical conduct, as  
4     amended by section 15 of part C of chapter 59 of the laws of 2011, is  
5     amended to read as follows:  
6     (a) The superintendent of insurance and the commissioner of health or  
7     their designee shall, from funds available in the hospital excess  
8     liability pool created pursuant to subdivision 5 of this section,  
9     purchase a policy or policies for excess insurance coverage, as author-  
10    ized by paragraph 1 of subsection (e) of section 5502 of the insurance  
11    law; or from an insurer, other than an insurer described in section 5502  
12    of the insurance law, duly authorized to write such coverage and actual-  
13    ly writing medical malpractice insurance in this state; or shall  
14    purchase equivalent excess coverage in a form previously approved by the  
15    superintendent of insurance for purposes of providing equivalent excess  
16    coverage in accordance with section 19 of chapter 294 of the laws of  
17    1985, for medical or dental malpractice occurrences between July 1, 1986  
18    and June 30, 1987, between July 1, 1987 and June 30, 1988, between July  
19    1, 1988 and June 30, 1989, between July 1, 1989 and June 30, 1990,  
20    between July 1, 1990 and June 30, 1991, between July 1, 1991 and June  
21    30, 1992, between July 1, 1992 and June 30, 1993, between July 1, 1993  
22    and June 30, 1994, between July 1, 1994 and June 30, 1995, between July  
23    1, 1995 and June 30, 1996, between July 1, 1996 and June 30, 1997,

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 between July 1, 1997 and June 30, 1998, between July 1, 1998 and June  
2 30, 1999, between July 1, 1999 and June 30, 2000, between July 1, 2000  
3 and June 30, 2001, between July 1, 2001 and June 30, 2002, between July  
4 1, 2002 and June 30, 2003, between July 1, 2003 and June 30, 2004,  
5 between July 1, 2004 and June 30, 2005, between July 1, 2005 and June  
6 30, 2006, between July 1, 2006 and June 30, 2007, between July 1, 2007  
7 and June 30, 2008, between July 1, 2008 and June 30, 2009, between July  
8 1, 2009 and June 30, 2010, between July 1, 2010 and June 30, 2011,  
9 between July 1, 2011 and June 30, 2012, between July 1, 2012 and June  
10 30, 2013 and between July 1, 2013 and June 30, 2014 or reimburse the  
11 hospital where the hospital purchases equivalent excess coverage as  
12 defined in subparagraph (i) of paragraph (a) of subdivision 1-a of this  
13 section for medical or dental malpractice occurrences between July 1,  
14 1987 and June 30, 1988, between July 1, 1988 and June 30, 1989, between  
15 July 1, 1989 and June 30, 1990, between July 1, 1990 and June 30, 1991,  
16 between July 1, 1991 and June 30, 1992, between July 1, 1992 and June  
17 30, 1993, between July 1, 1993 and June 30, 1994, between July 1, 1994  
18 and June 30, 1995, between July 1, 1995 and June 30, 1996, between July  
19 1, 1996 and June 30, 1997, between July 1, 1997 and June 30, 1998,  
20 between July 1, 1998 and June 30, 1999, between July 1, 1999 and June  
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22 and June 30, 2002, between July 1, 2002 and June 30, 2003, between July  
23 1, 2003 and June 30, 2004, between July 1, 2004 and June 30, 2005,  
24 between July 1, 2005 and June 30, 2006, between July 1, 2006 and June  
25 30, 2007, between July 1, 2007 and June 30, 2008, between July 1, 2008  
26 and June 30, 2009, between July 1, 2009 and June 30, 2010, between July  
27 1, 2010 and June 30, 2011, between July 1, 2011 and June 30, 2012,  
28 between July 1, 2012 and June 30, 2013 and between July 1, 2013 and June  
29 30, 2014 for physicians or dentists certified as eligible for each such  
30 period or periods pursuant to subdivision 2 of this section by a general  
31 hospital licensed pursuant to article 28 of the public health law;  
32 provided that no single insurer shall write more than fifty percent of  
33 the total excess premium for a given policy year; and provided, however,  
34 that such eligible physicians or dentists must have in force an individ-  
35 ual policy, from an insurer licensed in this state of primary malprac-  
36 tice insurance coverage in amounts of no less than one million [three  
37 hundred thousand] dollars for each claimant and three million [nine  
38 hundred thousand] dollars for all claimants under that policy during the  
39 period of such excess coverage for such occurrences or be endorsed as  
40 additional insureds under a hospital professional liability policy which  
41 is offered through a voluntary attending physician ("channeling")  
42 program previously permitted by the superintendent of insurance during  
43 the period of such excess coverage for such occurrences. During such  
44 period, such policy for excess coverage or such equivalent excess cover-  
45 age shall, when combined with the physician's or dentist's primary malp-  
46 ractice insurance coverage or coverage provided through a voluntary  
47 attending physician ("channeling") program, total an aggregate level of  
48 two million three hundred thousand dollars for each claimant and six  
49 million nine hundred thousand dollars for all claimants from all such  
50 policies with respect to occurrences in each of such years [provided,  
51 however, if the cost of primary malpractice insurance coverage in excess  
52 of one million dollars, but below the excess medical malpractice insur-  
53 ance coverage provided pursuant to this act, exceeds the rate of nine  
54 percent per annum, then the required level of primary malpractice insur-  
55 ance coverage in excess of one million dollars for each claimant shall  
56 be in an amount of not less than the dollar amount of such coverage

1 available at nine percent per annum; the required level of such coverage  
2 for all claimants under that policy shall be in an amount not less than  
3 three times the dollar amount of coverage for each claimant; and excess  
4 coverage, when combined with such primary malpractice insurance cover-  
5 age, shall increase the aggregate level for each claimant by one million  
6 dollars and three million dollars for all claimants;] and provided  
7 further, that, with respect to policies of primary medical malpractice  
8 coverage that include occurrences between April 1, 2002 and June 30,  
9 2002, such requirement that coverage be in amounts no less than one  
10 million three hundred thousand dollars for each claimant and three  
11 million nine hundred thousand dollars for all claimants for such occur-  
12 rences shall be effective April 1, 2002.

13 S 2. This act shall take effect immediately.