

2133

2015-2016 Regular Sessions

I N S E N A T E

January 21, 2015

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 18 of part B of chapter 60 of the laws of 2014, is
5 amended to read as follows:
6 (a) The superintendent of [insurance] FINANCIAL SERVICES and the
7 commissioner of health or their designee shall, from funds available in
8 the hospital excess liability pool created pursuant to subdivision 5 of
9 this section, purchase a policy or policies for excess insurance cover-
10 age, as authorized by paragraph 1 of subsection (e) of section 5502 of
11 the insurance law; or from an insurer, other than an insurer described
12 in section 5502 of the insurance law, duly authorized to write such
13 coverage and actually writing medical malpractice insurance in this
14 state; or shall purchase equivalent excess coverage in a form previously
15 approved by the superintendent of insurance for purposes of providing
16 equivalent excess coverage in accordance with section 19 of chapter 294
17 of the laws of 1985, for medical or dental malpractice occurrences
18 between July 1, 1986 and June 30, 1987, between July 1, 1987 and June
19 30, 1988, between July 1, 1988 and June 30, 1989, between July 1, 1989
20 and June 30, 1990, between July 1, 1990 and June 30, 1991, between July
21 1, 1991 and June 30, 1992, between July 1, 1992 and June 30, 1993,
22 between July 1, 1993 and June 30, 1994, between July 1, 1994 and June
23 30, 1995, between July 1, 1995 and June 30, 1996, between July 1, 1996

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

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1 and June 30, 1997, between July 1, 1997 and June 30, 1998, between July
2 1, 1998 and June 30, 1999, between July 1, 1999 and June 30, 2000,
3 between July 1, 2000 and June 30, 2001, between July 1, 2001 and June
4 30, 2002, between July 1, 2002 and June 30, 2003, between July 1, 2003
5 and June 30, 2004, between July 1, 2004 and June 30, 2005, between July
6 1, 2005 and June 30, 2006, between July 1, 2006 and June 30, 2007,
7 between July 1, 2007 and June 30, 2008, between July 1, 2008 and June
8 30, 2009, between July 1, 2009 and June 30, 2010, between July 1, 2010
9 and June 30, 2011, between July 1, 2011 and June 30, 2012, between July
10 1, 2012 and June 30, 2013, between July 1, 2013 and June 30, 2014, and
11 between July 1, 2014 and June 30, 2015 or reimburse the hospital where
12 the hospital purchases equivalent excess coverage as defined in subpara-
13 graph (i) of paragraph (a) of subdivision 1-a of this section for
14 medical or dental malpractice occurrences between July 1, 1987 and June
15 30, 1988, between July 1, 1988 and June 30, 1989, between July 1, 1989
16 and June 30, 1990, between July 1, 1990 and June 30, 1991, between July
17 1, 1991 and June 30, 1992, between July 1, 1992 and June 30, 1993,
18 between July 1, 1993 and June 30, 1994, between July 1, 1994 and June
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28 and June 30, 2011, between July 1, 2011 and June 30, 2012, between July
29 1, 2012 and June 30, 2013, between July 1, 2013 and June 30, 2014, and
30 between July 1, 2014 and June 30, 2015 for physicians or dentists certi-
31 fied as eligible for each such period or periods pursuant to subdivision
32 2 of this section by a general hospital licensed pursuant to article 28
33 of the public health law; provided that no single insurer shall write
34 more than fifty percent of the total excess premium for a given policy
35 year; and provided, however, that such eligible physicians or dentists
36 must have in force an individual policy, from an insurer licensed in
37 this state of primary malpractice insurance coverage in amounts of no
38 less than one million [three hundred thousand] dollars for each claimant
39 and three million [nine hundred thousand] dollars for all claimants
40 under that policy during the period of such excess coverage for such
41 occurrences or be endorsed as additional insureds under a hospital
42 professional liability policy which is offered through a voluntary
43 attending physician ("channeling") program previously permitted by the
44 superintendent of [insurance] FINANCIAL SERVICES during the period of
45 such excess coverage for such occurrences. During such period, such
46 policy for excess coverage or such equivalent excess coverage shall,
47 when combined with the physician's or dentist's primary malpractice
48 insurance coverage or coverage provided through a voluntary attending
49 physician ("channeling") program, total an aggregate level of two
50 million three hundred thousand dollars for each claimant and six million
51 nine hundred thousand dollars for all claimants from all such policies
52 with respect to occurrences in each of such years [provided, however, if
53 the cost of primary malpractice insurance coverage in excess of one
54 million dollars, but below the excess medical malpractice insurance
55 coverage provided pursuant to this act, exceeds the rate of nine percent
56 per annum, then the required level of primary malpractice insurance

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

15 S 2. This act shall take effect immediately.