

FIRST REGULAR SESSION

SENATE BILL NO. 257

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR STEELMAN.

Read 1st time January 15, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0847S.021

AN ACT

To amend chapter 383, RSMo, by adding thereto nine new sections relating to medical malpractice.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 383, RSMo, is amended by adding thereto nine new sections, to be known as sections 383.300, 383.303, 383.306, 383.309, 383.312, 383.315, 383.318, 383.321, and 383.324, to read as follows:

383.300. As used in sections 383.300 to 383.321, the following terms mean:

- (1) "Director", the director of the department of insurance;**
- (2) "Fund", the Missouri patients' compensation fund established pursuant to sections 383.300 to 383.321;**
- (3) "Health care provider", includes physicians, dentists, clinical psychologists, pharmacists, optometrists, podiatrists, registered nurses, physicians' assistants, chiropractors, physical therapists, nurse anesthetists, anesthetists, emergency medical technicians, hospitals, nursing homes, and extended care facilities; but shall not include any nursing service or nursing facility conducted by and for those who rely upon treatment by spiritual means alone in accordance with the creed or tenets of any well-recognized church or religious denomination;**
- (4) "Insurer", any insurance company, association, exchange, or legal entity authorized to issue policies of medical malpractice insurance in this state;**
- (5) "Medical malpractice insurance", insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as a result of the negligence or**

malpractice in rendering professional service by any health care provider.

383.303. 1. There is hereby created in the state treasury the "Missouri Patients' Compensation Fund". Membership fees and premium surcharges collected pursuant to section 383.312 shall be deposited in the fund. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the Missouri patients' compensation fund shall not revert to the general revenue fund. Interest accruing to the fund shall be part of the fund. Moneys in the fund shall be invested and reinvested in the same manner as provided by law for the investment of other state funds in interest-bearing investments. All expenses of collecting, protecting, and administering the fund shall be paid from the fund.

2. The Missouri patients' compensation fund shall be used for the purpose of paying that portion of a medical malpractice claim, settlement, or judgment which is in excess of the limits expressed in section 383.318 or the maximum liability limits for which the health care provider is insured, whichever limit is greater. The fund is liable only for payment of claims against licensed health care providers in compliance with the provisions of sections 383.300 to 383.321 and includes reasonable and necessary expenses incurred in payment of claims and the fund's administrative expense. The fund shall not be liable for damages for injury or death caused by an intentional crime committed by a health care provider or an employee of a health care provider, whether or not the criminal conduct is the basis for a medical malpractice claim. The fund shall have no obligation for the payment of punitive damages rendered in any judgment. The state shall not be responsible for any costs, expenses, liabilities, judgments, or other obligations of the fund.

383.306. 1. There is hereby created within the department of insurance the "Patients' Compensation Board", which shall be composed of the director and nine members appointed by the director. The board shall be composed of:

(1) One member who is licensed to practice medicine and surgery in Missouri who is a doctor of medicine and who is on a list of nominees submitted to the director by an organization representing Missouri's medical society;

(2) One member who is a doctor of osteopathy and who is on a list of nominees submitted to the director by an organization representing Missouri doctors of osteopathy;

(3) One member who is a licensed nurse in Missouri and who is on a list submitted to the director by an organization representing Missouri nurses;

(4) One member who is a representative of Missouri hospitals and who is on a list of nominees submitted to the director by an organization representing Missouri hospitals;

(5) Two members who are insurance representatives and who are on a list of nominees submitted to the director by the insurance industry;

(6) Two members who are attorneys that handle medical malpractice and who are on a list of nominees submitted to the director by an organization representing Missouri attorneys;

(7) One member of the general public appointed by the governor who is unaffiliated with the insurance or health care industries or the medical or legal professions; and

(8) The director.

2. The board is created to manage and operate the Missouri patients' compensation fund. The appointed members shall serve for a term of six years. Each member shall serve until a successor is appointed and qualified. The board must meet at the call of the director or a majority of the members but in any event it must meet at least once a year. A majority of the board members shall constitute a quorum for the transaction of any business of the board. The affirmative vote by a majority of the quorum present at a duly called meeting after notice is required to exercise any function of the board.

3. The director may promulgate any regulations necessary to carry out the provisions of sections 383.300 to 383.324. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

4. When a vacancy occurs in the membership of the board created by this section, the director shall appoint a successor of like qualifications from a list of three nominees submitted to the director by the professional society or association prescribed by this section. Whenever a vacancy occurs in the membership of the board created by this section for any reason other than the expiration of a member's term of office, the director shall appoint a successor of like qualifications to fill the unexpired term. In each case of a vacancy occurring in the membership of the board, the director shall notify the professional society or association required for the vacant position and request a list of three nominations from which to make the appointment.

5. The board shall develop a plan of operation for the efficient administration

of the fund consistent with the provisions of sections 383.300 to 383.321. The fund must operate pursuant to a plan of operation which shall provide for the economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of excess medical malpractice insurance and which may contain other provisions including, but not limited to, assessment of all members for expenses, deficits, losses, commissions arrangements, reasonable underwriting standards, acceptance and cession of reinsurance appointment of servicing carriers, and procedures for determining the amounts of insurance to be provided by the Missouri patients' compensation fund. The plan of operation and any amendments to the plan are subject to the approval of the director. If the board fails to develop a plan of operation within the time frame established by the director, the director or the director's designee shall develop the plan of operation for the fund.

6. The board may appoint such additional employees, and provide all office space, services, equipment, materials and supplies, and all budgeting, personnel, purchasing and related management functions required by the board in the exercise of the powers, duties and functions imposed or authorized by sections 383.300 to 383.321.

7. The department of insurance shall:

(1) Provide technical and administrative assistance to the board with respect to administration of the fund upon request of the board; and

(2) Provide such expertise as the board may reasonably request with respect to evaluation of claims or potential claims.

383.309. All Missouri licensed health care providers shall participate in the fund and shall remit to the board the appropriate membership fees and premium surcharges as are required by section 383.312 on or before the provider's membership anniversary date.

383.312. 1. All healthcare providers shall participate in the Missouri patients' compensation fund and shall pay annual membership fees. The director, after approval by the board, shall set the membership fees. The rule shall provide that fees may be paid annually or in semiannual or quarterly installments.

2. In addition to the membership fees delineated in subsection 1 of this section, the director shall levy an annual premium surcharge on each participating health care provider who has obtained a policy meeting the requirements of section 383.315 and upon each self-insurer. The surcharge shall be determined by the director based upon sound actuarial principles, using data obtained from Missouri experience if available. The amount of the surcharge shall be adequate for the payment of claims and expenses from the Missouri patients' compensation fund.

3. The surcharge shall be collected on the same basis as premiums by each insurer from the health care provider. The surcharge with accrued interest shall be due and payable within thirty days after the premiums for medical malpractice insurance have been received by the insurer from the health care provider in Missouri.

4. If the annual premium surcharge is collected but not paid within the time limit specified in subsection 3 of this section, the certificate of authority of the insurer, risk manager, or surplus lines agents shall be suspended until the annual premium surcharge is paid.

5. Membership in the fund is contingent upon the participating member making timely payment of all membership fees and all premium surcharges.

6. Self-insureds shall be eligible for membership in the fund upon compliance with the requirements of the board and shall pay similar membership fees and premium surcharges as the members. The surcharge for self-insureds shall be in an amount determined by the director. The amount of the surcharge imposed on the self-insured shall be in an amount comparable to what a health care provider would be required to pay if the provider's surcharge was based upon a policy of medical malpractice insurance.

383.315. 1. All books, records, and audits of the fund are open for reasonable inspection to the general public.

2. On or before December thirty-first of each year the state auditor shall audit the records of the fund and shall furnish an audited financial report to all fund participants, the department of insurance, and the general assembly.

383.318. 1. All health care providers shall participate in the Missouri patients' compensation fund and shall either insure and keep insured the health care provider's liability by a policy of medical malpractice insurance issued by an insurer authorized to do business in this state or shall qualify as a self-insurer. Qualification as a self-insurer is subject to conditions established by the director. The director may establish conditions that permit a self-insurer to self-insure for claims that are against employees who are health care providers and that are not covered by the fund.

2. The minimum liability limits for each policy of medical malpractice insurance for each health care provider shall be established by the director by rule. When determining the minimum level of primary coverage for health care providers, the director shall consider the health care provider's area of practice, past risk experience, and any other factors the director deems relevant. The director shall also consider the financial solvency of the fund when establishing the minimum liability limits.

3. Each insurance company issuing medical malpractice insurance policies that meet the requirements of this section shall, at the times prescribed by the director, file with the director in a form prescribed by the director, a certificate of insurance on behalf of the health care provider upon original issuance and each renewal.

4. Each self-insured health care provider furnishing coverage that meets the requirements of this section shall, at the time and in a form prescribed by the director, file with the director a certificate of self-insurance and a separate certificate of insurance for each additional health care provider covered by the self-insured plan.

383.321. 1. A person filing a claim may recover from the fund only if the health care provider or the employee of the health care provider has coverage under the fund, the fund is named as a party in the action, and the action against the fund is commenced within the same time limitation within which the action against the health care provider or employee of the health care provider must be commenced.

2. If, after reviewing the facts upon which the claim or action is based, it appears reasonably probable that damages paid will exceed the limits provided in section 383.318, the fund may appear and actively defend itself when named as a party in an action against a health care provider, or an employee of a health care provider, that has coverage under the fund. In such action, the fund may retain counsel and pay out of the fund attorney fees and expenses including court costs incurred in defending the fund. The attorney or law firm retained to defend the fund shall not be retained or employed by the board to perform legal services for the board of other than those directly connected with the fund. Any judgment affecting the fund may be appealed as provided by law.

3. It shall be the responsibility of the insurer or self-insurer providing insurance or self-insurance for a health care provider who is also covered by the fund to provide an adequate defense of the fund on any claim filed that may potentially affect the fund with respect to such insurance contract or self-insurance contract. The insurer or self-insurer shall act in good faith and in a fiduciary relationship with respect to any claim affecting the fund. No settlement exceeding an amount which could require payment by the fund may be agreed to unless approved by the board.

4. A person who has recovered a final judgment or a settlement approved by the board against a health care provider, or an employee of a health care provider, that has coverage under the fund may file a claim with the board to recover that portion of such judgment or settlement which is in excess of the limits provided in section 383.318 or the maximum liability limit for which the health care provider is insured, whichever limit is greater. In the event the fund incurs liability for future

payments exceeding five hundred thousand dollars to any person under a single claim as the result of a settlement or judgment that is entered into or rendered, the fund shall pay, after deducting the reasonable costs of collection attributable to the remaining liability, including attorney fees reduced to present value, the full medical expenses each year, plus an amount not to exceed five hundred thousand dollars per year that will pay the remaining liability over the person's anticipated lifetime, or until the liability is paid in full. If the remaining liability is not paid before the person dies, the fund may pay the remaining liability in a lump sum. Payments shall be made from money collected and paid into the fund and from interest earned thereon. For claims subject to a periodic payment made pursuant to this subsection, payments shall be made until the claim has been paid in full.

5. Claims filed against the fund shall be paid in the order received within ninety days after filing unless appealed by the fund. If the amounts in the fund are not sufficient to pay all of the claims, claims received after the funds are exhausted shall be immediately payable the following year in the order in which they were received.

6. The board may bring an action against an insurer, self-insurer or health care provider for failure to act in good faith or breach of fiduciary responsibility.

383.324. Notwithstanding any other provision of the law to the contrary, no insurer authorized to issue policies of medical malpractice insurance in this state shall increase the renewal premium on any policy of medical malpractice insurance nor impose changes in deductibles or coverage that materially alter the policy, unless the insurer mails or delivers to the named insured written notice of such increase or change in deductible or coverage at least ninety days prior to the renewal or anniversary date.

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