

S. 2959

A. 6589

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

March 6, 2009

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

IN ASSEMBLY -- Introduced by M. of A. BALL -- read once and referred 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 23 of part B of chapter 58 of the laws of 2008, 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,

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

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1 between July 1, 1990 and June 30, 1991, between July 1, 1991 and June
2 30, 1992, between July 1, 1992 and June 30, 1993, between July 1, 1993
3 and June 30, 1994, between July 1, 1994 and June 30, 1995, between July
4 1, 1995 and June 30, 1996, between July 1, 1996 and June 30, 1997,
5 between July 1, 1997 and June 30, 1998, between July 1, 1998 and June
6 30, 1999, between July 1, 1999 and June 30, 2000, between July 1, 2000
7 and June 30, 2001, between July 1, 2001 and June 30, 2002, between July
8 1, 2002 and June 30, 2003, between July 1, 2003 and June 30, 2004,
9 between July 1, 2004 and June 30, 2005, between July 1, 2005 and June
10 30, 2006, between July 1, 2006 and June 30, 2007, between July 1, 2007
11 and June 30, 2008, between July 1, 2008 and June 30, 2009, between July
12 1, 2009 and June 30, 2010, and between July 1, 2010 and June 30, 2011 or
13 reimburse the hospital where the hospital purchases equivalent excess
14 coverage as defined in subparagraph (i) of paragraph (a) of subdivision
15 (1-a) of this section for medical or dental malpractice occurrences
16 between July 1, 1987 and June 30, 1988, between July 1, 1988 and June
17 30, 1989, between July 1, 1989 and June 30, 1990, between July 1, 1990
18 and June 30, 1991, between July 1, 1991 and June 30, 1992, between July
19 1, 1992 and June 30, 1993, between July 1, 1993 and June 30, 1994,
20 between July 1, 1994 and June 30, 1995, between July 1, 1995 and June
21 30, 1996, between July 1, 1996 and June 30, 1997, between July 1, 1997
22 and June 30, 1998, between July 1, 1998 and June 30, 1999, between July
23 1, 1999 and June 30, 2000, between July 1, 2000 and June 30, 2001,
24 between July 1, 2001 and June 30, 2002, between July 1, 2002 and June
25 30, 2003, between July 1, 2003 and June 30, 2004, between July 1, 2004
26 and June 30, 2005, between July 1, 2005 and June 30, 2006, between July
27 1, 2006 and June 30, 2007, between July 1, 2007 and June 30, 2008,
28 between July 1, 2008 and June 30, 2009, between July 1, 2009 and June
29 30, 2010, and between July 1, 2010 and June 30, 2011 for physicians or
30 dentists certified as eligible for each such period or periods pursuant
31 to subdivision (2) of this section by a general hospital licensed pursu-
32 ant to article 28 of the public health law; provided that no single
33 insurer shall write more than fifty percent of the total excess premium
34 for a given policy year; and provided, however, that such eligible
35 physicians or dentists must have in force an individual policy, from an
36 insurer licensed in this state of primary malpractice insurance coverage
37 in amounts of no less than one million [three hundred thousand] dollars
38 for each claimant and three million [nine hundred thousand] dollars for
39 all claimants under that policy during the period of such excess cover-
40 age for such occurrences or be endorsed as additional insureds under a
41 hospital professional liability policy which is offered through a volun-
42 tary attending physician ("channeling") program previously permitted by
43 the superintendent of insurance during the period of such excess cover-
44 age for such occurrences. During such period, such policy for excess
45 coverage or such equivalent excess coverage shall, when combined with
46 the physician's or dentist's primary malpractice insurance coverage or
47 coverage provided through a voluntary attending physician ("channeling")
48 program, total an aggregate level of two million three hundred thousand
49 dollars for each claimant and six million nine hundred thousand dollars
50 for all claimants from all such policies with respect to occurrences in
51 each of such years [provided, however, if the cost of primary malprac-
52 tice insurance coverage in excess of one million dollars, but below the
53 excess medical malpractice insurance coverage provided pursuant to this
54 act, exceeds the rate of nine percent per annum, then the required level
55 of primary malpractice insurance coverage in excess of one million
56 dollars for each claimant shall be in an amount of not less than the

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

13 S 2. This act shall take effect immediately.