

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. KELLNER -- 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; and to amend the state finance law, in relation to creating the health care access protection fund; and to amend the insurance law, in relation to the payment of medical malpractice insurance premiums

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

1 Section 1. Legislative Intent. The legislature finds and declares that
2 access to quality health care is a critical element to achieving and
3 sustaining a high quality of life for all New Yorkers, and that assuring
4 an adequate supply of physicians in New York state is an essential
5 component to ensuring access to quality health care. As a result of
6 rapidly rising liability insurance premiums, physicians are being forced
7 to limit the scope of their practice, increase the number of patients
8 they have to see each day, leave New York, or leave the practice of
9 medicine entirely, thereby compromising patient access and/or the quality
10 of medical care to New Yorkers. The legislature further finds that
11 the health insurance industry has generated enormous profits and
12 reserves far beyond that required by law. Since the payers exercise
13 absolute control over the revenue side of most physicians' practices, it
14 is only right and proper that some of those reserves and profits be used
15 to reduce the burden of physicians' medical liability premiums and to
16 ensure that reimbursement rates adequately reflect future annual
17 increases in medical malpractice premiums to be paid by physicians.

18 S 2. Paragraph (a) of subdivision 1 of section 18 of chapter 266 of
19 the laws of 1986, amending the civil practice law and rules and other
20 laws relating to malpractice and professional medical conduct, as

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

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1 amended by section 15 of part C of chapter 59 of the laws of 2011, is
2 amended to read as follows:

3 (a) The superintendent of [insurance] FINANCIAL SERVICES and the
4 commissioner of health or their designee shall, from funds available in
5 the hospital excess liability pool created pursuant to subdivision 5 of
6 this section, purchase a policy or policies for excess insurance cover-
7 age, as authorized by paragraph 1 of subsection (e) of section 5502 of
8 the insurance law; or from an insurer, other than an insurer described
9 in section 5502 of the insurance law, duly authorized to write such
10 coverage and actually writing medical malpractice insurance in this
11 state; or shall purchase equivalent excess coverage in a form previously
12 approved by the superintendent of insurance for purposes of providing
13 equivalent excess coverage in accordance with section 19 of chapter 294
14 of the laws of 1985, for medical or dental malpractice occurrences
15 between July 1, 1986 and June 30, 1987, between July 1, 1987 and June
16 30, 1988, between July 1, 1988 and June 30, 1989, between July 1, 1989
17 and June 30, 1990, between July 1, 1990 and June 30, 1991, between July
18 1, 1991 and June 30, 1992, between July 1, 1992 and June 30, 1993,
19 between July 1, 1993 and June 30, 1994, between July 1, 1994 and June
20 30, 1995, between July 1, 1995 and June 30, 1996, between July 1, 1996
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22 1, 1998 and June 30, 1999, between July 1, 1999 and June 30, 2000,
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24 30, 2002, between July 1, 2002 and June 30, 2003, between July 1, 2003
25 and June 30, 2004, between July 1, 2004 and June 30, 2005, between July
26 1, 2005 and June 30, 2006, between July 1, 2006 and June 30, 2007,
27 between July 1, 2007 and June 30, 2008, between July 1, 2008 and June
28 30, 2009, between July 1, 2009 and June 30, 2010, between July 1, 2010
29 and June 30, 2011, between July 1, 2011 and June 30, 2012, between July
30 1, 2012 and June 30, 2013 and between July 1, 2013 and June 30, 2014 or
31 reimburse the hospital where the hospital purchases equivalent excess
32 coverage as defined in subparagraph (i) of paragraph (a) of subdivision
33 1-a of this section for medical or dental malpractice occurrences
34 between July 1, 1987 and June 30, 1988, between July 1, 1988 and June
35 30, 1989, between July 1, 1989 and June 30, 1990, between July 1, 1990
36 and June 30, 1991, between July 1, 1991 and June 30, 1992, between July
37 1, 1992 and June 30, 1993, between July 1, 1993 and June 30, 1994,
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44 and June 30, 2005, between July 1, 2005 and June 30, 2006, between July
45 1, 2006 and June 30, 2007, between July 1, 2007 and June 30, 2008,
46 between July 1, 2008 and June 30, 2009, between July 1, 2009 and June
47 30, 2010, between July 1, 2010 and June 30, 2011, between July 1, 2011
48 and June 30, 2012, between July 1, 2012 and June 30, 2013 and between
49 July 1, 2013 and June 30, 2014 for physicians or dentists certified as
50 eligible for each such period or periods pursuant to subdivision 2 of
51 this section by a general hospital licensed pursuant to article 28 of
52 the public health law; provided that no single insurer shall write more
53 than fifty percent of the total excess premium for a given policy year;
54 and provided, however, that such eligible physicians or dentists must
55 have in force an individual policy, from an insurer licensed in this
56 state of primary malpractice insurance coverage in amounts of no less

1 than one million three hundred thousand dollars for each claimant and
2 three million nine hundred thousand dollars for all claimants under that
3 policy during the period of such excess coverage for such occurrences or
4 be endorsed as additional insureds under a hospital professional liability
5 policy which is offered through a voluntary attending physician
6 ("channeling") program previously permitted by the superintendent of
7 insurance during the period of such excess coverage for such occurrences.
8 During such period, such policy for excess coverage or such
9 equivalent excess coverage shall, when combined with the physician's or
10 dentist's primary malpractice insurance coverage or coverage provided
11 through a voluntary attending physician ("channeling") program, total an
12 aggregate level of two million three hundred thousand dollars for each
13 claimant and six million nine hundred thousand dollars for all claimants
14 from all such policies with respect to occurrences in each of such years
15 provided, however, if the cost of primary malpractice insurance coverage
16 in excess of one million dollars, but below the excess medical malpractice
17 insurance coverage provided pursuant to this act, exceeds the rate
18 of nine percent per annum, then the required level of primary malpractice
19 insurance coverage in excess of one million dollars for each claimant
20 shall be in an amount of not less than the dollar amount of such
21 coverage available at nine percent per annum; the required level of such
22 coverage for all claimants under that policy shall be in an amount not
23 less than three times the dollar amount of coverage for each claimant;
24 and excess coverage, when combined with such primary malpractice insurance
25 coverage, shall increase the aggregate level for each claimant by
26 one million dollars and three million dollars for all claimants; and
27 provided further, that, with respect to policies of primary medical
28 malpractice coverage that include occurrences between April 1, 2002 and
29 June 30, 2002, such requirement that coverage be in amounts no less than
30 one million three hundred thousand dollars for each claimant and three
31 million nine hundred thousand dollars for all claimants for such occurrences
32 shall be effective April 1, 2002. PROVIDED FURTHER THAT, EFFECTIVE
33 JULY 1, 2013, THE COST OF THE FIRST FIVE HUNDRED FIFTY THOUSAND
34 DOLLARS OF AN ELIGIBLE PHYSICIAN'S PRIMARY MEDICAL MALPRACTICE COVERAGE
35 SHALL BE PAID THROUGH THE HEALTH CARE ACCESS PROTECTION FUND CREATED
36 PURSUANT TO SECTION 97-LLLL OF THE STATE FINANCE LAW.

37 S 3. The state finance law is amended by adding a new section 97-llll
38 to read as follows:

39 S 97-LLLL. HEALTH CARE ACCESS PROTECTION FUND. FUNDS ACCUMULATED,
40 INCLUDING INCOME FROM INVESTED FUNDS, FROM THE PAYMENTS SPECIFIED IN
41 SECTIONS THREE THOUSAND TWO HUNDRED FORTY AND FOUR THOUSAND THREE
42 HUNDRED TWENTY-EIGHT OF THE INSURANCE LAW SHALL BE DEPOSITED AND CREDITED
43 TO A SPECIAL REVENUE FUND-OTHER FUND TO BE ESTABLISHED BY THE COMPTROLLER.
44 TO THE EXTENT OF FUNDS APPROPRIATED THEREFOR, THE COMMISSIONER
45 SHALL PROVIDE FUNDING FOR THE PURPOSES OF COVERING THE COST OF THE FIRST
46 FIVE HUNDRED FIFTY THOUSAND DOLLARS OF PRIMARY MEDICAL MALPRACTICE
47 COVERAGE OF A PHYSICIAN WHO IS ELIGIBLE TO OBTAIN EXCESS COVERAGE, AS
48 SET FORTH PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION EIGHTEEN
49 OF CHAPTER TWO HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN HUNDRED
50 EIGHTY-SIX.

51 S 4. The insurance law is amended by adding a new section 3240 to read
52 as follows:

53 S 3240. LOSS RATIO PAYMENT. BEGINNING IN CALENDAR YEAR TWO THOUSAND
54 ELEVEN, IF THE LOSS RATIO FOR AN INDIVIDUAL HEALTH INSURANCE POLICY
55 FORM, A SMALL GROUP HEALTH INSURANCE OR A LARGE GROUP HEALTH INSURANCE
56 POLICY FORM IS LESS THAN EIGHTY-SEVEN PERCENT, AN INSURER SHALL PAY TO

1 THE COMMISSIONER OF HEALTH OR SUCH COMMISSIONER'S DESIGNEE A PERCENT OF
2 THE AGGREGATE PREMIUM COLLECTED FOR THE POLICY FORM IN THE PREVIOUS YEAR
3 EQUAL TO THE DIFFERENCE BETWEEN THE MINIMUM LOSS RATIO FOR THE POLICY
4 FORM STATED IN THIS SECTION AND THE ACTUAL LOSS RATIO; PROVIDED, HOWEV-
5 ER, SUCH AMOUNTS SHALL BE OFFSET BY ANY AMOUNT REQUIRED TO BE RETURNED
6 TO POLICY HOLDERS IN ACCORDANCE WITH SECTION THREE THOUSAND TWO HUNDRED
7 THIRTY-ONE OF THIS ARTICLE. AMOUNTS DUE UNDER THIS SECTION SHALL BE PAID
8 BY MAY FIRST OF THE YEAR FOLLOWING THE CALENDAR YEAR IN WHICH A LOSS
9 RATIO REQUIREMENT WAS NOT SATISFIED. THE INSTRUCTIONS AND FORMAT FOR
10 CALCULATING AND REPORTING LOSS RATIOS SHALL BE THE SAME AS THOSE THAT
11 APPLY TO SECTION THREE THOUSAND TWO HUNDRED THIRTY-ONE OF THIS ARTICLE.
12 THE SUPERINTENDENT SHALL HAVE AUTHORITY TO AUDIT DATA, IMPOSE PENALTIES
13 FOR NONCOMPLIANCE WITH THIS SECTION CONSISTENT WITH AUTHORITY PROVIDED
14 TO THE SUPERINTENDENT IN OTHER PROVISIONS OF THIS CHAPTER, AND PROMUL-
15 GATE REGULATIONS TO IMPLEMENT THIS SECTION. SUCH SUMS SHALL BE DIRECTED
16 TO THE HEALTH CARE ACCESS PROTECTION FUND SET FORTH PURSUANT TO SECTION
17 NINETY-SEVEN-LLLL OF THE STATE FINANCE LAW. FOR THE PURPOSES OF THIS
18 SECTION, THE TERM "LOSS RATIO" SHALL MEAN ALL FUNDS EXPENDED DIRECTLY
19 FOR THE PURPOSES OF REIMBURSING MEDICAL CARE, INCLUDING CARE PROVIDED BY
20 PHYSICIANS AND OTHER HEALTH CARE PROFESSIONALS, HOSPITALS, NURSING
21 HOMES, HOME CARE, PRESCRIPTION DRUGS AND DURABLE MEDICAL EQUIPMENT,
22 PROVIDED TO INSURED COVERED UNDER AN INDIVIDUAL HEALTH INSURANCE POLICY
23 FORM, A SMALL GROUP HEALTH INSURANCE POLICY FORM OR A LARGE GROUP HEALTH
24 INSURANCE POLICY FORM, AS A PERCENTAGE OF REVENUE DERIVED BY SUCH INSUR-
25 ER FOR SUCH POLICY FORM.

26 S 5. The insurance law is amended by adding a new section 4328 to read
27 as follows:

28 S 4328. LOSS RATIO PAYMENT. BEGINNING IN CALENDAR YEAR TWO THOUSAND
29 ELEVEN, IF THE LOSS RATIO FOR AN INDIVIDUAL DIRECT PAYMENT CONTRACT
30 FORM, A SMALL GROUP OR A SMALL GROUP REMITTANCE CONTRACT FORM OR A LARGE
31 GROUP CONTRACT FORM IS LESS THAN EIGHTY-SEVEN PERCENT, A CORPORATION
32 SUBJECT TO THE PROVISIONS OF THIS ARTICLE SHALL PAY TO THE COMMISSIONER
33 OF HEALTH OR SUCH COMMISSIONER'S DESIGNEE A PERCENT OF THE AGGREGATE
34 PREMIUMS EARNED FOR THE CONTRACT FORM IN THE PREVIOUS CALENDAR YEAR
35 EQUAL TO THE DIFFERENCE BETWEEN THE MINIMUM LOSS RATIO FOR THE POLICY
36 FORM AS STATED IN THIS SECTION AND THE ACTUAL LOSS RATIO; PROVIDED,
37 HOWEVER, THAT SUCH AMOUNT SHALL BE OFFSET BY ANY AMOUNT REQUIRED TO BE
38 RETURNED TO CONTRACT HOLDERS IN ACCORDANCE WITH SECTION FOUR THOUSAND
39 THREE HUNDRED EIGHT OF THIS ARTICLE. AMOUNTS DUE UNDER THIS SECTION
40 SHALL BE PAID BY MAY FIRST OF THE YEAR FOLLOWING THE CALENDAR YEAR IN
41 WHICH THE LOSS RATIO REQUIREMENT WAS NOT SATISFIED. THE INSTRUCTIONS
42 AND FORMAT FOR CALCULATING AND REPORTING LOSS RATIOS SHALL BE THE SAME
43 AS THOSE THAT APPLY TO SECTION FOUR THOUSAND THREE HUNDRED EIGHT OF THIS
44 ARTICLE. THE SUPERINTENDENT SHALL HAVE AUTHORITY TO AUDIT DATA, IMPOSE
45 PENALTIES FOR NONCOMPLIANCE WITH THIS SECTION CONSISTENT WITH AUTHORITY
46 PROVIDED TO THE SUPERINTENDENT IN OTHER PROVISIONS OF THIS CHAPTER, AND
47 PROMULGATE REGULATIONS TO IMPLEMENT THIS SECTION. SUCH FUNDS SHALL BE
48 DIRECTED TO THE HEALTH CARE ACCESS PROTECTION FUND ESTABLISHED PURSUANT
49 TO SECTION NINETY-SEVEN-LLLL OF THE STATE FINANCE LAW. FOR THE PURPOSES
50 OF THIS SECTION, THE TERM "LOSS RATIO" SHALL MEAN ALL FUNDS EXPENDED
51 DIRECTLY FOR THE PURPOSES OF REIMBURSING MEDICAL CARE, INCLUDING CARE
52 PROVIDED BY PHYSICIANS AND OTHER HEALTH CARE PROFESSIONALS, HOSPITALS,
53 NURSING HOMES, HOME CARE, PRESCRIPTION DRUGS AND DURABLE MEDICAL EQUIP-
54 MENT, PROVIDED TO INSURED COVERED UNDER AN INDIVIDUAL DIRECT PAYMENT
55 CONTRACT FORM, A SMALL GROUP OR SMALL GROUP REMITTANCE CONTRACT FORM OR

1 A LARGE GROUP CONTRACT FORM, AS A PERCENTAGE OF REVENUE DERIVED BY SUCH
2 INSURER FOR SUCH POLICY FORM.

3 S 6. The insurance law is amended by adding a new section 3224-d to
4 read as follows:

5 S 3224-D. PHYSICIAN REIMBURSEMENT. (A) IF THE SUPERINTENDENT APPROVES
6 AN INCREASE IN THE COST OF MEDICAL MALPRACTICE INSURANCE COVERAGE FOR
7 PHYSICIANS AND SURGEONS, BY SEPTEMBER FIRST OF EACH YEAR IN WHICH SUCH
8 INCREASE IS APPROVED, A HEALTH PLAN SHALL INCREASE ITS FEE SCHEDULE FOR
9 PHYSICIAN REIMBURSEMENT BY A PERCENTAGE EQUAL TO OR GREATER THAN A
10 PERCENTAGE AS DETERMINED BY THE SUPERINTENDENT TO BE THE INCREASE IN
11 PHYSICIAN OFFICE EXPENSE ALLOCABLE TO THE INCREASE IN THE COST OF A
12 MEDICAL MALPRACTICE INSURANCE POLICY APPROVED BY THE SUPERINTENDENT FOR
13 THE POLICY YEAR BEGINNING THE PREVIOUS JULY FIRST. THE SUPERINTENDENT
14 SHALL HAVE THE AUTHORITY TO ESTABLISH SEPARATE PERCENTAGES BASED UPON
15 REGION OR SPECIALTY OF PRACTICE.

16 (B) AN INSURER'S, ORGANIZATION'S OR CORPORATION'S PURPOSEFUL OR KNOW-
17 ING FAILURE TO INCLUDE SUCH INCREASE IN ITS FEE SCHEDULE FOR EACH PHYSI-
18 CIAN FOR THE CONTRACT CYCLE NEXT FOLLOWING OR FAILURE TO INCLUDE SUCH
19 INCREASE IN FUTURE REIMBURSEMENT FOR OUT OF NETWORK SERVICES WILL BE
20 ASSESSED A MONETARY PENALTY OF ONE MILLION DOLLARS FOR EACH AFFECTED
21 PHYSICIAN.

22 (C) NOTHING IN THIS SECTION SHALL BE CONSTRUED: (1) TO PREVENT A
23 HEALTH PLAN FROM INCREASING ITS FEE SCHEDULE IN A PERCENTAGE GREATER
24 THAN THE PERCENTAGE AS DETERMINED BY THE SUPERINTENDENT TO BE THE
25 INCREASE IN PHYSICIAN OFFICE EXPENSE ALLOCABLE TO THE INCREASE IN THE
26 COST OF A MEDICAL MALPRACTICE INSURANCE POLICY APPROVED BY THE SUPER-
27 INTENDENT FOR THE POLICY YEAR BEGINNING THE PREVIOUS JULY FIRST; OR

28 (2) TO REQUIRE THE IMPOSITION OF A DECREASE IN PHYSICIAN REIMBURSEMENT
29 AS A RESULT OF AN AVERAGE RATE DECREASE FOR MEDICAL MALPRACTICE INSUR-
30 ANCE COVERAGE APPROVED BY THE SUPERINTENDENT.

31 (D) FOR THE PURPOSES OF THIS SECTION, A "HEALTH PLAN" SHALL BE DEFINED
32 AS AN INSURER THAT IS LICENSED TO WRITE ACCIDENT AND HEALTH INSURANCE,
33 OR THAT IS LICENSED PURSUANT TO ARTICLE FORTY-THREE OF THIS CHAPTER OR
34 IS CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW.

35 S 7. This act shall take effect immediately; provided that the amend-
36 ments to chapter 266 of the laws of 1986 made by section one of this act
37 shall apply to physician malpractice insurance policies issued on or
38 after July 1, 2013.