

SECOND REGULAR SESSION

SENATE BILL NO. 1301

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Read 1st time February 25, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4746S.011

AN ACT

To amend chapter 383, RSMo, by adding thereto one new section relating to medical malpractice insurance.

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

Section A. Chapter 383, RSMo, is amended by adding thereto one new section, to be known as section 383.038, to read as follows:

383.038. 1. No insurer shall issue or sell in the state of Missouri a policy insuring a health care provider, as defined in section 538.205, RSMo, against damage, loss, 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, unless the rates for such policy are approved by the director of the department of insurance.

2. The director of the department of insurance shall review and approve or reject rates pursuant to subsection 1 of this section based on the following factors:

(1) Rates shall not be excessive or inadequate, nor shall they be unfairly discriminatory;

(2) No rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided with respect to the classification to which such rate is applicable;

(3) No rate shall be held to be inadequate unless such rate is unreasonably low for the insurance provided with respect to the classification to which such rate is applicable;

(4) Rates shall be based solely on Missouri loss experience and not the insurance company's or the insurance industry's loss experiences in states other than Missouri unless the failure to do so jeopardizes the financial stability of the insurer; provided however, that loss experiences relating to the specific proposed insured occurring outside the state of Missouri may be considered in allowing a

surcharge to such insured's premium rate;

(5) Investment income or investment losses of the insurance company for the previous ten-year period to the request for rate approval may be considered in reviewing rates. Investment income or investment losses for a period of less than ten years shall not be considered in reviewing rates. Industry-wide investment income and losses for the ten-year period prior to the request for a rate approval may be considered for any insurance company that has not been authorized to issue insurance for more than ten years;

(6) The locale in which the health care practice is occurring;

(7) Inflation;

(8) Reasonable administrative costs of the insurer;

(9) Reasonable costs of defense claims against Missouri health care providers;

(10) A reasonable rate of return on investment for the owners or shareholders of the insurer when compared to other similar investments at the time of the rate request; except that, such factor shall not be used to offset losses in other states or in activities of the insurer other than the sale of policies of insurance to Missouri health care providers;

(11) Rates shall reflect any impact resulting from any state or federal legislation regarding tort law or medical malpractice insurance that directly or indirectly affects medical malpractice insurance rates. In determining the impact resulting from such state or federal legislation, the director shall use generally accepted actuarial techniques and standards; and

(12) Any other reasonable factors may be considered in the approval or rejection of the rate request.

3. Rate approval requests may be approved or denied based on any subcategory or subspecialty of the health care industry that the director determines to be reasonable.

4. The insurer may charge any reasonable additional premium or grant any reasonable discount rate to any health care provider based on the following criteria as it relates to a specified insured health care provider or other specific health care providers within the specific insured's employ or business entity:

(1) Loss experiences;

(2) Training and experience;

(3) Number of employees of the insured entity;

(4) Availability of equipment, capital, or hospital privileges;

(5) Loss prevention measures taken by the insured;

(6) The number and extent of claims not resulting in losses;

- (7) The specialty or subspecialty of the health care provider;
- (8) Access to equipment and hospital privileges; and
- (9) Any other factors determined to be reasonable by the director.

5. Any rate application shall be approved or disapproved within sixty days, unless the director extends such period due to the applicant's failure to timely provide requested information.

6. Should a rate filing be rejected, the director shall notify the insurer in writing of the rejection and indicate the rate the director has determined to be justified. The insurer may, within fifteen days of receiving notice, request a hearing in order to convince the director that the rate is reasonable, adequate, and fair. The insurer shall carry the burden of proof by a preponderance of the evidence.

7. The director of the department of insurance shall annually provide the governor and the general assembly a report as to the increases or decreases of the rates approved pursuant to this section and the number of requests disapproved pursuant to this section.

8. As used in this section, "insurer" includes every insurance company authorized to transact business in this state, every unauthorized insurance company transacting business pursuant to chapter 384, RSMo, every risk retention group, every insurance company issuing policies or providing benefits to or through a purchasing group, and any other person providing insurance coverage in this state.

9. The director of the department of insurance shall promulgate rules for the enforcement of this section. 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, 2004, shall be invalid and void.