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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:

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HF 598

1 Section 1. NEW SECTION. 519B.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise  
3 requires:

4 1. "Advanced registered nurse practitioner" means a person  
5 who is licensed as such under chapter 152.

6 2. "Board" means the patient compensation board.

7 3. "Commissioner" means the commissioner of insurance or  
8 the commissioner's designee.

9 4. "Division" means the insurance division.

10 5. "Fiscal year" means the period of twelve months  
11 beginning on July 1 and ending on the following June 30.

12 6. "Fund" means the patient compensation fund.

13 7. "Health care provider" means the same as provided in  
14 section 519B.3.

15 8. "Medical malpractice" means a situation where a  
16 physician fails to properly treat a medical condition and the  
17 physician's negligent act or omission is the cause of a new or  
18 aggravated injury to the patient.

19 9. "Nurse anesthetist" means a registered nurse licensed  
20 under chapter 152 who has completed additional specialized  
21 education and training in administering anesthetics to  
22 patients under the supervision of a physician,  
23 anesthesiologist, or dentist.

24 10. "Patient" means an individual who receives or should  
25 have received health care services from a health care provider  
26 or from an employee of a health care provider acting within  
27 the scope of the provider's practice or employee's employment.

28 11. "Physician" means a person who is licensed under  
29 chapter 148, 150, or 150A.

30 12. "Principal place of practice" means either of the  
31 following:

32 a. A state where a health care provider furnishes health  
33 care services to more than fifty percent of the health care  
34 provider's patients in a fiscal year.

35 b. A state where a health care provider derives more than

1 fifty percent of the health care provider's income in a fiscal  
2 year from the practice of the health care provider's  
3 profession.

4 Sec. 2. NEW SECTION. 519B.2 PARTICIPATION IN FUND.

5 An Iowa licensed health care provider may participate in  
6 the fund and maintain the participation by remitting to the  
7 board the appropriate assessment fees.

8 Sec. 3. NEW SECTION. 519B.3 APPLICABILITY.

9 1. Except as provided in section 519B.4, this chapter  
10 applies to all of the following:

11 a. A physician, nurse anesthetist, or advanced registered  
12 nurse practitioner for whom this state is a principal place of  
13 practice and who practices in this state more than two hundred  
14 forty hours in a fiscal year.

15 b. A physician, nurse anesthetist, or advanced registered  
16 nurse practitioner, who is exempt under section 519B.4,  
17 subsection 1, but who practices outside the scope of the  
18 exemption and for whom this state is a principal place of  
19 practice and who practices in this state more than two hundred  
20 forty hours in a fiscal year. For a physician, nurse  
21 anesthetist, or advanced registered nurse practitioner who is  
22 subject to this paragraph, this chapter applies only to claims  
23 arising out of the physician's, nurse anesthetist's, or  
24 advanced registered nurse practitioner's practice that is  
25 outside the scope of the exemption under section 519B.4,  
26 subsection 1.

27 c. A partnership comprised of physicians, nurse  
28 anesthetists, or advanced registered nurse practitioners  
29 organized and operated in this state for the primary purpose  
30 of providing medical services.

31 d. A corporation organized and operated in this state for  
32 the primary purpose of providing the medical services of  
33 physicians, nurse anesthetists, or advanced registered nurse  
34 practitioners.

35 e. An ambulatory surgery center that operates in this

1 state.

2 f. A hospital, as defined in section 135B.1, that operates  
3 in this state.

4 g. An entity operated in this state that is an affiliate  
5 of a hospital and that provides diagnosis or treatment of, or  
6 care for, patients of the hospital.

7 h. A health care facility, as defined in section 135C.1,  
8 whose operations are combined as a single entity with a  
9 hospital, whether or not the health care facility operations  
10 are physically separate from the hospital operations.

11 2. A physician, nurse anesthetist, or advanced registered  
12 nurse practitioner for whom this state is a principal place of  
13 practice but who does not practice in this state more than two  
14 hundred forty hours in a fiscal year, may elect, in the manner  
15 designated by rule by the commissioner, to be subject to this  
16 chapter. However, this chapter applies only to claims arising  
17 out of the electing physician's, nurse anesthetist's, or  
18 advanced registered nurse practitioner's practice that is in  
19 this state and that is outside the scope of an exemption under  
20 section 519B.4.

21 Sec. 4. NEW SECTION. 519B.4 EXEMPTIONS FOR PUBLIC  
22 EMPLOYEES AND FACILITIES.

23 Except as provided in section 519B.3, this chapter shall  
24 not apply to the following:

25 1. A physician, nurse anesthetist, or advanced registered  
26 nurse practitioner who is a state, county, or municipal  
27 employee, or a federal employee or contractor covered under  
28 the Federal Tort Claims Act, who is acting within the scope of  
29 the physician's employment or contractual duties.

30 2. A facility operated by any governmental agency.

31 Sec. 5. NEW SECTION. 519B.5 HEALTH CARE PROVIDER  
32 EMPLOYEES.

33 1. A patient or the patient's representative having a  
34 claim or a spouse, parent, minor sibling, or child of a  
35 patient having a derivative claim for injury or death based

1 upon a claim of medical malpractice against a health care  
2 provider or an employee of the health care provider, for  
3 damages for bodily injury or death due to acts or omissions of  
4 the health care provider or the employee of the health care  
5 provider acting within the scope of the health care provider's  
6 practice or employee's employment and providing health care  
7 services, shall be subject to this chapter.

8 2. The fund established in section 519B.8 shall provide  
9 coverage for claims against a health care provider or an  
10 employee of the health care provider due to the acts or  
11 omissions of the employee acting within the scope of  
12 employment and providing health care services.

13 Sec. 6. NEW SECTION. 519B.6 COMMISSIONER DUTIES.

14 1. The commissioner shall administer the fund except that  
15 the board may provide for third-party administration of the  
16 fund pursuant to section 519B.7.

17 2. The commissioner may adopt rules pursuant to chapter  
18 17A as necessary to administer this chapter.

19 Sec. 7. NEW SECTION. 519B.7 PATIENT COMPENSATION BOARD.

20 1. A patient compensation board is established, and shall  
21 consist of the following members:

22 a. The treasurer of state or the treasurer's designee.

23 b. The director of public health or the director's  
24 designee.

25 c. The commissioner or the commissioner's designee.

26 d. Four public members appointed by the governor and  
27 confirmed by the senate to staggered four-year terms, except  
28 that of the first members appointed, two public members shall  
29 be appointed for terms of two years. One public member shall  
30 be a licensed attorney in Iowa with experience in the area of  
31 medical malpractice, one public member shall be an insurer  
32 based in Iowa, one public member shall be an Iowa-licensed  
33 physician, and one public member shall represent an Iowa-based  
34 hospital.

35 The filling of positions reserved for public

1 representatives, vacancies, membership terms, payment of  
2 compensation and expenses, and removal of members are governed  
3 by chapter 69. Members of the board are entitled to receive  
4 reimbursement of actual expenses incurred in the discharge of  
5 their duties within the limits of funds appropriated to the  
6 board or made available from the fund. Each member of the  
7 board may also be eligible to receive compensation as provided  
8 in section 7E.6. The members shall elect a chairperson of the  
9 board from among the members of the board.

10 2. Management of the fund shall be vested with the board.

11 3. In managing the fund, the board shall have all of the  
12 general powers reasonably necessary and convenient to carry  
13 out its purposes and duties including but not limited to the  
14 following:

15 a. Management of the fund including the authority to  
16 retain a third-party administrator, external claims  
17 assistance, actuarial services, outside defense counsel, and  
18 other services as necessary to manage the fund.

19 b. Enter into contracts on behalf of the fund.

20 c. Adopt rules as necessary for the management of the  
21 fund.

22 Sec. 8. NEW SECTION. 519B.8 ESTABLISHMENT OF PATIENT  
23 COMPENSATION FUND.

24 1. A patient compensation fund is created for the purpose  
25 of paying that portion of a medical malpractice claim that is  
26 in excess of either one million dollars for each occurrence or  
27 three million dollars for all occurrences in any one policy  
28 year or the maximum liability limit for which the health care  
29 provider is insured, whichever limit is greater.

30 2. Moneys in the fund shall be payable for occurrence  
31 coverage for claims against health care providers who have  
32 complied with this chapter and against employees of those  
33 health care providers, and for reasonable and necessary  
34 expenses incurred in payment of claims and administrative  
35 expenses of the fund.

1 3. The fund shall not be liable for damages for injury or  
2 death caused by an intentional crime committed by a health  
3 care provider or an employee of a health care provider,  
4 whether or not the criminal conduct is the basis for the  
5 medical malpractice claim.

6 4. The fund shall be actuarially sound and require the  
7 maintenance of surplus adequate to fund the level of the  
8 claims as set by the board.

9 5. The fund shall be a separate fund in the state  
10 treasury, and any funds remaining in the fund at the end of  
11 each fiscal year shall not revert to the general fund of the  
12 state but shall remain in the patient compensation fund.  
13 Interest or other income earned by the fund shall be deposited  
14 in the fund. Moneys in the fund shall not be subject to  
15 appropriation for any other purposes by the general assembly,  
16 but shall be used only for the purposes set forth in  
17 subsections 1 and 2.

18 Sec. 9. NEW SECTION. 519B.9 FEES.

19 1. A health care provider who participates in the fund  
20 shall pay an annual fee, subject to the following  
21 requirements:

22 a. The past and prospective loss and expense experience in  
23 different types of practice.

24 b. The past and prospective loss and expense experience of  
25 the fund.

26 c. The loss and expense experience of the health care  
27 provider that resulted in the payment of moneys, from the fund  
28 or other sources, for damages arising out of the provision of  
29 medical care by the health care provider or an employee of the  
30 health care provider.

31 d. Risk factors for persons who are semiretired or part-  
32 time professionals.

33 e. Risk factors and past and prospective loss and expense  
34 experience attributable to employees of a health care provider  
35 other than licensed physician employees.

1     2. The commissioner, upon approval by the board, shall by  
2 rule set the fees under subsection 1. The rules shall provide  
3 that fees may be paid annually or in semiannual or quarterly  
4 installments. A prorated portion of the annual fee and  
5 semiannual and quarterly installments shall include an amount  
6 sufficient to cover interest not earned and administrative  
7 costs incurred because the fees were not paid on an annual  
8 basis. This subsection shall not impose liability on the  
9 board for payment of any part of a fund deficit.

10    3. The rules may provide for not more than four payment  
11 classifications for fees paid by physicians and shall be based  
12 upon the amount of surgery performed and the risk of  
13 diagnostic and therapeutic services provided or procedures  
14 performed.

15    4. The rules may provide for an automatic increase in a  
16 health care provider's fee if the loss and expense experience  
17 of the fund and other sources with respect to the health care  
18 provider or an employee of the health care provider exceeds  
19 either a number-of-claims-paid threshold or a dollar-volume-of  
20 claims-paid threshold. The rules shall specify applicable  
21 amounts of increase corresponding to the number of claims paid  
22 and the dollar volume of claims paid in excess of the  
23 respective threshold.

24    5. The rules setting fees for a particular fiscal year  
25 under this section shall ensure that the fees do not exceed  
26 the greatest of the following:

27    a. The estimated total dollar amount of claims to be paid  
28 from the fund during that particular fiscal year.

29    b. The fees set for the fiscal year preceding that  
30 particular fiscal year, adjusted by the commissioner to  
31 reflect changes in the consumer price index for all urban  
32 consumers, United States city average, for the medical care  
33 group, as determined by the United States department of labor.

34    c. Two hundred percent of the total dollar amount  
35 disbursed for claims from the fund during the fiscal year

1 preceding that particular fiscal year.

2 6. Fees set for the fund shall be collected by the  
3 commissioner for deposit in the fund in a manner prescribed by  
4 the commissioner by rule.

5 Sec. 10. NEW SECTION. 519B.10 FEE ACCOUNTING AND AUDIT.

6 1. Moneys shall be drawn from the fund by the commissioner  
7 only as approved and authorized by the board.

8 2. All books, records, and audits of the fund shall be  
9 open to the general public for reasonable inspection with the  
10 exception of confidential claims information.

11 3. Annually, after the close of the fiscal year, the board  
12 shall furnish a financial report to the commissioner. The  
13 report shall be prepared in accordance with accepted  
14 accounting procedures and shall include the present value of  
15 all claims reserves including those for incurred but not  
16 reported claims as determined by accepted actuarial principles  
17 and such other information as may be required by the  
18 commissioner. The board shall furnish an appropriate summary  
19 of the report to all health care providers covered by the  
20 fund.

21 4. The board shall submit a report to the general assembly  
22 and the governor on or before January 1 of each year.

23 5. The board may cede reinsurance to an insurer authorized  
24 to do business in the state or pursue other loss-funding  
25 management mechanisms to preserve the solvency and integrity  
26 of the fund, subject to the approval of the commissioner. The  
27 commissioner may prescribe controls over or other conditions  
28 on such use of reinsurance or other loss-funding management  
29 mechanisms.

30 Sec. 11. NEW SECTION. 519B.11 CLAIMS PROCEDURE.

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

1 action against the health care provider or employee of the  
2 health care provider must be commenced.

3 2. If, after reviewing the facts upon which the claim or  
4 action is based, it appears reasonably probable that damages  
5 paid will exceed the limits in section 519B.8, the fund may  
6 appear and actively defend itself when named as a party in an  
7 action against a health care provider or an employee of a  
8 health care provider who has coverage under the fund. The  
9 fund may retain counsel and pay attorney fees and expenses,  
10 including court costs incurred in defending the fund, out of  
11 the fund. The attorney or law firm retained to defend the  
12 fund shall not be retained or employed by the board to perform  
13 legal services for the board other than those directly  
14 connected with the fund. A judgment affecting the fund may be  
15 appealed as provided by law. The fund shall not be required  
16 to file any undertaking in any judicial action, proceedings,  
17 or appeal.

18 3. An insurer or self-insurer providing insurance or self-  
19 insurance for a health care provider or an employee of a  
20 health care provider, who is also covered by the fund, shall  
21 provide an adequate defense of the fund on any claim filed  
22 that may potentially affect the fund with respect to such  
23 insurance contract or self-insurance contract. The insurer or  
24 self-insurer shall act in good faith and in a fiduciary  
25 relationship with respect to any claim affecting the fund. A  
26 settlement exceeding an amount which could require payment by  
27 the fund shall not be agreed to unless approved by the board.

28 4. A person who has recovered a final judgment or  
29 settlement approved by the board against a health care  
30 provider or an employee of a health care provider who has  
31 coverage under the fund may file a claim with the board to  
32 recover that portion of such judgment or settlement that is in  
33 excess of the limits set forth in section 519B.8, or the  
34 maximum liability limit for which the health care provider or  
35 employee of the health care provider is insured, whichever

1 limit is greater.

2 5. Claims filed against the fund shall be paid in the  
3 order received within ninety days after filing unless appealed  
4 by the fund. If the amounts in the fund are not sufficient to  
5 pay all of the claims, the claims received after the funds are  
6 exhausted shall be immediately payable the following year in  
7 the order of their receipt.

8 Sec. 12. NEW SECTION. 519B.12 PROOF OF FINANCIAL  
9 RESPONSIBILITY.

10 A health care provider shall insure and keep insured the  
11 health care provider's liability by procuring a policy of  
12 medical malpractice liability insurance issued by an insurer  
13 authorized to do business in this state or shall qualify as a  
14 self-insurer. Qualification as a self-insurer is subject to  
15 the conditions established by the commissioner and shall be  
16 valid only upon approval by the commissioner.

17 Sec. 13. NEW SECTION. 519B.13 REPORTS ON CLAIMS PAID.

18 1. An insurer that writes medical malpractice liability  
19 insurance in this state and each self-insurer approved  
20 pursuant to section 519B.12 shall report all of the following  
21 information to the board on each claim paid during the  
22 previous month for damages arising out of the provision of  
23 health care services:

24 a. The name and address of the policyholder or self-  
25 insured entity and the name and address of any person on whose  
26 behalf the claim was paid.

27 b. The profession of the health care provider or the type  
28 of entity on whose behalf the claim was paid.

29 c. The health care provider's medical specialty, if the  
30 health care provider is a physician.

31 d. A description of the injury, including the cause and  
32 severity of the injury.

33 e. Whether the claim was paid as a result of a settlement,  
34 a patient compensation fund award, or a court award.

35 f. The amount of the payment.

1 g. The number and amounts of any previous claims paid by  
2 the insurer or self-insurer for damages arising out of the  
3 provision of health care services by the insured, the self-  
4 insurer, or employees of the insured or self-insurer. Only  
5 claims paid on or after July 1, 2005, shall be reported under  
6 this paragraph.

7 h. Any additional information requested by the board.

8 2. By the fifteenth day of each month, the board shall  
9 report the information specified in subsection 1 to the board  
10 of medical examiners for each claim paid by the fund during  
11 the previous month for damages arising out of the provision of  
12 health care services by a health care provider or an employee  
13 of a health care provider.

14 3. If more than one payment is scheduled to be made on a  
15 claim, the first report filed under subsection 1 or 2 after  
16 the first payment is made on the claim shall include the total  
17 amount of the award or settlement and the projected schedule  
18 and amounts of payments.

19 4. A person who in good faith provides information to the  
20 board pursuant to this section shall be immune from civil  
21 liability for acts or omissions in providing the information.

22 Sec. 14. NEW SECTION. 519B.14 APPLICABILITY.

23 Coverage under the fund applies to settlements and  
24 judgments entered on or after January 1, 2006, with respect to  
25 occurrences taking place on or after July 1, 2005.

26 Sec. 15. APPROPRIATION. There is appropriated from the  
27 general fund of the state to the insurance division of the  
28 department of commerce for the fiscal year beginning July 1,  
29 2005, and ending June 30, 2006, the sum of twenty million  
30 dollars to implement and administer chapter 519B.

31 EXPLANATION

32 This bill relates to medical malpractice liability  
33 including the creation of a patient compensation fund for the  
34 payment of certain medical malpractice claims.

35 The bill allows certain health care providers to purchase

1 from the patient compensation fund, created in the bill, an  
2 excess amount of medical malpractice coverage beyond the  
3 greater of the primary medical malpractice insurance coverage  
4 amount required by statute or the maximum liability limit for  
5 which the health care provider is insured through either an  
6 insurer authorized to do business in this state or through  
7 self-insurance. The bill provides that the fund shall provide  
8 occurrence coverage for such excess medical malpractice claims  
9 against a health care provider and employees of a health care  
10 provider, and for reasonable and necessary expenses incurred  
11 in the administration of the fund. The fund shall not be  
12 liable for damages caused by an intentional criminal act of a  
13 health care provider or employees of a health care provider.

14 The bill provides that participation in the fund is  
15 voluntary. "Health care provider" is defined to include a  
16 medical or osteopathic physician or surgeon, a nurse  
17 anesthetist, or an advanced registered nurse practitioner or a  
18 partnership of such physicians or surgeons, nurse  
19 anesthetists, or advanced registered nurse practitioners, a  
20 corporation providing physician or surgeon medical services,  
21 an ambulatory surgery center, a hospital and affiliates of a  
22 hospital that provide diagnosis, treatment, or care for  
23 patients of the hospital, and a health care facility as  
24 defined in Code section 135C.1. The bill further provides  
25 that the fund shall provide coverage for claims against a  
26 health care provider or an employee of the health care  
27 provider due to the acts or omissions of the employee acting  
28 within the scope of employment and providing health care  
29 services.

30 The bill provides that the fund shall be managed and  
31 administered by a board that consists of the treasurer of  
32 state, the director of public health, the commissioner of  
33 insurance, and four public members.

34 The bill further provides that the commissioner of  
35 insurance shall by rule and subject to board approval set the

1 annual fee assessed a participating health care provider,  
2 subject to certain guidelines. The assessed fees are  
3 determined by a number of factors including the past and  
4 prospective loss and expense experience of the health care  
5 provider, the past and prospective loss and expense experience  
6 of the fund, risk factors for persons who are semiretired or  
7 part-time professionals, and risk factors and past and  
8 prospective loss and expense experience attributable to  
9 employees of the health care provider other than licensed  
10 physician employees. The commissioner is given the authority  
11 to draw moneys from the fund as approved and authorized by the  
12 board.

13 The bill also provides a claims procedure for a person  
14 filing a claim against a health care provider or an employee  
15 of the health care provider who has coverage under the fund.

16 The bill provides that the fund shall operate on a fiscal  
17 year basis from July 1 through June 30. Administrative costs,  
18 operating costs, and claim payments are funded through the  
19 assessments on participating health care providers. The fund  
20 is also financed through earnings on the fund's investments.  
21 Annually after the close of the fiscal year, the board shall  
22 submit a financial report to the commissioner and shall submit  
23 a report to the general assembly and the governor on or before  
24 January 1.

25 The bill further provides that an insurer that writes  
26 medical malpractice liability insurance in this state and each  
27 self-insurer approved by the commissioner of insurance shall  
28 file a report with the patient compensation board, by the 15th  
29 of each month, on each claim paid during the previous month  
30 for damages arising out of the provision of health care  
31 services.

32 The bill appropriates from the general fund of the state to  
33 the insurance division of the department of commerce for the  
34 fiscal year beginning July 1, 2005, and ending June 30, 2006,  
35 \$20 million to implement and administer provisions of this

1 bill relating to the patient compensation fund.

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