



The Judiciary Review

Report from the Senate Judiciary Committee (D)

JAY COSTA JR., DEMOCRATIC CHAIRMAN

(717) 787-7683

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SENATE CONSIDERS COMPREHENSIVE MEDICAL MALPRACTICE LEGISLATION

Responding to escalating medical malpractice insurance costs, doctors and medical facilities promoted medical malpractice reform in Pennsylvania for more than a year. A legislative working group including health care representatives, lawyers and the insurance industry met for more than a month to craft a response. As Senate Democratic Chairman to the Judiciary Committee, my office participated in these important negotiations. This Special Edition of the Judiciary Review provides a brief analysis of the product adopted by the Senate and amended in the House of Representatives on February 13. The bill currently rests in the Senate Rules Committee and may be considered in March.

PATIENT SAFETY

■ **State Authority**

Eleven members including the Physician General, physicians, nurses, pharmacists and hospital employee serve as a clearinghouse for reports filed by Medical Facilities regarding patient safety.

The authority is responsible for collecting and evaluating data submitted by medical facilities through their Patient Safety Committees; coordinating with

the Department of Health making facility specific and system-wide recommendations; and reporting to the General Assembly. Reports of serious events, incidents and infrastructure failures and recommendations resulting from such reports may be considered by the Department of Health for licensing but are not mandatory unless adopted by regulation.

■ **Medical Facilities**

Appoint a Patient Safety Officer responsible for the implementation and administration of the Patient Safety Plan.

Establish a Patient Safety Committee to develop a Patient Safety plan that includes written notification to patients of serious events, receive and review reports of serious events, incidents and infrastructure failure, make reports to the Authority and the Department of Health.

Health care workers must make reports of serious events or incidents to the Patient Safety Committee as condition of licensure but receive protection from employer retaliation, criminal or civil liability.

Materials, investigations and reports generated by the Patient Safety Committee and Authority in the investigation of serious events and incidents are confidential.

Original source documents—medical records and patient notifications of a serious event—are discoverable and not subject to confidentiality protection of the chapter.

MEDICAL MALPRACTICE

Retains provisions from Act 111 relating to Informed Consent, Punitive Damages, Affidavit of Non-Involvement and Advance Payments. Twenty-five percent of award for a punitive damage award paid into the MCARE Fund.

■ **The Collateral Source Rule**

Claimant prohibited from recovering damages for past medical expenses or past lost earnings paid or reimbursed by any private or public source prior to trial. Damages may not be offset by payments from life insurance, deferred compensation, agreements regarding the purchase or sale of a business, Social Security, Cash Assistance or Medical Assistance provided by D.P.W. or any benefit provided under a federal or state program requiring reimbursement. Subrogation is eliminated.

■ **Verdicts and Damages**

Jury must make specific findings for past lost earnings, past medical expenses, non-economic damages, future lost earnings and future medical expenses.

■ **Periodic Payments**

Authorized only for future medical and non-economic damages in excess of \$100,000 prior to reduction to present value after payment of the proportionate share of attorney fees and costs.

Continued

Annuity or trust must be approved by the court and paid monthly, may incorporate the immediate needs of the claimant, include adjustment for inflation and medical care improvements.

Annuity contractors must be approved by Insurance Commissioner and receive the highest solvency ratings. If an annuity becomes insolvent, the claimant receives payment from the MedCAT Fund or either the Pennsylvania Life and Health Insurance Guaranty Association or the Property and Casualty Insurance Guaranty Association. Upon death of claimant, payment ceases.

■ Reduction to Present Value

Past medical expenses, past and future loss of earnings, non-economic damages are paid in a lump sum after being reduced to present value. Jury determines the discount rate after adjusting for productivity and inflation.

■ Medical Records

Makes it unlawful to correct, modify or destroy records without noting the date and time.

■ Expert Witnesses

Expert witness must be licensed and engaged in active practice in the same subspecialty and be board certified by the same board as the defendant.

Court may waive the license, practice, specialty and board certification requirements if the expert possesses sufficient training, experience and knowledge to testify to the appropriate standard of care.

■ Venue

Interbranch Commission consisting of representatives from the Judicial, Executive and Legislative branches convened to study and report on venue by September 1, 2002.

■ Joint and Several Liability

Eliminates joint and several liability in medical malpractice actions for non-economic damages over \$1.0 million. Proportionate

liability for non-economic damages over \$1.0 million in medical malpractice actions.

■ Insurance

MedCAT Fund transferred to the Department of Insurance to be administered by Third Party Administrator. Department to settle and litigate claims on behalf of the fund until phased out.

2002 would continue private/CAT Fund coverage levels. 2003, the total coverage reduced to \$1.0 million per occurrence and \$3.0 million aggregate and coverage levels change.

2003-2005:

- \$500,000/occurrence—\$1,500,000/ aggregate private primary insurance coverage.
- \$500,000—\$1,500,000/aggregate MCARE Fund coverage.

July 1, 2005 and July 1, 2008:

- Insurance Commissioner determines if sufficient insurance capacity exists to adjust coverage amounts.

2006 and each year after:

- \$750,000/occurrence—\$2,250,000/ aggregate private primary coverage,
- \$250,000/occurrence—\$750,000/ aggregate MCARE Fund coverage.

2009 and each year after:

- \$1,000,000/occurrence—\$3,000,000/ aggregate private primary coverage.
- \$0 MCARE Fund coverage.

■ MCARE Fund

2002 surcharge may not exceed 95% of the 2001 surcharge. 2003 and

2004—Assessment may not exceed 90% of the 2001 surcharge.

MCARE Fund authorized to impose premium increases up to 20% for frequency and 20% for severity of claims in the preceding five years.

MCARE Fund may impose up to a 20% increase for fund premiums against hospitals for frequency and severity of claims in the preceding five years.

Consent to settle may be retained by a health care professional for an additional premium amount.

January 1, 2004 through December 31, 2013 surcharges and levies from Auto CAT Fund transferred to MCARE Fund.

DOCTOR DISCIPLINE

Provides professional boards with additional authority to report concerning complaints opened and closed by board in five year period, disciplinary sanctions imposed, number of license revocations and suspensions.

Disciplinary action against a licensee for a single act of negligence. Health Care Professionals required to report civil complaints, disciplinary actions in other states, conviction for criminal offenses greater than summary offense including drug offenses and termination of employment or privileges after a Peer Review Hearing.

Increases the maximum civil penalties to \$10,000 from \$1,000.

STATE SENATOR JAY COSTA, JR.

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FOREST HILLS

1501 Ardmore Blvd. • Suite 403 • Pittsburgh, PA 15221 • (412) 241-6690

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314 East 8th Avenue • Homestead, PA 15120 • (412) 565-7536

HARRISBURG

Senate Box 203043 • Harrisburg, PA 17120-3043 • (717) 787-7683

E-MAIL: costa@dem.pasen.gov • **WEBSITE:** www.SenatorCosta.com