House File 598

HOUSE FILE
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and WENDT

Passed House, Date ____________ Passed Senate, Date
Vote: Ayes _______ Nays ________ Vote: Ayes _______ Nays
Approved

A BILL FOR

1 An Act relating to medical malpractice liability including the
2 creation of a patient compensation fund for the payment of
3 certain medical malpractice claims and making an
4 appropriation.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 2054YH 81
7 rh/cf/24

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1 1 Section 1. NEW SECTION. 519B.1 DEFINITIONS.
1 2 As used in this chapter, unless the context otherwise
1 3 requires:
1 4 1. "Advanced registered nurse practitioner" means a person
1 5 who is licensed as such under chapter 152.
1 6 2. "Board" means the patient compensation board.
1 7 3. "Commissioner" means the commissioner of insurance or
1 8 the commissioner's designee.
1 9 4. "Division" means the insurance division.
1 10 5. "Fiscal year" means the period of twelve months
1 11 beginning on July 1 and ending on the following June 30.
1 12 6. "Fund" means the patient compensation fund.
1 13 7. "Health care provider" means the same as provided in
1 14 section 519B.3.
1 15 8. "Medical malpractice" means a situation where a
1 16 physician fails to properly treat a medical condition and the
1 17 physician's negligent act or omission is the cause of a new or
1 18 aggravated injury to the patient.
1 19 9. "Nurse anesthetist" means a registered nurse licensed
1 20 under chapter 152 who has completed additional specialized
1 21 education and training in administering anesthetics to
1 22 patients under the supervision of a physician,
1 23 anesthesiologist, or dentist.
1 24 10. "Patient" means an individual who receives or should
1 25 have received health care services from a health care provider
1 26 or from an employee of a health care provider acting within
1 27 the scope of the provider's practice or employee's employment.
1 28 11. "Physician" means a person who is licensed under
1 29 chapter 148, 150, or 150A.
1 30 12. "Principal place of practice" means either of the

1 31 following:
1 32 a. A state where a health care provider furnishes health
1 33 care services to more than fifty percent of the health care
1 34 provider's patients in a fiscal year.
1 35 b. A state where a health care provider derives more than
2 1 fifty percent of the health care provider's income in a fiscal
2 2 year from the practice of the health care provider's
2 3 profession.
2 4 Sec. 2. NEW SECTION. 519B.2 PARTICIPATION IN FUND.
2 5 An Iowa licensed health care provider may participate in
2 6 the fund and maintain the participation by remitting to the
2 7 board the appropriate assessment fees.
2 8 Sec. 3. NEW SECTION. 519B.3 APPLICABILITY.
2 9 1. Except as provided in section 519B.4, this chapter
2 10 applies to all of the following:
2 11 a. A physician, nurse anesthetist, or advanced registered
2 12 nurse practitioner for whom this state is a principal place of
2 13 practice and who practices in this state more than two hundred
2 14 forty hours in a fiscal year.
2 15 b. A physician, nurse anesthetist, or advanced registered
2 16 nurse practitioner, who is exempt under section 519B.4,
2 17 subsection 1, but who practices outside the scope of the
2 18 exemption and for whom this state is a principal place of
2 19 practice and who practices in this state more than two hundred
2 20 forty hours in a fiscal year. For a physician, nurse
2 21 anesthetist, or advanced registered nurse practitioner who is
2 22 subject to this paragraph, this chapter applies only to claims
2 23 arising out of the physician's, nurse anesthetist's, or
2 24 advanced registered nurse practitioner's practice that is
2 25 outside the scope of the exemption under section 519B.4,
2 26 subsection 1.
2 27 c. A partnership comprised of physicians, nurse
2 28 anesthetists, or advanced registered nurse practitioners
2 29 organized and operated in this state for the primary purpose
2 30 of providing medical services.
2 31 d. A corporation organized and operated in this state for
2 32 the primary purpose of providing the medical services of
2 33 physicians, nurse anesthetists, or advanced registered nurse
2 34 practitioners.
2 35 e. An ambulatory surgery center that operates in this
3 1 state.
3 2 f. A hospital, as defined in section 135B.1, that operates
3 3 in this state.
3 4 g. An entity operated in this state that is an affiliate
3 5 of a hospital and that provides diagnosis or treatment of, or
3 6 care for, patients of the hospital.
3 7 h. A health care facility, as defined in section 135C.1,
3 8 whose operations are combined as a single entity with a
3 9 hospital, whether or not the health care facility operations
3 10 are physically separate from the hospital operations.
3 11 2. A physician, nurse anesthetist, or advanced registered
3 12 nurse practitioner for whom this state is a principal place of
3 13 practice but who does not practice in this state more than two
3 14 hundred forty hours in a fiscal year, may elect, in the manner
3 15 designated by rule by the commissioner, to be subject to this
3 16 chapter. However, this chapter applies only to claims arising
3 17 out of the electing physician's, nurse anesthetist's, or
3 18 advanced registered nurse practitioner's practice that is in
3 19 this state and that is outside the scope of an exemption under
3 20 section 519B.4.

3 21 Sec. 4. NEW SECTION. 519B.4 EXEMPTIONS FOR PUBLIC
3 22 EMPLOYEES AND FACILITIES.
3 23 Except as provided in section 519B.3, this chapter shall
3 24 not apply to the following:
3 25 1. A physician, nurse anesthetist, or advanced registered
3 26 nurse practitioner who is a state, county, or municipal
3 27 employee, or a federal employee or contractor covered under
3 28 the Federal Tort Claims Act, who is acting within the scope of
3 29 the physician's employment or contractual duties.
3 30 2. A facility operated by any governmental agency.
3 31 Sec. 5. NEW SECTION. 519B.5 HEALTH CARE PROVIDER
3 32 EMPLOYEES.
3 33 1. A patient or the patient's representative having a
3 34 claim or a spouse, parent, minor sibling, or child of a
3 35 patient having a derivative claim for injury or death based
4 1 upon a claim of medical malpractice against a health care
4 2 provider or an employee of the health care provider, for
4 3 damages for bodily injury or death due to acts or omissions of
4 4 the health care provider or the employee of the health care
4 5 provider acting within the scope of the health care provider's
4 6 practice or employee's employment and providing health care
4 7 services, shall be subject to this chapter.
4 8 2. The fund established in section 519B.8 shall provide
4 9 coverage for claims against a health care provider or an
4 10 employee of the health care provider due to the acts or
4 11 omissions of the employee acting within the scope of
4 12 employment and providing health care services.
4 13 Sec. 6. NEW SECTION. 519B.6 COMMISSIONER DUTIES.
4 14 1. The commissioner shall administer the fund except that
4 15 the board may provide for third=party administration of the
4 16 fund pursuant to section 519B.7.
4 17 2. The commissioner may adopt rules pursuant to chapter
4 18 17A as necessary to administer this chapter.
4 19 Sec. 7. NEW SECTION. 519B.7 PATIENT COMPENSATION BOARD.
4 20 1. A patient compensation board is established, and shall
4 21 consist of the following members:
4 22 a. The treasurer of state or the treasurer's designee.
4 23 b. The director of public health or the director's
4 24 designee.
4 25 c. The commissioner or the commissioner's designee.
4 26 d. Four public members appointed by the governor and
4 27 confirmed by the senate to staggered four=year terms, except
4 28 that of the first members appointed, two public members shall
4 29 be appointed for terms of two years. One public member shall
4 30 be a licensed attorney in Iowa with experience in the area of
4 31 medical malpractice, one public member shall be an insurer
4 32 based in Iowa, one public member shall be an Iowa=licensed
4 33 physician, and one public member shall represent an Iowa=based
4 34 hospital.
4 35 The filling of positions reserved for public
5 1 representatives, vacancies, membership terms, payment of
5 2 compensation and expenses, and removal of members are governed
5 3 by chapter 69. Members of the board are entitled to receive
5 4 reimbursement of actual expenses incurred in the discharge of
5 5 their duties within the limits of funds appropriated to the
5 6 board or made available from the fund. Each member of the
5 7 board may also be eligible to receive compensation as provided
5 8 in section 7E.6. The members shall elect a chairperson of the
5 9 board from among the members of the board.
5 10 2. Management of the fund shall be vested with the board.

5 11 3. In managing the fund, the board shall have all of the
5 12 general powers reasonably necessary and convenient to carry
5 13 out its purposes and duties including but not limited to the
5 14 following:
5 15 a. Management of the fund including the authority to
5 16 retain a third=party administrator, external claims
5 17 assistance, actuarial services, outside defense counsel, and
5 18 other services as necessary to manage the fund.
5 19 b. Enter into contracts on behalf of the fund.
5 20 c. Adopt rules as necessary for the management of the
5 21 fund.
5 22 Sec. 8. NEW SECTION. 519B.8 ESTABLISHMENT OF PATIENT
5 23 COMPENSATION FUND.
5 24 1. A patient compensation fund is created for the purpose
5 25 of paying that portion of a medical malpractice claim that is
5 26 in excess of either one million dollars for each occurrence or
5 27 three million dollars for all occurrences in any one policy
5 28 year or the maximum liability limit for which the health care
5 29 provider is insured, whichever limit is greater.
5 30 2. Moneys in the fund shall be payable for occurrence
5 31 coverage for claims against health care providers who have
5 32 complied with this chapter and against employees of those
5 33 health care providers, and for reasonable and necessary
5 34 expenses incurred in payment of claims and administrative
5 35 expenses of the fund.
6 1 3. The fund shall not be liable for damages for injury or
6 2 death caused by an intentional crime committed by a health
6 3 care provider or an employee of a health care provider,
6 4 whether or not the criminal conduct is the basis for the
6 5 medical malpractice claim.
6 6 4. The fund shall be actuarially sound and require the
6 7 maintenance of surplus adequate to fund the level of the
6 8 claims as set by the board.
6 9 5. The fund shall be a separate fund in the state
6 10 treasury, and any funds remaining in the fund at the end of
6 11 each fiscal year shall not revert to the general fund of the
6 12 state but shall remain in the patient compensation fund.
6 13 Interest or other income earned by the fund shall be deposited
6 14 in the fund. Moneys in the fund shall not be subject to
6 15 appropriation for any other purposes by the general assembly,
6 16 but shall be used only for the purposes set forth in
6 17 subsections 1 and 2.
6 18 Sec. 9. NEW SECTION. 519B.9 FEES.
6 19 1. A health care provider who participates in the fund
6 20 shall pay an annual fee, subject to the following
6 21 requirements:
6 22 a. The past and prospective loss and expense experience in
6 23 different types of practice.
6 24 b. The past and prospective loss and expense experience of
6 25 the fund.
6 26 c. The loss and expense experience of the health care
6 27 provider that resulted in the payment of moneys, from the fund
6 28 or other sources, for damages arising out of the provision of
6 29 medical care by the health care provider or an employee of the
6 30 health care provider.
6 31 d. Risk factors for persons who are semiretired or part=
6 32 time professionals.
6 33 e. Risk factors and past and prospective loss and expense
6 34 experience attributable to employees of a health care provider
6 35 other than licensed physician employees.

7 1 2. The commissioner, upon approval by the board, shall by
7 2 rule set the fees under subsection 1. The rules shall provide
7 3 that fees may be paid annually or in semiannual or quarterly
7 4 installments. A prorated portion of the annual fee and
7 5 semiannual and quarterly installments shall include an amount
7 6 sufficient to cover interest not earned and administrative
7 7 costs incurred because the fees were not paid on an annual
7 8 basis. This subsection shall not impose liability on the
7 9 board for payment of any part of a fund deficit.
7 10 3. The rules may provide for not more than four payment
7 11 classifications for fees paid by physicians and shall be based
7 12 upon the amount of surgery performed and the risk of
7 13 diagnostic and therapeutic services provided or procedures
7 14 performed.
7 15 4. The rules may provide for an automatic increase in a
7 16 health care provider's fee if the loss and expense experience
7 17 of the fund and other sources with respect to the health care
7 18 provider or an employee of the health care provider exceeds
7 19 either a number=of=claims=paid threshold or a dollar=volume=of
7 20 claims=paid threshold. The rules shall specify applicable
7 21 amounts of increase corresponding to the number of claims paid
7 22 and the dollar volume of claims paid in excess of the
7 23 respective threshold.
7 24 5. The rules setting fees for a particular fiscal year
7 25 under this section shall ensure that the fees do not exceed
7 26 the greatest of the following:
7 27 a. The estimated total dollar amount of claims to be paid
7 28 from the fund during that particular fiscal year.
7 29 b. The fees set for the fiscal year preceding that
7 30 particular fiscal year, adjusted by the commissioner to
7 31 reflect changes in the consumer price index for all urban
7 32 consumers, United States city average, for the medical care
7 33 group, as determined by the United States department of labor.
7 34 c. Two hundred percent of the total dollar amount
7 35 disbursed for claims from the fund during the fiscal year
8 1 preceding that particular fiscal year.
8 2 6. Fees set for the fund shall be collected by the
8 3 commissioner for deposit in the fund in a manner prescribed by
8 4 the commissioner by rule.
8 5 Sec. 10. NEW SECTION. 519B.10 FEE ACCOUNTING AND AUDIT.
8 6 1. Moneys shall be drawn from the fund by the commissioner
8 7 only as approved and authorized by the board.
8 8 2. All books, records, and audits of the fund shall be
8 9 open to the general public for reasonable inspection with the
8 10 exception of confidential claims information.
8 11 3. Annually, after the close of the fiscal year, the board
8 12 shall furnish a financial report to the commissioner. The
8 13 report shall be prepared in accordance with accepted
8 14 accounting procedures and shall include the present value of
8 15 all claims reserves including those for incurred but not
8 16 reported claims as determined by accepted actuarial principles
8 17 and such other information as may be required by the
8 18 commissioner. The board shall furnish an appropriate summary
8 19 of the report to all health care providers covered by the
8 20 fund.
8 21 4. The board shall submit a report to the general assembly
8 22 and the governor on or before January 1 of each year.
8 23 5. The board may cede reinsurance to an insurer authorized
8 24 to do business in the state or pursue other loss=funding
8 25 management mechanisms to preserve the solvency and integrity

8 26 of the fund, subject to the approval of the commissioner. The
8 27 commissioner may prescribe controls over or other conditions
8 28 on such use of reinsurance or other loss=funding management
8 29 mechanisms.
8 30 Sec. 11. NEW SECTION. 519B.11 CLAIMS PROCEDURE.
8 31 1. A person filing a claim may recover from the fund only
8 32 if the health care provider or the employee of a health care
8 33 provider has coverage under the fund, the fund is named as a
8 34 party in the action, and the action against the fund is
8 35 commenced within the same time limitation within which the
9 1 action against the health care provider or employee of the
9 2 health care provider must be commenced.
9 3 2. If, after reviewing the facts upon which the claim or
9 4 action is based, it appears reasonably probable that damages
9 5 paid will exceed the limits in section 519B.8, the fund may
9 6 appear and actively defend itself when named as a party in an
9 7 action against a health care provider or an employee of a
9 8 health care provider who has coverage under the fund. The
9 9 fund may retain counsel and pay attorney fees and expenses,
9 10 including court costs incurred in defending the fund, out of
9 11 the fund. The attorney or law firm retained to defend the
9 12 fund shall not be retained or employed by the board to perform
9 13 legal services for the board other than those directly
9 14 connected with the fund. A judgment affecting the fund may be
9 15 appealed as provided by law. The fund shall not be required
9 16 to file any undertaking in any judicial action, proceedings,
9 17 or appeal.
9 18 3. An insurer or self=insurer providing insurance or self=
9 19 insurance for a health care provider or an employee of a
9 20 health care provider, who is also covered by the fund, shall
9 21 provide an adequate defense of the fund on any claim filed
9 22 that may potentially affect the fund with respect to such
9 23 insurance contract or self=insurance contract. The insurer or
9 24 self=insurer shall act in good faith and in a fiduciary
9 25 relationship with respect to any claim affecting the fund. A
9 26 settlement exceeding an amount which could require payment by
9 27 the fund shall not be agreed to unless approved by the board.
9 28 4. A person who has recovered a final judgment or
9 29 settlement approved by the board against a health care
9 30 provider or an employee of a health care provider who has
9 31 coverage under the fund may file a claim with the board to
9 32 recover that portion of such judgment or settlement that is in
9 33 excess of the limits set forth in section 519B.8, or the
9 34 maximum liability limit for which the health care provider or
9 35 employee of the health care provider is insured, whichever
10 1 limit is greater.
10 2 5. Claims filed against the fund shall be paid in the
10 3 order received within ninety days after filing unless appealed
10 4 by the fund. If the amounts in the fund are not sufficient to
10 5 pay all of the claims, the claims received after the funds are
10 6 exhausted shall be immediately payable the following year in
10 7 the order of their receipt.
10 8 Sec. 12. NEW SECTION. 519B.12 PROOF OF FINANCIAL
10 9 RESPONSIBILITY.
10 10 A health care provider shall insure and keep insured the
10 11 health care provider's liability by procuring a policy of
10 12 medical malpractice liability insurance issued by an insurer
10 13 authorized to do business in this state or shall qualify as a
10 14 self=insurer. Qualification as a self=insurer is subject to
10 15 the conditions established by the commissioner and shall be

10 16 valid only upon approval by the commissioner.
10 17 Sec. 13. NEW SECTION. 519B.13 REPORTS ON CLAIMS PAID.
10 18 1. An insurer that writes medical malpractice liability
10 19 insurance in this state and each self=insurer approved
10 20 pursuant to section 519B.12 shall report all of the following
10 21 information to the board on each claim paid during the
10 22 previous month for damages arising out of the provision of
10 23 health care services:
10 24 a. The name and address of the policyholder or self=
10 25 insured entity and the name and address of any person on whose
10 26 behalf the claim was paid.
10 27 b. The profession of the health care provider or the type
10 28 of entity on whose behalf the claim was paid.
10 29 c. The health care provider's medical specialty, if the
10 30 health care provider is a physician.
10 31 d. A description of the injury, including the cause and
10 32 severity of the injury.
10 33 e. Whether the claim was paid as a result of a settlement,
10 34 a patient compensation fund award, or a court award.
10 35 f. The amount of the payment.
11 1 g. The number and amounts of any previous claims paid by
11 2 the insurer or self=insurer for damages arising out of the
11 3 provision of health care services by the insured, the self=
11 4 insurer, or employees of the insured or self=insurer. Only
11 5 claims paid on or after July 1, 2005, shall be reported under
11 6 this paragraph.
11 7 h. Any additional information requested by the board.
11 8 2. By the fifteenth day of each month, the board shall
11 9 report the information specified in subsection 1 to the board
11 10 of medical examiners for each claim paid by the fund during
11 11 the previous month for damages arising out of the provision of
11 12 health care services by a health care provider or an employee
11 13 of a health care provider.
11 14 3. If more than one payment is scheduled to be made on a
11 15 claim, the first report filed under subsection 1 or 2 after
11 16 the first payment is made on the claim shall include the total
11 17 amount of the award or settlement and the projected schedule
11 18 and amounts of payments.
11 19 4. A person who in good faith provides information to the
11 20 board pursuant to this section shall be immune from civil
11 21 liability for acts or omissions in providing the information.
11 22 Sec. 14. NEW SECTION. 519B.14 APPLICABILITY.
11 23 Coverage under the fund applies to settlements and
11 24 judgments entered on or after January 1, 2006, with respect to
11 25 occurrences taking place on or after July 1, 2005.
11 26 Sec. 15. APPROPRIATION. There is appropriated from the
11 27 general fund of the state to the insurance division of the
11 28 department of commerce for the fiscal year beginning July 1,
11 29 2005, and ending June 30, 2006, the sum of twenty million
11 30 dollars to implement and administer chapter 519B.
11 31 EXPLANATION
11 32 This bill relates to medical malpractice liability
11 33 including the creation of a patient compensation fund for the
11 34 payment of certain medical malpractice claims.
11 35 The bill allows certain health care providers to purchase
12 1 from the patient compensation fund, created in the bill, an
12 2 excess amount of medical malpractice coverage beyond the
12 3 greater of the primary medical malpractice insurance coverage
12 4 amount required by statute or the maximum liability limit for
12 5 which the health care provider is insured through either an

12 6 insurer authorized to do business in this state or through
12 7 self=insurance. The bill provides that the fund shall provide
12 8 occurrence coverage for such excess medical malpractice claims
12 9 against a health care provider and employees of a health care
12 10 provider, and for reasonable and necessary expenses incurred
12 11 in the administration of the fund. The fund shall not be
12 12 liable for damages caused by an intentional criminal act of a
12 13 health care provider or employees of a health care provider.
12 14 The bill provides that participation in the fund is
12 15 voluntary. "Health care provider" is defined to include a
12 16 medical or osteopathic physician or surgeon, a nurse
12 17 anesthetist, or an advanced registered nurse practitioner or a
12 18 partnership of such physicians or surgeons, nurse
12 19 anesthetists, or advanced registered nurse practitioners, a
12 20 corporation providing physician or surgeon medical services,
12 21 an ambulatory surgery center, a hospital and affiliates of a
12 22 hospital that provide diagnosis, treatment, or care for
12 23 patients of the hospital, and a health care facility as
12 24 defined in Code section 135C.1. The bill further provides
12 25 that the fund shall provide coverage for claims against a
12 26 health care provider or an employee of the health care
12 27 provider due to the acts or omissions of the employee acting
12 28 within the scope of employment and providing health care
12 29 services.
12 30 The bill provides that the fund shall be managed and
12 31 administered by a board that consists of the treasurer of
12 32 state, the director of public health, the commissioner of
12 33 insurance, and four public members.
12 34 The bill further provides that the commissioner of
12 35 insurance shall by rule and subject to board approval set the
13 1 annual fee assessed a participating health care provider,
13 2 subject to certain guidelines. The assessed fees are
13 3 determined by a number of factors including the past and
13 4 prospective loss and expense experience of the health care
13 5 provider, the past and prospective loss and expense experience
13 6 of the fund, risk factors for persons who are semiretired or
13 7 part=time professionals, and risk factors and past and
13 8 prospective loss and expense experience attributable to
13 9 employees of the health care provider other than licensed
13 10 physician employees. The commissioner is given the authority
13 11 to draw moneys from the fund as approved and authorized by the
13 12 board.
13 13 The bill also provides a claims procedure for a person
13 14 filing a claim against a health care provider or an employee
13 15 of the health care provider who has coverage under the fund.
13 16 The bill provides that the fund shall operate on a fiscal
13 17 year basis from July 1 through June 30. Administrative costs,
13 18 operating costs, and claim payments are funded through the
13 19 assessments on participating health care providers. The fund
13 20 is also financed through earnings on the fund's investments.
13 21 Annually after the close of the fiscal year, the board shall
13 22 submit a financial report to the commissioner and shall submit
13 23 a report to the general assembly and the governor on or before
13 24 January 1.
13 25 The bill further provides that an insurer that writes
13 26 medical malpractice liability insurance in this state and each
13 27 self=insurer approved by the commissioner of insurance shall
13 28 file a report with the patient compensation board, by the 15th
13 29 of each month, on each claim paid during the previous month
13 30 for damages arising out of the provision of health care

13 31 services.
13 32   The bill appropriates from the general fund of the state to
13 33 the insurance division of the department of commerce for the
13 34 fiscal year beginning July 1, 2005, and ending June 30, 2006,
13 35 $20 million to implement and administer provisions of this
14 1 bill relating to the patient compensation fund.
14 2 LSB 2054YH 81
14 3 rh:rj/cf/24.2