

5224--A

2015-2016 Regular Sessions

I N S E N A T E

May 7, 2015

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law and the education law, in relation to medical malpractice insurance requirements for physicians licensed to practice medicine in this state

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

1 Section 1. Legislative intent. The legislature has long recognized
2 that medical malpractice insurance is a vital component of the state's
3 health care system and economic safety net. Medical malpractice is that
4 which is relied upon by both practicing physicians, dentists and other
5 health care professionals, and patients who become the victim of a
6 negligent health care act. It is in the interest of all New Yorkers,
7 therefore, that medical malpractice insurance which is obtained by
8 health care providers practicing according to the privileges granted by
9 a license issued by the state be of a kind and nature that provides the
10 highest degree of financial security. This should include, in the legis-
11 lature's estimation, medical malpractice insurance which is regulated by
12 this state's insurance company regulator and medical malpractice carri-
13 ers whose policies are protected by a guaranty fund, such as the
14 property/casualty insurance security fund which was established to
15 protect claimants and policyholders from the difficulties encountered
16 from an insurance company insolvency. Therefore, it is the legislature's
17 intent to assure the highest degree of protection for patient and
18 provider alike by requiring as a condition of practicing medicine,
19 dentistry or other health care profession in the state, the purchase of
20 medical, dental or other forms of health care practitioner professional
21 liability insurance from an insurer authorized to write such coverages

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

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1 in this state, and protected by the appropriate security fund if such
2 insurance is to be obtained by a licensed health care provider. The
3 legislature further directs that the superintendent of financial
4 services shall maintain a market surveillance to assure that all such
5 health care provider insurance coverages are available in the state, or
6 inform the legislature when such coverage for any given provider class
7 is not available.

8 S 2. Subsection (a) of section 3436 of the insurance law, as amended
9 by chapter 381 of the laws of 1991, is amended to read as follows:

10 (a) Every insurer which issues or renews policies for primary levels
11 of medical malpractice insurance covering physicians licensed to prac-
12 tice in this state shall issue such policies on a claims-made or occur-
13 rence basis, as prescribed by the superintendent by regulation; AND
14 EVERY PHYSICIAN LICENSED TO PRACTICE MEDICINE IN THIS STATE WHO OBTAINS
15 OR INTENDS TO OBTAIN A POLICY OF MEDICAL MALPRACTICE INSURANCE, WHETHER
16 ON A CLAIMS-MADE OR OCCURRENCE BASIS, EQUIVALENT TO THE PRIMARY LIMIT
17 PROVIDED FOR IN SECTION EIGHTEEN OF CHAPTER TWO HUNDRED SIXTY-SIX OF THE
18 LAWS OF NINETEEN HUNDRED EIGHTY-SIX, AS AMENDED, TO COVER THE TREATMENT
19 OF PATIENTS OR OTHER LIABILITIES ARISING FROM THEIR PRACTICE OF MEDICINE
20 PURSUANT TO HIS OR HER LICENSE TO DO SO IN THIS STATE SHALL DO SO ONLY
21 FROM AN AUTHORIZED INSURER ACTUALLY WRITING SUCH INSURANCE IN THIS
22 STATE, OR FROM THE MEDICAL MALPRACTICE INSURANCE POOL; PROVIDED, HOWEV-
23 ER, THAT THIS SHALL NOT APPLY TO ANY PHYSICIAN COVERED BY A MEDICAL
24 MALPRACTICE POLICY ISSUED BY OR COVERAGE THROUGH A VOLUNTARY ATTENDING
25 PHYSICIAN ("CHANNELING") PROGRAM APPROVED BY THE SUPERINTENDENT;
26 provided, further, that nothing in this section shall preclude any
27 insurer from applying otherwise applicable underwriting standards in
28 determining whether to issue or renew such policies.

29 S 3. Section 6524 of the education law is amended by adding a new
30 subdivision 12 to read as follows:

31 (12) MALPRACTICE INSURANCE: WHERE AN APPLICANT INTENDS TO ENGAGE IN
32 THE TREATMENT OF PATIENTS AS A PHYSICIAN AND INTENDS TO PROCURE AND
33 MAINTAIN IN FULL FORCE AND EFFECT A POLICY OF MEDICAL MALPRACTICE INSUR-
34 ANCE EQUIVALENT TO THE PRIMARY LIMIT PROVIDED FOR IN SECTION EIGHTEEN OF
35 CHAPTER TWO HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN HUNDRED
36 EIGHTY-SIX, AS AMENDED, SUCH AN APPLICANT MAY ONLY OBTAIN SUCH INSURANCE
37 COVERAGE FROM AN INSURER AUTHORIZED TO DO BUSINESS IN THIS STATE AND
38 ACTUALLY WRITING SUCH COVERAGE IN THIS STATE, OR FROM THE MEDICAL MALP-
39 RACTICE INSURANCE POOL.

40 S 4. Section 6525 of the education law is amended by adding a new
41 subdivision 5 to read as follows:

42 5. MALPRACTICE INSURANCE. EVERY APPLICANT FOR AND HOLDER OF A PERMIT
43 TO PRACTICE MEDICINE PURSUANT TO THIS SECTION WHO OBTAINS OR INTENDS TO
44 OBTAIN A POLICY OF MEDICAL MALPRACTICE INSURANCE EQUIVALENT TO THE
45 PRIMARY LIMIT PROVIDED FOR IN SECTION EIGHTEEN OF CHAPTER TWO HUNDRED
46 SIXTY-SIX OF THE LAWS OF NINETEEN HUNDRED EIGHTY-SIX, AS AMENDED, SHALL
47 DO SO ONLY FROM AN INSURER AUTHORIZED TO DO BUSINESS IN THIS STATE AND
48 ACTUALLY WRITING SUCH INSURANCE COVERAGE IN THIS STATE, OR FROM THE
49 MEDICAL MALPRACTICE INSURANCE POOL.

50 S 5. This act shall take effect immediately; provided, however, that
51 for policies in force on such effective date and written by an insurer
52 not authorized to do business in this state, the provisions of this act
53 shall apply on and after the anniversary date of such policies.