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SENATE FILE 383
BY HULTMAN

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to health care providers and patients and
2 providing for the creation of an excess liability fund for
3 health care providers, establishing a surcharge to be
4 deposited in the fund, establishing a special surcharge,
5 establishing qualifications for a health care provider or a
6 patient to be protected by the fund, establishing a maximum
7 limitation on the liability of the fund, creation of a
8 compensation review board, authorization of the fund to
9 procure reinsurance to protect the fund, authorization of the
10 fund to provide primary insurance coverage to health care
11 providers and providing for structured settlements.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 383

1 Section 1. FINDINGS.

2 The general assembly finds that a critical situation exists
3 in Iowa's health care provider industry impacting on the
4 accessibility and affordability of high quality health care.
5 Physicians in certain specialty and high-risk areas are
6 choosing to no longer provide these services as a result of
7 the potential liability. Physicians continuing to provide
8 these services are increasingly practicing defensive medicine
9 in an effort to protect themselves from potentially ruinous
10 verdicts. The practice of defensive medicine results in
11 increased cost to the public in need of medical services and
12 rarely results in a corresponding medical benefit.

13 The general assembly further finds that it is in the public
14 interest that high quality medical and hospital services be
15 available to the citizens of Iowa at reasonable costs. It is
16 in the public interest to encourage competent physicians to
17 enter into and remain in the practice of medicine in this
18 state. It is in the public interest to assure that funds are
19 available to compensate an injured party while protecting
20 health care providers from liabilities effectively preventing
21 them from serving the best interests of society.

22 Sec. 2. NEW SECTION. 147B.1 SHORT TITLE. This Act shall
23 be known as the "Health Care Provider and Patient Assistance
24 Act".

25 Sec. 3. NEW SECTION. 147B.2 DEFINITIONS.

26 As used in this chapter, unless the context requires
27 otherwise:

28 1. "Health care provider" means a person licensed or
29 certified under chapter 147, 148, 148A, 148C, 149, 150, 150A,
30 151, 152, 153, 154, 154B or 155 to provide in this state
31 professional health care service to an individual during that
32 individual's medical care, treatment, or confinement.

33 2. "Health services" means clinically related diagnostic,
34 curative, or rehabilitative services, and includes alcoholism,
35 drug abuse, and mental health services.

1 3. "Hospital" means the same as it is defined in section
2 135B.1, subsection 1.

3 4. "Physician" shall mean a person licensed to practice
4 medicine and surgery, osteopathy and surgery, osteopathy, or
5 chiropractic under the laws of this state; however, a person
6 licensed as a physician and surgeon shall be designated as a
7 "physician" or "surgeon", a person licensed as an osteopath
8 and surgeon shall be designated as an "osteopathic physician"
9 or "osteopathic surgeon", a person licensed as an osteopath
10 shall be designated as an "osteopathic physician", and a
11 person licensed as a chiropractor shall be designated as a
12 "chiropractor".

13 5. "Commissioner" means the commissioner of insurance.

14 Sec. 4. NEW SECTION. 147B.3 QUALIFIED PROVIDER --
15 PATIENT.

16 1. A health care provider is qualified to participate
17 under this chapter if the health care provider does the
18 following:

19 a. Files with the commissioner proof of financial
20 responsibility in an amount of one hundred thousand dollars
21 per occurrence. The health care provider is qualified as long
22 as the required proof of financial responsibility remains
23 effective.

24 b. Pays a surcharge or special surcharge levied on health
25 care providers pursuant to section 147B.8, subsection 2.

26 2. A hospital is qualified to participate under this
27 chapter if the hospital does the following:

28 a. Files with the commissioner proof of financial
29 responsibility in an amount of one million dollars for all
30 occurrences or claims made in any policy year.

31 b. Pays a surcharge or special surcharge levied on
32 hospitals pursuant to section 147B.8, subsection 2.

33 3. The commissioner may permit qualification of a health
34 care provider who has retired or ceased doing business, if the
35 health care provider files proof of financial responsibility

1 as required in subsection 1.

2 4. A claim or cause of action against a health care
3 provider or hospital, for purposes of this chapter, is subject
4 to the facts and circumstances relating to the health care
5 provider's or hospital's qualification under this section at
6 the time of the occurrence of the alleged wrongful act and is
7 not affected by the fact that the health care provider or
8 hospital is not qualified at the time the action is
9 instituted. A health care provider or hospital who is not
10 qualified at the time of the alleged occurrence is not
11 eligible to qualify under this chapter by filing proof of
12 financial responsibility and payment of the required surcharge
13 subsequent to the occurrence giving rise to the claim.

14 Sec. 5. NEW SECTION. 147B.4 PATIENT ELECTION TO BE
15 BOUND.

16 1. A patient's exclusive remedy against a health care
17 provider or hospital qualifying under 147B.3 for alleged
18 malpractice, professional negligence, failure to provide care,
19 or claim based upon failure to obtain informed consent for an
20 operation or treatment is the remedy provided for under this
21 chapter unless the patient has elected not to be bound by the
22 remedies provided for in this chapter. A patient may elect to
23 not be bound under this chapter by filing the election with
24 the commissioner, pursuant to rules adopted by the
25 commissioner, in advance of a treatment, act or omission upon
26 which a claim may be based, and notified the health care
27 provider or hospital of the election within a reasonable time
28 before any treatment begins. Failure to provide the required
29 notice is conclusive evidence of the patient's election to be
30 bound by the provisions of this chapter.

31 2. An election by a patient not to be bound by this
32 chapter is effective for a period of two years after filing
33 unless the election is withdrawn. The patient may withdraw
34 the election in writing at any time by filing the withdrawal
35 with the commissioner.

1 3. A health care provider or hospital must provide a
2 patient with notice that the health care provider or hospital
3 is qualified under this chapter prior to any treatment, and
4 must inform the patient of the patient's right to elect not to
5 be bound by the provisions of this chapter.

6 Sec. 6. NEW SECTION. 147B.5 SCOPE OF RECOVERY.

7 Actions arising under this chapter are subject to section
8 147.136.

9 Sec. 7. NEW SECTION. 147B.6 LIMITATION ON RECOVERY.

10 1. The total amount recoverable from a health care
11 provider or hospital and the excess liability fund for an
12 occurrence resulting in an injury or death of a patient may
13 not exceed one million dollars. However, if a verdict or
14 judgment is issued for an amount greater than one million
15 dollars, the court may order that payment of the verdict or
16 award be structured so that the total payments made to the
17 plaintiff are as close to the actual verdict or judgment as
18 possible.

19 2. A health care provider or hospital qualified under this
20 chapter is not liable to a patient or the patient's
21 representative who has elected to be covered by this chapter
22 for an amount in excess of one hundred thousand dollars for
23 all claims or causes of action arising from an occurrence
24 during the period of election. Subject to limits in this
25 section, an amount due from a judgment or settlement which is
26 in excess of the total liability of all liable health care
27 providers shall be paid from the excess liability fund
28 pursuant to section 147B.8.

29 Sec. 8. NEW SECTION. 147B.7 STATE COMPENSATION BOARD.

30 A state compensation board is created to review all
31 malpractice claims against health care providers covered by
32 this chapter.

33 Sec. 9. NEW SECTION. 147B.8 EXCESS LIABILITY FUND.

34 1. An excess liability fund is created for the purposes
35 stated in this chapter. The fund and income from the fund

1 shall be deposited with the treasurer of state to be used for
2 the payment of qualifying claims under this chapter, and the
3 fund is appropriated for that purpose. Appropriations from
4 the fund are not subject to reversion under section 8.33.

5 2. An annual surcharge shall be levied on all health care
6 providers and hospitals qualifying under section 147B.3. The
7 surcharge for a health care provider is determined by the
8 commissioner subject to the following limitations:

9 a. The annual surcharge shall not exceed fifty percent of
10 the annual premium paid by the health care provider for
11 maintenance of current financial responsibility as provided in
12 section 147B.3, subsection 1.

13 b. The charge shall not exceed the amount necessary to
14 maintain the fund in accordance with section 147B.9.

15 3. The surcharge due under section 147B.3, subsection 1,
16 is due and payable within thirty days after the health care
17 provider has qualified pursuant to section 147B.3 and is
18 payable annually thereafter in amounts as determined by the
19 commissioner.

20 4. If the annual premium surcharge under section 147B.3 is
21 not paid within the time specified in subsection 3, the
22 qualification of the health care provider shall be suspended
23 until the annual premium is paid. The suspension shall not be
24 effective as to patients claiming against the health care pro-
25 vider unless, at least thirty days before the effective date
26 of the suspension, a written notice giving the date upon which
27 the suspension becomes effective has been provided by the
28 commissioner to the health care provider.

29 5. All expenses of collecting, protecting, and ad-
30 ministering the funds shall be paid from the fund, including
31 necessary costs of outside legal counsel.

32 Sec. 10. NEW SECTION. 147B.9 SPECIAL SURCHARGE -- RE-
33 INSURANCE.

34 The commissioner may, at any time, analyze the fund to
35 determine if the amount in the fund is inadequate to pay in

1 full all claims allowed or to be allowed during the calendar
2 year. If the fund is determined to be inadequate, the
3 commissioner may levy a special surcharge on all health care
4 providers who have qualified under this chapter on the date of
5 the special surcharge or at any time during the preceding
6 twelve months and shall be in an amount proportionate to the
7 surcharge each health care provider has paid to the fund. The
8 special surcharge shall be an amount sufficient to permit full
9 payment of all claims allowed against the fund during a
10 calendar year. The special surcharge shall be levied against
11 all health care providers who have qualified under this
12 chapter. The special surcharge is due and payable within
13 thirty days after the surcharge is levied.

14 The director may cause all or any part of the potential
15 liability of the excess liability fund to be reinsured, if
16 reinsurance is available on a fair and reasonable basis. The
17 cost of the reinsurance shall be paid by the fund and the fact
18 of the reinsurance shall be taken into account in determining
19 the surcharge under section 147B.8, subsection 2, but in no
20 event shall the surcharge exceed fifty percent of the annual
21 premium paid by a health care provider for maintenance of
22 current financial responsibility.

23 EXPLANATION

24 This bill creates the Health Care Provider and Patient
25 Assistance Act. The bill establishes a limitation on the
26 liability of a health care provider or hospital qualified
27 under the Act. An excess liability fund is created for the
28 purpose of compensating injured parties for amounts awarded
29 over that covered by the primary coverage provided by the
30 health care provider or hospital. A surcharge is established
31 to be assessed against all qualifying health care providers
32 and hospitals which is to be deposited in the fund. A patient
33 may elect to not be bound by the Act, but must provide notice
34 to the health care provider or hospital of the election, as
35 well as the insurance commissioner.

1 An amount recoverable under this Act by a plaintiff is
2 limited to one million dollars. However, the court may order,
3 in cases where a verdict or judgment is issued for a greater
4 amount, that payments be structured so that the total payments
5 to the plaintiff most closely approximate the actual verdict
6 or award.

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