STATE OF NEW YORK

5673

2017-2018 Regular Sessions

IN SENATE

April 25, 2017

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

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:

Section 1. Legislative intent. The legislature has long recognized that medical malpractice insurance is a vital component of the state's health care system and economic safety net. Medical malpractice is that which is relied upon by both practicing physicians, dentists and other health care professionals, and patients who become the victim of a negligent health care act. It is in the interest of all New Yorkers, therefore, that medical malpractice insurance which is obtained by health care providers practicing according to the privileges granted by a license issued by the state be of a kind and nature that provides the highest degree of financial security. This should include, in the legislature's estimation, medical malpractice insurance which is regulated by this state's insurance company regulator and medical malpractice carriers whose policies are protected by a guaranty fund, such as the property/casualty insurance security fund which was established to protect claimants and policyholders from the difficulties encountered from an insurance company insolvency. Therefore, it is the legislature's intent to assure the highest degree of protection for patient and provider alike by requiring as a condition of practicing medicine, dentistry or other health care profession in the state, the purchase of medical, dental or other forms of health care practitioner professional liability insurance from an insurer authorized to write such coverages in this state, and protected by the appropriate security fund if such insurance is to be obtained by a licensed health care provider. The legislature further directs that the superintendent of financial

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

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services shall maintain a market surveillance to assure that all such health care provider insurance coverages are available in the state, or inform the legislature when such coverage for any given provider class is not available.

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

(a) Every insurer which issues or renews policies for primary levels of medical malpractice insurance covering physicians licensed to practice in this state shall issue such policies on a claims-made or occurrence basis, as prescribed by the superintendent by regulation; **and every physician licensed to practice medicine in this state who obtains or intends to obtain a policy of medical malpractice insurance, whether on a claims-made or occurrence basis, equivalent to the primary limit provided for in section eighteen of chapter two hundred sixty-six of the laws of nineteen hundred eighty-six, as amended, to cover the treatment of patients or other liabilities arising from their practice of medicine pursuant to his or her license to do so in this state shall do so only from an authorized insurer actually writing such insurance in this state, or from the medical malpractice insurance pool; provided, however, that this shall not apply to any physician covered by a medical malpractice policy issued by or coverage through a voluntary attending physician ("channeling") program approved by the superintendent;** provided, further, that nothing in this section shall preclude any insurer from applying otherwise applicable underwriting standards in determining whether to issue or renew such policies.

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

(12) Malpractice insurance: where an applicant intends to engage in the treatment of patients as a physician and intends to procure and maintain in full force and effect a policy of medical malpractice insurance equivalent to the primary limit provided for in section eighteen of chapter two hundred sixty-six of the laws of nineteen hundred eighty-six, as amended, such an applicant may only obtain such insurance coverage from an insurer authorized to do business in this state and actually writing such coverage in this state, or from the medical malpractice insurance pool.

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

5. Malpractice insurance. Every applicant for and holder of a permit to practice medicine pursuant to this section who obtains or intends to obtain a policy of medical malpractice insurance equivalent to the primary limit provided for in section eighteen of chapter two hundred sixty-six of the laws of nineteen hundred eighty-six, as amended, shall do so only from an insurer authorized to do business in this state and actually writing such insurance coverage in this state, or from the medical malpractice insurance pool.

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