



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 02/09/04, by Steve Davis

SYNOPSIS AS INTRODUCED:

New Act

Creates the Illinois Common Sense Medical Malpractice Insurance Reform Act. Provides that: for any liability policy for healthcare providers issued or renewed on or after January 1, 2004, every insurer shall reduce its rates and premiums to no more than 80% of the rate and premium for the same coverage that was in effect on January 1, 2003; between January 1, 2004 and January 1, 2005, rates and premiums may be increased if the Director of Insurance finds that an insurer is substantially threatened with insolvency; beginning January 1, 2004, rates and premiums may be increased if approved in accordance with specified conditions; a healthcare provider applying for a policy for the first time on or after January 1, 2004 shall not be charged more than 80% of the rate and premium that was being charged by that insurer on January 1, 2003 for similarly situated risks; and any separate affiliate of a healthcare provider liability insurer established on or after January 1, 2003 shall reduce its rates and premiums to no more than 80% at the insurer's rates and premiums in effect on January 1, 2003. Sets forth factors to be used in determining rates and premiums for liability insurance policies for healthcare providers. Contains provisions concerning: applicability of other laws; permitted activities; cancellation or non-renewal of insurance; disclosure of premiums; approval of rate changes; hearings; rules; establishment of a joint underwriting authority under specified circumstances; group insurance; enforcement and penalties; filing fees to cover administrative or operational costs; construction; and severability. Effective immediately.

LRB093 15100 WGH 47080 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning insurance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Illinois Common Sense Medical Malpractice Insurance Reform
6 Act.

7 Section 5. Findings and Declaration. The General Assembly
8 of the State of Illinois finds and declares as follows:

9 Excessive, unjustified, and arbitrary increases in the
10 cost of liability insurance have made it both unaffordable and
11 unavailable to many Illinois physicians, hospitals, and other
12 healthcare entities (hereinafter "healthcare providers").

13 The existing laws inadequately protect healthcare
14 providers and allow insurance companies to charge excessive,
15 unjustified and arbitrary rates.

16 Therefore, the General Assembly of the State of Illinois
17 declares that healthcare provider liability insurance reform
18 is necessary. First, liability insurance rates for all
19 healthcare providers shall be immediately rolled back to those
20 existing on January 1, 2003, and reduced no less than an
21 additional 20%. Second, liability insurance rates for
22 healthcare providers shall be determined primarily by the
23 healthcare provider's claims record. Third, healthcare
24 provider liability insurance rates shall be maintained at fair
25 levels by requiring insurers to justify all future increases.
26 Finally, insurance companies writing policies for liability
27 insurance for healthcare providers shall pay a fee to cover the
28 costs of administering these new laws so that this reform will
29 cost taxpayers nothing.

30 Section 10. Purpose. The purpose of this Act is to protect
31 healthcare providers from arbitrary insurance rates and

1 practices, to encourage a competitive insurance marketplace,
2 and to ensure that liability insurance is fair, available, and
3 affordable for all Illinois healthcare providers.

4 Section 15. Reduction and Control of Insurance Rates.

5 (a) Insurance Rate Rollback.

6 (1) For any liability policy for healthcare providers
7 issued or renewed on or after January 1, 2004, every
8 insurer shall reduce its rates and premiums to no more than
9 80% of the rate and premium for the same coverage which was
10 in effect on January 1, 2003.

11 (2) Between January 1, 2004, and January 1, 2005, rates
12 and premiums (after reduction pursuant to subdivision (a))
13 may be increased if the Director of Insurance finds, after
14 a hearing, that an insurer is substantially threatened with
15 insolvency.

16 (3) Commencing January 1, 2004, healthcare provider
17 liability insurance rates and premiums may be increased
18 pursuant to Section 30.

19 (4) A healthcare provider applying for a healthcare
20 providers liability insurance policy for the first time on
21 or after January 1, 2004, shall not be charged more than
22 80% of the rate and premium which was being charged by that
23 insurer on January 1, 2003, for similarly situated risks.

24 (5) Any separate affiliate of a healthcare provider
25 liability insurer established on or after January 1, 2003,
26 shall be subject to the provisions of this Section and
27 shall reduce its rates and premiums to no more than 80% at
28 the insurer's rates and premiums in effect on January 1,
29 2003.

30 (b) Insurance Rates and Premiums for Healthcare Providers.

31 Rates and premiums for liability insurance policies for
32 healthcare providers shall be determined by application of the
33 following factors in decreasing order of importance:

34 (1) The insured's claims record.

35 (2) If a licensed practitioner, the specialty or

1 subspecialty, if any.

2 (3) If a licensed practitioner, the number of years of
3 practice experience the insured has had

4 (4) If a licensed practitioner, the number of patients
5 he or she sees annually.

6 (5) Such other factors as the Director of Insurance may
7 adopt by rule that have a substantial relationship to the
8 risk of loss. The rules shall set forth the respective
9 weight to be given each factor in determining rates and
10 premiums. Notwithstanding any other provision of law, the
11 use of any criterion without such approval shall constitute
12 unfair discrimination.

13 (c) The fact that a healthcare provider has had no prior
14 liability insurance coverage, in and of itself, shall not be
15 used as criteria for rates, premiums, or insurability.

16 (d) This Section shall become operative on January 1, 2004.
17 The Director of Insurance shall adopt rules implementing this
18 Section and insurers may submit applications for rate and
19 premium approval pursuant to this Act which comply with those
20 rules prior to that date, provided that no such application
21 shall be approved prior to that date.

22 Section 20. Prohibition of Unfair Insurance Practices.

23 (a) The business of insurance shall be subject to the laws
24 of Illinois applicable to any other business, including, but
25 not limited to the antitrust and unfair business practices
26 laws.

27 (b) Nothing in this Section shall be construed to prohibit

28 (1) any agreement to collect, compile, and disseminate
29 historical data on paid claims or reserves for reported claims,
30 provided such data is contemporaneously transmitted to the
31 Director of Insurance, (2) participation in any joint
32 arrangement established by statute or the Director of Insurance
33 to assure availability of insurance, (3) any agent or broker,
34 representing one or more insurers, from obtaining from any
35 insurer it represents information relative to the premium for

1 any policy or risk to be underwritten by that insurer, (4) any
2 agent or broker from disclosing to an insurer it represents any
3 quoted rate or charge offered by another insurer represented by
4 that agent or broker for the purpose of negotiating a lower
5 rate, charge, or term from the insurer to whom the disclosure
6 is made, or (5) any agents, brokers, or insurers from utilizing
7 or participating with multiple insurers or reinsurers for
8 underwriting a single risk or group of risks.

9 (c) Notwithstanding any other provision of law, a notice of
10 cancellation or non-renewal of a policy of liability insurance
11 for healthcare providers shall be effective only if it is based
12 upon one or more of the following:

13 (1) non-payment of premium;

14 (2) fraud or material misrepresentation affecting the
15 policy or insured;

16 (3) a substantial and verifiable increase in the hazard
17 insured against.

18 Section 25. Full Disclosure of Insurance Information. Upon
19 request, and for a reasonable fee to cover costs, the Director
20 of Insurance shall provide healthcare providers with a
21 comparison of the existing premium for each insurer who
22 provides a similar line of liability insurance for healthcare
23 providers.

24 Section 30. Approval of Insurance Rates and Premiums.

25 (a) No rate or premium shall remain in effect which is
26 excessive, unjustified, arbitrary, unfairly discriminatory, or
27 otherwise in violation of this Act. In considering whether a
28 rate or premium is excessive, unjustified, arbitrary, or
29 unfairly discriminatory, no consideration shall be given to the
30 degree of competition. The Director of Insurance shall also
31 consider whether the rate mathematically reflects the
32 insurance company's investment income.

33 (b) Every insurer which desires to change any rate or
34 premium shall file a complete rate application with the

1 Director of Insurance. A complete rate application shall
2 include all data supporting the change and such other
3 information as the Director of Insurance may require. The
4 applicant shall have the burden of proving that the requested
5 rate or premium change is justified and meets the requirements
6 of this Act.

7 (c) The Director of Insurance shall notify the public of
8 any application for a rate change by a liability insurer for
9 healthcare providers. The application shall be deemed approved
10 60 days after public notice unless (1) a healthcare provider or
11 his or her representative requests a hearing within 45 days of
12 public notice and the Director of Insurance grants the hearing,
13 or determines not to grant the hearing and issues written
14 findings in support of that decision, or (2) the Director of
15 Insurance on his or her own motion determines to hold a
16 hearing, or (3) the proposed rate adjustment exceeds 9% of the
17 then applicable rate for that insurer's healthcare providers
18 liability lines, in which case the Director of Insurance must
19 hold a hearing upon a timely request. In any event, a rate
20 change application shall be deemed approved 180 days after the
21 rate application is received by the Director of Insurance
22 unless (A) that application has been disapproved by a final
23 order of the Director of Insurance subsequent to a hearing, or
24 (B) extraordinary circumstances exist. For purposes of this
25 Section, "received" means the date delivered to the Department
26 of Insurance.

27 (d) For purposes of this Section, extraordinary
28 circumstances include the following:

29 (1) Rate change application hearings commenced during
30 the 180-day period provided by subdivision (c). If a
31 hearing is commenced during the 180-day period, the rate
32 change application shall be deemed approved upon
33 expiration of the 180-day period or 60 days after the close
34 of the record of the hearing, whichever is later, unless
35 disapproved prior to that date.

36 (2) Rate change applications that are not approved or

1 disapproved within the 180-day period provided by
2 subdivision (c) as a result of a judicial proceeding
3 directly involving the application and initiated by the
4 applicant or an intervenor. During the pendency of the
5 judicial proceedings, the 180-day period is tolled, except
6 that in no event shall the Director of Insurance have less
7 than 30 days after conclusion of the judicial proceedings
8 to approve or disapprove the application. Notwithstanding
9 any other provision of law, nothing shall preclude the
10 Director of Insurance from disapproving an application
11 without a hearing if a stay is in effect barring the
12 Director from holding a hearing within the 180-day period.

13 (3) The hearing has been continued. The 180-day period
14 provided by subdivision (c) shall be tolled during any
15 period in which a hearing is continued. A continuance shall
16 be decided on a case by case basis. If the hearing is
17 commenced or continued during the 180-day period, the rate
18 change application shall be deemed approved upon the
19 expiration of the 180-day period or 100 days after the case
20 is submitted, whichever is later, unless disapproved prior
21 to that date

22 Section 35. Rules Pertaining to Hearings by Director of
23 Insurance.

24 (a) The Director of Insurance shall adopt rules governing
25 hearings required by subdivision (c) of Section 30 on or before
26 120 days after the enactment of this Section. Those rules
27 shall, at the minimum, include timelines for scheduling and
28 commencing hearings, and procedures to prevent delays in
29 commencing or continuing hearings without good cause.

30 (b) The sole remedy for failure by the Director of
31 Insurance to adopt the rules required by subdivision (a) within
32 the prescribed period or to abide by those rules once adopted
33 shall be a writ of mandate by any aggrieved party in a court of
34 competent jurisdiction to compel the Director of Insurance to
35 adopt those rules, or commence or resume hearings.

1 (c) Nothing in this Section shall preclude the Director of
2 Insurance from commencing hearings required by subdivision (c)
3 of Section 30 prior to adopting the rules required by this
4 Section.

5 (d) The Director of Insurance (or administrative law judge
6 or judges) shall render a decision within 30 days of the
7 closing of the record in the proceeding

8 Section 40. Public Notice of Hearings. Public notice
9 required by this Act shall be made through distribution to the
10 news media and to any member of the public who requests
11 placement on a mailing list for that purpose.

12 Section 45. Public Records. All information provided to the
13 Director of Insurance pursuant to this Act shall be available
14 for public inspection.

15 Section 50. Manner of Hearings.

16 (a) Hearings shall be conducted by the Director of
17 Insurance or at his or her discretion, administrative law
18 judges appointed by the Director of Insurance

19 (b) Hearings are commenced by a filing of a Notice.

20 (c) If the hearing is conducted by an administrative law
21 judge or judges, the Director of Insurance shall adopt, amend
22 or reject the decision of the judge or judges.

23 (d) Discovery shall be liberally construed and disputes
24 determined by the Director of Insurance or the administrative
25 law judge or judges.

26 (e) Hearings shall be open to the public.

27 Section 55. Initiation of Proceeding.

28 (a) Any person may initiate or intervene in any proceeding
29 permitted or established pursuant to this Act, challenge any
30 action of the Director of Insurance under this Act, and enforce
31 any provision of this Act

32 (b) The Director of Insurance or a court shall award

1 reasonable advocacy and witness fees and expenses to any person
2 who demonstrates that (1) the person represents the interests
3 of healthcare providers or consumers, and (2) he or she has
4 made a substantial contribution to the adoption of any order,
5 regulation or decision by the Director of Insurance or a court.
6 Where such advocacy occurs in response to a rate application,
7 the award shall be paid by the applicant.

8 Section 60. Emergency Authority. In the event that the
9 Director of Insurance finds that (a) insurers have
10 substantially withdrawn from any insurance market covered by
11 this Act and (b) a market assistance plan would not be
12 sufficient to make insurance available, the Director of
13 Insurance shall establish a joint underwriting authority,
14 without the prior creation of a market assistance plan.

15 Section 65. Group Insurance Plans. Any insurer may issue
16 any insurance coverage on a group plan, without restriction as
17 to the purpose of the group, occupation or type of group. Group
18 insurance rates shall not be considered to be unfairly
19 discriminatory, if they are averaged broadly among persons
20 insured under the group plan.

21 Section 70. Application. This Act shall apply to all
22 liability insurance policies for healthcare providers in this
23 State.

24 Section 75. Enforcement and Penalties. Violations of this
25 Act shall be subject to the penalties provided for in the
26 Illinois Insurance Code. In addition to those penalties, the
27 Director of Insurance may suspend or revoke, in whole or in
28 part, the certificate of authority of any insurer which fails
29 to comply with the provisions of this Act.

30 Section 80. Insurance Company Filing Fees. The Director of
31 Insurance shall establish a schedule of filing fees to be paid

1 by each healthcare liability insurer, in proportion to its
2 share of the market, to cover any administrative or operational
3 costs arising from the provisions of this Act.

4 Section 85. Interpretation of this Act.

5 (a) This Act shall be liberally construed and applied in
6 order to fully promote its underlying purposes.

7 (b) If any provision of this Act or the application thereof
8 to any person or circumstances is held invalid, that invalidity
9 shall not affect other provisions or applications of this Act
10 which can be given effect without the invalid provision or
11 application, and to this end the provisions of this Act are
12 severable.

13 Section 999. Effective date. This Act takes effect upon
14 becoming law.