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FOLLOWING WERE PRINTED:

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REPORTS:

No

HEARINGS:

974.90 New Jersey. Legislature. Assembly. Health and Human Services and Banking and Insurance
H434 "Testimony concerning issues...enhancement of patient safety", held August 1, 2002.
2002b Trenton, 2002

974.90 New Jersey. Legislature. Assembly. Health and Human Services and Banking and Insurance Committee
I59 Public hearing on "testimony to provide medical malpractice insurance....held May 1, 2003
2003 Trenton, 2003.

974.90 New Jersey. Legislature. Special Committee to Investigate Medical Malpractice Insurer Business
I59 Practices
2003a Testimony on information related to the business practices of medical malpractice insurance
Companies, held 10-2-2003. Trenton, 2003

NEWSPAPER ARTICLES:

Yes

"Medical malpractice law is enacted," 1-8-2004 Philadelphia Inquirer, p.B1
"New Jersey starts fund for malpractice costs," 6-8-2004 New York Times p.B5
"McGreevey approves bill on medical-malpractice aid," 6-8-2004 Home News Tribune pA4
"Governor signs medical malpractice law," 6-8-2004 The Record, pA3
"Malpractice bill is signed into law," 6-8-2004 Star Ledger, p20
"Long ordeal ends; malpractice reform adopted," 1-8-2004 Asbury Park Press, pA1

§§1,2, 5-7, 9
C.2A:53A-37
to
2A:53A-42
§10
C.2A:62A-1.3
§§13-19, 21, 22, 24,
26-28, 32
C.17:30D-18
to
17:30D-31
§29
TITLE 18A.
Chapter 71a
ARTICLE 4. (NEW)

OB/GYN STUDENT
LOAN PROGRAM
C.18A:71C-49
§30
C.30:4J-7
§31
T & E
§33
Note to §§1-32

P.L. 2004, CHAPTER 17, *approved June 7, 2004*
Assembly Committee Substitute (*Second Reprint*) for
Assembly, No. 50

- 1 **AN ACT** concerning medical professional liability, insurance reform
2 and patient protection and revising parts of the statutory law.
3
- 4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:
6
- 7 1. (New section) This act shall be known and may be cited as the
8 "New Jersey Medical Care Access and Responsibility and Patients
9 First Act."
10
- 11 2. (New section) The Legislature finds and declares that:
12 a. One of the most vital interests of the State is to ensure that
13 high-quality health care continues to be available in this State and that
14 the residents of this State continue to have access to a full spectrum
15 of health care providers, including highly trained physicians in all
16 specialties;
17 b. The State's health care system and its residents' access to health
18 care providers are threatened by a dramatic escalation in medical

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted March 11, 2004.

² Senate SHH committee amendments adopted March 22, 2004.

1 malpractice liability insurance premiums, which is creating a crisis of
2 affordability in the purchase of necessary liability coverage for our
3 health care providers;

4 c. One particularly alarming result of rising premiums is that there
5 are increasing reports of doctors retiring or moving to other states
6 where insurance premiums are lower, dropping high-risk patients and
7 procedures, and practicing defensive medicine in a manner that may
8 significantly increase the cost of health care for all our citizens;

9 d. The reasons for the steep increases in the cost of medical
10 malpractice liability insurance are complex and involve issues related
11 to: the State's tort liability system; the State's health care system,
12 which includes issues related to patient safety and medical error
13 reporting; and the State's regulation and requirements concerning
14 medical malpractice liability insurers;

15 e. It is necessary and appropriate for the State to take meaningful
16 and prompt action to address the various interrelated aspects of these
17 issues that are impacted by, or impact on, the State's health care
18 system; and

19 f. To that end, this act provides for a comprehensive set of
20 reforms affecting the State's tort liability system, health care system
21 and medical malpractice liability insurance carriers to ensure that
22 health care services continue to be available and accessible to residents
23 of the State and to enhance patient safety at health care facilities.

24

25 3. N.J.S.2A:14-2 is amended to read as follows:

26 2A:14-2. ¹ a.¹ Every action at law for an injury to the person
27 caused by the wrongful act, neglect or default of any person within this
28 [state] State shall be commenced within 2 years next after the cause
29 of any such action shall have accrued; except that an action by or on
30 behalf of a minor that has accrued for medical malpractice for injuries
31 sustained at birth shall be commenced prior to the minor's 13th
32 birthday.

33 ¹b. In the event that an action by or on behalf of a minor that has
34 accrued for medical malpractice for injuries sustained at birth is not
35 commenced by the minor's parent or guardian prior to the minor's 12th
36 birthday, the minor or a person 18 years of age or older designated by
37 the minor to act on the minor's behalf may commence such an action.
38 For this purpose, the minor or designated person may petition the
39 court for the appointment of a guardian ad litem to act on the minor's
40 behalf.¹

41 (cf: N.J.S.2A:14-2)

42

43 4. N.J.S.2A:14-21 is amended to read as follows:

44 2A:14-21. If any person entitled to any of the actions or
45 proceedings specified in [sections] N.J.S.2A:14-1 to 2A:14-8 or
46 [sections] N.J.S.2A:14-16 to 2A:14-20 [of this title] or to a right or

1 title of entry under [section] N.J.S.2A:14-6 [of this title] is or shall
2 be, at the time of any such cause of action or right or title accruing,
3 under the age of 21 years, or insane, such person may commence such
4 action or make such entry, within such time as limited by [said
5 sections] those statutes, after his coming to or being of full age or of
6 sane mind. Notwithstanding the provisions of this section to the
7 contrary, an action by or on behalf of a minor that has accrued for
8 medical malpractice for injuries sustained at birth shall be commenced
9 prior to the minor's 13th birthday, as provided in N.J.S.2A:14-2.
10 (cf: N.J.S.2A:14-21)

11

12 5. (New section) The judge presiding over a medical malpractice
13 action, or the judge's designee, shall, within 30 days after the
14 discovery end date, determine whether referral to a complementary
15 dispute resolution mechanism may encourage early disposition or
16 settlement of the action. If the judge makes such a determination, the
17 matter shall be referred to complementary dispute resolution pursuant
18 to Rule 1:40 of the Rules Governing the Courts of the State of New
19 Jersey.

20 Nothing in this section shall be construed to limit the authority of
21 the judge to refer an action to complementary dispute resolution prior
22 to the discovery end date.

23

24 6. (New section) a. A health care provider named as a defendant
25 in a medical malpractice action may cause the action against that
26 provider to be dismissed upon the filing of an affidavit of
27 noninvolvement with the court. The affidavit of noninvolvement shall
28 set forth, with particularity, the facts that demonstrate that the
29 provider was misidentified or otherwise not involved, individually or
30 through its servants or employees, in the care and treatment of the
31 claimant, and was not obligated, either individually or through its
32 servants or employees, to provide for the care and treatment of the
33 claimant, and could not have caused the alleged malpractice, either
34 individually or through its servants or employees, in any way.

35 b. A codefendant or claimant shall have the right to challenge an
36 affidavit of noninvolvement by filing a motion and submitting an
37 affidavit that contradicts the assertions of noninvolvement made by the
38 health care provider in the affidavit of noninvolvement.

39 c. If the court determines that a health care provider named as a
40 defendant falsely files or makes false or inaccurate statements in an
41 affidavit of noninvolvement, the court, upon motion or upon its own
42 initiative, shall immediately reinstate the claim against that provider.
43 Reinstatement of a party pursuant to this subsection shall not be barred
44 by any statute of limitations defense that was not valid at the time the
45 original action was filed.

46 In any action in which the health care provider is found by the

1 court to have knowingly filed a false or inaccurate affidavit of
2 noninvolvement, the court shall impose upon the person who signed
3 the affidavit or represented the party, or both, an appropriate sanction,
4 including, but not limited to, ²[a civil penalty not to exceed \$10,000
5 and]² an order to pay to the other party or parties the amount of the
6 reasonable expenses incurred as a result of the filing of the false or
7 inaccurate affidavit, including a reasonable attorney fee. The court
8 shall also refer the matter to the Attorney General and the appropriate
9 professional licensing board for further review.

10 d. If the court determines that a plaintiff falsely objected to a
11 health care provider's affidavit of noninvolvement, or knowingly
12 provided an inaccurate statement regarding a health care provider's
13 affidavit, the court shall impose upon the plaintiff or the plaintiff's
14 counsel, or both, an appropriate sanction, including, but not limited to,
15 an order to pay to the other party or parties the amount of the
16 reasonable expenses incurred as a result of the ²submission of the²
17 false objection or inaccurate statement, including a reasonable attorney
18 fee. ²The court shall also refer the matter to the Attorney General and
19 the appropriate professional licensing board for further review.²

20 e. As used in this section, "health care provider" means an
21 individual or entity, which, acting within the scope of its licensure or
22 certification, provides health care services, and includes, but is not
23 limited to: a physician, dentist, nurse, pharmacist or other health care
24 professional whose professional practice is regulated pursuant to Title
25 45 of the Revised Statutes; and a health care facility licensed pursuant
26 to P.L.1971, c.136 (C.26:2H-1 et seq.)
27

28 7. (New section) In an action alleging medical malpractice, a
29 person shall not give expert testimony or execute an affidavit pursuant
30 to the provisions of P.L.1995, c.139 (C.2A:53A-26 et seq.) on the
31 appropriate standard of practice or care unless the person is licensed
32 as a physician or other health care professional in the United States
33 and meets the following criteria:

34 a. If the party against whom or on whose behalf the testimony is
35 offered is a specialist or subspecialist recognized by the American
36 Board of Medical Specialties or the American Osteopathic Association
37 and the care or treatment at issue involves that specialty or
38 subspecialty recognized by the American Board of Medical Specialties
39 or the American Osteopathic Association, the person providing the
40 testimony shall have specialized at the time of the occurrence that is
41 the basis for the action in the same specialty or subspecialty,
42 recognized by the American Board of Medical Specialties or the
43 American Osteopathic Association, as the party against whom or on
44 whose behalf the testimony is offered, and if the person against whom
45 or on whose behalf the testimony is being offered is board certified and
46 the care or treatment at issue involves that board specialty or

1 subspecialty recognized by the American Board of Medical Specialties
2 or the American Osteopathic Association, the expert witness shall be:

3 (1) a physician credentialed by a hospital to treat patients for the
4 medical condition, or to perform the procedure, that is the basis for
5 the claim or action; or

6 (2) a specialist or subspecialist recognized by the American Board
7 of Medical Specialties or the American Osteopathic Association who
8 is board certified in the same specialty or subspecialty, recognized by
9 the American Board of Medical Specialties or the American
10 Osteopathic Association, and during the year immediately preceding
11 the date of the occurrence that is the basis for the claim or action, shall
12 have devoted a majority of his professional time to either:

13 (a) the active clinical practice of the same health care profession
14 in which the defendant is licensed, and, if the defendant is a specialist
15 or subspecialist recognized by the American Board of Medical
16 Specialties or the American Osteopathic Association, the active
17 clinical practice of that specialty or subspecialty recognized by the
18 American Board of Medical Specialties or the American Osteopathic
19 Association; or

20 (b) the instruction of students in an accredited medical school,
21 other accredited health professional school or accredited residency or
22 clinical research program in the same health care profession in which
23 the defendant is licensed, and, if that party is a specialist or
24 subspecialist recognized by the American Board of Medical Specialties
25 or the American Osteopathic Association, an accredited medical
26 school, health professional school or accredited residency or clinical
27 research program in the same specialty or subspecialty recognized by
28 the American Board of Medical Specialties or the American
29 Osteopathic Association; or

30 (c) both.

31 b. If the party against whom or on whose behalf the testimony is
32 offered is a general practitioner, the expert witness, during the year
33 immediately preceding the date of the occurrence that is the basis for
34 the claim or action, shall have devoted a majority of his professional
35 time to:

36 (1) active clinical practice as a general practitioner; or active
37 clinical practice that encompasses the medical condition, or that
38 includes performance of the procedure, that is the basis of the claim or
39 action; or

40 (2) the instruction of students in an accredited medical school,
41 health professional school, or accredited residency or clinical research
42 program in the same health care profession in which the party against
43 whom or on whose behalf the testimony is licensed; or

44 (3) both.

45 c. A court may waive the same specialty or subspecialty
46 recognized by the American Board of Medical Specialties or the
47 American Osteopathic Association and board certification

1 requirements of this section, upon motion by the party seeking a
2 waiver, if, after the moving party has demonstrated to the satisfaction
3 of the court that a good faith effort has been made to identify an
4 expert in the same specialty or subspecialty, the court determines that
5 the expert possesses sufficient training, experience and knowledge to
6 provide the testimony as a result of active involvement in, or full-time
7 teaching of, medicine in the applicable area of practice or a related
8 field of medicine.

9 d. Nothing in this section shall limit the power of the trial court to
10 disqualify an expert witness on grounds other than the qualifications
11 set forth in this section.

12 e. In an action alleging medical malpractice, an expert witness
13 shall not testify on a contingency fee basis.

14 f. An individual or entity who threatens to take or takes adverse
15 action against a person in retaliation for that person providing or
16 agreeing to provide expert testimony, or for that person executing an
17 affidavit pursuant to the provisions of P.L.1995, c.139 (C.2A:53A-26
18 et seq.), which adverse action relates to that person's employment,
19 accreditation, certification, credentialing or licensure, shall be liable to
20 a civil penalty not to exceed \$10,000 and other damages incurred by
21 the person and the party for whom the person was testifying as an
22 expert.

23

24 ¹⁸. Section 2 of P.L.1995, c.139 (C.2A:53A-27) is amended to
25 read as follows:

26 2. In any action for damages for personal injuries, wrongful death
27 or property damage resulting from an alleged act of malpractice or
28 negligence by a licensed person in his profession or occupation, the
29 plaintiff shall, within 60 days following the date of filing of the answer
30 to the complaint by the defendant, provide each defendant with an
31 affidavit of an appropriate licensed person that there exists a
32 reasonable probability that the care, skill or knowledge exercised or
33 exhibited in the treatment, practice or work that is the subject of the
34 complaint, fell outside acceptable professional or occupational
35 standards or treatment practices. The court may grant no more than
36 one additional period, not to exceed 60 days, to file the affidavit
37 pursuant to this section, upon a finding of good cause.

38 [The] In the case of an action for medical malpractice, the person
39 executing the affidavit shall meet the requirements of a person who
40 provides expert testimony or executes an affidavit as set forth in
41 section 7 of P.L. , c. (C.)(pending before the Legislature as
42 this bill). In all other cases, the person executing the affidavit shall be
43 licensed in this or any other state; have particular expertise in the
44 general area or specialty involved in the action, as evidenced by board
45 certification or by devotion of the person's practice substantially to the
46 general area or specialty involved in the action for a period of at least
47 five years. The person shall have no financial interest in the outcome

1 of the case under review, but this prohibition shall not exclude the
2 person from being an expert witness in the case.¹

3 (cf: P.L.1995, c.139, s.2)

4
5 ¹[8.] 9.¹ (New section) ²[a.]² A judge presiding over an action
6 alleging medical malpractice, in which the jury has rendered a verdict
7 in favor of the complaining party, shall, upon a motion by any party for
8 additur or remittitur on the issue of the quantum of damages, consider
9 the evidence in the light most favorable to the non-moving party and
10 determine whether the award is clearly inadequate or excessive in view
11 of the nature of the medical condition or injury that is the cause of
12 action or because of passion or prejudice by the jury.

13 ²[b. The provisions of subsection a. of this section shall apply to
14 claims filed on or after the effective date of this act.]²

15
16 ¹[9.] 10.¹ (New section) a. If an individual's actual health care
17 facility duty, including on-call duty, does not require a response to a
18 patient emergency situation, a health care professional who, in good
19 faith, responds to a life-threatening emergency or responds to a
20 request for emergency assistance in a life-threatening emergency
21 within a hospital or other health care facility, is not liable for civil
22 damages as a result of an act or omission in the rendering of
23 emergency care. The immunity granted pursuant to this section shall
24 not apply to acts or omissions constituting gross negligence,
25 recklessness or willful misconduct.

26 b. The provisions of subsection a. of this section shall not apply
27 to a health care professional if a provider-patient relationship existed
28 before the emergency, or if consideration in any form is provided to
29 the health care professional for the service rendered.

30 c. The provisions of subsection a. of this section ²[shall not apply
31 if a general hospital has not reasonably and adequately staffed its
32 emergency department] do not diminish a general hospital's
33 responsibility to comply with all Department of Health and Senior
34 Services licensure requirements concerning medical staff availability
35 at the hospital².

36 d. A health care professional shall not be liable for civil damages
37 for injury or death caused in an emergency situation occurring in the
38 health care professional's private practice or in a health care facility on
39 account of a failure to inform a patient of the possible consequences
40 of a medical procedure when the failure to inform is caused by any of
41 the following:

42 (1) the patient was unconscious;

43 (2) the medical procedure was undertaken without the consent of
44 the patient because the health care professional reasonably believed
45 that the medical procedure should be undertaken immediately and that
46 there was insufficient time to fully inform the patient; or

47 (3) the medical procedure was performed on a person legally

1 incapable of giving informed consent, and the health care professional
2 reasonably believed that the medical procedure should be undertaken
3 immediately and that there was insufficient time to obtain the informed
4 consent of the person authorized to give such consent for the patient.

5 The provisions of this subsection shall apply only to actions for
6 damages for an injury or death arising as a result of a health care
7 professional's failure to inform, and not to actions for damages arising
8 as a result of a health care professional's negligence in rendering or
9 failing to render treatment.

10 e. As used in this section:

11 (1) "Health care professional" means a physician, dentist, nurse or
12 other health care professional whose professional practice is regulated
13 pursuant to Title 45 of the Revised Statutes and an emergency medical
14 technician or mobile intensive care paramedic certified by the
15 Commissioner of Health and Senior Services pursuant to Title 26 of
16 the Revised Statutes; and

17 (2) "Health care facility" means a health care facility licensed by
18 the Department of Health and Senior Services pursuant to P.L.1971,
19 c.136 (C.26:2H-1 et seq.) and a psychiatric hospital operated by the
20 Department of Human Services and listed in R.S.30:1-7.

21
22 ¹[10.] 11. ¹ Section 1 of P.L.1995, c.69 (C.45:9-19.16) is
23 amended to read as follows:

24 1. a. A physician licensed by the State Board of Medical
25 Examiners, or a physician who is an applicant for a license from the
26 State Board of Medical Examiners, shall notify the board within 10
27 days of :

28 (1) any action taken against the physician's medical license by any
29 other state licensing board or any action affecting the physician's
30 privileges to practice medicine by any out-of-State hospital, health
31 care facility, health maintenance organization or other employer;

32 (2) any pending or final action by any criminal authority for
33 violations of law or regulation, or any arrest or conviction for any
34 criminal or quasi-criminal offense pursuant to the laws of the United
35 States, this State or another state, including, but not limited to:

36 (a) criminal homicide pursuant to N.J.S.2C:11-2;

37 (b) aggravated assault pursuant to N.J.S.2C:12-1;

38 (c) sexual assault, criminal sexual contact or lewdness pursuant to
39 N.J.S.2C:14-2 through 2C:14-4; or

40 (d) an offense involving any controlled dangerous substance or
41 controlled substance analog as set forth in chapter 35 of Title 2C of
42 the New Jersey Statutes.

43 b. A physician who is in violation of this section is subject to
44 disciplinary action and civil penalties pursuant to sections 8, 9 and 12
45 of P.L.1978, c.73 (C.45:1-21 to 22 and 45:1-25).

46 c. The State Board of Medical Examiners shall notify all
47 physicians licensed by the board of the requirements of this section

1 within 30 days of the date of enactment of this act.
2 (cf: P.L.1995, c.69, s.1)

3
4 ¹[11.] 12. ¹ Section 13 of P.L.1989, c.300 (C.45:9-19.13) is
5 amended to read as follows:

6 13. a. In any case in which the State Board of Medical Examiners
7 refuses to issue, suspends, revokes or otherwise conditions the license,
8 registration, or permit of a physician, podiatrist or medical resident or
9 intern, the board shall, within 30 days of its action, notify each
10 licensed health care facility, psychiatric hospital operated by the
11 Department of Human Services and listed in R.S.30:1-7, and health
12 maintenance organization with which the person is affiliated and every
13 board licensee in the State with which the person is directly associated
14 in his private medical practice.

15 b. If, during the course of an investigation of a physician, the
16 board requests information from a health care facility, psychiatric
17 hospital operated by the Department of Human Services or health
18 maintenance organization regarding that physician, and the board
19 subsequently makes a finding of no basis for disciplinary action, the
20 board shall, within 30 days of making that finding, notify the health
21 care facility, State psychiatric hospital or health maintenance
22 organization of its determination.

23 (cf: P.L.1989, c.300, s.13)

24

25 ¹[12.] 13. ¹ (New section) a. On or after the effective date of
26 P.L. , c. (C.) (pending before the Legislature as this bill) and
27 except as provided in subsection d. of this section, no person who is
28 an officer, director or board member of a professional association for
29 health care providers shall serve concurrently as an officer, director or
30 board member of a State-domiciled medical malpractice liability
31 insurer that is licensed in the State and offering medical malpractice
32 liability insurance policies on that effective date.

33 b. As used in this section, "health care provider" means an
34 individual or entity, which, acting within the scope of its licensure or
35 certification, provides health care services, and includes, but is not
36 limited to, a physician, dentist, nurse or other health care professional
37 whose professional practice is regulated pursuant to Title 45 of the
38 Revised Statutes, and a health care facility licensed pursuant to
39 P.L.1971, c.136 (C.26:2H-1 et seq.).

40 c. A person or professional association who violates the provisions
41 of this section shall be liable for a civil penalty of \$10,000 for each
42 violation. The penalty shall be sued for and collected by the
43 Commissioner of Banking and Insurance in a summary proceeding in
44 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
45 c.274 (C.2A:58-10 et seq.).

46 d. In the case of an officer, director or board member of a medical
47 malpractice liability insurer who is an officer, director or board

1 member of a professional association for health care providers on the
2 effective date of P.L. , c. (C.) (pending before the Legislature as this
3 bill), the officer, director or board member shall have 180 days to
4 comply with the requirements of this section.

5
6 ¹[13.] 14.¹ (New section) Physicians may join together, by means
7 of a joint contract under the procedures established by this section, to
8 form a "Medical Malpractice Liability Insurance Purchasing Alliance"
9 for the purpose of negotiating a reduced premium for its members in
10 the purchase of medical malpractice liability insurance. The joint
11 contract shall be executed by all members of the purchasing alliance.

12 a. As used in this section:

13 "Board" means a medical malpractice liability insurance purchasing
14 alliance board of directors provided for in this section.

15 "Commissioner" means the Commissioner of Banking and
16 Insurance.

17 "Medical Malpractice Liability Insurance Purchasing Alliance,"
18 "purchasing alliance" or "alliance" means a purchasing alliance
19 established pursuant to this section.

20 "Member" means a physician who is a member of a medical
21 malpractice liability insurance purchasing alliance as provided for in
22 this section.

23 b. The purchasing alliance, which may be a corporation, shall be
24 governed by a board of directors, elected by the members of the
25 purchasing alliance. No person may serve as an officer or director of
26 an alliance who has a prior record of administrative, civil or criminal
27 violations within the financial services industry. The directors shall
28 serve for terms of three years, and shall serve until their successors are
29 elected and qualified. Each director shall serve without compensation,
30 except for reimbursement for actual expenses incurred by that director.

31 c. The board shall adopt by-laws for the operation of the
32 purchasing alliance, which shall be effective upon ratification by a
33 two-thirds majority of the members. The by-laws shall include, but not
34 be limited to:

35 (1) the establishment of procedures for the organization and
36 administration of the alliance; and

37 (2) procedures for the qualifications and admission of the members
38 of the alliance.

39 The bases for denial of membership shall include, but not be limited
40 to:

41 (a) performance of an act or practice that constitutes fraud or
42 intentional misrepresentation of material fact;

43 (b) previous denial of membership in the alliance; or

44 (c) previous expulsion from the alliance;

45 (3) procedures for the withdrawal of members from the alliance;

46 (4) procedures for the expulsion of members from the alliance.

47 The bases for expulsion shall include, but not be limited to:

- 1 (a) failure to pay membership or other fees required by the
- 2 purchasing alliance;
- 3 (b) failure to pay premiums in accordance with the terms of the
- 4 medical malpractice liability insurance policy or the terms of the joint
- 5 contract; or
- 6 (c) performance of an act or practice that constitutes fraud or
- 7 intentional misrepresentation of material fact; and
- 8 (5) procedures for the termination of the alliance.
- 9 d. In addition to the other powers authorized under this section,
- 10 a purchasing alliance shall have the authority to:
 - 11 (1) set reasonable fees for membership in the alliance that will
 - 12 finance reasonable and necessary costs incurred in administering the
 - 13 purchasing alliance;
 - 14 (2) negotiate premium rates for medical malpractice liability
 - 15 insurance with insurers on behalf of the members of the alliance,
 - 16 provided that negotiations are conducted by a person other than a
 - 17 member of the alliance or an employee of a member of the alliance;
 - 18 (3) provide premium collection services for insurance purchased
 - 19 through the alliance for members;
 - 20 (4) contract with third parties for any services necessary to carry
 - 21 out the powers and duties authorized or required pursuant to this
 - 22 section; and
 - 23 (5) establish procedures for keeping confidential all
 - 24 communications between the members of the purchasing alliance and
 - 25 for prohibiting the dissemination and discussion of pricing information
 - 26 and other business-related information between and among members
 - 27 of the alliance.
- 28 e. A purchasing alliance established pursuant to the provisions of
- 29 this section shall not:
 - 30 (1) assume risk for the cost or provision of medical malpractice
 - 31 liability insurance;
 - 32 (2) exclude a member who agrees to pay fees for membership and
 - 33 the premium for medical malpractice liability insurance coverage and
 - 34 who abides by the by-laws of the alliance;
 - 35 (3) engage in any trade practice or activity prohibited pursuant to
 - 36 P.L.1947, c.379 (C.17:29B-1 et seq.);
 - 37 (4) represent more than 35% of the physicians in a county or other
 - 38 relevant geographic service area; or
 - 39 (5) require a member to purchase medical malpractice liability
 - 40 insurance only through the alliance.
- 41 f. Within 30 days after its organization, the purchasing alliance
- 42 board shall file with the commissioner a certificate that shall list: the
- 43 members of the alliance; the names of the directors, chairman,
- 44 treasurer and secretary of the alliance; the address at which
- 45 communications for the alliance are to be received; a copy of the
- 46 certificate of incorporation of the alliance, if any; and a copy of the
- 47 joint contract executed by all of the members. Any change in the

1 information required by the provisions of this section shall be filed
2 with the commissioner within 30 days of the change.

3 g. The commissioner, pursuant to the "Administrative Procedure
4 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
5 regulations necessary to effectuate the provisions of this section.

6
7 ¹[14.] 15.¹ (New section) a. A medical malpractice liability
8 insurance policy, which is made, issued or delivered pursuant to
9 Subtitle 3 of Title 17 of the Revised Statutes in this State on or after
10 the effective date of P.L. , c. (C.) (pending before the
11 Legislature as this bill), may contain a provision that provides a person
12 insured under the policy with the exclusive right to require the insurer
13 to obtain the consent of the insured to settle any claim filed against the
14 insured; except that, if the policy contains that provision, the insurer
15 shall offer an endorsement, to be included in the policy at the option
16 of the insured, providing the insurer with the right to settle a claim
17 filed under the policy without first having obtained the insured's
18 consent. The insurer shall establish a premium for the endorsement,
19 which premium shall reflect any savings or reduced costs attributable
20 to the endorsement.

21 b. The Commissioner of Banking and Insurance, pursuant to the
22 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
23 seq.), shall adopt rules and regulations necessary to effectuate the
24 provisions of this section.

25
26 ¹[15.] 16.¹ (New section) a. Every insurer authorized to transact
27 medical malpractice liability insurance in this State shall offer medical
28 malpractice liability insurance policies with a deductible, at the option
29 of the insured, in an amount of at least \$5,000 per claim and up to
30 \$1,000,000 per claim, and may require the insured to provide
31 collateral for the deductible amount to the insurer.

32 b. Every insurer authorized to transact medical malpractice
33 liability insurance in this State shall provide an appropriate premium
34 reduction for any deductible chosen pursuant to subsection a. of this
35 section.

36 c. In the case of a policy with any deductible, the insurer shall be
37 responsible for payment of the deductible and shall be reimbursed for
38 that amount by the insured.

39
40 ¹[16.] 17.¹ (New section) Notwithstanding any other law or
41 regulation to the contrary, an insurer authorized to transact medical
42 malpractice liability insurance in this State shall not increase the
43 premium of any medical malpractice liability insurance policy based on
44 a claim of medical negligence or malpractice against the insured if the
45 insured is dismissed from an action alleging medical malpractice
46 ¹[within 180 days of the filing of the last responsive pleading] ²[prior
47 to the close of discovery¹] within 180 days of the filing of the last

1 responsive pleading².

2

3 ¹[17.] 18.¹ (New section) Each annual statement made after the
4 effective date of P.L. , c. (C.) (pending before the Legislature
5 as this bill), pursuant to the provisions of section 16 of P.L.1982,
6 c.114 (C.17:29AA-16), by an insurer writing medical malpractice in
7 this State, shall include a certification by the chief executive officer or
8 chief financial officer that the rates for every category, subcategory,
9 or risk classification are adequate to cover expected losses and
10 expenses of the insurer and to ensure the safety and soundness of the
11 insurer.

12

13 ¹[18.] 19.¹ (New section) Notwithstanding the provisions of
14 section 1 of P.L.1968, c.131 (C.17:29C-1) to the contrary, each notice
15 of renewal or nonrenewal by an insurer authorized to transact medical
16 malpractice liability insurance in this State shall be mailed or delivered
17 by the insurer to the insured not less than 60 days prior to the
18 expiration of the policy and, in the case of a nonrenewal, shall contain
19 the reason for the nonrenewal.

20

21 ¹[19. Section 3 of P.L.1982, c.114 (C.17:29AA-3) is amended to
22 read as follows:

23 3. As used in this act:

24 a. "Commercial lines insurance" includes all insurance policies
25 issued by a licensed insurer pursuant to Title 17 of the Revised
26 Statutes, except:

27 (1) Insurance of vessels or craft, their cargoes, marine builders'
28 risks, marine protection and indemnity, or other risks commonly
29 insured under marine, as distinguished from inland marine insurance
30 policies;

31 (2) Title insurance;

32 (3) Mortgage guaranty insurance;

33 (4) Workers' compensation and employers' liability insurance;

34 (5) Any policy or contract of reinsurance, other than joint
35 reinsurance to the extent provided for under section 22 of this act;

36 (6) Insurance written through the New Jersey Medical Malpractice
37 Reinsurance Association established pursuant to P.L.1975, c. 301 (C.
38 17:30D-1 et seq.);

39 (7) Insurance written through the New Jersey Insurance
40 Underwriting Association established pursuant to P.L.1968, c. 129 (C.
41 17:37A-1 et seq.);

42 (8) Insurance issued by hospital service corporations and medical
43 service corporations; **[and]**

44 (9) Insurance issued for personal, family or household purposes,
45 as determined by the commissioner; and

46 (10) Medical malpractice liability insurance.

47 b. "Commissioner" means Commissioner of Banking and

1 Insurance.

2 c. "Department" means the Department of Banking and
3 Insurance.

4 d. "Insurer" means any person, corporation, association, joint
5 underwriting association subject to section 22 of this act, partnership
6 or company licensed under the laws of this State to transact the
7 business of insurance in this State.

8 e. "Premium" means the consideration paid or to be paid to an
9 insurer for the issuance and delivery of any binder or policy of
10 insurance.

11 f. "Rate" means the unit charge by which the measure of exposure
12 or the amount of insurance specified in a policy of insurance or
13 covered thereunder is multiplied to determine the premium.

14 g. "Rate-making" means the examination and analysis of every
15 factor and influence related to and bearing upon the hazard and risk
16 made the subject of insurance; the collection and collation of such
17 factors and influences into rating systems; and the application of such
18 rating systems to individual risks.

19 h. "Rating system" means every schedule, class, classification,
20 rule, guide, standard, manual, table, rating plan, or compilation by
21 whatever name described, containing the rates used by any rating
22 organization or by any insurer, or used by any insurer or by any rating
23 organization in determining or ascertaining a rate.

24 i. "Reasonable degree of competition" means that degree of
25 competition which would tend to produce rates that are not excessive,
26 inadequate, or unfairly discriminatory, or forms that are not unfair,
27 inequitable, misleading or contrary to law, as determined by the
28 commissioner.

29 j. "Risk," as the context may require, means (1) as to fire
30 insurance or any other kind of insurance which, by law, may be
31 embraced in a policy of fire insurance as part thereof or as
32 supplemental thereto, any property, real or personal, described in a
33 policy, exposed to any hazard or peril named in such policy; and (2)
34 as to all other kinds of insurance not specifically included in clause (1)
35 of this subsection, the hazard or peril named in a policy of insurance.

36 k. "Special risks" mean (1) those commercial lines insurance risks
37 as specified on a list promulgated by the commissioner, which are of
38 an unusual nature or high loss hazard or are difficult to place or rate
39 or which are excess or umbrella or which are eligible for export; (2)
40 commercial lines insurance risks which produce minimum annual
41 premiums in excess of \$10,000.00; (3) inland marine insurance; or (4)
42 fidelity, surety or forgery bonds. Additions or deletions to the list
43 promulgated may be made by the commissioner without a hearing
44 upon notice to all licensed insurers.

45 l. "Supplementary rate information" includes any manual or plan
46 of rates, statistical plan, classification, rating schedule, rating rule and
47 any other rule used by an insurer in making rates.

48 (cf: P.L.1982, c.114, s.3)]¹

1 ¹[20. Section 10 of P.L.1982, c.114 (C.17:29AA-10) is amended
2 to read as follows:

3 10. a. Rates shall not be excessive, inadequate or unfairly
4 discriminatory.

5 b. (1) Notwithstanding the provisions of P.L.1982, c.114
6 (C.17:29AA-1 et seq.) to the contrary, no insurer writing medical
7 malpractice liability insurance in this State shall implement an
8 alteration, supplement or amendment to its rates or rating systems, or
9 any part thereof, which would result in a rate increase of 15% or more
10 on an annual basis for any medical specialty without complying with
11 the provisions of this subsection.

12 (2) Any alteration, supplement or amendment by a medical
13 malpractice liability insurer to its rates or rating systems, or any part
14 thereof, as described in paragraph (1) of this subsection shall be filed
15 for "file and use" with the commissioner at least 45 days prior to
16 becoming effective. The filing shall include a statement that explains
17 the reason for the proposed change and such information as the
18 commissioner may prescribe. Unless disapproved by the commissioner
19 prior to its effective date, the rate filing shall be deemed effective.

20 (3) If the commissioner finds that the rates as altered are
21 excessive, inadequate or unfairly discriminatory, the commissioner
22 shall issue an order disapproving of the alteration, supplement or
23 amendment.

24 (4) Upon satisfying the submission requirements of a rate filing
25 pursuant to this subsection or upon its disapproval by the
26 commissioner, the insurer may request that the filing be transmitted to
27 the Office of Administrative Law for a hearing, and may elect to
28 implement the proposed rates pending the outcome of that hearing;
29 except, however, that the final order issued on the filing may provide
30 for retroactive adjustment of the implemented rates.

31 (5) A rate filing that would result in a rate increase of less than
32 15% on an annual basis for any medical specialty is subject to the
33 provisions of P.L.1982, c.114 (C.17:29AA-1 et seq.).

34 (cf: P.L.1982, c.114, s.10)]¹

35

36 ¹20. Section 13 of P.L.1982, c.114 (C.17:29AA-13) is amended to
37 read as follows:

38 13. a. If the commissioner finds, after a hearing, that a rate or
39 policy form in effect for any rating organization or insurer, whether or
40 not a member or subscriber of a rating organization is not in
41 compliance with the standards of this act, he shall issue an order
42 specifying in what respects it so fails, and stating when, within a
43 reasonable period thereafter, such rate or form shall be deemed no
44 longer effective. The order shall not affect any contract or policy
45 made or issued prior to the expiration of the period set forth in the
46 order.

47 b. If the commissioner finds, after a hearing, that a rate in effect
48 for any insurer writing medical malpractice liability insurance is not in

1 compliance with the provisions of P.L.1982, c.114 (C.17:29AA-1 et
2 seq.), the commissioner shall issue an order specifying in what respects
3 it so fails, and stating when such rate shall no longer be deemed
4 effective. The order may provide for the retroactive adjustment of
5 rates and require the payment or credit of interest to insureds covered
6 during the adjusted rate period. Interest shall be calculated at the
7 percentage of interest prescribed in the Rules Governing the Courts of
8 the State of New Jersey for judgments, awards and orders for the
9 payment of money.¹

10 (cf: P.L.1982, c.114, s.13)

11

12 21. (New section) Subject to standards adopted by the National
13 Association of Insurance Commissioners, the Commissioner of
14 Banking and Insurance shall, within 180 days after the effective date
15 of P.L. , c. (C.) (pending before the Legislature as this bill) and
16 annually thereafter, review the current capitalization and reserve
17 requirements applicable to insurers authorized or admitted to transact
18 medical malpractice liability insurance in this State, as those
19 requirements are established by statute or regulation, or both.

20 Based upon the findings of that review, the commissioner shall
21 adopt regulations, pursuant to the "Administrative Procedure Act,"
22 P.L.1968, c.410 (C.52:14B-1 et seq.), to modify those requirements,
23 as the commissioner determines necessary in order to ensure the
24 solvency of those insurers and the availability and affordability of
25 medical malpractice liability insurance in this State. If the
26 commissioner determines that legislation is necessary to effect any
27 such modification, the commissioner shall notify the Governor and the
28 Legislature within the 180-day period provided in this section.

29

30 22. (New section) Every insurer authorized to transact medical
31 malpractice liability insurance in this State shall offer its insureds the
32 option to make premium payments in installments, as prescribed by the
33 Commissioner of Banking and Insurance by regulation.

34

35 23. Section 2 of P.L.1983, c.247 (C.17:30D-17) is amended to
36 read as follows:

37 2. a. Any insurer or insurance association authorized to issue
38 medical malpractice liability insurance in the State shall notify the
39 Medical Practitioner Review Panel established pursuant to section 8
40 of P.L.1989, c.300 (C.45:9-19.8) in writing of any medical malpractice
41 claim settlement, judgment or arbitration award involving any
42 practitioner licensed by the State Board of Medical Examiners and
43 insured by the insurer or insurance association. Any practitioner
44 licensed by the board who is not covered by medical malpractice
45 liability insurance issued in this State, who has coverage through a
46 self-insured health care facility or health maintenance organization, or
47 has medical malpractice liability insurance which has been issued by an
48 insurer or insurance association from outside the State, shall notify the

1 review panel in writing of any medical malpractice claim settlement,
2 judgment or arbitration award to which the practitioner is a party. The
3 review panel or board, as the case may be, shall not presume that the
4 judgment or award is conclusive evidence in any disciplinary
5 proceeding and the fact of a settlement is not admissible in any
6 disciplinary proceeding.

7 In any malpractice action against a practitioner, a settlement
8 prohibiting a complaint against the practitioner or the providing of
9 information to the review panel or board concerning the underlying
10 facts or circumstances of the action is void and unenforceable.

11 b. An insurer or insurance association authorized to issue medical
12 malpractice liability insurance in the State shall notify the review panel
13 in writing of any termination or denial of coverage to a practitioner or
14 surcharge assessed on account of the practitioner's practice method or
15 medical malpractice claims history.

16 c. The form of notification shall be prescribed by the
17 Commissioner of Banking and Insurance, shall contain such
18 information as may be required by the board and the review panel, and
19 shall be made within seven days of the settlement, judgment or award
20 or the final action for a termination or denial of, or surcharge on, the
21 medical malpractice liability insurance. Upon request of the board, the
22 review panel or the commissioner, an insurer or insurance association
23 shall provide all records regarding the defense of a malpractice claim,
24 the processing of the claim and the legal proceeding; except that
25 nothing in this subsection shall be construed to authorize disclosure of
26 any confidential communication which is otherwise protected by
27 statute, court rule or common law.

28 An insurer or insurance association, or any employee thereof, shall
29 be immune from liability for furnishing information to the review panel
30 and the board in fulfillment of the requirements of this section unless
31 the insurer or insurance association, or any employee thereof,
32 knowingly provided false information.

33 d. An insurer, insurance association or practitioner who fails to
34 notify the review panel as required pursuant to this section shall be
35 subject to such penalties as the Commissioner of Banking and
36 Insurance may determine pursuant to section 12 of P.L.1975, c.301
37 (C.17:30D-12). In addition to, or in lieu of suspension or revocation,
38 the commissioner may assess a fine which shall not exceed \$1,000 for
39 the first offense and \$2,000 for the second and each subsequent
40 offense, which may be recovered in a summary proceeding, brought in
41 the name of the State in a court of competent jurisdiction pursuant to
42 ["the penalty enforcement law," N.J.S.2A:58-1 et seq.] the "Penalty
43 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

44 e. A practitioner who fails to notify the review panel as required
45 pursuant to this section shall be subject to disciplinary action and civil
46 penalties pursuant to sections 8, 9 and 12 of P.L.1978, c.73
47 (C.45:1-21 to 45:1-22 and 45:1-25).

48 f. An insurer or insurance association shall make available to the

1 review panel or the board, upon request, any records of termination or
2 denial of coverage to a practitioner or surcharge assessed on account
3 of the practitioner's practice method or medical malpractice claims
4 history, which occurred up to five years prior to the effective date of
5 P.L.1989, c.300 (C.45:9-19.4 et al.).

6 g. For the purposes of this section, "practitioner" means a person
7 licensed to practice: medicine and surgery under chapter 9 of Title 45
8 of the Revised Statutes or a medical resident or intern; or podiatry
9 under chapter 5 of Title 45 of the Revised Statutes.

10 h. Any insurer or insurance association authorized to issue medical
11 malpractice liability insurance in the State shall notify the
12 Commissioner of Banking and Insurance, in a form and manner
13 specified by the commissioner, of any medical malpractice claim
14 settlement, judgment or arbitration award involving any practitioner
15 licensed by the State Board of Medical Examiners and insured by the
16 insurer or insurance association. The notification shall include the
17 specialty or area of professional practice of the practitioner and the
18 amount of the settlement, judgment or arbitration award, but shall not
19 include the name or other identifying information of the practitioner.
20 (cf: P.L.1989, c.300, s.4)

21

22 24. (New section) a. As used in this section:

23 "Annuity" means an annuity issued by an insurer licensed or
24 authorized to do business in this State which is a qualified assignment
25 under section 130 of the federal Internal Revenue Code of 1986, 26
26 U.S.C. s.130.

27 "Judgment creditor" means a claimant who is the recipient of an
28 award for economic or noneconomic damages, or both, that is the
29 result of an action filed against a health care provider for medical
30 malpractice, which award is subject to the provisions of subsection b.
31 of this section.

32 "Judgment debtor" means a health care provider who, as a
33 defendant in an action brought for medical malpractice, is required to
34 pay the claimant an award that is subject to the provisions of this
35 section.

36 "Noneconomic damages" means damages for physical and
37 emotional pain, suffering, inconvenience, physical impairment, mental
38 anguish, disfigurement, loss of enjoyment of life, loss of society and
39 companionship, loss of consortium, hedonic damages, injury to
40 reputation, and all other nonpecuniary losses of any kind or nature.

41 "Structured payment agreement" means an agreement made to
42 settle a claim or lawsuit or respond to a judgment in an action brought
43 for medical malpractice by an injured person whereby a series of
44 periodic payments, rather than a lump sum payment, is made over time
45 to a claimant, in accordance with the needs of the claimant or the
46 claimant's family, either through the purchase of an annuity or the
47 establishment of a trust fund, or by another means approved by the
48 court.

1 b. (1) Unless otherwise agreed to by the parties, in any judgment
2 resulting from a medical malpractice action brought by a claimant for
3 medical malpractice in which the noneconomic damages are less than
4 or equal to \$1,000,000, the court shall enter a judgment ordering that
5 all of the money damages, both economic and noneconomic, be paid
6 immediately.

7 (2) Unless otherwise agreed to by the parties, in any judgment
8 resulting from a medical malpractice action brought by a claimant for
9 medical malpractice in which the noneconomic damages exceed
10 \$1,000,000, the court shall enter a judgment ordering that 50% of the
11 noneconomic damages be paid immediately, with the costs and
12 attorney's fees to be paid from that amount. The remaining 50% of the
13 judgment shall be paid over 60 months in the form of a structured
14 payment agreement by any person, organization, group, or insurer that
15 is contractually liable to pay the judgment.

16 c. The structured payment agreement shall specify: the recipient
17 of the payments; the dollar amount of the payments; the interval
18 between payments; the number of payments or the period of time over
19 which payments are to be made; and the persons to whom money
20 damages are owed, if any, in the event of the judgment creditor's
21 death.

22 d. In the event of the judgment creditor's death, any amounts due
23 and owing pursuant to subsection b. of this section shall be paid to the
24 judgment creditor's estate.

25 e. The judgment debtor or the judgment debtor's insurer shall be
26 required to: post a bond or security; or, as otherwise provided by
27 regulation of the Department of Banking and Insurance, assure full
28 payment of the noneconomic damages awarded. A bond shall not be
29 deemed adequate unless it is written by a company authorized to do
30 business in this State and is rated ¹[A+] A-, or better,¹ by A.M. Best
31 Company ¹or such other company as is approved by the Department
32 of Banking and Insurance¹. If the judgment debtor is unable to
33 adequately assure full payment of the judgment, the judgment, reduced
34 to present value, shall be paid to the claimant in a lump sum. No bond
35 may be canceled or be subject to cancellation unless at least 60 days'
36 advance written notice is filed with the court and the claimant. Upon
37 termination of periodic payments, the security, or so much as remains,
38 shall be returned to the judgment debtor.

39 f. Upon the purchase of an annuity, establishment of a trust, or
40 approval of another arrangement for periodic payments by a court, any
41 obligation of the judgment debtor with respect to the judgment shall
42 cease.

43
44 25. Section 1 of P.L.1997, c.365 (C.45:9-19.17) is amended to
45 read as follows:

46 1. a. A physician who maintains a professional medical practice
47 in this State and has responsibility for patient care is required to be
48 covered by medical malpractice liability insurance ²issued by a carrier

1 authorized to write medical malpractice liability insurance policies in
2 this State.² in the sum of \$1,000,000 per occurrence and \$3,000,000
3 per policy year² [. with] and unless renewal coverage includes the
4 premium retroactive date, the policy shall provide for² extended
5 reporting endorsement coverage for claims made policies, also known
6 as "tail coverage."² [issued by a carrier authorized to write medical
7 malpractice liability insurance policies in this State,]² or, if such
8 liability coverage is not available, by a letter of credit for at least [the
9 minimum amount required by the State Board of Medical Examiners]
10 \$500,000.

11 The physician shall notify the State Board of Medical Examiners
12 of the name and address of the insurance carrier or the institution
13 issuing the letter of credit, pursuant to section 7 of P.L.1989, c.300
14 (C.45:9-19.7).

15 b. A physician who is in violation of this section is subject to
16 disciplinary action and civil penalties pursuant to sections 8, 9 and 12
17 of P.L.1978, c.73 (C.45:1-21 to 22 and 45:1-25).

18 c. The State Board of Medical Examiners [shall] may, pursuant
19 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
20 et seq.), [adopt regulations which] establish [the] by regulation,
21 minimum [amount of a line] amounts for medical malpractice liability
22 insurance coverage and lines of credit [that is] in excess of those
23 amounts required pursuant to subsection a. of this section.

24 d. The State Board of Medical Examiners shall notify all
25 physicians licensed by the board of the requirements of this section
26 within 30 days of the date of enactment of [this act] P.L. , c. (now
27 before the Legislature as this bill).
28 (cf: P.L.1997, c.365, s.1)

29
30 26. (New section) For the purposes of sections 27 and 28 of
31 P.L. , c. (C.)(pending before the Legislature as this bill):

32 "Commissioner" means the Commissioner of Banking and
33 Insurance.

34 "Fund" means the Medical Malpractice Liability Insurance
35 Premium Assistance Fund established pursuant to section 27 of P.L. ,
36 c. (C.)(pending before the Legislature as this bill).

37 "Health care provider" means a physician, podiatrist, dentist and
38 chiropractor licensed pursuant to the provisions of Title 45 of the
39 Revised Statutes, a nurse licensed pursuant to the provisions of Title
40 45 of the Revised Statutes who is employed by a licensed hospital,
41 long-term care facility or assisted living facility in this State and any
42 person who purchases professional liability insurance on behalf of or
43 for a ¹[health care provider] practitioner¹, including professional
44 liability insurance protection which is provided for hospital employed
45 physicians through hospital funding supplemented by purchased
46 commercial insurance coverage.

47 ¹"Practitioner" means a physician, podiatrist, dentist and

1 chiropractor and a nurse employed by a licensed hospital, long-term
2 care facility or assisted living facility in this State.¹

3
4 27. (New section) a. There is established a Medical Malpractice
5 Liability Insurance Premium Assistance Fund within the Department
6 of the Treasury as a nonlapsing, revolving fund.

7 b. The fund shall be comprised of the following revenue:

8 (1) an annual surcharge of \$3 per employee for all employers who
9 are subject to the New Jersey "unemployment compensation law,"
10 R.S.43:21-1 et seq., collected by the comptroller for the New Jersey
11 Unemployment Compensation Fund and paid over to the State
12 Treasurer for deposit in the fund annually, as provided by the
13 commissioner, which surcharge may, at the option of the employer, be
14 treated as a payroll deduction to each covered employee;

15 (2) an annual charge of ²[\$50] \$75² to be imposed by the State
16 Board of Medical Examiners on every physician and podiatrist licensed
17 by the board pursuant to the provisions of R.S.45:9-1 et seq.,
18 collected by the board and remitted to the State Treasurer for deposit
19 into the fund;

20 (3) an annual charge of ²[\$50] \$75² to be imposed by the State
21 Board of Chiropractic Examiners on every chiropractor licensed by the
22 board pursuant to the provisions of P.L.1989, c.153 (C.45:9-41.17 et
23 seq.), collected by the board and remitted to the State Treasurer for
24 deposit into the fund;

25 (4) an annual charge of ²[\$50] \$75² to be imposed by the New
26 Jersey State Board of Dentistry on every dentist licensed pursuant to
27 the provisions of R.S. 45:6-1 et seq., collected by the board and
28 remitted to the State Treasurer for deposit into the fund;

29 (5) an annual charge of ²[\$50] \$75² to be imposed by the New
30 Jersey State Board of Optometrists on every optometrist licensed by
31 the board pursuant to the provisions of R.S.45:12-1 et seq., collected
32 by the board and remitted to the State Treasurer for deposit into the
33 fund; and

34 (6) an annual fee of ²[\$50] \$75² to be assessed by the State
35 Treasurer and payable by each person licensed to practice law in this
36 State, for deposit into the fund.

37 The provisions of paragraphs (2) through (5) of this subsection
38 shall not apply to physicians, podiatrists, chiropractors, dentists or
39 optometrists who: are statutorily or constitutionally barred from the
40 practice of their respective profession; can show that they do not
41 maintain a bona fide office for the practice of their profession in this
42 State; are completely retired from the practice of their profession; are
43 on full-time duty with the armed forces, VISTA or the Peace Corps
44 and not engaged in practice; or have not practiced their profession for
45 at least one year.

46 The provisions of paragraph (6) of this subsection shall not apply
47 to attorneys who: are constitutionally or statutorily barred from the

1 practice of law; can show that they do not maintain a bona fide office
 2 for the practice of law in this State; are completely retired from the
 3 practice of law; are on full-time duty with the armed forces, VISTA or
 4 the Peace Corps and not engaged in practice; are ineligible to practice
 5 law because they have not made their New Jersey Lawyers' Fund for
 6 Client Protection payment; or have not practiced law for at least one
 7 year.

8 c. The State Treasurer shall deposit all moneys collected by him
 9 pursuant to this section into the fund. Monies credited to the fund
 10 may be invested in the same manner as assets of the General Fund and
 11 any investment earnings on the fund shall accrue to the fund and shall
 12 be available subject to the same terms and conditions as other monies
 13 in the fund.

14 d. The fund shall be administered by the Department of Banking
 15 and Insurance in accordance with the provisions of ¹[this act] P.L. ,
 16 c. (C.)(pending before the Legislature as this bill)¹.

17 e. The monies in the fund are specifically dedicated and shall be
 18 utilized exclusively for the following purposes:

19 (1) ²[\$20] \$17² million shall be allocated ¹annually¹ for the
 20 purpose of providing relief towards the payment of medical
 21 malpractice liability insurance premiums to health care providers in the
 22 State who have experienced or are experiencing a liability insurance
 23 premium increase in an amount as established by the commissioner by
 24 regulation and meet the criteria established pursuant to section 28 of
 25 P.L. , c. (C.)(pending before the Legislature as this bill);

26 (2) ²[\$8] \$6.9² million shall be allocated ¹annually¹ to the Health
 27 Care Subsidy Fund established pursuant to section 8 of P.L.1992,
 28 c.160 (C.26:2H-18.58) for the purpose of providing payments to
 29 hospitals in accordance with the formula used for the distribution of
 30 charity care subsidies that are provided pursuant to P.L.1992, c.160
 31 (C.26:2H-18.51 et al.);

32 (3) ¹[\$2] \$1¹ million shall be allocated ¹annually¹ for a student
 33 loan expense reimbursement program for ¹[health care providers who
 34 are members of specialties and subspecialties who qualify for relief
 35 under subsection b. of section 28 of P.L. , c. (C.)(pending before
 36 the Legislature as this bill)] obstetrician/gynecologists¹, to be
 37 established pursuant to section 29 of P.L. , c. (C.)(pending before
 38 the Legislature as this bill); and

39 (4) ¹[the balance of any unexpended monies in the fund]
 40 ²[\$1] \$1.2² million¹ shall be allocated ¹annually¹ to the Division of
 41 Medical Assistance and Health Services in the Department of Human
 42 Services for the ¹[provision of other health care services as
 43 determined by the Commissioner of Human Services] purposes
 44 provided in section 30 of P.L. , c. (C.)(pending before the
 45 Legislature as this bill)¹.

46 f. The fund ²and the annual surcharge, charges and fee provided
 47 for in subsection b. of this section² shall expire three years after the

1 effective date of P.L. , c. (C.)(pending before the Legislature as this
2 bill).

3 ²g. The commissioner, in consultation with the Commissioner of
4 Health and Senior Services, shall adopt rules and regulations pursuant
5 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
6 et seq.), to carry out the purposes of sections 26 through 29 of P.L. ,
7 c. (C.)(pending before the Legislature as this bill); except that,
8 notwithstanding any provision of P.L.1968, c.410 to the contrary, the
9 commissioner may adopt, immediately upon filing with the Office of
10 Administrative Law, such regulations as the commissioner deems
11 necessary to implement the provisions of sections 26 through 29 of
12 P.L. , c. (pending before the Legislature as this bill), which shall be
13 effective for a period not to exceed six months and may thereafter be
14 amended, adopted or readopted by the commissioner in accordance
15 with the requirements of P.L.1968, c.410.²

16

17 28. (New section) a. In order to carry out the purposes of
18 section 27 of P.L. , c. (C.)(pending before the Legislature as this
19 bill), the commissioner shall, at a minimum:

20 (1) establish a program to provide medical malpractice liability
21 insurance premium subsidies to health care providers from monies that
22 are contained in the fund;

23 (2) establish a methodology and procedures for determining
24 eligibility for, and providing subsidies from, the fund;

25 (3) maintain confidential records on each health care provider who
26 receives assistance from the fund;

27 (4) take all necessary action to recover the cost of the subsidy
28 provided to a health care provider that the commissioner determines
29 to have been incorrectly provided; and

30 (5) provide for subsidies to all ¹[health care providers]
31 practitioners¹ who are members of specialties and subspecialties who
32 qualify for relief under subsection b. of this section, including those
33 whose professional liability insurance protection is provided by
34 hospital funding supplemented by purchased commercial insurance
35 coverage.

36 b. The commissioner shall certify classes of ¹[health care
37 providers] practitioners¹ by specialty and subspecialty for each type
38 of practitioner, whose average medical malpractice premium, as a
39 class, on or after December 31, 2002, is in excess of an amount per
40 year as determined by the commissioner by regulation. In certifying
41 classes eligible for the subsidy, the commissioner, in consultation with
42 the Commissioner of Health and Senior Services, may also consider if
43 access to care is threatened by the inability of a significant number of
44 ¹[health care providers] practitioners¹, as applicable, in a particular
45 specialty or subspecialty, to continue practicing in a geographic area
46 of the State.

47 (1) In order to be eligible for a subsidy from the fund, a ¹[health

1 care provider] practitioner¹ shall have received a medical malpractice
2 liability insurance premium increase in an amount as determined by the
3 commissioner by regulation, for one or more of the following: upon
4 renewal on or after January 1, 2004, from the amount paid by that
5 practitioner in calendar year 2003; upon renewal on or after January
6 1, 2005, from the amount paid by that practitioner in calendar year
7 2004; and upon renewal on or after January 1, 2006, from the amount
8 paid by that practitioner in calendar year 2005; or

9 (2) In the case of a health care provider providing professional
10 liability insurance protection through self-insured hospital funding
11 supplemented with purchased commercial insurance coverage, in order
12 to be eligible for a subsidy from the fund, that provider shall have
13 increased its total professional liability funding obligation in an amount
14 as determined by the commissioner by regulation, for one or more of
15 the following: upon renewal on or after January 1, 2004, from the
16 professional liability funding obligation paid by that provider in
17 calendar year 2003; upon renewal on or after January 1, 2005, from
18 the professional liability funding obligation paid by that provider in
19 calendar year 2004; and upon renewal on or after January 1, 2006,
20 from the professional liability funding obligation paid by that provider
21 in calendar year 2005.

22 (3) The amount of the subsidy shall be an amount, as determined
23 by the commissioner by regulation, of the increase from the preceding
24 year's premium or self-insured professional liability funding obligation;
25 except that no health care provider shall receive a subsidy in any year
26 that is greater than an amount as determined by the commissioner by
27 regulation.

28 c. A ¹[health care provider] practitioner¹ who has been subject to
29 a disciplinary action or civil penalty by the practitioner's respective
30 licensing board pursuant to sections 8, 9 or 12 of P.L.1978, c.73
31 (C.45:1-21, 22 or 25), when that action or penalty relates to the
32 ¹[provider's] practitioner's¹ provision of, or failure to provide,
33 treatment or care to a patient, is not eligible for a subsidy from the
34 fund.

35 d. (1) A ¹[health care provider] practitioner¹ who receives a
36 subsidy from the fund shall be required to practice in that
37 ¹[provider's] practitioner's¹ specialty or subspecialty in this State for
38 a period of at least two years after receipt of the subsidy.

39 (2) A ¹[health care provider] practitioner¹ who fails to comply
40 with the provisions of paragraph (1) of this subsection shall be
41 required to repay to the commissioner the amount of the subsidy, in
42 whole or in part as determined by the commissioner.

43 e. The commissioner may waive the criteria for eligibility for a
44 subsidy established pursuant to this section, if the commissioner
45 determines that access to care for a particular specialty is threatened
46 because of an inability of a sufficient number of practitioners in that
47 specialty or subspecialty to practice in a geographic area of the State.

1 f. The State Board of Medical Examiners, the State Board of
2 Chiropractic Examiners, the New Jersey State Board of Dentistry and
3 the New Jersey Board of Nursing shall each provide to the
4 commissioner, on a quarterly basis, the names of the practitioners who
5 have been subject to a disciplinary action or civil penalty by the
6 practitioner's respective licensing board.

7 ²g. For the purposes of section 29 of P.L. , c. (C.)(pending
8 before the Legislature as this bill), the commissioner, in consultation
9 with the State Board of Medical Examiners, shall provide to the
10 Higher Education Student Assistance Authority the names of
11 obstetrician/gynecologists licensed by the board who may qualify for
12 the student loan reimbursement program established pursuant to P.L. ,
13 c. (pending before the Legislature as this bill). A physician who has
14 been subject to a disciplinary action or civil penalty by the board, as
15 provided in subsection c. of this section, shall not be eligible for the
16 program.²

17
18 29. (New section) a. There is established a student loan expense
19 reimbursement program within the Higher Education Student
20 Assistance Authority for ¹[health care providers who are members of
21 specialties and subspecialties who qualify for relief under subsection
22 b. of section 28 of P.L. , c. (C.)(pending before the Legislature as
23 this bill)] obstetrician/gynecologists who agree to practice in State
24 designated underserved areas as established pursuant to section 1 of
25 P.L.1999, c.46 (C.18A:71C-35)¹. ²Any loans provided through the
26 NJCLASS Loan Program pursuant to P.L.1999, c.46 (C.18A:71C-21
27 et seq.) or a student loan program of the federal government shall be
28 eligible for reimbursement under this program.²

29 The authority shall implement the program in consultation with the
30 Commissioners of Banking and Insurance and Health and Senior
31 Services ²and the State Board of Medical Examiners².

32 b. (1) ¹[A health care provider] An obstetrician/gynecologist¹
33 who receives a payment under the student loan expense reimbursement
34 program shall be required to practice ¹[in that provider's specialty or
35 subspecialty] as an obstetrician/gynecologist in an underserved area¹
36 in this State for a period of at least four years after receipt of the
37 payment.

38 (2) ¹[A health care provider] An obstetrician/gynecologist¹ who
39 fails to comply with the provisions of paragraph (1) of this subsection
40 shall be required to repay to the Higher Education Student Assistance
41 Authority the amount of the payment, in whole or in part as
42 determined by the authority.

43 c. The authority shall adopt rules and regulations, pursuant to the
44 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
45 seq.), to effectuate the purposes of ²[subsection a. of]² this section,
46 including, but not limited to: eligibility for the program, procedures
47 for application, selection of participants, establishment and

1 nullification of contracts established with participants under the
2 program, ²and² reports to the program by participants²[, and
3 recruitment of participants]².

4
5 ¹30. (New section) Within the limits of funds appropriated
6 pursuant to section 27 of P.L. , c. (C.)(pending before the
7 Legislature as this bill) and such other funds as may be available for
8 this purpose, the FamilyCare Health Coverage Program established
9 pursuant to P.L.2000, c.71 (C.30:4J-1 et seq.) shall enroll into the
10 program women whose eligibility under the Medicaid New Jersey Care
11 pregnant women program or the "New Jersey Standardized Parent
12 Service Package," Demonstration Population 3, Medicaid expansion
13 for uninsured pregnant woman, has expired and whose family income
14 does not exceed 100% of the federal poverty level.

15 The Commissioner of Human Services shall establish a presumptive
16 eligibility process to provide for an efficient transition into the
17 FamilyCare Health Coverage Program from the Medicaid program
18 pursuant to this section.¹

19
20 ¹[30.] 31.¹ There is established the "Medical Care Availability
21 Task Force."

22 a. The task force shall consist of 17 members as follows:

23 (1) the Commissioners of Banking and Insurance, Health and
24 Senior Services, and Human Services, and the Director of the
25 Administrative Office of the Courts, or their designees, who shall serve
26 ex officio; and

27 (2) 13 public members, who shall include: one person appointed
28 upon the recommendation of an organization that represents
29 physicians; one person appointed upon the recommendation of an
30 organization that represents osteopathic physicians and surgeons; one
31 person appointed upon the recommendation of an organization that
32 represents dentists; one person appointed upon the recommendation
33 of an organization that represents hospitals; one person appointed
34 upon the recommendation of an organization that represents teaching
35 hospitals; one person appointed upon the recommendation of an
36 organization that represents trial lawyers; one person appointed upon
37 the recommendation of an organization that represents attorneys; one
38 person appointed upon the recommendation of an organization that
39 represents medical malpractice insurers; one person appointed upon
40 the recommendation of an organization that represents managed care
41 carriers; and four persons who represent the interests of health care
42 consumers.

43 Of the 13 public members, five shall be appointed by the Governor,
44 with the advice and consent of the Senate; four shall be appointed by
45 the President of the Senate; and four shall be appointed by the Speaker
46 of the General Assembly. The Governor, the President of the Senate,
47 and the Speaker of the General Assembly shall consult with each other
48 on the appointment of the public members.

1 b. Vacancies in the membership of the task force shall be filled in
2 the same manner provided for the original appointments. The public
3 members of the task force shall serve without compensation but may
4 be reimbursed for traveling and other miscellaneous expenses
5 necessary to perform their duties, within the limits of funds made
6 available to the task force for its purposes.

7 c. (1) The task force shall organize as soon as practicable, but no
8 later than the 30th day after the appointment of its members, and shall
9 select a chairperson and vice-chairperson from among the members.
10 The chairperson shall appoint a secretary who need not be a member
11 of the task force.

12 (2) The task force may meet at the call of the chairperson and hold
13 hearings at the times and in the places it may deem appropriate and
14 necessary to fulfill its charge. The task force shall be entitled to call
15 to its assistance, and avail itself of the services of, the employees of
16 any State, county or municipal department, board, bureau, commission
17 or agency as it may require and as may be available to it for its
18 purposes.

19 (3) The Department of Banking and Insurance shall provide staff
20 services to the task force.

21 d. The purpose of the task force shall be to study the following
22 issues:

23 (1) the advantages and disadvantages of establishing limitations on
24 noneconomic damages for medical malpractice judgments and on
25 extending current limitations on liability that apply to nonprofit
26 hospitals to employees, other than physicians, of those hospitals;

27 (2) the impact of third party reimbursement policies by insurers
28 and health maintenance organizations on access to health care services
29 in the context of the current affordability crisis in the State affecting
30 health care providers in the purchase of necessary liability coverage;

31 (3) the advantages and disadvantages of adopting additional
32 changes to the statute of limitations regarding medical malpractice
33 actions;

34 (4) the advantages and disadvantages of establishing additional
35 procedures for mediation of actions alleging medical malpractice and
36 for screening for frivolous medical malpractice lawsuits; ¹and¹

37 (5) the advantages and disadvantages of establishing a pre-suit
38 procedure ¹ [; and

39 (6) the necessity for, and advantages and disadvantages of,
40 reactivating the Medical Malpractice Reinsurance Association
41 established pursuant to P.L.1975, c.301 (C.17:30D-1 et seq.)¹.

42 e. The task force shall present a report of its findings and
43 recommendations to the Governor and the Legislature no later than 24
44 months after the date of its initial meeting, and shall be authorized to
45 periodically issue a summary of its deliberations prior to the
46 presentation of its report.

47

48 ²32. The Commissioner of Banking and Insurance shall adopt rules

1 and regulations, pursuant to the "Administrative Procedure Act,"
2 P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the purposes of
3 sections 13, 16 through 19, 21, 22 and 24 of this act.²

4

5 ¹[31.] ²[32. ¹] ³33.² This act shall take effect on the 30th day after
6 enactment and shall apply to causes of action for medical malpractice
7 that accrue on or after that effective date; except that ²section 9 shall
8 take effect upon action by the court.² sections ¹[13 through 15] ¹⁴
9 through 16¹ and section 22 shall take effect on the 180th day after the
10 date of enactment, sections ¹[16 and 18] ^{17 and 19}¹ shall take effect
11 on the 90th day after the date of enactment, and the amendatory
12 provisions of sections 3 and 4 shall apply to injuries sustained at birth
13 on or after the effective date of this act. Section 29 shall expire three
14 years after the effective date.

15

16

17

18

19 "New Jersey Medical Care Access and Responsibility and Patients
20 First Act."

ASSEMBLY, No. 50

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED MARCH 4, 2004

Sponsored by:

Assemblyman JOSEPH J. ROBERTS, JR.

District 5 (Camden and Gloucester)

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

Assemblyman JOHN F. MCKEON

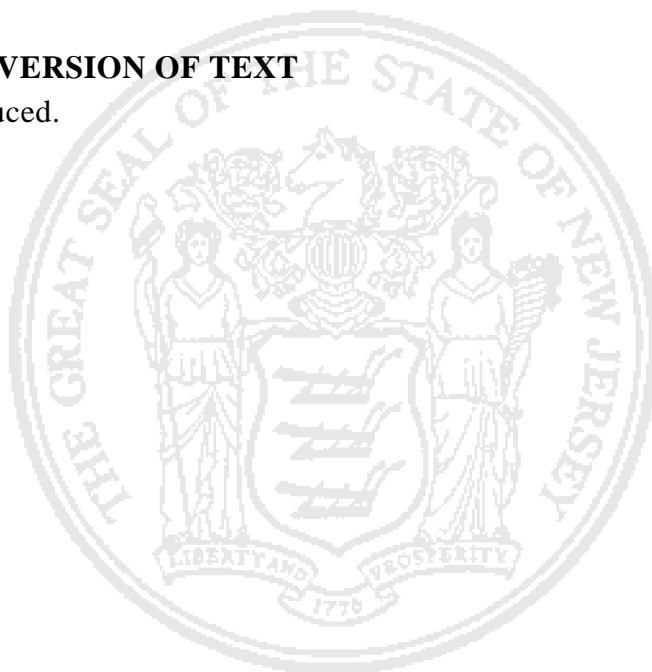
District 27 (Essex)

SYNOPSIS

"New Jersey Medical Care Access and Responsibility and Patients First Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning medical professional liability, insurance reform
2 and patient protection and revising parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. (New section) This act shall be known and may be cited as the
8 "New Jersey Medical Care Access and Responsibility and Patients
9 First Act."

10

11 2. (New section) The Legislature finds and declares that:

12 a. One of the most vital interests of the State is to ensure that high-
13 quality health care continues to be available in this State and that the
14 residents of this State continue to have access to a full spectrum of
15 health care providers, including highly trained physicians in all
16 specialties;

17 b. The State's health care system and its residents' access to health
18 care providers are threatened by a dramatic escalation in medical
19 malpractice liability insurance premiums, which is creating a crisis of
20 affordability in the purchase of necessary liability coverage for our
21 health care providers;

22 c. One particularly alarming result of rising premiums is that there
23 are increasing reports of doctors retiring or moving to other states
24 where insurance premiums are lower, dropping high-risk patients and
25 procedures, and practicing defensive medicine in a manner that may
26 significantly increase the cost of health care for all our citizens;

27 d. The reasons for the steep increases in the cost of medical
28 malpractice liability insurance are complex and involve issues related
29 to: the State's tort liability system; the State's health care system,
30 which includes issues related to patient safety and medical error
31 reporting; and the State's regulation and requirements concerning
32 medical malpractice liability insurers;

33 e. It is necessary and appropriate for the State to take meaningful
34 and prompt action to address the various interrelated aspects of these
35 issues that are impacted by, or impact on, the State's health care
36 system; and

37 f. To that end, this act provides for a comprehensive set of reforms
38 affecting the State's tort liability system, health care system and
39 medical malpractice liability insurance carriers to ensure that health
40 care services continue to be available and accessible to residents of the
41 State and to enhance patient safety at health care facilities.

42

43 3. N.J.S.2A:14-2 is amended to read as follows:

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2A:14-2. Every action at law for an injury to the person caused by
2 the wrongful act, neglect or default of any person within this
3 [state] State shall be commenced within 2 years next after the cause
4 of any such action shall have accrued; except that an action by or on
5 behalf of a minor that has accrued for medical malpractice for injuries
6 sustained at birth shall be commenced prior to the minor's 11th
7 birthday.

8 (cf: N.J.S.2A:14-2)

9
10 4. N.J.S.2A:14-21 is amended to read as follows:

11 2A:14-21. If any person entitled to any of the actions or
12 proceedings specified in [sections] N.J.S.2A:14-1 to 2A:14-8 or
13 [sections] N.J.S.2A:14-16 to 2A:14-20 [of this title] or to a right or
14 title of entry under [section] N.J.S.2A:14-6 [of this title] is or shall
15 be, at the time of any such cause of action or right or title accruing,
16 under the age of 21 years, or insane, such person may commence such
17 action or make such entry, within such time as limited by [said
18 sections] those statutes, after his coming to or being of full age or of
19 sane mind. Notwithstanding the provisions of this section to the
20 contrary, an action by or on behalf of a minor that has accrued for
21 medical malpractice for injuries sustained at birth shall be commenced
22 prior to the minor's 11th birthday, as provided in N.J.S.2A:14-2.

23 (cf: N.J.S.2A:14-21)

24
25 5. (New section) The judge presiding over a medical malpractice
26 action, or the judge's designee, shall, within 30 days after the
27 discovery end date, determine whether referral to a complementary
28 dispute resolution mechanism may encourage early disposition or
29 settlement of the action. If the judge makes such a determination, the
30 matter shall be referred to complementary dispute resolution pursuant
31 to Rule 1:40 of the Rules Governing the Courts of the State of New
32 Jersey.

33 Nothing in this section shall be construed to limit the authority of
34 the judge to refer an action to complementary dispute resolution prior
35 to the discovery end date.

36
37 6. (New section) a. A health care provider named as a defendant
38 in a medical malpractice action may cause the action against that
39 provider to be dismissed upon the filing of an affidavit of
40 noninvolvement with the court. The affidavit of noninvolvement shall
41 set forth, with particularity, the facts that demonstrate that the
42 provider was misidentified or otherwise not involved, individually or
43 through its servants or employees, in the care and treatment of the
44 claimant, and was not obligated, either individually or through its
45 servants or employees, to provide for the care and treatment of the
46 claimant, and could not have caused the alleged malpractice, either
47 individually or through its servants or employees, in any way.

1 b. A codefendant or claimant shall have the right to challenge an
2 affidavit of noninvolvement by filing a motion and submitting an
3 affidavit that contradicts the assertions of noninvolvement made by the
4 health care provider in the affidavit of noninvolvement.

5 c. If the court determines that a health care provider named as a
6 defendant falsely files or makes false or inaccurate statements in an
7 affidavit of noninvolvement, the court, upon motion or upon its own
8 initiative, shall immediately reinstate the claim against that provider.
9 Reinstatement of a party pursuant to this subsection shall not be barred
10 by any statute of limitations defense that was not valid at the time the
11 original action was filed.

12 In any action in which the health care provider is found by the court
13 to have knowingly filed a false or inaccurate affidavit of
14 noninvolvement, the court shall impose upon the person who signed
15 the affidavit or represented the party, or both, an appropriate sanction,
16 including, but not limited to, a civil penalty not to exceed \$10,000 and
17 an order to pay to the other party or parties the amount of the
18 reasonable expenses incurred as a result of the filing of the false or
19 inaccurate affidavit, including a reasonable attorney fee. The court
20 shall also refer the matter to the Attorney General and the appropriate
21 professional licensing board for further review.

22 d. If the court determines that a plaintiff falsely objected to a health
23 care provider's affidavit of noninvolvement, or knowingly provided an
24 inaccurate statement regarding a health care provider's affidavit, the
25 court shall impose upon the plaintiff or the plaintiff's counsel, or both,
26 an appropriate sanction, including, but not limited to, an order to pay
27 to the other party or parties the amount of the reasonable expenses
28 incurred as a result of the false objection or inaccurate statement,
29 including a reasonable attorney fee.

30 e. As used in this section, "health care provider" means an
31 individual or entity, which, acting within the scope of its licensure or
32 certification, provides health care services, and includes, but is not
33 limited to: a physician, dentist, nurse, pharmacist or other health care
34 professional whose professional practice is regulated pursuant to Title
35 45 of the Revised Statutes; and a health care facility licensed pursuant
36 to P.L.1971, c.136 (C.26:2H-1 et seq.).
37

38 7. (New section) In an action alleging medical malpractice, a
39 person shall not give expert testimony or execute an affidavit pursuant
40 to the provisions of P.L.1995, c.139 (C.2A:53A-26 et seq.) on the
41 appropriate standard of practice or care unless the person is licensed
42 as a physician or other health care professional in the United States
43 and meets the following criteria:

44 a. If the party against whom or on whose behalf the testimony is
45 offered is a specialist or subspecialist recognized by the American
46 Board of Medical Specialties and the care or treatment at issue

1 involves that specialty or subspecialty recognized by the American
2 Board of Specialties, the person providing the testimony shall have
3 specialized at the time of the occurrence that is the basis for the action
4 in the same specialty or subspecialty, recognized by the American
5 Board of Medical Specialties, as the party against whom or on whose
6 behalf the testimony is offered, and if the person against whom or on
7 whose behalf the testimony is being offered is board certified and the
8 care or treatment at issue involves that board specialty or subspecialty
9 recognized by the American Board of Medical Specialties, the expert
10 witness shall be a specialist or subspecialist recognized by the
11 American Board of Medical Specialties who is board certified in the
12 same specialty or subspecialty, recognized by the American Board of
13 Medical Specialties, and during the year immediately preceding the
14 date of the occurrence that is the basis for the claim or action, shall
15 have devoted a majority of his professional time to either:

16 (1) the active clinical practice of the same health care profession
17 in which the defendant is licensed, and, if the defendant is a specialist
18 or subspecialist recognized by the American Board of Medical
19 Specialties, the active clinical practice of that specialty or subspecialty
20 recognized by the American Board of Medical Specialties; or

21 (2) the instruction of students in an accredited medical school,
22 other accredited health professional school or accredited residency or
23 clinical research program in the same health care profession in which
24 the defendant is licensed, and, if that party is a specialist or
25 subspecialist recognized by the American Board of Medical
26 Specialties, an accredited medical school, health professional school
27 or accredited residency or clinical research program in the same
28 specialty or subspecialty recognized by the American Board of Medical
29 Specialties; or

30 (3) both.

31 b. If the party against whom or on whose behalf the testimony is
32 offered is a general practitioner, the expert witness, during the year
33 immediately preceding the date of the occurrence that is the basis for
34 the claim or action, shall have devoted a majority of his professional
35 time to:

36 (1) active clinical practice as a general practitioner; or

37 (2) the instruction of students in an accredited medical school,
38 health professional school, or accredited residency or clinical research
39 program in the same health care profession in which the party against
40 whom or on whose behalf the testimony is licensed; or

41 (3) both.

42 c. A court may waive the same specialty or subspecialty recognized
43 by the American Board of Medical Specialties and board certification
44 requirements of this section if the court determines that the expert
45 possesses sufficient training, experience and knowledge to provide the
46 testimony as a result of active involvement in, or full-time teaching of,

1 medicine in the applicable area of practice or a related field of
2 medicine.

3 d. Nothing in this section shall limit the power of the trial court to
4 disqualify an expert witness on grounds other than the qualifications
5 set forth in this section.

6 e. In an action alleging medical malpractice, an expert witness shall
7 not testify on a contingency fee basis.

8 f. A person who provides expert testimony or executes an affidavit
9 pursuant to the provisions of P.L.1995, c.139 (C.2A:53A-26 et seq.)
10 pursuant to this section, who deliberately misrepresents the applicable
11 appropriate standard of practice or care, shall be liable to a civil
12 penalty not to exceed \$10,000 and other expenses incurred as a result
13 of the testimony provided or affidavit that was executed.

14 g. An individual or entity who threatens to take or takes adverse
15 action against a person in retaliation for that person providing or
16 agreeing to provide expert testimony, or for that person executing an
17 affidavit pursuant to the provisions of P.L.1995, c.139 (C.2A:53A-26
18 et seq.), which adverse action relates to that person's employment,
19 accreditation, certification, credentialing or licensure, shall be liable to
20 a civil penalty not to exceed \$10,000 and other damages incurred by
21 the person and the party for whom the person was testifying as an
22 expert.

23

24 8. (New section) A judge presiding over an action alleging medical
25 malpractice, in which the jury has rendered a verdict in favor of the
26 complaining party, shall, upon a motion by any party for additur or
27 remittitur on the issue of the quantum of damages, consider the
28 evidence in the light most favorable to the non-moving party and
29 determine whether the award is clearly inadequate or excessive in view
30 of the nature of the medical condition or injury that is the cause of
31 action or because of passion or prejudice by the jury.

32

33 9. (New section) a. If an individual's actual health care facility
34 duty, including on-call duty, does not require a response to a patient
35 emergency situation, a health care professional who, in good faith,
36 responds to a life-threatening emergency or responds to a request for
37 emergency assistance in a life-threatening emergency within a hospital
38 or other health care facility, is not liable for civil damages as a result
39 of an act or omission in the rendering of emergency care. The
40 immunity granted pursuant to this section shall not apply to acts or
41 omissions constituting gross negligence, recklessness or willful
42 misconduct.

43 b. The provisions of subsection a. of this section shall not apply to
44 a health care professional if a provider-patient relationship existed
45 before the emergency, or if consideration in any form is provided to
46 the health care professional for the service rendered.

1 c. The provisions of subsection a. of this section shall not apply if
2 a general hospital has not reasonably and adequately staffed its
3 emergency department.

4 d. A health care professional shall not be liable for civil damages
5 for injury or death caused in an emergency situation occurring in the
6 health care professional's private practice or in a health care facility on
7 account of a failure to inform a patient of the possible consequences
8 of a medical procedure when the failure to inform is caused by any of
9 the following:

10 (1) the patient was unconscious;

11 (2) the medical procedure was undertaken without the consent of
12 the patient because the health care professional reasonably believed
13 that the medical procedure should be undertaken immediately and that
14 there was insufficient time to fully inform the patient; or

15 (3) the medical procedure was performed on a person legally
16 incapable of giving informed consent, and the health care professional
17 reasonably believed that the medical procedure should be undertaken
18 immediately and that there was insufficient time to obtain the informed
19 consent of the person authorized to give such consent for the patient.

20 The provisions of this subsection shall apply only to actions for
21 damages for an injury or death arising as a result of a health care
22 professional's failure to inform, and not to actions for damages arising
23 as a result of a health care professional's negligence in rendering or
24 failing to render treatment.

25 e. As used in this section:

26 (1) "Health care professional" means a physician, dentist, nurse or
27 other health care professional whose professional practice is regulated
28 pursuant to Title 45 of the Revised Statutes and an emergency medical
29 technician or mobile intensive care paramedic certified by the
30 Commissioner of Health and Senior Services pursuant to Title 26 of
31 the Revised Statutes; and

32 (2) "Health care facility" means a health care facility licensed by
33 the Department of Health and Senior Services pursuant to P.L.1971,
34 c.136 (C.26:2H-1 et seq.) and a psychiatric hospital operated by the
35 Department of Human Services and listed in R.S.30:1-7.

36
37 10. Section 1 of P.L.1995, c.69 (C.45:9-19.16) is amended to read
38 as follows:

39 1. a. A physician licensed by the State Board of Medical
40 Examiners, or a physician who is an applicant for a license from the
41 State Board of Medical Examiners, shall notify the board within 10
42 days of :

43 (1) any action taken against the physician's medical license by any
44 other state licensing board or any action affecting the physician's
45 privileges to practice medicine by any out-of-State hospital, health
46 care facility, health maintenance organization or other employer;

1 (2) any pending or final action by any criminal authority for
2 violations of law or regulation, or any arrest or conviction for any
3 criminal or quasi-criminal offense pursuant to the laws of the United
4 States, this State or another state, including, but not limited to:

5 (a) criminal homicide pursuant to N.J.S.2C:11-2;

6 (b) aggravated assault pursuant to N.J.S.2C:12-1;

7 (c) sexual assault, criminal sexual contact or lewdness pursuant to
8 N.J.S.2C:14-2 through 2C:14-4; or

9 (d) an offense involving any controlled dangerous substance or
10 controlled substance analog as set forth in chapter 35 of Title 2C of
11 the New Jersey Statutes.

12 b. A physician who is in violation of this section is subject to
13 disciplinary action and civil penalties pursuant to sections 8, 9 and 12
14 of P.L.1978, c.73 (C.45:1-21 to 22 and 45:1-25).

15 c. The State Board of Medical Examiners shall notify all physicians
16 licensed by the board of the requirements of this section within 30 days
17 of the date of enactment of this act.

18 (cf: P.L.1995, c.69, s.1)

19
20 11. Section 13 of P.L.1989, c.300 (C.45:9-19.13) is amended to
21 read as follows:

22 13. a. In any case in which the State Board of Medical Examiners
23 refuses to issue, suspends, revokes or otherwise conditions the license,
24 registration, or permit of a physician, podiatrist or medical resident or
25 intern, the board shall, within 30 days of its action, notify each
26 licensed health care facility, psychiatric hospital operated by the
27 Department of Human Services and listed in R.S.30:1-7, and health
28 maintenance organization with which the person is affiliated and every
29 board licensee in the State with which the person is directly associated
30 in his private medical practice.

31 b. If, during the course of an investigation of a physician, the board
32 requests information from a health care facility, psychiatric hospital
33 operated by the Department of Human Services or health maintenance
34 organization regarding that physician, and the board subsequently
35 makes a finding of no basis for disciplinary action, the board shall,
36 within 30 days of making that finding, notify the health care facility,
37 State psychiatric hospital or health maintenance organization of its
38 determination.

39 (cf: P.L.1989, c.300, s.13)

40
41 12. (New section) a. On or after the effective date of P.L. , c.
42 (C.) (pending before the Legislature as this bill) and except as
43 provided in subsection e. of this section, no person who is an officer,
44 director or board member of a professional association for health care
45 providers shall serve concurrently as an officer, director or board
46 member of a State-domiciled medical malpractice liability insurer that

1 is licensed in the State and offering medical malpractice liability
2 insurance policies on that effective date.

3 b. On or after the effective date of P.L. , c. (C.)(pending
4 before the Legislature as this bill) and except as provided in subsection
5 e. of this section, no more than one person who has been an officer,
6 director or board member of a professional association for health care
7 providers shall serve as an officer, director or board member of a
8 State-domiciled medical malpractice liability insurer that is licensed in
9 the State and offering medical malpractice liability insurance policies
10 on that effective date.

11 c. As used in this section, "health care provider" means an
12 individual or entity, which, acting within the scope of its licensure or
13 certification, provides health care services, and includes, but is not
14 limited to, a physician, dentist, nurse or other health care professional
15 whose professional practice is regulated pursuant to Title 45 of the
16 Revised Statutes, and a health care facility licensed pursuant to
17 P.L.1971, c.136 (C.26:2H-1 et seq.).

18 d. A person or professional association who violates the provisions
19 of this section shall be liable for a civil penalty of \$10,000 for each
20 violation. The penalty shall be sued for and collected by the
21 Commissioner of Banking and Insurance in a summary proceeding in
22 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
23 c.274 (C.2A:58-10 et seq.).

24 e. In the case of an officer, director or board member of a medical
25 malpractice liability insurer who is an officer, director or board
26 member of a professional association for health care providers on the
27 effective date of P.L. , c. (C.) (pending before the Legislature as
28 this bill), the officer, director or board member shall have 180 days to
29 comply with the requirements of this section.

30

31 13. (New section) Physicians may join together, by means of a
32 joint contract under the procedures established by this section, to form
33 a "Medical Malpractice Liability Insurance Purchasing Alliance" for
34 the purpose of negotiating a reduced premium for its members in the
35 purchase of medical malpractice liability insurance. The joint contract
36 shall be executed by all members of the purchasing alliance.

37 a. As used in this section:

38 "Board" means a medical malpractice liability insurance purchasing
39 alliance board of directors provided for in this section.

40 "Commissioner" means the Commissioner of Banking and
41 Insurance.

42 "Medical Malpractice Liability Insurance Purchasing Alliance,"
43 "purchasing alliance" or "alliance" means a purchasing alliance
44 established pursuant to this section.

45 "Member" means a physician who is a member of a medical
46 malpractice liability insurance purchasing alliance as provided for in
47 this section.

1 b. The purchasing alliance, which may be a corporation, shall be
2 governed by a board of directors, elected by the members of the
3 purchasing alliance. No person may serve as an officer or director of
4 an alliance who has a prior record of administrative, civil or criminal
5 violations within the financial services industry. The directors shall
6 serve for terms of three years, and shall serve until their successors are
7 elected and qualified. Each director shall serve without compensation,
8 except for reimbursement for actual expenses incurred by that director.

9 c. The board shall adopt by-laws for the operation of the
10 purchasing alliance, which shall be effective upon ratification by a
11 two-thirds majority of the members. The by-laws shall include, but not
12 be limited to:

13 (1) the establishment of procedures for the organization and
14 administration of the alliance; and

15 (2) procedures for the qualifications and admission of the members
16 of the alliance.

17 The bases for denial of membership shall include, but not be limited
18 to:

19 (a) performance of an act or practice that constitutes fraud or
20 intentional misrepresentation of material fact;

21 (b) previous denial of membership in the alliance; or

22 (c) previous expulsion from the alliance;

23 (3) procedures for the withdrawal of members from the alliance;

24 (4) procedures for the expulsion of members from the alliance.

25 The bases for expulsion shall include, but not be limited to:

26 (a) failure to pay membership or other fees required by the
27 purchasing alliance;

28 (b) failure to pay premiums in accordance with the terms of the
29 medical malpractice liability insurance policy or the terms of the joint
30 contract; or

31 (c) performance of an act or practice that constitutes fraud or
32 intentional misrepresentation of material fact; and

33 (5) procedures for the termination of the alliance.

34 d. In addition to the other powers authorized under this section, a
35 purchasing alliance shall have the authority to:

36 (1) set reasonable fees for membership in the alliance that will
37 finance reasonable and necessary costs incurred in administering the
38 purchasing alliance;

39 (2) negotiate premium rates for medical malpractice liability
40 insurance with insurers on behalf of the members of the alliance,
41 provided that negotiations are conducted by a person other than a
42 member of the alliance or an employee of a member of the alliance;

43 (3) provide premium collection services for insurance purchased
44 through the alliance for members;

45 (4) contract with third parties for any services necessary to carry
46 out the powers and duties authorized or required pursuant to this
47 section; and

1 (5) establish procedures for keeping confidential all
2 communications between the members of the purchasing alliance and
3 for prohibiting the dissemination and discussion of pricing information
4 and other business-related information between and among members
5 of the alliance.

6 e. A purchasing alliance established pursuant to the provisions of
7 this section shall not:

8 (1) assume risk for the cost or provision of medical malpractice
9 liability insurance;

10 (2) exclude a member who agrees to pay fees for membership and
11 the premium for medical malpractice liability insurance coverage and
12 who abides by the by-laws of the alliance;

13 (3) engage in any trade practice or activity prohibited pursuant to
14 P.L.1947, c.379 (C.17:29B-1 et seq.);

15 (4) represent more than 35% of the physicians in a county or other
16 relevant geographic service area; or

17 (5) require a member to purchase medical malpractice liability
18 insurance only through the alliance.

19 f. Within 30 days after its organization, the purchasing alliance
20 board shall file with the commissioner a certificate that shall list: the
21 members of the alliance; the names of the directors, chairman,
22 treasurer and secretary of the alliance; the address at which
23 communications for the alliance are to be received; a copy of the
24 certificate of incorporation of the alliance, if any; and a copy of the
25 joint contract executed by all of the members. Any change in the
26 information required by the provisions of this section shall be filed
27 with the commissioner within 30 days of the change.

28 g. The commissioner, pursuant to the "Administrative Procedure
29 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
30 regulations necessary to effectuate the provisions of this section.

31

32 14. (New section) a. A medical malpractice liability insurance
33 policy, which is made, issued or delivered pursuant to Subtitle 3 of
34 Title 17 of the Revised Statutes in this State on or after the effective
35 date of P.L. , c. (C.) (pending before the Legislature as this
36 bill), may contain a provision that provides a person insured under the
37 policy with the exclusive right to require the insurer to obtain the
38 consent of the insured to settle any claim filed against the insured;
39 except that, if the policy contains that provision, the insurer shall offer
40 an endorsement, to be included in the policy at the option of the
41 insured, providing the insurer with the right to settle a claim filed
42 under the policy without first having obtained the insured's consent.
43 The insurer shall establish a premium for the endorsement, which
44 premium shall reflect any savings or reduced costs attributable to the
45 endorsement.

1 b. The Commissioner of Banking and Insurance, pursuant to the
2 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
3 seq.), shall adopt rules and regulations necessary to effectuate the
4 provisions of this section.

5
6 15. (New section) a. Every insurer authorized to transact medical
7 malpractice liability insurance in this State shall offer medical
8 malpractice liability insurance policies with a deductible, at the option
9 of the insured, in an amount of at least \$5,000 per claim and up to
10 \$1,000,000 per claim, and may require the insured to provide
11 collateral for the deductible amount to the insurer.

12 b. Every insurer authorized to transact medical malpractice liability
13 insurance in this State shall provide an appropriate premium reduction
14 for any deductible chosen pursuant to subsection a. of this section.

15 c. In the case of a policy with any deductible, the insurer shall be
16 responsible for payment of the deductible and shall be reimbursed for
17 that amount by the insured.

18
19 16. (New section) Notwithstanding any other law or regulation to
20 the contrary, an insurer authorized to transact medical malpractice
21 liability insurance in this State shall not increase the premium of any
22 medical malpractice liability insurance policy based on a claim of
23 medical negligence or malpractice against the insured if the insured is
24 dismissed from an action alleging medical malpractice within 300 days
25 of the filing of that action.

26
27 17. (New section) Each annual statement made after the effective
28 date of P.L. , c. (C.) (pending before the Legislature as this
29 bill), pursuant to the provisions of section 16 of P.L.1982, c.114
30 (C.17:29AA-16), by an insurer writing medical malpractice in this
31 State, shall include a certification by the chief executive officer or
32 chief financial officer that the rates for every category, subcategory,
33 or risk classification are adequate to cover expected losses and
34 expenses of the insurer and to ensure the safety and soundness of the
35 insurer.

36
37 18. (New section) Notwithstanding the provisions of section 1 of
38 P.L.1968, c.131 (C.17:29C-1) to the contrary, each notice of renewal
39 or nonrenewal by an insurer authorized to transact medical malpractice
40 liability insurance in this State shall be mailed or delivered by the
41 insurer to the insured not less than 60 days prior to the expiration of
42 the policy and, in the case of a nonrenewal, shall contain the reason for
43 the nonrenewal.

44
45 19. Section 10 of P.L.1982, c.114 (C.17:29AA-10) is amended to
46 read as follows:

1 10. a. Rates shall not be excessive, inadequate or unfairly
2 discriminatory.

3 b. In the case of rates for medical malpractice liability insurance,
4 if the commissioner finds, after a hearing, that a rate in effect for any
5 insurer is not in compliance with the standards of P.L.1982, c.114
6 (C.17:29AA-1 et seq.), and has increased in excess of 25% of the rate
7 previously in effect, the commissioner shall issue an order specifying
8 in what respects the rate so fails and directing that the rate change is
9 no longer in effect, and shall order the insurer to refund with interest
10 any premiums collected pursuant to the non-compliant rate.

11 c. Pursuant to procedures and standards adopted by the
12 commissioner, insureds may petition the commissioner to investigate
13 and, if appropriate, to conduct a hearing into whether medical
14 malpractice liability insurance rates fail to comply with the standards
15 of P.L.1982, c.114 (C.17:29AA-1 et seq.).

16 (cf: P.L.1982, c.114, s.10)

17

18 20. (New section) Subject to standards adopted by the National
19 Association of Insurance Commissioners, the Commissioner of
20 Banking and Insurance shall, within 180 days after the effective date
21 of P.L. , c. (C.) (pending before the Legislature as this bill),
22 review the current capitalization and reserve requirements applicable
23 to insurers authorized or admitted to transact medical malpractice
24 liability insurance in this State, as those requirements are established
25 by statute or regulation, or both.

26 Based upon the findings of that review, the commissioner shall
27 adopt regulations, pursuant to the "Administrative Procedure Act,"
28 P.L.1968, c.410 (C.52:14B-1 et seq.), to modify those requirements,
29 as the commissioner determines necessary in order to ensure the
30 solvency of those insurers and the availability and affordability of
31 medical malpractice liability insurance in this State. If the
32 commissioner determines that legislation is necessary to effect any
33 such modification, the commissioner shall notify the Governor and the
34 Legislature within the 180-day period provided in this section.

35

36 21. (New section) The provisions of P.L.1970, c.22 (C.17:27A-1
37 et seq.), regulating insurance company holding systems, shall apply to
38 attorneys in fact and other persons engaged in reciprocal exchange or
39 interinsurance contracts for the provision of medical malpractice
40 insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes.

41

42 22. (New section) Every insurer authorized to transact medical
43 malpractice liability insurance in this State shall offer its insureds the
44 option to make premium payments in installments, as prescribed by the
45 Commissioner of Banking and Insurance by regulation.

1 23. Section 2 of P.L.1983, c.247 (C.17:30D-17) is amended to
2 read as follows:

3 2. a. Any insurer or insurance association authorized to issue
4 medical malpractice liability insurance in the State shall notify the
5 Medical Practitioner Review Panel established pursuant to section 8
6 of P.L.1989, c.300 (C.45:9-19.8) in writing of any medical malpractice
7 claim settlement, judgment or arbitration award involving any
8 practitioner licensed by the State Board of Medical Examiners and
9 insured by the insurer or insurance association. Any practitioner
10 licensed by the board who is not covered by medical malpractice
11 liability insurance issued in this State, who has coverage through a
12 self-insured health care facility or health maintenance organization, or
13 has medical malpractice liability insurance which has been issued by an
14 insurer or insurance association from outside the State, shall notify the
15 review panel in writing of any medical malpractice claim settlement,
16 judgment or arbitration award to which the practitioner is a party. The
17 review panel or board, as the case may be, shall not presume that the
18 judgment or award is conclusive evidence in any disciplinary
19 proceeding and the fact of a settlement is not admissible in any
20 disciplinary proceeding.

21 In any malpractice action against a practitioner, a settlement
22 prohibiting a complaint against the practitioner or the providing of
23 information to the review panel or board concerning the underlying
24 facts or circumstances of the action is void and unenforceable.

25 b. An insurer or insurance association authorized to issue medical
26 malpractice liability insurance in the State shall notify the review panel
27 in writing of any termination or denial of coverage to a practitioner or
28 surcharge assessed on account of the practitioner's practice method or
29 medical malpractice claims history.

30 c. The form of notification shall be prescribed by the Commissioner
31 of Banking and Insurance, shall contain such information as may be
32 required by the board and the review panel, and shall be made within
33 seven days of the settlement, judgment or award or the final action for
34 a termination or denial of, or surcharge on, the medical malpractice
35 liability insurance. Upon request of the board, the review panel or the
36 commissioner, an insurer or insurance association shall provide all
37 records regarding the defense of a malpractice claim, the processing
38 of the claim and the legal proceeding; except that nothing in this
39 subsection shall be construed to authorize disclosure of any
40 confidential communication which is otherwise protected by statute,
41 court rule or common law.

42 An insurer or insurance association, or any employee thereof, shall
43 be immune from liability for furnishing information to the review panel
44 and the board in fulfillment of the requirements of this section unless
45 the insurer or insurance association, or any employee thereof,
46 knowingly provided false information.

1 d. An insurer, insurance association or practitioner who fails to
2 notify the review panel as required pursuant to this section shall be
3 subject to such penalties as the Commissioner of Banking and
4 Insurance may determine pursuant to section 12 of P.L.1975, c.301
5 (C.17:30D-12). In addition to, or in lieu of suspension or revocation,
6 the commissioner may assess a fine which shall not exceed \$1,000 for
7 the first offense and \$2,000 for the second and each subsequent
8 offense, which may be recovered in a summary proceeding, brought in
9 the name of the State in a court of competent jurisdiction pursuant to
10 ["the penalty enforcement law," N.J.S.2A:58-1 et seq.] the "Penalty
11 Enforcement Law of 1999," P.L.1999, c.274 (C.2A: 58-10 et seq.).

12 e. A practitioner who fails to notify the review panel as required
13 pursuant to this section shall be subject to disciplinary action and civil
14 penalties pursuant to sections 8, 9 and 12 of P.L.1978, c.73
15 (C.45:1-21 to 45:1-22 and 45:1-25).

16 f. An insurer or insurance association shall make available to the
17 review panel or the board, upon request, any records of termination or
18 denial of coverage to a practitioner or surcharge assessed on account
19 of the practitioner's practice method or medical malpractice claims
20 history, which occurred up to five years prior to the effective date of
21 P.L.1989, c.300 (C.45:9-19.4 et al.).

22 g. For the purposes of this section, "practitioner" means a person
23 licensed to practice: medicine and surgery under chapter 9 of Title 45
24 of the Revised Statutes or a medical resident or intern; or podiatry
25 under chapter 5 of Title 45 of the Revised Statutes.

26 h. Any insurer or insurance association authorized to issue medical
27 malpractice liability insurance in the State shall notify the
28 Commissioner of Banking and Insurance, in a form and manner
29 specified by the commissioner, of any medical malpractice claim
30 settlement, judgment or arbitration award involving any practitioner
31 licensed by the State Board of Medical Examiners and insured by the
32 insurer or insurance association. The notification shall include the
33 specialty or area of professional practice of the practitioner and the
34 amount of the settlement, judgment or arbitration award, but shall not
35 include the name or other identifying information of the practitioner.
36 (cf: P.L.1989, c.300, s.4)

37

38 24. (New section) a. Notwithstanding any provision of law to the
39 contrary, every insurer authorized to transact medical malpractice
40 liability insurance in this State shall, during the period ending on the
41 91st day after the effective date of this act, permit a health care
42 professional, who has a policy issued by that insurer that is in effect on
43 the effective date of this act, to:

44 (1) request that the premium for that policy be recalculated to
45 reflect any cost-saving provisions of this act; and

1 (2) cancel the policy with a return of the amount of the gross
2 unearned premium to be returned on a pro rata basis.

3 b. The provisions of subsection a. of this section shall not be
4 construed to permit an insurer to increase a premium on a policy,
5 which is in effect on the effective date of this act, during the term of
6 that policy.

7
8 25. (New section) a. As used in this section:

9 "Annuity" means an annuity issued by an insurer licensed or
10 authorized to do business in this State which is a qualified assignment
11 under section 130 of the federal Internal Revenue Code of 1986, 26
12 U.S.C. s.130.

13 "Judgment creditor" means a claimant who is the recipient of an
14 award for economic or noneconomic damages, or both, that is the
15 result of an action filed against a health care provider for medical
16 malpractice, which award is subject to the provisions of subsection b.
17 of this section.

18 "Judgment debtor" means a health care provider who, as a
19 defendant in an action brought for medical malpractice, is required to
20 pay the claimant an award that is subject to the provisions of this
21 section.

22 "Noneconomic damages" means damages for physical and
23 emotional pain, suffering, inconvenience, physical impairment, mental
24 anguish, disfigurement, loss of enjoyment of life, loss of society and
25 companionship, loss of consortium, hedonic damages, injury to
26 reputation, and all other nonpecuniary losses of any kind or nature.

27 "Structured payment agreement" means an agreement made to
28 settle a claim or lawsuit or respond to a judgment in an action brought
29 for medical malpractice by an injured person whereby a series of
30 periodic payments, rather than a lump sum payment, is made over time
31 to a claimant, in accordance with the needs of the claimant or the
32 claimant's family, either through the purchase of an annuity or the
33 establishment of a trust fund, or by another means approved by the
34 court.

35 b. (1) Unless otherwise agreed to by the parties, in any judgment
36 resulting from a medical malpractice action brought by a claimant for
37 medical malpractice in which the noneconomic damages are less than
38 or equal to \$1,000,000, the court shall enter a judgment ordering that
39 all of the money damages, both economic and noneconomic, be paid
40 immediately.

41 (2) Unless otherwise agreed to by the parties, in any judgment
42 resulting from a medical malpractice action brought by a claimant for
43 medical malpractice in which the noneconomic damages exceed
44 \$1,000,000, the court shall enter a judgment ordering that 50% of the
45 noneconomic damages be paid immediately, with the costs and

1 attorney's fees to be paid from that amount. The remaining 50% of the
2 judgment shall be paid over 60 months in the form of a structured
3 payment agreement by any person, organization, group, or insurer that
4 is contractually liable to pay the judgment.

5 c. The structured payment agreement shall specify: the recipient
6 of the payments; the dollar amount of the payments; the interval
7 between payments; the number of payments or the period of time over
8 which payments are to be made; and the persons to whom money
9 damages are owed, if any, in the event of the judgment creditor's
10 death.

11 d. In the event of the judgment creditor's death, any amounts due
12 and owing pursuant to subsection b. of this section shall be paid to the
13 judgment creditor's estate.

14 e. The judgment debtor or the judgment debtor's insurer shall be
15 required to: post a bond or security; or, as otherwise provided by
16 regulation of the Department of Banking and Insurance, assure full
17 payment of the noneconomic damages awarded. A bond shall not be
18 deemed adequate unless it is written by a company authorized to do
19 business in this State and is rated A+ by A.M. Best Company. If the
20 judgment debtor is unable to adequately assure full payment of the
21 judgment, the judgment, reduced to present value, shall be paid to the
22 claimant in a lump sum. No bond may be canceled or be subject to
23 cancellation unless at least 60 days' advance written notice is filed with
24 the court and the claimant. Upon termination of periodic payments,
25 the security, or so much as remains, shall be returned to the judgment
26 debtor.

27 f. Upon the purchase of an annuity, establishment of a trust, or
28 approval of another arrangement for periodic payments by a court, any
29 obligation of the judgment debtor with respect to the judgment shall
30 cease.

31

32 26. There is established the "Medical Care Availability Task
33 Force."

34 a. The task force shall consist of 33 members as follows:

35 (1) the Commissioners of Banking and Insurance, Health and
36 Senior Services, and Human Services, and the Director of the
37 Administrative Office of the Courts, or their designees, who shall serve
38 ex officio;

39 (2) two members of the Senate to be appointed by the President of
40 the Senate, no more than one of whom shall be of the same political
41 party, and two members of the General Assembly to be appointed by
42 the Speaker of the General Assembly, no more than one of whom shall
43 be of the same political party; and

44 (3) 25 public members, each of whom shall be selected by the
45 governing body of an organization to represent that organization. The

1 following organizations shall each be represented by one public
2 member: New Jersey Association of Health Plans; AAHP-HIAA;
3 Physicians and Patients for Quality Care; Princeton Insurance
4 Company; Medical Society of New Jersey; New Jersey Association of
5 Osteopathic Physicians and Surgeons; New Jersey Section, American
6 College of Obstetrics and Gynecology; American College of
7 Emergency Physicians-New Jersey Chapter; New Jersey Neurosurgical
8 Society; New Jersey Academy of Family Physicians; New Jersey State
9 Nurses Association; New Jersey Hospital Association; New Jersey
10 Council of Teaching Hospitals; Health Care Association of New
11 Jersey; Association of Trial Attorneys-New Jersey; New Jersey State
12 Bar Association; Garden State Bar Association; Hispanic Bar
13 Association of New Jersey; Trial Attorneys of New Jersey; Consumers
14 for Civil Justice; New Jersey Citizen Action; AARP; New Jersey
15 Public Interest Research Group (PIRG); Legal Services of New Jersey;
16 and Health Professionals and Allied Employees (HPAE) union.

17 b. Vacancies in the membership of the task force shall be filled in
18 the same manner provided for the original appointments. The public
19 members of the task force shall serve without compensation but may
20 be reimbursed for traveling and other miscellaneous expenses
21 necessary to perform their duties, within the limits of funds made
22 available to the task force for its purposes.

23 c. (1) The task force shall organize as soon as practicable, but no
24 later than the 30th day after the appointment of its members, and shall
25 select a chairperson and vice-chairperson from among the members.
26 The chairperson shall appoint a secretary who need not be a member
27 of the task force.

28 (2) The task force may meet at the call of the chairperson and hold
29 hearings at the times and in the places it may deem appropriate and
30 necessary to fulfill its charge. The task force shall be entitled to call
31 to its assistance, and avail itself of the services of, the employees of
32 any State, county or municipal department, board, bureau, commission
33 or agency as it may require and as may be available to it for its
34 purposes.

35 (3) The Department of Banking and Insurance shall provide staff
36 services to the task force.

37 d. The purpose of the task force shall be to study the following
38 issues:

39 (1) the advantages and disadvantages of establishing limitations on
40 noneconomic damages for medical malpractice judgments and on
41 extending current limitations on liability that apply to nonprofit
42 hospitals to employees, other than physicians, of those hospitals;

43 (2) the impact of third party reimbursement policies by insurers and
44 health maintenance organizations on access to health care services in
45 the context of the current affordability crisis in the State affecting
46 health care providers in the purchase of necessary liability coverage;

1 (3) the advantages and disadvantages of adopting additional
2 changes to the statute of limitations regarding medical malpractice
3 actions;

4 (4) the advantages and disadvantages of establishing additional
5 procedures for mediation of actions alleging medical malpractice and
6 for screening for frivolous medical malpractice lawsuits; and

7 (5) the necessity for, and advantages and disadvantages of,
8 reactivating the Medical Malpractice Reinsurance Association
9 established pursuant to P.L.1975, c.301 (C.17:30D-1 et seq.).

10 e. The task force shall present a report of its findings and
11 recommendations to the Governor and the Legislature no later than 12
12 months after the date of its initial meeting.

13
14 27. This act shall take effect on the 30th day after enactment and
15 shall apply to causes of action for medical malpractice that accrue on
16 or after that effective date; except that, sections 13 and 14 shall take
17 effect on the 180th day after the date of enactment and section 18 shall
18 take effect on the 90th day after the date of enactment, and the
19 amendatory provisions of sections 3 and 4 shall apply to injuries
20 sustained at birth on or after the effective date of this act.

21
22
23 STATEMENT

24
25 This bill, which is designated the "New Jersey Medical Care Access
26 and Responsibility and Patients First Act," is designed to implement a
27 number of tort liability, health care system and medical malpractice
28 liability reforms.

29 Specifically, the bill provides for the following:

30
31 **Tort Liability Reforms:**

32 The bill amends N.J.S.2A:14-2 and N.J.S.2A:14-21 to provide that
33 actions by or on behalf of a minor that have accrued for medical
34 malpractice for injuries sustained at birth must be commenced prior to
35 the minor's 11th birthday, and do not affect the discovery doctrine in
36 any way.

37 The bill provides for court referral of a medical malpractice action
38 to a complementary dispute resolution mechanism if the judge
39 presiding over the action determines, within 30 days after the
40 discovery end date, that the referral may encourage early disposition
41 or settlement of the action. If the judge makes that determination, the
42 matter is to be referred to complementary dispute resolution pursuant
43 to Rule 1:40 of the New Jersey Court Rules.

44 The bill also provides that a health care provider named as a
45 defendant in a medical malpractice action may file an affidavit of
46 noninvolvement with the court. The affidavit of noninvolvement is to

1 set forth the facts that demonstrate that the provider was misidentified
2 or otherwise not involved, individually or through its servants or
3 employees, in the care and treatment of the claimant, and was not
4 obligated, either individually or through its servants or employees, to
5 provide for the care and treatment of the claimant. The bill also
6 provides penalties for false statements made in the affidavit or in
7 challenging the affidavit.

8 The bill establishes qualifications for expert witnesses in medical
9 malpractice actions and for the purpose of executing an affidavit of
10 merit, and provides that an expert must have the same type of practice
11 and possess the same credentials, as applicable, as the defendant health
12 care provider, unless waived by the court. The bill prohibits expert
13 witnesses from testifying on a contingency fee basis and provides for
14 penalties for expert witnesses who intentionally misrepresent the
15 applicable standard of practice or care. The bill also provides for
16 penalties for an individual or entity who threatens to take or takes
17 adverse action against a person in retaliation for that person providing
18 or agreeing to provide expert testimony, or for that person executing
19 an affidavit of merit, which adverse action relates to that person's
20 employment, accreditation, certification, credentialing or licensure.

21 With respect to the payment of medical malpractice judgments, the
22 bill provides that in any medical malpractice judgment in which the
23 noneconomic damages (those for pain and suffering) are \$1 million or
24 less, unless otherwise agreed to by the parties, the court is to enter a
25 judgment ordering that money damages be paid immediately. In any
26 judgment in which the noneconomic damages exceed \$1 million, unless
27 otherwise agreed to by the parties, 50% of the money damages are to
28 be paid immediately, with the costs and attorney's fees paid from that
29 amount. The remaining 50% of the judgment is to be paid over 60
30 months in the form of a structured payment agreement.

31 Further, in order to provide the court with discretion to modify jury
32 awards, the bill modifies the standard of review to be used by the court
33 in reviewing the amount of a jury award to require the court to
34 consider the evidence in the light most favorable to the non-moving
35 party and to allow the court to determine whether the award is clearly
36 inadequate or excessive in view of the nature of the medical condition
37 or injury that is the cause of action or because of passion or prejudice
38 by the jury.

39

40 **Health Care System Reforms:**

41 The bill expands the State's "Good Samaritan" law to provide
42 immunity from civil damages to licensed health care professionals,
43 emergency medical technicians and mobile intensive care paramedics
44 whose duty does not require a response to a patient emergency
45 situation, who, in good faith, respond to a life-threatening emergency
46 or respond to a request for emergency assistance in a life-threatening

1 emergency within a hospital or other licensed health care facility or a
2 State psychiatric hospital operated by the Department of Human
3 Services. The immunity shall not apply: to acts or omissions
4 constituting gross negligence, recklessness or willful misconduct; if a
5 provider-patient relationship existed before the emergency; if
6 consideration in any form is provided to the health care professional
7 for the service rendered; or if a general hospital has not reasonably and
8 adequately staffed its emergency department.

9 Further, the bill provides that a health care professional is not liable
10 for civil damages for injury or death caused in an emergency situation
11 occurring in the health care professional's private practice or in a
12 health care facility or State psychiatric hospital on account of a failure
13 to inform a patient of the possible consequences of a medical
14 procedure when the failure to inform is caused by any of the following:

- 15 - the patient was unconscious;
- 16 - the medical procedure was undertaken without the consent of the
17 patient because the health care professional reasonably believed that
18 the medical procedure should be undertaken immediately and that
19 there was insufficient time to fully inform the patient; or
- 20 - a medical procedure was performed on a person legally incapable
21 of giving informed consent, and the health care professional reasonably
22 believed that a medical procedure should be undertaken immediately
23 and that there was insufficient time to obtain the informed consent of
24 the person authorized to give such consent for the patient.

25 The immunity provided is applicable only to actions for damages for
26 an injury or death arising as a result of a health care professional's
27 failure to inform, and not to actions for damages arising as a result of
28 a health care professional's negligence in rendering or failing to render
29 treatment.

30 The bill strengthens reporting requirements by physicians to the
31 State Board of Medical Examiners (BME) to ensure that the BME is
32 promptly informed of any pending or final action by any criminal
33 authority in this State or any other state or federal jurisdiction or any
34 arrest or conviction for a criminal or quasi-criminal act, by requiring
35 that a physician report, within 10 days, the action or his arrest or
36 conviction, for crimes that include, but are not limited to, criminal
37 homicide, aggravated assault, sexual assault, criminal sexual contact
38 or lewdness, or an offense involving any controlled dangerous
39 substance or controlled substance analog.

40 The bill also ensures that health care facilities, State psychiatric
41 hospitals and other physicians affiliated with a physician who has been
42 disciplined by the BME, are notified of its action, within 30 days of the
43 action. Similarly, the bill ensures that a health care facility, State
44 psychiatric hospital or health maintenance organization is promptly
45 notified by the BME if, during the course of an investigation of a
46 physician, it requests information from that facility or health

1 maintenance organization regarding that physician, and subsequently
2 determines that no disciplinary action is warranted.

3

4 **Medical Malpractice Liability Insurance Reforms:**

5 To avoid the appearance of any conflicts of interest, the bill
6 prohibits any person who is an officer, director or board member of a
7 professional association for health care providers to serve concurrently
8 as an officer, director or board member of a State-domiciled medical
9 malpractice liability insurer that is issuing policies in the State. The
10 bill also provides that no more than one person who has been an
11 officer, director or board member of a professional association for
12 health care providers is to serve as an officer, director or board
13 member of a State-domiciled medical malpractice liability insurer that
14 is issuing policies in the State.

15 For the purpose of negotiating a reduced medical malpractice
16 liability insurance premium, the bill would permit physicians to join
17 together, by means of a joint contract, to form a "Medical Malpractice
18 Liability Insurance Purchasing Alliance."

19 The bill provides that a medical malpractice liability insurance
20 policy may contain a provision that provides a person insured under
21 the policy with the exclusive right to require the insurer to obtain the
22 consent of the insured to settle any claim filed against the insured; but,
23 if the policy contains that provision, the insurer would be required to
24 offer an endorsement to the policy that permits the insurer to settle a
25 claim filed under the policy without first having obtained the insured's
26 consent. The insurer would be required to establish a premium for the
27 endorsement which reflects any savings or reduced costs attributable
28 to the endorsement, and the insured would have the option of
29 accepting or refusing the endorsement.

30 Another provision to provide premium relief to health care
31 providers is the requirement that every medical malpractice liability
32 insurer offer individual or group medical malpractice liability insurance
33 policies with a deductible, at the option of the insured, in an amount
34 of at least \$5,000 per claim and up to \$1 million per claim, with the
35 insurer being permitted to require the insured to provide collateral for
36 the deductible amount to the insurer. The deductibles offered by an
37 insurer are subject to the approval of the Commissioner of Banking
38 and Insurance. For policies with any deductible, the insurer would be
39 responsible for payment of the deductible and would be reimbursed for
40 that amount by the insured.

41 To provide increased oversight of medical malpractice insurers, the
42 bill requires that every annual statement filed by a medical malpractice
43 insurer in this State with the Department of Banking and Insurance
44 include a certification by the chief executive officer or chief financial
45 officer that the rates for every category, subcategory or risk
46 classification are adequate to cover expected losses and expenses of

1 the insurer and to ensure the safety and soundness of the insurer.

2 The bill requires insurers authorized to transact medical malpractice
3 liability insurance in this State to provide at least 60 days' notice to the
4 insured for policy renewals and nonrenewals. Also, in the case of a
5 nonrenewal, the insurer must provide the reason for the nonrenewal.

6 The bill provides for oversight by the Commissioner of Banking and
7 Insurance with respect to certain rates in effect for any category or
8 subcategory of insureds, of any medical malpractice liability insurer,
9 that increase in excess of 25%, and provides that the insured may
10 petition the commissioner to investigate and, if appropriate, to conduct
11 a hearing into whether the rates fail to comply with the standards of
12 N.J.S.A.17:29AA-1 et seq. The bill also directs the commissioner,
13 subject to standards adopted by the National Association of Insurance
14 Commissioners, to review the current capitalization and reserve
15 requirements applicable to medical malpractice insurers, and to modify
16 those requirements, as necessary, to ensure the solvency of those
17 insurers and the availability and affordability of medical malpractice
18 liability insurance in the State.

19 The bill provides that the insurance holding company systems act,
20 N.J.S.A.17:27A-1 et seq., applies to reciprocal exchanges, to ensure
21 that the provisions of that law are applicable to any future conversion
22 by a reciprocal medical malpractice liability insurer to a stock
23 company.

24 Also, the bill requires medical malpractice liability insurers to offer
25 their insureds the option to make premium payments in installments,
26 as prescribed by the Commissioner of Banking and Insurance, by
27 regulation.

28 In addition, N.J.S.A.17:30D-17, which requires all medical
29 malpractice insurers to notify the BME of every medical malpractice
30 judgment, settlement and award involving a physician or podiatrist
31 licensed in this State, is amended to also require notification to the
32 Commissioner of Banking and Insurance of these payments. The
33 notification to the commissioner is to enable the commissioner to
34 compile statistical data about medical malpractice payouts, and would
35 not include the name of or other identifying information about the
36 practitioner.

37 The bill permits health care professionals, under terms and
38 conditions established by the Commissioner of Banking and Insurance,
39 to request their medical malpractice insurer to recalculate their
40 premium to reflect any cost saving provisions of the bill, and to cancel
41 their policy without penalty in the event the professional is able to
42 obtain less expensive coverage from another insurer.

43 Finally, the bill establishes a 33-member "Medical Care Availability
44 Task Force" to study the following issues:

45 -- the advantages and disadvantages of establishing limitations on
46 non-economic damages for medical malpractice judgments and on

1 extending current limitations on liability that apply to nonprofit
2 hospitals to employees, other than physicians, of those hospitals;
3 -- the impact of third party reimbursement policies by insurers and
4 health maintenance organizations on access to health care services in
5 the context of the current affordability crisis in the State affecting
6 health care providers in the purchase of necessary liability coverage;
7 -- the advantages and disadvantages of adopting additional changes
8 to the statute of limitations regarding medical malpractice actions;
9 -- the advantages and disadvantages of establishing additional
10 procedures for mediation of actions alleging medical malpractice and
11 for screening for frivolous medical malpractice lawsuits; and
12 -- the necessity for, and advantages and disadvantages of,
13 reactivating the Medical Malpractice Reinsurance Association
14 established pursuant to N.J.S.A.17:30D-1 et seq.
15 The task force may also study the causes, and any related issues,
16 relative to the affordability of medical malpractice liability insurance.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 50

STATE OF NEW JERSEY

DATED: MARCH 4, 2004

The Assembly Appropriations Committee reports favorably Assembly Bill No. 50 (ACS).

Assembly Bill No. 50 (ACS) which is designated the "New Jersey Medical Care Access and Responsibility and Patients First Act," is designed to implement a number of reforms relating to tort liability as it concerns medical malpractice, as well as health care system and medical malpractice liability insurance reforms.

Specifically, the bill provides for the following:

Tort Liability Reforms:

The bill amends N.J.S.2A:14-2 and N.J.S.2A:14-21 to provide that actions by or on behalf of a minor that have accrued for medical malpractice for injuries sustained at birth must be commenced prior to the minor's 13th birthday. These statutory changes would not affect the discovery doctrine in any way.

The bill provides for court referral of a medical malpractice action to a complementary dispute resolution mechanism if the judge presiding over the action determines, within 30 days after the discovery end date, that the referral may encourage early disposition or settlement of the action. If the judge makes that determination, the matter is to be referred to complementary dispute resolution pursuant to Rule 1:40 of the New Jersey Rules of Court.

The bill also provides that a health care provider named as a defendant in a medical malpractice action may file an affidavit of noninvolvement with the court. The affidavit of noninvolvement is to set forth the facts that demonstrate that the provider was misidentified or otherwise not involved, individually or through its servants or employees, in the care and treatment of the claimant, and was not obligated, either individually or through its servants or employees, to provide for the care and treatment of the claimant. The bill also provides penalties for false statements made in the affidavit or in challenging the affidavit.

The bill establishes qualifications for expert witnesses in medical malpractice actions and for the purpose of executing an affidavit of merit, and provides that an expert must have the same type of practice

and possess the same credentials, as applicable, as the defendant health care provider, unless waived by the court. The bill prohibits expert witnesses from testifying on a contingency fee basis and provides for penalties for expert witnesses who intentionally misrepresent the applicable standard of practice or care. The bill also provides for penalties for an individual or entity who threatens to take or takes adverse action against a person in retaliation for that person providing or agreeing to provide expert testimony, or for that person executing an affidavit of merit, which adverse action relates to that person's employment, accreditation, certification, credentialing or licensure.

With respect to the payment of medical malpractice judgments, the bill provides that in any medical malpractice judgment in which the noneconomic damages (those for pain and suffering) are \$1 million or less, unless otherwise agreed to by the parties, the court is to enter a judgment ordering that money damages be paid immediately. In any judgment in which the noneconomic damages exceed \$1 million, unless otherwise agreed to by the parties, 50% of the money damages are to be paid immediately, with the costs and attorney's fees paid from that amount. The remaining 50% of the judgment is to be paid over 60 months in the form of a structured payment agreement.

Further, in order to provide the court with discretion to modify jury awards, the bill modifies the standard of review to be used by the court in reviewing the amount of a jury award to require the court to consider the evidence in the light most favorable to the non-moving party and to allow the court to determine whether the award is clearly inadequate or excessive in view of the nature of the medical condition or injury that is the cause of action or because of passion or prejudice by the jury.

Health Care System Reforms:

The bill expands the State's "Good Samaritan" law to provide immunity from civil damages to licensed health care professionals, emergency medical technicians and mobile intensive care paramedics whose duty does not require a response to a patient emergency situation, who, in good faith, respond to a life-threatening emergency or respond to a request for emergency assistance in a life-threatening emergency within a hospital or other licensed health care facility or a State psychiatric hospital operated by the Department of Human Services. The immunity shall not apply: to acts or omissions constituting gross negligence, recklessness or willful misconduct; if a provider-patient relationship existed before the emergency; if consideration in any form is provided to the health care professional for the service rendered; or if a general hospital has not reasonably and adequately staffed its emergency department.

Further, the bill provides that a health care professional is not liable for civil damages for injury or death caused in an emergency situation occurring in the health care professional's private practice or in a health care facility or State psychiatric hospital on account of a failure

to inform a patient of the possible consequences of a medical procedure when the failure to inform is caused by any of the following:

- the patient was unconscious;
- the medical procedure was undertaken without the consent of the patient because the health care professional reasonably believed that the medical procedure should be undertaken immediately and that there was insufficient time to fully inform the patient; or
- the medical procedure was performed on a person legally incapable of giving informed consent, and the health care professional reasonably believed that the medical procedure should be undertaken immediately and that there was insufficient time to obtain the informed consent of the person authorized to give such consent for the patient.

The immunity provided is applicable only to actions for damages for an injury or death arising as a result of a health care professional's failure to inform, and not to actions for damages arising as a result of a health care professional's negligence in rendering or failing to render treatment.

The bill strengthens reporting requirements by physicians to the State Board of Medical Examiners (BME) to ensure that the BME is promptly informed of any pending or final action by any criminal authority in this State or any other state or federal jurisdiction or any arrest or conviction for a criminal or quasi-criminal act, by requiring that a physician report, within 10 days, the action or his arrest or conviction, for crimes that include, but are not limited to, criminal homicide, aggravated assault, sexual assault, criminal sexual contact or lewdness, or an offense involving any controlled dangerous substance or controlled substance analog.

The bill also ensures that health care facilities, State psychiatric hospitals and other physicians affiliated with a physician who has been disciplined by the BME, are notified of its action, within 30 days of the action. Similarly, the bill ensures that a health care facility, State psychiatric hospital or health maintenance organization is promptly notified by the BME if, during the course of an investigation of a physician, it requests information from that facility or health maintenance organization regarding that physician, and subsequently determines that no disciplinary action is warranted.

Medical Malpractice Liability Insurance Reforms:

To avoid the appearance of any conflicts of interest, the bill prohibits any person who is an officer, director or board member of a professional association for health care providers to serve concurrently as an officer, director or board member of a State-domiciled medical malpractice liability insurer that is issuing policies in the State.

For the purpose of negotiating a reduced medical malpractice liability insurance premium, the bill would permit physicians to join together, by means of a joint contract, to form a "Medical Malpractice Liability Insurance Purchasing Alliance."

The bill provides that a medical malpractice liability insurance

policy may contain a provision that provides a person insured under the policy with the exclusive right to require the insurer to obtain the consent of the insured to settle any claim filed against the insured; but, if the policy contains that provision, the insurer would be required to offer an endorsement to the policy that permits the insurer to settle a claim filed under the policy without first having obtained the insured's consent. The insurer would be required to establish a premium for the endorsement which reflects any savings or reduced costs attributable to the endorsement, and the insured would have the option of accepting or refusing the endorsement.

Another provision to provide premium relief to health care providers is the requirement that every medical malpractice liability insurer offer individual or group medical malpractice liability insurance policies with a deductible, at the option of the insured, in an amount of at least \$5,000 per claim and up to \$1 million per claim, with the insurer being permitted to require the insured to provide collateral for the deductible amount to the insurer. The deductibles offered by an insurer are subject to the approval of the Commissioner of Banking and Insurance. For policies with any deductible, the insurer would be responsible for payment of the deductible and would be reimbursed for that amount by the insured.

To provide increased oversight of medical malpractice insurers, the bill requires that every annual statement filed by a medical malpractice insurer in this State with the Department of Banking and Insurance include a certification by the chief executive officer or chief financial officer that the rates for every category, subcategory or risk classification are adequate to cover expected losses and expenses of the insurer and to ensure the safety and soundness of the insurer.

The bill requires insurers authorized to transact medical malpractice liability insurance in this State to provide at least 60 days' notice to the insured for policy renewals and nonrenewals. Also, in the case of a nonrenewal, the insurer must provide the reason for the nonrenewal.

The bill provides for implementation by the Commissioner of Banking and Insurance of a "file and use" system with respect to any proposed rate increase by a medical malpractice liability insurer of 15% or more on an annual basis for any medical specialty. Any such increase must be filed with the commissioner at least 45 days prior to becoming effective and include the reason for the proposed change. Unless disapproved by the commissioner prior to its effective date, the rate filing is to be deemed effective; however, the commissioner must disapprove the increase if the commissioner finds that the increased rates are excessive, inadequate or unfairly discriminatory. A rate filing that would result in a rate increase of less than 15% on an annual basis for any medical specialty would be subject to the provisions of N.J.S.A.17:29AA-1 et seq.

The bill also directs the commissioner, subject to standards adopted by the National Association of Insurance Commissioners, to

review the current capitalization and reserve requirements applicable to medical malpractice insurers, and to modify those requirements, as necessary, to ensure the solvency of those insurers and the availability and affordability of medical malpractice liability insurance in the State.

Also, the bill requires medical malpractice liability insurers to offer their insureds the option to make premium payments in installments, as prescribed by the Commissioner of Banking and Insurance, by regulation.

In addition, N.J.S.A.17:30D-17, which requires all medical malpractice insurers to notify the BME of every medical malpractice judgment, settlement and award involving a physician or podiatrist licensed in this State, is amended to also require notification to the Commissioner of Banking and Insurance of these payments. The notification to the commissioner is to enable the commissioner to compile statistical data about medical malpractice payouts, and would not include the name of or other identifying information about the practitioner.

The bill removes from the BME the authority and discretion to set the minimum amounts of medical malpractice liability insurance that a physician who maintains a professional medical practice in this State and has responsibility for patient care is required to carry, and instead establishes those minimum amounts by statute. The bill sets the limits at those currently in effect by virtue of regulations promulgated by the BME, that is: medical malpractice liability insurance in the sum of \$1 million per occurrence and \$3 million per policy year, with extended reporting endorsement coverage for claims made, also known as "tail coverage;" or, if liability coverage is not available, by a letter of credit for at least \$500,000. The BME may, however, increase these minimum amounts by regulation.

The bill establishes the Medical Malpractice Liability Insurance Premium Assistance Fund in the Department of the Treasury to provide relief towards the payment of medical malpractice liability insurance premiums to certain health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the Commissioner of Banking and Insurance by regulation. The fund will be administered by the Department of Banking and Insurance, and will expire three years after the effective date of the bill.

The bill provides that the Commissioner of Banking and Insurance will certify classes of health care providers (practitioners), by specialty and subspecialty for each type of practitioner, whose average medical malpractice premium, as a class, on or after December 31, 2002, is in excess of an amount determined by the commissioner, or in the case of health care practitioners whose professional liability insurance protection is provided through self-insured hospital funding supplemented with purchased commercial insurance, the total professional liability funding obligation has increased in excess of an amount determined by the commissioner. In certifying classes eligible

for the subsidy, the commissioner, in consultation with the Commissioner of Health and Senior Services, may also consider if access to care is threatened by the inability of a significant number of practitioners, in a particular specialty or subspecialty, to continue practicing in a geographic area of the State.

In order to be eligible for a subsidy from the fund, a practitioner must have received a medical malpractice liability insurance premium increase in an amount determined by the commissioner by regulation, for one or more of the following: upon renewal on or after January 1, 2004, from the amount paid by that practitioner in 2003; upon renewal on or after January 1, 2005, from the amount paid by that practitioner in 2004; and upon renewal on or after January 1, 2006, from the amount paid by that practitioner in 2005. The amount of the subsidy will be determined by the commissioner by regulation.

In the case of a health care provider providing professional liability insurance protection through self-insured hospital funding supplemented with purchased commercial insurance coverage, that provider must have increased its total professional liability funding obligation in an amount as determined by the commissioner by regulation, for one or more of the following: upon renewal on or after January 1, 2004, from the professional liability funding obligation paid by that practitioner in calendar year 2003; upon renewal on or after January 1, 2005, from the professional liability funding obligation paid by that practitioner in calendar year 2004; and upon renewal on or after January 1, 2006, from the professional liability funding obligation paid by that practitioner in calendar year 2005.

The Medical Malpractice Liability Insurance Premium Assistance Fund is to be comprised of the following revenue:

- an annual surcharge of \$3 per employee for all employers who are subject to the New Jersey "unemployment compensation law";
- an annual charge of \$50 imposed on each licensed physician, podiatrist, chiropractor, dentist and optometrist by the appropriate professional licensing board; and
- an annual fee of \$50 imposed on each licensed attorney by the State Treasurer.

The above charges and fees will not apply to physicians, podiatrists, chiropractors, dentists, optometrists or attorneys who: are statutorily or constitutionally barred from the practice of their respective profession; can show that they do not maintain a bona fide office for the practice of their profession in this State; are completely retired from the practice of their profession; are on full-time duty with the armed forces, VISTA or the Peace Corps and not engaged in practice; have not practiced their profession for at least one year; or, in the case of attorneys, are ineligible to practice law because they have not made their New Jersey Lawyers' Fund for Client Protection payment.

The bill also specifies that a practitioner who has been subject to a disciplinary action or civil penalty by the practitioner's licensing

board, when that action or penalty relates to the practitioner's provision of, or failure to provide, treatment or care to a patient, is not eligible for a subsidy from the fund.

The bill requires that a health care provider who receives a subsidy from the fund practice in that provider's specialty or subspecialty in this State for a period of at least two years after receipt of the subsidy; and a provider who fails to comply with this requirement must repay the Commissioner of Banking and Insurance the amount of the subsidy, in whole or in part as determined by the commissioner.

The monies in the Medical Malpractice Liability Insurance Premium Assistance Fund are specifically dedicated and to be utilized exclusively for the following purposes:

-- \$20 million is to be allocated for the purpose of providing relief towards the payment of medical malpractice liability insurance premiums to health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the commissioner by regulation and meet the criteria established under the bill;

-- \$8 million is to be allocated to the Health Care Subsidy Fund established pursuant to N.J.S.A.26:2H-18.58 for the purpose of providing payments to hospitals in accordance with the formula used for the distribution of charity care subsidies that are provided pursuant to N.J.S.A.26:2H-18.51 et al.;

-- \$2 million is to be allocated for a student loan expense reimbursement program for health care providers who are members of specialties and subspecialties who qualify for relief from the fund (as described below); and

-- the balance of any unexpended monies in the fund is to be allocated to the Division of Medical Assistance and Health Services in the Department of Human Services for the provision of other health care services as determined by the Commissioner of Human Services.

The bill establishes a three-year student loan expense reimbursement program within the Higher Education Student Assistance Authority for health care providers who are members of specialties and subspecialties who qualify for relief from the Fund. A provider who receives a payment under the program is required to practice in that provider's specialty or subspecialty in this State for a period of at least four years after receipt of the payment; and a provider who fails to comply with this requirement must repay the authority the amount of the payment, in whole or in part as determined by the authority. The authority is to implement the program in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, and to adopt rules and regulations, pursuant to the "Administrative Procedure Act," to effectuate the purposes of this new program, including, but not limited to: eligibility for the program, procedures for application, selection of participants, establishment and nullification of contracts established with participants under the program, reports to the program by participants,

and recruitment of participants.

Finally, the bill establishes a 17-member "Medical Care Availability Task Force" to study the following issues:

- the advantages and disadvantages of establishing limitations on non-economic damages for medical malpractice judgments and on extending current limitations on liability that apply to nonprofit hospitals to employees, other than physicians, of those hospitals;
- the impact of third party reimbursement policies by insurers and health maintenance organizations on access to health care services in the context of the current affordability crisis in the State affecting health care providers in the purchase of necessary liability coverage;
- the advantages and disadvantages of adopting additional changes to the statute of limitations regarding medical malpractice actions;
- the advantages and disadvantages of establishing additional procedures for mediation of actions alleging medical malpractice and for screening for frivolous medical malpractice lawsuits;
- the advantages and disadvantages of establishing a pre-suit procedure; and
- the necessity for, and advantages and disadvantages of, reactivating the Medical Malpractice Reinsurance Association established pursuant to N.J.S.A.17:30D-1 et seq.

FISCAL IMPACT:

The balance of the Medical Malpractice Liability Insurance Premium Assistance Fund is to be comprised of the following revenue:

- an annual surcharge of \$3 per employee for all employers who are subject to the New Jersey "unemployment compensation law";
- an annual charge of \$50 imposed on each licensed physician, podiatrist, chiropractor, dentist and optometrist by the appropriate professional licensing board; and
- an annual fee of \$50 imposed on each licensed attorney by the State Treasurer.

The monies in the Medical Malpractice Liability Insurance Premium Assistance Fund are specifically dedicated and to be utilized exclusively for the following purposes:

- \$20 million is to be allocated for the purpose of providing relief towards the payment of medical malpractice liability insurance premiums to health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the commissioner by regulation and meet the criteria established under the bill;
- \$8 million is to be allocated to the Health Care Subsidy Fund established pursuant to N.J.S.A.26:2H-18.58 for the purpose of providing payments to hospitals in accordance with the formula used for the distribution of charity care subsidies that are provided pursuant to N.J.S.A.26:2H-18.51 et al.;

\$2 million is to be allocated for a student loan expense reimbursement program for health care providers who are members of specialties and subspecialties who qualify for relief from the fund (as described below); and

the balance of any unexpended monies in the fund is to be allocated to the Division of Medical Assistance and Health Services in the Department of Human Services for the provision of other health care services as determined by the Commissioner of Human Services.

No other information has been made available to the Office of Legislative Services concerning the fiscal implications of the bill.

ASSEMBLY HEALTH AND HUMAN SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 50**

STATE OF NEW JERSEY

DATED: MARCH 4, 2004

The Assembly Health and Human Services Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 50.

This committee substitute, which is designated the "New Jersey Medical Care Access and Responsibility and Patients First Act," is designed to implement a number of reforms relating to tort liability as it concerns medical malpractice, as well as health care system and medical malpractice liability insurance reforms.

Specifically, the substitute provides for the following:

Tort Liability Reforms:

The substitute amends N.J.S.2A:14-2 and N.J.S.2A:14-21 to provide that actions by or on behalf of a minor that have accrued for medical malpractice for injuries sustained at birth must be commenced prior to the minor's 13th birthday. These statutory changes would not affect the discovery doctrine in any way.

The substitute provides for court referral of a medical malpractice action to a complementary dispute resolution mechanism if the judge presiding over the action determines, within 30 days after the discovery end date, that the referral may encourage early disposition or settlement of the action. If the judge makes that determination, the matter is to be referred to complementary dispute resolution pursuant to Rule 1:40 of the New Jersey Rules of Court.

The substitute also provides that a health care provider named as a defendant in a medical malpractice action may file an affidavit of noninvolvement with the court. The affidavit of noninvolvement is to set forth the facts that demonstrate that the provider was misidentified or otherwise not involved, individually or through its servants or employees, in the care and treatment of the claimant, and was not obligated, either individually or through its servants or employees, to provide for the care and treatment of the claimant. The substitute also provides penalties for false statements made in the affidavit or in challenging the affidavit.

The substitute establishes qualifications for expert witnesses in medical malpractice actions and for the purpose of executing an

affidavit of merit, and provides that an expert must have the same type of practice and possess the same credentials, as applicable, as the defendant health care provider, unless waived by the court. The substitute prohibits expert witnesses from testifying on a contingency fee basis. The substitute also provides for penalties for an individual or entity who threatens to take or takes adverse action against a person in retaliation for that person providing or agreeing to provide expert testimony, or for that person executing an affidavit of merit, which adverse action relates to that person's employment, accreditation, certification, credentialing or licensure.

With respect to the payment of medical malpractice judgments, the substitute provides that in any medical malpractice judgment in which the noneconomic damages (those for pain and suffering) are \$1 million or less, unless otherwise agreed to by the parties, the court is to enter a judgment ordering that money damages be paid immediately. In any judgment in which the noneconomic damages exceed \$1 million, unless otherwise agreed to by the parties, 50% of the money damages are to be paid immediately, with the costs and attorney's fees paid from that amount. The remaining 50% of the judgment is to be paid over 60 months in the form of a structured payment agreement.

Further, in order to provide the court with discretion to modify jury awards, the substitute modifies the standard of review to be used by the court in reviewing the amount of a jury award to require the court to consider the evidence in the light most favorable to the non-moving party and to allow the court to determine whether the award is clearly inadequate or excessive in view of the nature of the medical condition or injury that is the cause of action or because of passion or prejudice by the jury.

Health Care System Reforms:

The substitute expands the State's "Good Samaritan" law to provide immunity from civil damages to licensed health care professionals, emergency medical technicians and mobile intensive care paramedics whose duty does not require a response to a patient emergency situation, who, in good faith, respond to a life-threatening emergency or respond to a request for emergency assistance in a life-threatening emergency within a hospital or other licensed health care facility or a State psychiatric hospital operated by the Department of Human Services. The immunity shall not apply: to acts or omissions constituting gross negligence, recklessness or willful misconduct; if a provider-patient relationship existed before the emergency; if consideration in any form is provided to the health care professional for the service rendered; or if a general hospital has not reasonably and adequately staffed its emergency department.

Further, the substitute provides that a health care professional is not liable for civil damages for injury or death caused in an emergency situation occurring in the health care professional's private practice or in a health care facility or State psychiatric hospital on account of a

failure to inform a patient of the possible consequences of a medical procedure when the failure to inform is caused by any of the following:

- the patient was unconscious;
- the medical procedure was undertaken without the consent of the patient because the health care professional reasonably believed that the medical procedure should be undertaken immediately and that there was insufficient time to fully inform the patient; or
- the medical procedure was performed on a person legally incapable of giving informed consent, and the health care professional reasonably believed that the medical procedure should be undertaken immediately and that there was insufficient time to obtain the informed consent of the person authorized to give such consent for the patient.

The immunity provided is applicable only to actions for damages for an injury or death arising as a result of a health care professional's failure to inform, and not to actions for damages arising as a result of a health care professional's negligence in rendering or failing to render treatment.

The substitute strengthens reporting requirements by physicians to the State Board of Medical Examiners (BME) to ensure that the BME is promptly informed of any pending or final action by any criminal authority in this State or any other state or federal jurisdiction or any arrest or conviction for a criminal or quasi-criminal act, by requiring that a physician report, within 10 days, the action or his arrest or conviction, for crimes that include, but are not limited to, criminal homicide, aggravated assault, sexual assault, criminal sexual contact or lewdness, or an offense involving any controlled dangerous substance or controlled substance analog.

The substitute also ensures that health care facilities, State psychiatric hospitals and other physicians affiliated with a physician who has been disciplined by the BME, are notified of its action, within 30 days of the action. Similarly, the substitute ensures that a health care facility, State psychiatric hospital or health maintenance organization is promptly notified by the BME if, during the course of an investigation of a physician, it requests information from that facility or health maintenance organization regarding that physician, and subsequently determines that no disciplinary action is warranted.

Medical Malpractice Liability Insurance Reforms:

To avoid the appearance of any conflicts of interest, the substitute prohibits any person who is an officer, director or board member of a professional association for health care providers to serve concurrently as an officer, director or board member of a State-domiciled medical malpractice liability insurer that issues policies in the State.

For the purpose of negotiating a reduced medical malpractice liability insurance premium, the substitute would permit physicians to join together, by means of a joint contract, to form a "Medical Malpractice Liability Insurance Purchasing Alliance."

The substitute provides that a medical malpractice liability

insurance policy may contain a provision that provides a person insured under the policy with the exclusive right to require the insurer to obtain the consent of the insured to settle any claim filed against the insured; but, if the policy contains that provision, the insurer would be required to offer an endorsement to the policy that permits the insurer to settle a claim filed under the policy without first having obtained the insured's consent. The insurer would be required to establish a premium for the endorsement which reflects any savings or reduced costs attributable to the endorsement, and the insured would have the option of accepting or refusing the endorsement.

Another provision to provide premium relief to health care providers is the requirement that every medical malpractice liability insurer offer individual or group medical malpractice liability insurance policies with a deductible, at the option of the insured, in an amount of at least \$5,000 per claim and up to \$1 million per claim, with the insurer being permitted to require the insured to provide collateral for the deductible amount to the insurer. The deductibles offered by an insurer are subject to the approval of the Commissioner of Banking and Insurance. For policies with any deductible, the insurer would be responsible for payment of the deductible and would be reimbursed for that amount by the insured.

To provide increased oversight of medical malpractice insurers, the substitute requires that every annual statement filed by a medical malpractice insurer in this State with the Department of Banking and Insurance include a certification by the chief executive officer or chief financial officer that the rates for every category, subcategory or risk classification are adequate to cover expected losses and expenses of the insurer and to ensure the safety and soundness of the insurer.

The substitute requires insurers authorized to transact medical malpractice liability insurance in this State to provide at least 60 days' notice to the insured for policy renewals and nonrenewals. Also, in the case of a nonrenewal, the insurer must provide the reason for the nonrenewal.

The substitute provides for implementation by the Commissioner of Banking and Insurance of a "file and use" system with respect to any proposed rate increase by a medical malpractice liability insurer of 15% or more on an annual basis for any medical specialty. Any such increase must be filed with the commissioner at least 45 days prior to becoming effective and include the reason for the proposed change. Unless disapproved by the commissioner prior to its effective date, the rate filing is to be deemed effective; however, the commissioner must disapprove the increase if the commissioner finds that the increased rates are excessive, inadequate or unfairly discriminatory. A rate filing that would result in a rate increase of less than 15% on an annual basis for any medical specialty would be subject to the provisions of N.J.S.A.17:29AA-1 et seq.

The substitute also directs the commissioner, subject to standards adopted by the National Association of Insurance Commissioners, to

review the current capitalization and reserve requirements applicable to medical malpractice insurers, and to modify those requirements, as necessary, to ensure the solvency of those insurers and the availability and affordability of medical malpractice liability insurance in the State.

Also, the substitute requires medical malpractice liability insurers to offer their insureds the option to make premium payments in installments, as prescribed by the Commissioner of Banking and Insurance, by regulation.

In addition, N.J.S.A.17:30D-17, which requires all medical malpractice insurers to notify the BME of every medical malpractice judgment, settlement and award involving a physician or podiatrist licensed in this State, is amended to also require notification to the Commissioner of Banking and Insurance of these payments. The notification to the commissioner is to enable the commissioner to compile statistical data about medical malpractice payouts, and would not include the name of or other identifying information about the practitioner.

The substitute removes from the BME the authority and discretion to set the minimum amounts of medical malpractice liability insurance that a physician who maintains a professional medical practice in this State and has responsibility for patient care is required to carry, and instead establishes those minimum amounts by statute. The substitute sets the limits at those currently in effect by virtue of regulations promulgated by the BME, that is: medical malpractice liability insurance in the sum of \$1 million per occurrence and \$3 million per policy year, with extended reporting endorsement coverage for claims made, also known as "tail coverage;" or, if liability coverage is not available, by a letter of credit for at least \$500,000. The BME may, however, increase these minimum amounts by regulation.

The substitute establishes the Medical Malpractice Liability Insurance Premium Assistance Fund in the Department of the Treasury to provide relief towards the payment of medical malpractice liability insurance premiums to certain health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the Commissioner of Banking and Insurance by regulation. The fund will be administered by the Department of Banking and Insurance, and will expire three years after the effective date of the substitute.

The substitute provides that the Commissioner of Banking and Insurance will certify classes of health care providers (practitioners), by specialty and subspecialty for each type of practitioner, whose average medical malpractice premium, as a class, on or after December 31, 2002, is in excess of an amount determined by the commissioner, or in the case of health care practitioners whose professional liability insurance protection is provided through self-insured hospital funding supplemented with purchased commercial insurance, the total professional liability funding obligation has increased in excess of an amount determined by the commissioner. In certifying classes eligible

for the subsidy, the commissioner, in consultation with the Commissioner of Health and Senior Services, may also consider if access to care is threatened by the inability of a significant number of practitioners, in a particular specialty or subspecialty, to continue practicing in a geographic area of the State.

In order to be eligible for a subsidy from the fund, a practitioner must have received a medical malpractice liability insurance premium increase in an amount determined by the commissioner by regulation, for one or more of the following: upon renewal on or after January 1, 2004, from the amount paid by that practitioner in 2003; upon renewal on or after January 1, 2005, from the amount paid by that practitioner in 2004; and upon renewal on or after January 1, 2006, from the amount paid by that practitioner in 2005. The amount of the subsidy will be determined by the commissioner by regulation.

In the case of a health care provider providing professional liability insurance protection through self-insured hospital funding supplemented with purchased commercial insurance coverage, that provider must have increased its total professional liability funding obligation in an amount as determined by the commissioner by regulation, for one or more of the following: upon renewal on or after January 1, 2004, from the professional liability funding obligation paid by that practitioner in calendar year 2003; upon renewal on or after January 1, 2005, from the professional liability funding obligation paid by that practitioner in calendar year 2004; and upon renewal on or after January 1, 2006, from the professional liability funding obligation paid by that practitioner in calendar year 2005.

The Medical Malpractice Liability Insurance Premium Assistance Fund is to be comprised of the following revenue:

- an annual surcharge of \$3 per employee for all employers who are subject to the New Jersey "unemployment compensation law";
- an annual charge of \$50 imposed on each licensed physician, podiatrist, chiropractor, dentist and optometrist by the appropriate professional licensing board; and
- an annual fee of \$50 imposed on each licensed attorney by the State Treasurer.

The above charges and fees will not apply to physicians, podiatrists, chiropractors, dentists, optometrists or attorneys who: are statutorily or constitutionally barred from the practice of their respective profession; can show that they do not maintain a bona fide office for the practice of their profession in this State; are completely retired from the practice of their profession; are on full-time duty with the armed forces, VISTA or the Peace Corps and not engaged in practice; have not practiced their profession for at least one year; or, in the case of attorneys, are ineligible to practice law because they have not made their New Jersey Lawyers' Fund for Client Protection payment.

The substitute also specifies that a practitioner who has been subject to a disciplinary action or civil penalty by the practitioner's

licensing board, when that action or penalty relates to the practitioner's provision of, or failure to provide, treatment or care to a patient, is not eligible for a subsidy from the fund.

The substitute requires that a health care provider who receives a subsidy from the fund practice in that provider's specialty or subspecialty in this State for a period of at least two years after receipt of the subsidy; and a provider who fails to comply with this requirement must repay the Commissioner of Banking and Insurance the amount of the subsidy, in whole or in part as determined by the commissioner.

The monies in the Medical Malpractice Liability Insurance Premium Assistance Fund are specifically dedicated and to be utilized exclusively for the following purposes:

- \$20 million is to be allocated for the purpose of providing relief towards the payment of medical malpractice liability insurance premiums to health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the commissioner by regulation and meet the criteria established under the substitute;

- \$8 million is to be allocated to the Health Care Subsidy Fund established pursuant to N.J.S.A.26:2H-18.58 for the purpose of providing payments to hospitals in accordance with the formula used for the distribution of charity care subsidies that are provided pursuant to N.J.S.A.26:2H-18.51 et al.;

- \$2 million is to be allocated for a student loan expense reimbursement program for health care providers who are members of specialties and subspecialties who qualify for relief from the fund (as described below); and

- the balance of any unexpended monies in the fund is to be allocated to the Division of Medical Assistance and Health Services in the Department of Human Services for the provision of other health care services as determined by the Commissioner of Human Services.

The substitute establishes a three-year student loan expense reimbursement program within the Higher Education Student Assistance Authority for health care providers who are members of specialties and subspecialties who qualify for relief from the Medical Malpractice Liability Insurance Premium Assistance Fund. A provider who receives a payment under the program is required to practice in that provider's specialty or subspecialty in this State for a period of at least four years after receipt of the payment; and a provider who fails to comply with this requirement must repay the authority the amount of the payment, in whole or in part as determined by the authority. The authority is to implement the program in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, and to adopt rules and regulations, pursuant to the "Administrative Procedure Act," to effectuate the purposes of this new program, including, but not limited to: eligibility for the program, procedures for application, selection of participants, establishment and

nullification of contracts established with participants under the program, reports to the program by participants, and recruitment of participants.

Finally, the substitute establishes a 17-member "Medical Care Availability Task Force" to study the following issues:

- the advantages and disadvantages of establishing limitations on non-economic damages for medical malpractice judgments and on extending current limitations on liability that apply to nonprofit hospitals to employees, other than physicians, of those hospitals;

- the impact of third party reimbursement policies by insurers and health maintenance organizations on access to health care services in the context of the current affordability crisis in the State affecting health care providers in the purchase of necessary liability coverage;

- the advantages and disadvantages of adopting additional changes to the statute of limitations regarding medical malpractice actions;

- the advantages and disadvantages of establishing additional procedures for mediation of actions alleging medical malpractice and for screening for frivolous medical malpractice lawsuits;

- the advantages and disadvantages of establishing a pre-suit procedure; and

- the necessity for, and advantages and disadvantages of, reactivating the Medical Malpractice Reinsurance Association established pursuant to N.J.S.A.17:30D-1 et seq.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 50

STATE OF NEW JERSEY

DATED: MARCH 4, 2004

The Assembly Financial Institutions and Insurance Committee reports favorably the Assembly Committee Substitute for Assembly Bill No. 50.

This committee substitute, which is designated the "New Jersey Medical Care Access and Responsibility and Patients First Act," is designed to implement a number of reforms relating to tort liability as it concerns medical malpractice, as well as health care system and medical malpractice liability insurance reforms.

Specifically, the substitute provides for the following:

Tort Liability Reforms:

The substitute amends N.J.S.2A:14-2 and N.J.S.2A:14-21 to provide that actions by or on behalf of a minor that have accrued for medical malpractice for injuries sustained at birth must be commenced prior to the minor's 13th birthday, and do not affect the discovery doctrine in any way.

The substitute provides for court referral of a medical malpractice action to a complementary dispute resolution mechanism if the judge presiding over the action determines, within 30 days after the discovery end date, that the referral may encourage early disposition or settlement of the action. If the judge makes that determination, the matter is to be referred to complementary dispute resolution pursuant to Rule 1:40 of the New Jersey Court Rules.

The substitute also provides that a health care provider named as a defendant in a medical malpractice action may file an affidavit of noninvolvement with the court. The affidavit of noninvolvement is to set forth the facts that demonstrate that the provider was misidentified or otherwise not involved, individually or through its servants or employees, in the care and treatment of the claimant, and was not obligated, either individually or through its servants or employees, to provide for the care and treatment of the claimant. The substitute also provides penalties for false statements made in the affidavit or in challenging the affidavit.

The substitute establishes qualifications for expert witnesses in medical malpractice actions and for the purpose of executing an affidavit of merit, and provides that an expert must have the same type of practice and possess the same credentials, as applicable, as the defendant health care provider, unless waived by the court. The substitute prohibits expert witnesses from testifying on a contingency fee basis and provides for penalties for expert witnesses who intentionally misrepresent the applicable standard of practice or care. The substitute also provides for penalties for an individual or entity who threatens to take or takes adverse action against a person in retaliation for that person providing or agreeing to provide expert testimony, or for that person executing an affidavit of merit, which adverse action relates to that person's employment, accreditation, certification, credentialing or licensure.

With respect to the payment of medical malpractice judgments, the substitute provides that in any medical malpractice judgment in which the noneconomic damages (those for pain and suffering) are \$1 million or less, unless otherwise agreed to by the parties, the court is to enter a judgment ordering that money damages be paid immediately. In any judgment in which the noneconomic damages exceed \$1 million, unless otherwise agreed to by the parties, 50% of the money damages are to be paid immediately, with the costs and attorney's fees paid from that amount. The remaining 50% of the judgment is to be paid over 60 months in the form of a structured payment agreement.

Further, in order to provide the court with discretion to modify jury awards, the substitute modifies the standard of review to be used by the court in reviewing the amount of a jury award to require the court to consider the evidence in the light most favorable to the non-moving party and to allow the court to determine whether the award is clearly inadequate or excessive in view of the nature of the medical condition or injury that is the cause of action or because of passion or prejudice by the jury.

Health Care System Reforms:

The substitute expands the State's "Good Samaritan" law to provide immunity from civil damages to licensed health care professionals, emergency medical technicians and mobile intensive care paramedics whose duty does not require a response to a patient emergency situation, who, in good faith, respond to a life-threatening emergency or respond to a request for emergency assistance in a life-threatening emergency within a hospital or other licensed health care facility or a State psychiatric hospital operated by the Department of Human Services. The immunity shall not apply: to acts or omissions constituting gross negligence, recklessness or willful misconduct; if a provider-patient relationship existed before the emergency; if consideration in any form is provided to the health care professional for the service rendered; or if a general hospital has not reasonably and adequately staffed its emergency department.

Further, the substitute provides that a health care professional is not liable for civil damages for injury or death caused in an emergency situation occurring in the health care professional's private practice or in a health care facility or State psychiatric hospital on account of a failure to inform a patient of the possible consequences of a medical procedure when the failure to inform is caused by any of the following:

- the patient was unconscious;

- the medical procedure was undertaken without the consent of the patient because the health care professional reasonably believed that the medical procedure should be undertaken immediately and that there was insufficient time to fully inform the patient; or

- the medical procedure was performed on a person legally incapable of giving informed consent, and the health care professional reasonably believed that the medical procedure should be undertaken immediately and that there was insufficient time to obtain the informed consent of the person authorized to give such consent for the patient.

The immunity provided is applicable only to actions for damages for an injury or death arising as a result of a health care professional's failure to inform, and not to actions for damages arising as a result of a health care professional's negligence in rendering or failing to render treatment.

The substitute strengthens reporting requirements by physicians to the State Board of Medical Examiners (BME) to ensure that the BME is promptly informed of any pending or final action by any criminal authority in this State or any other state or federal jurisdiction or any arrest or conviction for a criminal or quasi-criminal act, by requiring that a physician report, within 10 days, the action or his arrest or conviction, for crimes that include, but are not limited to, criminal homicide, aggravated assault, sexual assault, criminal sexual contact or lewdness, or an offense involving any controlled dangerous substance or controlled substance analog.

The substitute also ensures that health care facilities, State psychiatric hospitals and other physicians affiliated with a physician who has been disciplined by the BME, are notified of its action, within 30 days of the action. Similarly, the substitute ensures that a health care facility, State psychiatric hospital or health maintenance organization is promptly notified by the BME if, during the course of an investigation of a physician, it requests information from that facility or health maintenance organization regarding that physician, and subsequently determines that no disciplinary action is warranted.

Medical Malpractice Liability Insurance Reforms:

To avoid the appearance of any conflicts of interest, the substitute prohibits any person who is an officer, director or board member of a professional association for health care providers to serve concurrently as an officer, director or board member of a State-domiciled medical malpractice liability insurer that is issuing policies in the State.

For the purpose of negotiating a reduced medical malpractice

liability insurance premium, the substitute would permit physicians to join together, by means of a joint contract, to form a "Medical Malpractice Liability Insurance Purchasing Alliance."

The substitute provides that a medical malpractice liability insurance policy may contain a provision that provides a person insured under the policy with the exclusive right to require the insurer to obtain the consent of the insured to settle any claim filed against the insured; but, if the policy contains that provision, the insurer would be required to offer an endorsement to the policy that permits the insurer to settle a claim filed under the policy without first having obtained the insured's consent. The insurer would be required to establish a premium for the endorsement which reflects any savings or reduced costs attributable to the endorsement, and the insured would have the option of accepting or refusing the endorsement.

Another provision to provide premium relief to health care providers is the requirement that every medical malpractice liability insurer offer individual or group medical malpractice liability insurance policies with a deductible, at the option of the insured, in an amount of at least \$5,000 per claim and up to \$1 million per claim, with the insurer being permitted to require the insured to provide collateral for the deductible amount to the insurer. The deductibles offered by an insurer are subject to the approval of the Commissioner of Banking and Insurance. For policies with any deductible, the insurer would be responsible for payment of the deductible and would be reimbursed for that amount by the insured.

To provide increased oversight of medical malpractice insurers, the substitute requires that every annual statement filed by a medical malpractice insurer in this State with the Department of Banking and Insurance include a certification by the chief executive officer or chief financial officer that the rates for every category, subcategory or risk classification are adequate to cover expected losses and expenses of the insurer and to ensure the safety and soundness of the insurer.

The substitute requires insurers authorized to transact medical malpractice liability insurance in this State to provide at least 60 days' notice to the insured for policy renewals and nonrenewals. Also, in the case of a nonrenewal, the insurer must provide the reason for the nonrenewal.

The substitute provides for implementation by the Commissioner of Banking and Insurance of a "file and use" system with respect to any proposed rate increase by a medical malpractice liability insurer of 15% or more on an annual basis for any medical specialty. Any such increase must be filed with the commissioner at least 45 days prior to becoming effective and include the reason for the proposed change. Unless disapproved by the commissioner prior to its effective date, the rate filing is to be deemed effective; however, the commissioner must disapprove the increase if the commissioner finds that the increased rates are excessive, inadequate or unfairly discriminatory. A rate filing that would result in a rate increase of less than 15% on an annual basis

for any medical specialty would be subject to the provisions of N.J.S.A.17:29AA-1 et seq.

The substitute also directs the commissioner, subject to standards adopted by the National Association of Insurance Commissioners, to review the current capitalization and reserve requirements applicable to medical malpractice insurers, and to modify those requirements, as necessary, to ensure the solvency of those insurers and the availability and affordability of medical malpractice liability insurance in the State.

Also, the substitute requires medical malpractice liability insurers to offer their insureds the option to make premium payments in installments, as prescribed by the Commissioner of Banking and Insurance, by regulation.

In addition, N.J.S.A.17:30D-17, which requires all medical malpractice insurers to notify the BME of every medical malpractice judgment, settlement and award involving a physician or podiatrist licensed in this State, is amended to also require notification to the Commissioner of Banking and Insurance of these payments. The notification to the commissioner is to enable the commissioner to compile statistical data about medical malpractice payouts, and would not include the name of or other identifying information about the practitioner.

The substitute removes from the BME the authority and discretion to set the minimum amounts of medical malpractice liability insurance that a physician who maintains a professional medical practice in this State and has responsibility for patient care is required to carry, and instead establishes those minimum amounts by statute. The substitute sets the limits at those currently in effect by virtue of regulations promulgated by the BME, that is: medical malpractice liability insurance in the sum of \$1 million per occurrence and \$3 million per policy year, with extended reporting endorsement coverage for claims made, also known as "tail coverage;" or, if liability coverage is not available, by a letter of credit for at least \$500,000. The BME may, however, increase these minimum amounts by regulation.

The substitute establishes the Medical Malpractice Liability Insurance Premium Assistance Fund in the Department of the Treasury to provide relief towards the payment of medical malpractice liability insurance premiums to certain health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the Commissioner of Banking and Insurance by regulation. The fund will be administered by the Department of Banking and Insurance, and will expire three years after the effective date of the substitute.

The substitute provides that the Commissioner of Banking and Insurance will certify classes of health care providers (practitioners), by specialty and subspecialty for each type of practitioner, whose average medical malpractice premium, as a class, on or after December 31, 2002, is in excess of an amount determined by the commissioner, or in the case of health care providers whose professional liability

insurance protection is provided through self-insured hospital funding supplemented with purchased commercial insurance, the total professional liability funding obligation has increased in excess of an amount determined by the commissioner. In certifying classes eligible for the subsidy, the commissioner, in consultation with the Commissioner of Health and Senior Services, may also consider if access to care is threatened by the inability of a significant number of practitioners, in a particular specialty or subspecialty, to continue practicing in a geographic area of the State.

In order to be eligible for a subsidy from the fund, a practitioner must have received a medical malpractice liability insurance premium increase in an amount determined by the commissioner by regulation, for one or more of the following: upon renewal on or after January 1, 2004, from the amount paid by that practitioner in 2003; upon renewal on or after January 1, 2005, from the amount paid by that practitioner in 2004; and upon renewal on or after January 1, 2006, from the amount paid by that practitioner in 2005. The amount of the subsidy will be determined by the commissioner by regulation.

In the case of a health care provider providing professional liability insurance protection through self-insured hospital funding supplemented with purchased commercial insurance coverage, that provider must have increased its total professional liability funding obligation in an amount as determined by the commissioner by regulation, for one or more of the following: upon renewal on or after January 1, 2004, from the professional liability funding obligation paid by that practitioner in calendar year 2003; upon renewal on or after January 1, 2005, from the professional liability funding obligation paid by that practitioner in calendar year 2004; and upon renewal on or after January 1, 2006, from the professional liability funding obligation paid by that practitioner in calendar year 2005.

The Medical Malpractice Liability Insurance Premium Assistance Fund is to be comprised of the following revenue:

- an annual surcharge of \$3 per employee for all employers who are subject to the New Jersey "unemployment compensation law";
- an annual charge of \$50 imposed on each licensed physician, podiatrist, chiropractor, dentist and optometrist by the appropriate professional licensing board; and
- an annual fee of \$50 imposed on each licensed attorney by the State Treasurer.

The above revenue-raising provisions will not apply to physicians, podiatrists, chiropractors, dentists, optometrists or attorneys who: are statutorily or constitutionally barred from the practice of their respective profession; can show that they do not maintain a bona fide office for the practice of their profession in this State; are completely retired from the practice of their profession; are on full-time duty with the armed forces, VISTA or the Peace Corps and not engaged in practice; have not practiced their profession for at least one year; or, in the case of attorneys, are ineligible to practice law because they

have not made their New Jersey Lawyers' Fund for Client Protection payment.

The substitute also specifies that a practitioner who has been subject to a disciplinary action or civil penalty by the practitioner's licensing board, when that action or penalty relates to the provider's provision of, or failure to provide, treatment or care to a patient, is not eligible for a subsidy from the fund.

The substitute requires that a health care provider who receives a subsidy from the fund practice in that provider's specialty or subspecialty in this State for a period of at least two years after receipt of the subsidy. A health care provider who fails to comply with this requirement must repay the Commissioner of Banking and Insurance the amount of the subsidy, in whole or in part as determined by the commissioner.

The monies in the Medical Malpractice Liability Insurance Premium Assistance Fund are specifically dedicated and to be utilized exclusively for the following purposes:

--\$20 million is to be allocated for the purpose of providing relief towards the payment of medical malpractice liability insurance premiums to health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the commissioner by regulation and meet the criteria established under the substitute;

--\$8 million is to be allocated to the Health Care Subsidy Fund established pursuant to N.J.S.A.26:2H-18.58 for the purpose of providing payments to hospitals in accordance with the formula used for the distribution of charity care subsidies that are provided pursuant to N.J.S.A.26:2H-18.51 et al.;

--\$2 million is to be allocated for a student loan expense reimbursement program for health care providers who are members of specialties and subspecialties who qualify for relief from the fund (as described below); and

--the balance of any unexpended monies in the fund is to be allocated to the Division of Medical Assistance and Health Services in the Department of Human Services for the provision of other health care services as determined by the Commissioner of Human Services.

The substitute establishes a three-year student loan expense reimbursement program within the Higher Education Student Assistance Authority for health care providers who are members of specialties and subspecialties who qualify for relief from the Fund. The authority is to implement the program in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, and to adopt rules and regulations, pursuant to the "Administrative Procedure Act," to effectuate the purposes of this new program, including, but not limited to: eligibility for the program, procedures for application, selection of participants, establishment and nullification of contracts established with participants under the program, reports to the program by participants, and recruitment of

participants.

Finally, the substitute establishes a 17-member "Medical Care Availability Task Force" to study the following issues:

- the advantages and disadvantages of establishing limitations on non-economic damages for medical malpractice judgments and on extending current limitations on liability that apply to nonprofit hospitals to employees, other than physicians, of those hospitals;

- the impact of third party reimbursement policies by insurers and health maintenance organizations on access to health care services in the context of the current affordability crisis in the State affecting health care providers in the purchase of necessary liability coverage;

- the advantages and disadvantages of adopting additional changes to the statute of limitations regarding medical malpractice actions;

- the advantages and disadvantages of establishing additional procedures for mediation of actions alleging medical malpractice and for screening for frivolous medical malpractice lawsuits;

- the advantages and disadvantages of establishing a pre-suit procedure; and

- the necessity for, and advantages and disadvantages of, reactivating the Medical Malpractice Reinsurance Association established pursuant to N.J.S.A.17:30D-1 et seq.

The task force may also study the causes, and any related issues, relative to the affordability of medical malpractice liability insurance.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 50

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 22, 2004

The Senate Health, Human Services and Senior Citizens Committee reports favorably with committee amendments Assembly Bill No. 50 (ACS/1R).

As amended by committee, this substitute, which is designated the "New Jersey Medical Care Access and Responsibility and Patients First Act," is designed to implement a number of reforms relating to tort liability as it concerns medical malpractice, as well as health care system and medical malpractice liability insurance reforms.

Specifically, the substitute provides for the following:

Tort Liability Reforms:

The substitute amends N.J.S.2A:14-2 and N.J.S.2A:14-21 to provide that actions by or on behalf of a minor that have accrued for medical malpractice for injuries sustained at birth must be commenced prior to the minor's 13th birthday. These statutory changes would not affect the discovery doctrine in any way. The substitute also provides that in the event that an action by or on behalf of a minor that has accrued for medical malpractice for injuries sustained at birth is not commenced by the minor's parent or guardian prior to the minor's 12th birthday, the minor or a person 18 years of age or older designated by the minor to act on the minor's behalf would be permitted to commence such an action.

The substitute provides for court referral of a medical malpractice action to a complementary dispute resolution mechanism if the judge presiding over the action determines, within 30 days after the discovery end date, that the referral may encourage early disposition or settlement of the action. If the judge makes that determination, the matter is to be referred to complementary dispute resolution pursuant to Rule 1:40 of the New Jersey Rules of Court.

The substitute also provides that a health care provider named as

a defendant in a medical malpractice action may file an affidavit of noninvolvement with the court. The affidavit of noninvolvement is to set forth the facts that demonstrate that the provider was misidentified or otherwise not involved, individually or through its servants or employees, in the care and treatment of the claimant, and was not obligated, either individually or through its servants or employees, to provide for the care and treatment of the claimant. The substitute also provides penalties for false statements made in the affidavit or in challenging the affidavit.

The substitute establishes qualifications for expert witnesses in medical malpractice actions and for the purpose of executing an affidavit of merit, and provides that an expert must have the same type of practice and possess the same credentials, as applicable, as the defendant health care provider, unless waived by the court. The substitute prohibits expert witnesses from testifying on a contingency fee basis. The substitute also provides for penalties for an individual or entity who threatens to take or takes adverse action against a person in retaliation for that person providing or agreeing to provide expert testimony, or for that person executing an affidavit of merit, which adverse action relates to that person's employment, accreditation, certification, credentialing or licensure.

With respect to the payment of medical malpractice judgments, the substitute provides that in any medical malpractice judgment in which the noneconomic damages (those for pain and suffering) are \$1 million or less, unless otherwise agreed to by the parties, the court is to enter a judgment ordering that money damages be paid immediately. In any judgment in which the noneconomic damages exceed \$1 million, unless otherwise agreed to by the parties, 50% of the money damages are to be paid immediately, with the costs and attorney's fees paid from that amount. The remaining 50% of the judgment is to be paid over 60 months in the form of a structured payment agreement.

Further, in order to provide the court with discretion to modify jury awards, the substitute modifies the standard of review to be used by the court in reviewing the amount of a jury award to require the court to consider the evidence in the light most favorable to the non-moving party and to allow the court to determine whether the award is clearly inadequate or excessive in view of the nature of the medical condition or injury that is the cause of action or because of passion or prejudice by the jury. This provision shall take effect upon action by the court.

Health Care System Reforms:

The substitute expands the State's "Good Samaritan" law to provide immunity from civil damages to licensed health care professionals, emergency medical technicians and mobile intensive care paramedics whose duty does not require a response to a patient emergency situation, who, in good faith, respond to a life-threatening emergency or respond to a request for emergency assistance in a life-

threatening emergency within a hospital or other licensed health care facility or a State psychiatric hospital operated by the Department of Human Services. The immunity shall not apply: to acts or omissions constituting gross negligence, recklessness or willful misconduct; if a provider-patient relationship existed before the emergency; or if consideration in any form is provided to the health care professional for the service rendered. The immunity does not diminish a general hospital's responsibility to comply with all Department of Health and Senior Services licensure requirements concerning medical staff availability at the hospital.

Further, the substitute provides that a health care professional is not liable for civil damages for injury or death caused in an emergency situation occurring in the health care professional's private practice or in a health care facility or State psychiatric hospital on account of a failure to inform a patient of the possible consequences of a medical procedure when the failure to inform is caused by any of the following:

- the patient was unconscious;
- the medical procedure was undertaken without the consent of the patient because the health care professional reasonably believed that the medical procedure should be undertaken immediately and that there was insufficient time to fully inform the patient; or
- the medical procedure was performed on a person legally incapable of giving informed consent, and the health care professional reasonably believed that the medical procedure should be undertaken immediately and that there was insufficient time to obtain the informed consent of the person authorized to give such consent for the patient.

The immunity provided is applicable only to actions for damages for an injury or death arising as a result of a health care professional's failure to inform, and not to actions for damages arising as a result of a health care professional's negligence in rendering or failing to render treatment.

The substitute strengthens reporting requirements by physicians to the State Board of Medical Examiners (BME) to ensure that the BME is promptly informed of any pending or final action by any criminal authority in this State or any other state or federal jurisdiction or any arrest or conviction for a criminal or quasi-criminal act, by requiring that a physician report, within 10 days, the action or his arrest or conviction, for crimes that include, but are not limited to, criminal homicide, aggravated assault, sexual assault, criminal sexual contact or lewdness, or an offense involving any controlled dangerous substance or controlled substance analog.

The substitute also ensures that health care facilities, State psychiatric hospitals and other physicians affiliated with a physician who has been disciplined by the BME, are notified of its action, within 30 days of the action. Similarly, the substitute ensures that a health care facility, State psychiatric hospital or health maintenance organization is promptly notified by the BME if, during the course of an investigation of a physician, it requests information from that

facility or health maintenance organization regarding that physician, and subsequently determines that no disciplinary action is warranted.

Medical Malpractice Liability Insurance Reforms:

To avoid the appearance of any conflicts of interest, the substitute prohibits any person who is an officer, director or board member of a professional association for health care providers to serve concurrently as an officer, director or board member of a State-domiciled medical malpractice liability insurer that issues policies in the State.

For the purpose of negotiating a reduced medical malpractice liability insurance premium, the substitute would permit physicians to join together, by means of a joint contract, to form a "Medical Malpractice Liability Insurance Purchasing Alliance."

The substitute provides that a medical malpractice liability insurance policy may contain a provision that provides a person insured under the policy with the exclusive right to require the insurer to obtain the consent of the insured to settle any claim filed against the insured; but, if the policy contains that provision, the insurer would be required to offer an endorsement to the policy that permits the insurer to settle a claim filed under the policy without first having obtained the insured's consent. The insurer would be required to establish a premium for the endorsement which reflects any savings or reduced costs attributable to the endorsement, and the insured would have the option of accepting or refusing the endorsement.

Another provision to provide premium relief to health care providers is the requirement that every medical malpractice liability insurer offer individual or group medical malpractice liability insurance policies with a deductible, at the option of the insured, in an amount of at least \$5,000 per claim and up to \$1 million per claim, with the insurer being permitted to require the insured to provide collateral for the deductible amount to the insurer. The deductibles offered by an insurer are subject to the approval of the Commissioner of Banking and Insurance. For policies with any deductible, the insurer would be responsible for payment of the deductible and would be reimbursed for that amount by the insured.

The substitute prohibits a medical malpractice insurer from increasing the premium of a policy based on a claim of medical negligence or malpractice against the insured if the insured is dismissed from an action alleging medical malpractice within 180 days of the filing of the last responsive pleading.

To provide increased oversight of medical malpractice insurers, the substitute requires that every annual statement filed by a medical malpractice insurer in this State with the Department of Banking and Insurance include a certification by the chief executive officer or chief financial officer that the rates for every category, subcategory or risk classification are adequate to cover expected losses and expenses of the insurer and to ensure the safety and soundness of the insurer.

The substitute requires insurers authorized to transact medical

malpractice liability insurance in this State to provide at least 60 days' notice to the insured for policy renewals and nonrenewals. Also, in the case of a nonrenewal, the insurer must provide the reason for the nonrenewal.

The substitute provides that if the Commissioner of Banking and Insurance finds, after a hearing, that a rate in effect for any medical malpractice insurer is not in compliance with the provisions of N.J.S.A.17:29AA-1 et seq., the commissioner is to issue an order specifying in what respects it so fails, and stating when the rate will no longer be deemed effective. The order may provide for the retroactive adjustment of rates and require the payment or credit of interest to insureds covered during the adjusted rate period. Interest is to be calculated at the percentage of interest prescribed in the Rules Governing the Courts of the State of New Jersey for judgments, awards and orders for the payment of money.

The substitute also directs the commissioner, subject to standards adopted by the National Association of Insurance Commissioners, to review the current capitalization and reserve requirements applicable to medical malpractice insurers, and to modify those requirements, as necessary, to ensure the solvency of those insurers and the availability and affordability of medical malpractice liability insurance in the State.

Also, the substitute requires medical malpractice liability insurers to offer their insureds the option to make premium payments in installments, as prescribed by the Commissioner of Banking and Insurance, by regulation.

In addition, N.J.S.A.17:30D-17, which requires all medical malpractice insurers to notify the BME of every medical malpractice judgment, settlement and award involving a physician or podiatrist licensed in this State, is amended to also require notification to the Commissioner of Banking and Insurance of these payments. The notification to the commissioner is to enable the commissioner to compile statistical data about medical malpractice payouts, and would not include the name of or other identifying information about the practitioner.

The substitute removes from the BME the authority and discretion to set the minimum amounts of medical malpractice liability insurance that a physician who maintains a professional medical practice in this State and has responsibility for patient care is required to carry, and instead establishes those minimum amounts by statute. The substitute sets the limits at those currently in effect by virtue of regulations promulgated by the BME, that is: medical malpractice liability insurance in the sum of \$1 million per occurrence and \$3 million per policy year, with extended reporting endorsement coverage for claims made, also known as "tail coverage," (unless renewal coverage includes the premium retroactive date); or, if liability coverage is not available, by a letter of credit for at least \$500,000. The BME may, however, increase these minimum amounts by regulation.

The substitute establishes the Medical Malpractice Liability

Insurance Premium Assistance Fund in the Department of the Treasury to provide relief towards the payment of medical malpractice liability insurance premiums to certain health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the Commissioner of Banking and Insurance by regulation. The fund will be administered by the Department of Banking and Insurance, and will expire three years after the effective date of the substitute.

The substitute provides that the Commissioner of Banking and Insurance will certify classes of health care practitioners, by specialty and subspecialty for each type of practitioner, whose average medical malpractice premium, as a class, on or after December 31, 2002, is in excess of an amount determined by the commissioner, or in the case of health care practitioners whose professional liability insurance protection is provided through self-insured hospital funding supplemented with purchased commercial insurance, the total professional liability funding obligation has increased in excess of an amount determined by the commissioner. In certifying classes eligible for the subsidy, the commissioner, in consultation with the Commissioner of Health and Senior Services, may also consider if access to care is threatened by the inability of a significant number of practitioners, in a particular specialty or subspecialty, to continue practicing in a geographic area of the State.

In order to be eligible for a subsidy from the fund, a practitioner must have received a medical malpractice liability insurance premium increase in an amount determined by the commissioner by regulation, for one or more of the following: upon renewal on or after January 1, 2004, from the amount paid by that practitioner in 2003; upon renewal on or after January 1, 2005, from the amount paid by that practitioner in 2004; and upon renewal on or after January 1, 2006, from the amount paid by that practitioner in 2005. The amount of the subsidy will be determined by the commissioner by regulation.

In the case of a health care provider providing professional liability insurance protection through self-insured hospital funding supplemented with purchased commercial insurance coverage, that provider must have increased its total professional liability funding obligation in an amount as determined by the commissioner by regulation, for one or more of the following: upon renewal on or after January 1, 2004, from the professional liability funding obligation paid by that practitioner in calendar year 2003; upon renewal on or after January 1, 2005, from the professional liability funding obligation paid by that practitioner in calendar year 2004; and upon renewal on or after January 1, 2006, from the professional liability funding obligation paid by that practitioner in calendar year 2005.

The Medical Malpractice Liability Insurance Premium Assistance Fund is to be comprised of the following revenue:

-- an annual surcharge (for three years) of \$3 per employee for all employers who are subject to the New Jersey "unemployment

compensation law";

- an annual charge (for three years) of \$75 imposed on each licensed physician, podiatrist, chiropractor, dentist and optometrist by the appropriate professional licensing board; and

- an annual fee (for three years) of \$75 imposed on each licensed attorney by the State Treasurer.

The above charges and fees will not apply to physicians, podiatrists, chiropractors, dentists, optometrists or attorneys who: are statutorily or constitutionally barred from the practice of their respective profession; can show that they do not maintain a bona fide office for the practice of their profession in this State; are completely retired from the practice of their profession; are on full-time duty with the armed forces, VISTA or the Peace Corps and not engaged in practice; have not practiced their profession for at least one year; or, in the case of attorneys, are ineligible to practice law because they have not made their New Jersey Lawyers' Fund for Client Protection payment.

The substitute also specifies that a practitioner who has been subject to a disciplinary action or civil penalty by the practitioner's licensing board, when that action or penalty relates to the practitioner's provision of, or failure to provide, treatment or care to a patient, is not eligible for a subsidy from the fund.

The substitute requires that a health care practitioner who receives a subsidy from the fund practice in that practitioner's specialty or subspecialty in this State for a period of at least two years after receipt of the subsidy; and a practitioner who fails to comply with this requirement must repay the Commissioner of Banking and Insurance the amount of the subsidy, in whole or in part as determined by the commissioner.

The monies in the Medical Malpractice Liability Insurance Premium Assistance Fund are specifically dedicated and to be utilized exclusively for the following purposes:

- \$17 million is to be allocated annually for the purpose of providing relief towards the payment of medical malpractice liability insurance premiums to health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the commissioner by regulation and meet the criteria established under the substitute;

- \$6.9 million is to be allocated annually to the Health Care Subsidy Fund established pursuant to N.J.S.A.26:2H-18.58 for the purpose of providing payments to hospitals in accordance with the formula used for the distribution of charity care subsidies that are provided pursuant to N.J.S.A.26:2H-18.51 et al.;

- \$1.0 million is to be allocated annually for a student loan expense reimbursement program for obstetrician/gynecologists (as described below); and

- \$ 1.2 million is to be allocated annually to the Division of Medical Assistance and Health Services in the Department of Human

Services to expand the NJ FamilyCare program (as described below).

The substitute establishes a three-year student loan expense reimbursement program within the Higher Education Student Assistance Authority for obstetrician/gynecologists who agree to practice in State designated underserved areas as established pursuant to N.J.S.A.18A:71C-35. An obstetrician/gynecologist who receives a payment under the program is required to practice as an obstetrician/gynecologist in an underserved area in this State for a period of at least four years after receipt of the payment; and an obstetrician/gynecologist who fails to comply with this requirement must repay the authority the amount of the payment, in whole or in part as determined by the authority. The authority is to implement the program in consultation with the Commissioners of Banking and Insurance and Health and Senior Services and the State Board of Medical Examiners, and to adopt rules and regulations, pursuant to the "Administrative Procedure Act," to effectuate the purposes of this new program, including, but not limited to: eligibility for the program, procedures for application, selection of participants, establishment and nullification of contracts established with participants under the program, and reports to the program by participants.

The substitute provides that, within the limits of funds appropriated pursuant to the substitute and such other funds as may be available for this purpose, NJ FamilyCare is to enroll into the program women whose eligibility under the Medicaid New Jersey Care pregnant women program or the "New Jersey Standardized Parent Service Package," Demonstration Population 3, Medicaid expansion for uninsured pregnant woman, has expired and whose family income does not exceed 100% of the federal poverty level. The Commissioner of Human Services is to establish a presumptive eligibility process to provide for an efficient transition into NJ FamilyCare from the Medicaid program pursuant to this provision.

Finally, the substitute establishes a 17-member "Medical Care Availability Task Force" to study the following issues:

- the advantages and disadvantages of establishing limitations on non-economic damages for medical malpractice judgments and on extending current limitations on liability that apply to nonprofit hospitals to employees, other than physicians, of those hospitals;
- the impact of third party reimbursement policies by insurers and health maintenance organizations on access to health care services in the context of the current affordability crisis in the State affecting health care providers in the purchase of necessary liability coverage;
- the advantages and disadvantages of adopting additional changes to the statute of limitations regarding medical malpractice actions;
- the advantages and disadvantages of establishing additional procedures for mediation of actions alleging medical malpractice and for screening for frivolous medical malpractice lawsuits; and

-- the advantages and disadvantages of establishing a pre-suit procedure.

COMMITTEE AMENDMENTS:

The committee amended the substitute to:

- provide that the penalties for filing a false or inaccurate affidavit of noninvolvement (section 6) shall be the same as for falsely objecting to a health care provider's affidavit of noninvolvement, that is, an appropriate sanction, including, but not limited to, an order to pay to the other party the amount of the reasonable expenses incurred as a result of the false filing or objection, including a reasonable attorney fee, and referral of the matter by the court to the Attorney General and the appropriate professional licensing board for further review;

- provide that the additur/remittitur provisions (section 9) shall take effect upon action by the court, rather than specify that the provisions would apply to claims filed after the effective date of the substitute, as the substitute originally provided;

- provide that the "Good Samaritan" immunity (section 10) does not diminish a general hospital's responsibility to comply with all Department of Health and Senior Services licensure requirements concerning medical staff availability at the hospital, and delete language providing that the immunity shall not apply if a hospital has not reasonably and adequately staffed its emergency room;

- restore the original language of the substitute regarding the prohibition on premium increases based on a claim of medical negligence or malpractice (section 17), to provide that the prohibition applies if the insured is dismissed from the action within 180 days of the filing of the last responsive pleading;

- clarify the requirements for medical malpractice liability insurance coverage for physicians (section 25) to provide that tail coverage would be required unless renewal coverage includes the premium retroactive date;

- revise the amounts of the allocations for the Medical Malpractice Liability Insurance Premium Assistance Fund (section 27) to: \$17 million for health care providers, \$6.9 million for hospitals, \$1.2 million for the NJ FamilyCare expansion, and \$1.0 million for the student loan reimbursement program;

- provide the Commissioner of Banking and Insurance with emergency rulemaking authority for the fund (section 27);

- increase the annual health care professional charges and attorney fee from \$50 to \$75, and clarify that the \$3 employee surcharge, \$75 health care professional charges and \$75 attorney fee expire after three years (section 27);

- clarify that the Commissioner of Banking and Insurance, in consultation with the Board of Medical Examiners, shall provide the names of obstetrician/gynecologists who qualify for the student loan reimbursement, provided in the substitute, to the Higher Education Student Assistance Authority (section 28); and

- clarify that loans provided through NJCLASS and the federal government are eligible for reimbursement under the student loan expense reimbursement program created in the substitute (section 29).

This committee substitute is identical to the Senate Committee Substitute for S-50/551 (Vitale/Lesniak), which the committee also reported favorably on this date.

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 50

with Assembly Floor Amendments
(Proposed By Assemblymen ROBERTS, COHEN, Assemblywoman WEINBERG and
Assemblyman MCKEON)

ADOPTED: MARCH 11, 2004

These amendments:

1) Amend N.J.S.A.2A:14-2 concerning the statute of limitations to provide that in the event that a medical malpractice action by or on behalf of a minor for injuries sustained at birth is not commenced by the minor's parent or guardian prior to the minor's 12th birthday, the minor or a person 18 years of age or older designated by the minor to act on the minor's behalf may commence such an action. For this purpose, the minor or designated person may petition the court for the appointment of a guardian ad litem to act on the minor's behalf.

2) Amend N.J.S.A.2A:53A-27 concerning the affidavit of merit to clarify that the person executing the affidavit shall meet the requirements set forth in section 7 of the committee substitute concerning expert witnesses.

3) Provide that a medical malpractice insurer shall not increase the premium of any medical malpractice liability insurance policy based on a claim of medical negligence or malpractice against the insured if the insured is dismissed from an action alleging medical malpractice prior to the close of discovery, rather than within 180 days of the filing of the last responsive pleading, as the substitute originally provided.

4) Omit the amendments in the substitute to N.J.S.A.17:29AA-1 et seq. concerning "file and use" for medical malpractice insurers, and provide instead that if the Commissioner of Banking and Insurance finds, after a hearing, that a medical malpractice insurer's rate is not in compliance with the provisions of NJSA17:29AA-1 et seq., the commissioner shall issue an order specifying in what respects it so fails, and stating when such rate shall no longer be deemed effective. The order may provide for the retroactive adjustment of rates and require the payment or credit of interest to insureds covered during the adjusted rate period.

5) Provide that bonds required for structured payment agreements (section 24 of the substitute) shall be written by a company that is rated A- or better by A.M. Best Co., or such other company as is approved by the Department of Banking and Insurance. The substitute originally provided that the company be rated as A+.

6) Clarify, in sections 26 through 28 of the substitute, the use of the terms "health care provider" and "practitioner."

7) Provide that \$1 million annually from the Medical Malpractice Liability Insurance Premium Assistance Fund, rather than \$2 million, will be allocated to the student loan expense reimbursement program, and provide that the program will be limited to obstetrician/gynecologists who agree to practice in medically underserved areas of the State for at least four years.

8) Provide that \$1 million annually from the fund will be allocated to the NJ FamilyCare program to enroll new mothers with income up to 100% of the federal poverty level whose postpartum eligibility for Medicaid (provided under federal waivers) has expired.

9) Clarify that the allocations from the fund (specified in the substitute) are annual allocations.

10) Delete the reactivation of the Medical Malpractice Reinsurance Association as one of the issues that the Medical Care Availability Task Force shall study, since the association was recently reactivated by the Department of Banking and Insurance.

LEGISLATIVE FISCAL ESTIMATE
 [Second Reprint]
 ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 50
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: MAY 14, 2004

SUMMARY

- Synopsis:** "New Jersey Medical Care Access and Responsibility and Patients First Act."
- Type of Impact:** Revenue generated for the proposed Medical Malpractice Liability Insurance Premium Assistance Fund (MMLIPA) and expenditures from MMLIPA.
- Agencies Affected:** Department of Banking and Insurance; Department of Human Services; Department of Health and Senior Services; and Department of Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
MMLIPA Fund Revenue	\$26.1 million	\$26.1 million	\$26.1 million
MMLIPA Fund Expenditures	\$26.1 million	\$26.1 million	\$26.1 million

- * The MMLIPA fund is comprised of revenue from \$3 annual surcharges paid on or by employees of employers who are subject to the "unemployment compensation law" and \$75 annual surcharges paid on the professional licenses of physicians, podiatrists, dentists, chiropractors and attorneys, unless exempted under the substitute.
- * This estimate is based on the fact that the Catastrophic Illness in Children Relief Fund (P.L.1984, c.370), receives \$6.0 million annually from a \$1 surcharge per employee for all employers who are subject to the "unemployment compensation law." It is therefore estimated that the \$3 surcharge as proposed in the substitute will generate \$18 million in annual revenue for the MMLIPA fund. In addition, approximately 108,000 licensees will likely be subject to the proposed \$75 surcharge, resulting in \$8.1 million in MMLIPA fund revenue.
- * An estimated \$26.1 million in annual revenue will be collected for the Medical Malpractice Liability Insurance Premium Assistance Fund (MMLIPA). The fund will stay active for a

three-year period.

- * Under the substitute as amended, the MMLIPA fund annually allocates the following amounts: \$17 million for the purpose of providing premium relief to eligible health care providers who have experienced or are experiencing a premium increase in an amount as established by the Commissioner of Banking and Insurance by regulation; \$6.9 million for the Health Care Subsidy Fund; \$1 million for a student loan expense reimbursement program for obstetrician/gynecologists who agree to practice in medically underserved areas of the State for a minimum of four years; and \$1.2 million for the NJ FamilyCare program to enroll new mothers with income up to 100 percent of the federal poverty level whose postpartum eligibility for Medicaid has expired.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill No. 50 (2R) of 2004, among other things, establishes the Medical Malpractice Liability Insurance Premium Assistance Fund (MMLIPA), the purpose of which is to provide medical malpractice liability insurance premium relief to certain health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the Commissioner of Banking and Insurance by regulation. The fund will be administered by the Department of Banking and Insurance, and will expire three years after the effective date of the substitute.

The substitute provides that the Commissioner of Banking and Insurance will certify classes of health care practitioners, by specialty and subspecialty for each type of practitioner, whose average medical malpractice premium, as a class, on or after December 31, 2002, is in excess of an amount determined by the commissioner, or in the case of health care providers whose professional liability insurance protection is provided through self-insured hospital funding supplemented with purchased commercial insurance, the total professional liability funding obligation has increased in excess of an amount determined by the commissioner. In certifying classes eligible for the subsidy, the commissioner, in consultation with the Commissioner of Health and Senior Services, may also consider if access to care is threatened by the inability of a significant number of practitioners, in a particular specialty or subspecialty, to continue practicing in a geographic area of the State.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

Among its provisions, this substitute establishes the Medical Malpractice Liability Insurance Premium Assistance (MMLIPA) fund, in the Department of Treasury. The purpose of the fund is to provide premium relief, in an amount as established by the Commissioner of Banking and Insurance by regulation, to eligible health care providers who have experienced or are experiencing a premium increase. The fund is comprised of revenue from \$3 annual surcharges paid on or by employees of employers who are subject to the "unemployment compensation law"

and \$75 annual surcharges paid on the professional licenses of physicians, podiatrists, dentists, chiropractors, optometrists and attorneys, unless exempted under the substitute. Based on the number of licensed professionals who are subject to charges and the number of employees who fall under the "unemployment compensation law," approximately \$26.1 million in revenue will be collected by the MMLIPA fund annually. This estimate is calculated as follows: 1) the Catastrophic Illness in Children Relief Fund (P.L.1984, c.370), receives \$6.0 million in revenue annually from a \$1 surcharge per employee for all employers who are subject to the "unemployment compensation law." Based on this data, the \$3 surcharge as proposed in the substitute will generate \$18 million in annual revenue for the MMLIPA fund; and 2) approximately 108,000 licensees will likely be subject to the proposed \$75 surcharge, resulting in \$8.1 million in MMLIPA fund revenue.

Under the substitute as amended, the MMLIPA fund annually allocates the following amounts: \$17 million for the purpose of providing premium relief to eligible health care providers who have experienced or are experiencing a premium increase in an amount as established by the Commissioner of Banking and Insurance by regulation; \$6.9 million for the Health Care Subsidy Fund: \$1 million for a student loan expense reimbursement program for obstetrician/gynecologists who agree to practice in medically underserved areas of the State for a minimum of four years; and \$1.2 million for the NJ FamilyCare program to enroll new mothers with income up to 100 percent of the federal poverty level whose postpartum eligibility for Medicaid has expired.

Section: *Commerce, Labor and Industry*

Analyst: *Sonya S. Hough*
Associate Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 50

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MARCH 22, 2004

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator RAYMOND J. LESNIAK

District 20 (Union)

Co-Sponsored by:

Senator Madden

SYNOPSIS

"New Jersey Medical Care Access and Responsibility and Patients First Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning medical professional liability, insurance reform
2 and patient protection and revising parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. (New section) This act shall be known and may be cited as the
8 "New Jersey Medical Care Access and Responsibility and Patients
9 First Act."

10

11 2. (New section) The Legislature finds and declares that:

12 a. One of the most vital interests of the State is to ensure that high-
13 quality health care continues to be available in this State and that the
14 residents of this State continue to have access to a full spectrum of
15 health care providers, including highly trained physicians in all
16 specialties;

17 b. The State's health care system and its residents' access to health
18 care providers are threatened by a dramatic escalation in medical
19 malpractice liability insurance premiums, which is creating a crisis of
20 affordability in the purchase of necessary liability coverage for our
21 health care providers;

22 c. One particularly alarming result of rising premiums is that there
23 are increasing reports of doctors retiring or moving to other states
24 where insurance premiums are lower, dropping high-risk patients and
25 procedures, and practicing defensive medicine in a manner that may
26 significantly increase the cost of health care for all our citizens;

27 d. The reasons for the steep increases in the cost of medical
28 malpractice liability insurance are complex and involve issues related
29 to: the State's tort liability system; the State's health care system,
30 which includes issues related to patient safety and medical error
31 reporting; and the State's regulation and requirements concerning
32 medical malpractice liability insurers;

33 e. It is necessary and appropriate for the State to take meaningful
34 and prompt action to address the various interrelated aspects of these
35 issues that are impacted by, or impact on, the State's health care
36 system; and

37 f. To that end, this act provides for a comprehensive set of reforms
38 affecting the State's tort liability system, health care system and
39 medical malpractice liability insurance carriers to ensure that health
40 care services continue to be available and accessible to residents of the
41 State and to enhance patient safety at health care facilities.

42

43 3. N.J.S.2A:14-2 is amended to read as follows:

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2A:14-2. a. Every action at law for an injury to the person caused
2 by the wrongful act, neglect or default of any person within this
3 [state] State shall be commenced within 2 years next after the cause
4 of any such action shall have accrued; except that an action by or on
5 behalf of a minor that has accrued for medical malpractice for injuries
6 sustained at birth shall be commenced prior to the minor's 13th
7 birthday.

8 b. In the event that an action by or on behalf of a minor that has
9 accrued for medical malpractice for injuries sustained at birth is not
10 commenced by the minor's parent or guardian prior to the minor's 12th
11 birthday, the minor or a person 18 years of age or older designated by
12 the minor to act on the minor's behalf may commence such an action.
13 For this purpose, the minor or designated person may petition the
14 court for the appointment of a guardian ad litem to act on the minor's
15 behalf.

16 (cf: N.J.S.2A:14-2)

17

18 4. N.J.S.2A:14-21 is amended to read as follows:

19 2A:14-21. If any person entitled to any of the actions or
20 proceedings specified in [sections] N.J.S.2A:14-1 to 2A:14-8 or
21 [sections] N.J.S.2A:14-16 to 2A:14-20 [of this title] or to a right or
22 title of entry under [section] N.J.S.2A:14-6 [of this title] is or shall
23 be, at the time of any such cause of action or right or title accruing,
24 under the age of 21 years, or insane, such person may commence such
25 action or make such entry, within such time as limited by [said
26 sections] those statutes, after his coming to or being of full age or of
27 sane mind. Notwithstanding the provisions of this section to the
28 contrary, an action by or on behalf of a minor that has accrued for
29 medical malpractice for injuries sustained at birth shall be commenced
30 prior to the minor's 13th birthday, as provided in N.J.S.2A:14-2.

31 (cf: N.J.S.2A:14-21)

32

33 5. (New section) The judge presiding over a medical malpractice
34 action, or the judge's designee, shall, within 30 days after the
35 discovery end date, determine whether referral to a complementary
36 dispute resolution mechanism may encourage early disposition or
37 settlement of the action. If the judge makes such a determination, the
38 matter shall be referred to complementary dispute resolution pursuant
39 to Rule 1:40 of the Rules Governing the Courts of the State of New
40 Jersey.

41 Nothing in this section shall be construed to limit the authority of
42 the judge to refer an action to complementary dispute resolution prior
43 to the discovery end date.

44

45 6. (New section) a. A health care provider named as a defendant
46 in a medical malpractice action may cause the action against that

1 provider to be dismissed upon the filing of an affidavit of
2 noninvolvement with the court. The affidavit of noninvolvement shall
3 set forth, with particularity, the facts that demonstrate that the
4 provider was misidentified or otherwise not involved, individually or
5 through its servants or employees, in the care and treatment of the
6 claimant, and was not obligated, either individually or through its
7 servants or employees, to provide for the care and treatment of the
8 claimant, and could not have caused the alleged malpractice, either
9 individually or through its servants or employees, in any way.

10 b. A codefendant or claimant shall have the right to challenge an
11 affidavit of noninvolvement by filing a motion and submitting an
12 affidavit that contradicts the assertions of noninvolvement made by the
13 health care provider in the affidavit of noninvolvement.

14 c. If the court determines that a health care provider named as a
15 defendant falsely files or makes false or inaccurate statements in an
16 affidavit of noninvolvement, the court, upon motion or upon its own
17 initiative, shall immediately reinstate the claim against that provider.
18 Reinstatement of a party pursuant to this subsection shall not be barred
19 by any statute of limitations defense that was not valid at the time the
20 original action was filed.

21 In any action in which the health care provider is found by the court
22 to have knowingly filed a false or inaccurate affidavit of
23 noninvolvement, the court shall impose upon the person who signed
24 the affidavit or represented the party, or both, an appropriate sanction,
25 including, but not limited to, a civil penalty not to exceed \$10,000 and
26 an order to pay to the other party or parties the amount of the
27 reasonable expenses incurred as a result of the filing of the false or
28 inaccurate affidavit, including a reasonable attorney fee. The court
29 shall also refer the matter to the Attorney General and the appropriate
30 professional licensing board for further review.

31 d. If the court determines that a plaintiff falsely objected to a health
32 care provider's affidavit of noninvolvement, or knowingly provided an
33 inaccurate statement regarding a health care provider's affidavit, the
34 court shall impose upon the plaintiff or the plaintiff's counsel, or both,
35 an appropriate sanction, including, but not limited to, an order to pay
36 to the other party or parties the amount of the reasonable expenses
37 incurred as a result of the false objection or inaccurate statement,
38 including a reasonable attorney fee.

39 e. As used in this section, "health care provider" means an
40 individual or entity, which, acting within the scope of its licensure or
41 certification, provides health care services, and includes, but is not
42 limited to: a physician, dentist, nurse, pharmacist or other health care
43 professional whose professional practice is regulated pursuant to Title
44 45 of the Revised Statutes; and a health care facility licensed pursuant
45 to P.L.1971, c.136 (C.26:2H-1 et seq.)

1 7. (New section) In an action alleging medical malpractice, a
2 person shall not give expert testimony or execute an affidavit pursuant
3 to the provisions of P.L.1995, c.139 (C.2A:53A-26 et seq.) on the
4 appropriate standard of practice or care unless the person is licensed
5 as a physician or other health care professional in the United States
6 and meets the following criteria:

7 a. If the party against whom or on whose behalf the testimony is
8 offered is a specialist or subspecialist recognized by the American
9 Board of Medical Specialties or the American Osteopathic Association
10 and the care or treatment at issue involves that specialty or
11 subspecialty recognized by the American Board of Medical Specialties
12 or the American Osteopathic Association, the person providing the
13 testimony shall have specialized at the time of the occurrence that is
14 the basis for the action in the same specialty or subspecialty,
15 recognized by the American Board of Medical Specialties or the
16 American Osteopathic Association, as the party against whom or on
17 whose behalf the testimony is offered, and if the person against whom
18 or on whose behalf the testimony is being offered is board certified and
19 the care or treatment at issue involves that board specialty or
20 subspecialty recognized by the American Board of Medical Specialties
21 or the American Osteopathic Association, the expert witness shall be:

22 (1) a physician credentialed by a hospital to treat patients for the
23 medical condition, or to perform the procedure, that is the basis for
24 the claim or action; or

25 (2) a specialist or subspecialist recognized by the American Board
26 of Medical Specialties or the American Osteopathic Association who
27 is board certified in the same specialty or subspecialty, recognized by
28 the American Board of Medical Specialties or the American
29 Osteopathic Association, and during the year immediately preceding
30 the date of the occurrence that is the basis for the claim or action, shall
31 have devoted a majority of his professional time to either:

32 (a) the active clinical practice of the same health care profession in
33 which the defendant is licensed, and, if the defendant is a specialist or
34 subspecialist recognized by the American Board of Medical Specialties
35 or the American Osteopathic Association, the active clinical practice
36 of that specialty or subspecialty recognized by the American Board of
37 Medical Specialties or the American Osteopathic Association; or

38 (b) the instruction of students in an accredited medical school,
39 other accredited health professional school or accredited residency or
40 clinical research program in the same health care profession in which
41 the defendant is licensed, and, if that party is a specialist or
42 subspecialist recognized by the American Board of Medical Specialties
43 or the American Osteopathic Association, an accredited medical
44 school, health professional school or accredited residency or clinical
45 research program in the same specialty or subspecialty recognized by
46 the American Board of Medical Specialties or the American
47 Osteopathic Association; or

1 (c) both.

2 b. If the party against whom or on whose behalf the testimony is
3 offered is a general practitioner, the expert witness, during the year
4 immediately preceding the date of the occurrence that is the basis for
5 the claim or action, shall have devoted a majority of his professional
6 time to:

7 (1) active clinical practice as a general practitioner; or active
8 clinical practice that encompasses the medical condition, or that
9 includes performance of the procedure, that is the basis of the claim or
10 action; or

11 (2) the instruction of students in an accredited medical school,
12 health professional school, or accredited residency or clinical research
13 program in the same health care profession in which the party against
14 whom or on whose behalf the testimony is licensed; or

15 (3) both.

16 c. A court may waive the same specialty or subspecialty recognized
17 by the American Board of Medical Specialties or the American
18 Osteopathic Association and board certification requirements of this
19 section, upon motion by the party seeking a waiver, if, after the
20 moving party has demonstrated to the satisfaction of the court that a
21 good faith effort has been made to identify an expert in the same
22 specialty or subspecialty, the court determines that the expert
23 possesses sufficient training, experience and knowledge to provide the
24 testimony as a result of active involvement in, or full-time teaching of,
25 medicine in the applicable area of practice or a related field of
26 medicine.

27 d. Nothing in this section shall limit the power of the trial court to
28 disqualify an expert witness on grounds other than the qualifications
29 set forth in this section.

30 e. In an action alleging medical malpractice, an expert witness shall
31 not testify on a contingency fee basis.

32 f. An individual or entity who threatens to take or takes adverse
33 action against a person in retaliation for that person providing or
34 agreeing to provide expert testimony, or for that person executing an
35 affidavit pursuant to the provisions of P.L.1995, c.139 (C.2A:53A-26
36 et seq.), which adverse action relates to that person's employment,
37 accreditation, certification, credentialing or licensure, shall be liable to
38 a civil penalty not to exceed \$10,000 and other damages incurred by
39 the person and the party for whom the person was testifying as an
40 expert.

41

42 8. Section 2 of P.L.1995, c.139 (C.2A:53A-27) is amended to read
43 as follows:

44 2. In any action for damages for personal injuries, wrongful death
45 or property damage resulting from an alleged act of malpractice or
46 negligence by a licensed person in his profession or occupation, the
47 plaintiff shall, within 60 days following the date of filing of the answer

1 to the complaint by the defendant, provide each defendant with an
2 affidavit of an appropriate licensed person that there exists a
3 reasonable probability that the care, skill or knowledge exercised or
4 exhibited in the treatment, practice or work that is the subject of the
5 complaint, fell outside acceptable professional or occupational
6 standards or treatment practices. The court may grant no more than
7 one additional period, not to exceed 60 days, to file the affidavit
8 pursuant to this section, upon a finding of good cause.

9 [The] In the case of an action for medical malpractice, the person
10 executing the affidavit shall meet the requirements of a person who
11 provides expert testimony or executes an affidavit as set forth in
12 section 7 of P.L. , c. (C.)(pending before the Legislature as
13 this bill). In all other cases, the person executing the affidavit shall be
14 licensed in this or any other state; have particular expertise in the
15 general area or specialty involved in the action, as evidenced by board
16 certification or by devotion of the person's practice substantially to the
17 general area or specialty involved in the action for a period of at least
18 five years. The person shall have no financial interest in the outcome
19 of the case under review, but this prohibition shall not exclude the
20 person from being an expert witness in the case.

21 (cf: P.L.1995, c.139, s.2)

22
23 9. (New section) a. A judge presiding over an action alleging
24 medical malpractice, in which the jury has rendered a verdict in favor
25 of the complaining party, shall, upon a motion by any party for additur
26 or remittitur on the issue of the quantum of damages, consider the
27 evidence in the light most favorable to the non-moving party and
28 determine whether the award is clearly inadequate or excessive in view
29 of the nature of the medical condition or injury that is the cause of
30 action or because of passion or prejudice by the jury.

31 b. The provisions of subsection a. of this section shall apply to
32 claims filed on or after the effective date of this act.

33
34 10. (New section) a. If an individual's actual health care facility
35 duty, including on-call duty, does not require a response to a patient
36 emergency situation, a health care professional who, in good faith,
37 responds to a life-threatening emergency or responds to a request for
38 emergency assistance in a life-threatening emergency within a hospital
39 or other health care facility, is not liable for civil damages as a result
40 of an act or omission in the rendering of emergency care. The
41 immunity granted pursuant to this section shall not apply to acts or
42 omissions constituting gross negligence, recklessness or willful
43 misconduct.

44 b. The provisions of subsection a. of this section shall not apply to
45 a health care professional if a provider-patient relationship existed
46 before the emergency, or if consideration in any form is provided to
47 the health care professional for the service rendered.

1 c. The provisions of subsection a. of this section shall not apply if
2 a general hospital has not reasonably and adequately staffed its
3 emergency department.

4 d. A health care professional shall not be liable for civil damages
5 for injury or death caused in an emergency situation occurring in the
6 health care professional's private practice or in a health care facility on
7 account of a failure to inform a patient of the possible consequences
8 of a medical procedure when the failure to inform is caused by any of
9 the following:

10 (1) the patient was unconscious;

11 (2) the medical procedure was undertaken without the consent of
12 the patient because the health care professional reasonably believed
13 that the medical procedure should be undertaken immediately and that
14 there was insufficient time to fully inform the patient; or

15 (3) the medical procedure was performed on a person legally
16 incapable of giving informed consent, and the health care professional
17 reasonably believed that the medical procedure should be undertaken
18 immediately and that there was insufficient time to obtain the informed
19 consent of the person authorized to give such consent for the patient.

20 The provisions of this subsection shall apply only to actions for
21 damages for an injury or death arising as a result of a health care
22 professional's failure to inform, and not to actions for damages arising
23 as a result of a health care professional's negligence in rendering or
24 failing to render treatment.

25 e. As used in this section:

26 (1) "Health care professional" means a physician, dentist, nurse or
27 other health care professional whose professional practice is regulated
28 pursuant to Title 45 of the Revised Statutes and an emergency medical
29 technician or mobile intensive care paramedic certified by the
30 Commissioner of Health and Senior Services pursuant to Title 26 of
31 the Revised Statutes; and

32 (2) "Health care facility" means a health care facility licensed by
33 the Department of Health and Senior Services pursuant to P.L.1971,
34 c.136 (C.26:2H-1 et seq.) and a psychiatric hospital operated by the
35 Department of Human Services and listed in R.S.30:1-7.

36
37 11. Section 1 of P.L.1995, c.69 (C.45:9-19.16) is amended to read
38 as follows:

39 1. a. A physician licensed by the State Board of Medical
40 Examiners, or a physician who is an applicant for a license from the
41 State Board of Medical Examiners, shall notify the board within 10
42 days of :

43 (1) any action taken against the physician's medical license by any
44 other state licensing board or any action affecting the physician's
45 privileges to practice medicine by any out-of-State hospital, health
46 care facility, health maintenance organization or other employer;

47 (2) any pending or final action by any criminal authority for

1 violations of law or regulation, or any arrest or conviction for any
2 criminal or quasi-criminal offense pursuant to the laws of the United
3 States, this State or another state, including, but not limited to:

4 (a) criminal homicide pursuant to N.J.S.2C:11-2;

5 (b) aggravated assault pursuant to N.J.S.2C:12-1;

6 (c) sexual assault, criminal sexual contact or lewdness pursuant to
7 N.J.S.2C:14-2 through 2C:14-4; or

8 (d) an offense involving any controlled dangerous substance or
9 controlled substance analog as set forth in chapter 35 of Title 2C of
10 the New Jersey Statutes.

11 b. A physician who is in violation of this section is subject to
12 disciplinary action and civil penalties pursuant to sections 8, 9 and 12
13 of P.L.1978, c.73 (C.45:1-21 to 22 and 45:1-25).

14 c. The State Board of Medical Examiners shall notify all physicians
15 licensed by the board of the requirements of this section within 30 days
16 of the date of enactment of this act.

17 (cf: P.L.1995, c.69, s.1)

18

19 12. Section 13 of P.L.1989, c.300 (C.45:9-19.13) is amended to
20 read as follows:

21 13. a. In any case in which the State Board of Medical Examiners
22 refuses to issue, suspends, revokes or otherwise conditions the license,
23 registration, or permit of a physician, podiatrist or medical resident or
24 intern, the board shall, within 30 days of its action, notify each
25 licensed health care facility, psychiatric hospital operated by the
26 Department of Human Services and listed in R.S.30:1-7, and health
27 maintenance organization with which the person is affiliated and every
28 board licensee in the State with which the person is directly associated
29 in his private medical practice.

30 b. If, during the course of an investigation of a physician, the board
31 requests information from a health care facility, psychiatric hospital
32 operated by the Department of Human Services or health maintenance
33 organization regarding that physician, and the board subsequently
34 makes a finding of no basis for disciplinary action, the board shall,
35 within 30 days of making that finding, notify the health care facility,
36 State psychiatric hospital or health maintenance organization of its
37 determination.

38 (cf: P.L.1989, c.300, s.13)

39

40 13. (New section) a. On or after the effective date of P.L. , c.
41 (C.) (pending before the Legislature as this bill) and except as
42 provided in subsection d. of this section, no person who is an officer,
43 director or board member of a professional association for health care
44 providers shall serve concurrently as an officer, director or board
45 member of a State-domiciled medical malpractice liability insurer that
46 is licensed in the State and offering medical malpractice liability
47 insurance policies on that effective date.

1 b. As used in this section, "health care provider" means an
2 individual or entity, which, acting within the scope of its licensure or
3 certification, provides health care services, and includes, but is not
4 limited to, a physician, dentist, nurse or other health care professional
5 whose professional practice is regulated pursuant to Title 45 of the
6 Revised Statutes, and a health care facility licensed pursuant to
7 P.L.1971, c.136 (C.26:2H-1 et seq.).

8 c. A person or professional association who violates the provisions
9 of this section shall be liable for a civil penalty of \$10,000 for each
10 violation. The penalty shall be sued for and collected by the
11 Commissioner of Banking and Insurance in a summary proceeding in
12 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
13 c.274 (C.2A:58-10 et seq.).

14 d. In the case of an officer, director or board member of a medical
15 malpractice liability insurer who is an officer, director or board
16 member of a professional association for health care providers on the
17 effective date of P.L. , c. (C.) (pending before the Legislature as this
18 bill), the officer, director or board member shall have 180 days to
19 comply with the requirements of this section.

20
21 14. (New section) Physicians may join together, by means of a
22 joint contract under the procedures established by this section, to form
23 a "Medical Malpractice Liability Insurance Purchasing Alliance" for
24 the purpose of negotiating a reduced premium for its members in the
25 purchase of medical malpractice liability insurance. The joint contract
26 shall be executed by all members of the purchasing alliance.

27 a. As used in this section:

28 "Board" means a medical malpractice liability insurance purchasing
29 alliance board of directors provided for in this section.

30 "Commissioner" means the Commissioner of Banking and
31 Insurance.

32 "Medical Malpractice Liability Insurance Purchasing Alliance,"
33 "purchasing alliance" or "alliance" means a purchasing alliance
34 established pursuant to this section.

35 "Member" means a physician who is a member of a medical
36 malpractice liability insurance purchasing alliance as provided for in
37 this section.

38 b. The purchasing alliance, which may be a corporation, shall be
39 governed by a board of directors, elected by the members of the
40 purchasing alliance. No person may serve as an officer or director of
41 an alliance who has a prior record of administrative, civil or criminal
42 violations within the financial services industry. The directors shall
43 serve for terms of three years, and shall serve until their successors are
44 elected and qualified. Each director shall serve without compensation,
45 except for reimbursement for actual expenses incurred by that director.

46 c. The board shall adopt by-laws for the operation of the
47 purchasing alliance, which shall be effective upon ratification by a

1 two-thirds majority of the members. The by-laws shall include, but not
2 be limited to:

3 (1) the establishment of procedures for the organization and
4 administration of the alliance; and

5 (2) procedures for the qualifications and admission of the members
6 of the alliance.

7 The bases for denial of membership shall include, but not be limited
8 to:

9 (a) performance of an act or practice that constitutes fraud or
10 intentional misrepresentation of material fact;

11 (b) previous denial of membership in the alliance; or

12 (c) previous expulsion from the alliance;

13 (3) procedures for the withdrawal of members from the alliance;

14 (4) procedures for the expulsion of members from the alliance.

15 The bases for expulsion shall include, but not be limited to:

16 (a) failure to pay membership or other fees required by the
17 purchasing alliance;

18 (b) failure to pay premiums in accordance with the terms of the
19 medical malpractice liability insurance policy or the terms of the joint
20 contract; or

21 (c) performance of an act or practice that constitutes fraud or
22 intentional misrepresentation of material fact; and

23 (5) procedures for the termination of the alliance.

24 d. In addition to the other powers authorized under this section, a
25 purchasing alliance shall have the authority to:

26 (1) set reasonable fees for membership in the alliance that will
27 finance reasonable and necessary costs incurred in administering the
28 purchasing alliance;

29 (2) negotiate premium rates for medical malpractice liability
30 insurance with insurers on behalf of the members of the alliance,
31 provided that negotiations are conducted by a person other than a
32 member of the alliance or an employee of a member of the alliance;

33 (3) provide premium collection services for insurance purchased
34 through the alliance for members;

35 (4) contract with third parties for any services necessary to carry
36 out the powers and duties authorized or required pursuant to this
37 section; and

38 (5) establish procedures for keeping confidential all
39 communications between the members of the purchasing alliance and
40 for prohibiting the dissemination and discussion of pricing information
41 and other business-related information between and among members
42 of the alliance.

43 e. A purchasing alliance established pursuant to the provisions of
44 this section shall not:

45 (1) assume risk for the cost or provision of medical malpractice
46 liability insurance;

47 (2) exclude a member who agrees to pay fees for membership and

1 the premium for medical malpractice liability insurance coverage and
2 who abides by the by-laws of the alliance;

3 (3) engage in any trade practice or activity prohibited pursuant to
4 P.L.1947, c.379 (C.17:29B-1 et seq.);

5 (4) represent more than 35% of the physicians in a county or other
6 relevant geographic service area; or

7 (5) require a member to purchase medical malpractice liability
8 insurance only through the alliance.

9 f. Within 30 days after its organization, the purchasing alliance
10 board shall file with the commissioner a certificate that shall list: the
11 members of the alliance; the names of the directors, chairman,
12 treasurer and secretary of the alliance; the address at which
13 communications for the alliance are to be received; a copy of the
14 certificate of incorporation of the alliance, if any; and a copy of the
15 joint contract executed by all of the members. Any change in the
16 information required by the provisions of this section shall be filed
17 with the commissioner within 30 days of the change.

18 g. The commissioner, pursuant to the "Administrative Procedure
19 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
20 regulations necessary to effectuate the provisions of this section.

21

22 15. (New section) a. A medical malpractice liability insurance
23 policy, which is made, issued or delivered pursuant to Subtitle 3 of
24 Title 17 of the Revised Statutes in this State on or after the effective
25 date of P.L. , c. (C.) (pending before the Legislature as this
26 bill), may contain a provision that provides a person insured under the
27 policy with the exclusive right to require the insurer to obtain the
28 consent of the insured to settle any claim filed against the insured;
29 except that, if the policy contains that provision, the insurer shall offer
30 an endorsement, to be included in the policy at the option of the
31 insured, providing the insurer with the right to settle a claim filed
32 under the policy without first having obtained the insured's consent.
33 The insurer shall establish a premium for the endorsement, which
34 premium shall reflect any savings or reduced costs attributable to the
35 endorsement.

36 b. The Commissioner of Banking and Insurance, pursuant to the
37 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
38 seq.), shall adopt rules and regulations necessary to effectuate the
39 provisions of this section.

1 16. (New section) a. Every insurer authorized to transact medical
2 malpractice liability insurance in this State shall offer medical
3 malpractice liability insurance policies with a deductible, at the option
4 of the insured, in an amount of at least \$5,000 per claim and up to
5 \$1,000,000 per claim, and may require the insured to provide
6 collateral for the deductible amount to the insurer.

7 b. Every insurer authorized to transact medical malpractice liability
8 insurance in this State shall provide an appropriate premium reduction
9 for any deductible chosen pursuant to subsection a. of this section.

10 c. In the case of a policy with any deductible, the insurer shall be
11 responsible for payment of the deductible and shall be reimbursed for
12 that amount by the insured.

13
14 17. (New section) Notwithstanding any other law or regulation to
15 the contrary, an insurer authorized to transact medical malpractice
16 liability insurance in this State shall not increase the premium of any
17 medical malpractice liability insurance policy based on a claim of
18 medical negligence or malpractice against the insured if the insured is
19 dismissed from an action alleging medical malpractice prior to the
20 close of discovery.

21
22 18. (New section) Each annual statement made after the effective
23 date of P.L. , c. (C.) (pending before the Legislature as this
24 bill), pursuant to the provisions of section 16 of P.L.1982, c.114
25 (C.17:29AA-16), by an insurer writing medical malpractice in this
26 State, shall include a certification by the chief executive officer or
27 chief financial officer that the rates for every category, subcategory,
28 or risk classification are adequate to cover expected losses and
29 expenses of the insurer and to ensure the safety and soundness of the
30 insurer.

31
32 19. (New section) Notwithstanding the provisions of section 1 of
33 P.L.1968, c.131 (C.17:29C-1) to the contrary, each notice of renewal
34 or nonrenewal by an insurer authorized to transact medical malpractice
35 liability insurance in this State shall be mailed or delivered by the
36 insurer to the insured not less than 60 days prior to the expiration of
37 the policy and, in the case of a nonrenewal, shall contain the reason for
38 the nonrenewal.

39
40 20. Section 13 of P.L.1982, c.114 (C.17:29AA-13) is amended to
41 read as follows:

42 13. a. If the commissioner finds, after a hearing, that a rate or
43 policy form in effect for any rating organization or insurer, whether or
44 not a member or subscriber of a rating organization is not in
45 compliance with the standards of this act, he shall issue an order
46 specifying in what respects it so fails, and stating when, within a

1 reasonable period thereafter, such rate or form shall be deemed no
2 longer effective. The order shall not affect any contract or policy
3 made or issued prior to the expiration of the period set forth in the
4 order.

5 b. If the commissioner finds, after a hearing, that a rate in effect for
6 any insurer writing medical malpractice liability insurance is not in
7 compliance with the provisions of P.L.1982, c.114 (C.17:29AA-1 et
8 seq.), the commissioner shall issue an order specifying in what respects
9 it so fails, and stating when such rate shall no longer be deemed
10 effective. The order may provide for the retroactive adjustment of
11 rates and require the payment or credit of interest to insureds covered
12 during the adjusted rate period. Interest shall be calculated at the
13 percentage of interest prescribed in the Rules Governing the Courts of
14 the State of New Jersey for judgments, awards and orders for the
15 payment of money.

16 (cf: P.L.1982, c.114, s.13)

17

18 21. (New section) Subject to standards adopted by the National
19 Association of Insurance Commissioners, the Commissioner of
20 Banking and Insurance shall, within 180 days after the effective date
21 of P.L. , c. (C.) (pending before the Legislature as this bill) and
22 annually thereafter, review the current capitalization and reserve
23 requirements applicable to insurers authorized or admitted to transact
24 medical malpractice liability insurance in this State, as those
25 requirements are established by statute or regulation, or both.

26 Based upon the findings of that review, the commissioner shall
27 adopt regulations, pursuant to the "Administrative Procedure Act,"
28 P.L.1968, c.410 (C.52:14B-1 et seq.), to modify those requirements,
29 as the commissioner determines necessary in order to ensure the
30 solvency of those insurers and the availability and affordability of
31 medical malpractice liability insurance in this State. If the
32 commissioner determines that legislation is necessary to effect any
33 such modification, the commissioner shall notify the Governor and the
34 Legislature within the 180-day period provided in this section.

35

36 22. (New section) Every insurer authorized to transact medical
37 malpractice liability insurance in this State shall offer its insureds the
38 option to make premium payments in installments, as prescribed by the
39 Commissioner of Banking and Insurance by regulation.

40

41 23. Section 2 of P.L.1983, c.247 (C.17:30D-17) is amended to
42 read as follows:

43 2. a. Any insurer or insurance association authorized to issue
44 medical malpractice liability insurance in the State shall notify the
45 Medical Practitioner Review Panel established pursuant to section 8
46 of P.L.1989, c.300 (C.45:9-19.8) in writing of any medical malpractice

1 claim settlement, judgment or arbitration award involving any
2 practitioner licensed by the State Board of Medical Examiners and
3 insured by the insurer or insurance association. Any practitioner
4 licensed by the board who is not covered by medical malpractice
5 liability insurance issued in this State, who has coverage through a
6 self-insured health care facility or health maintenance organization, or
7 has medical malpractice liability insurance which has been issued by an
8 insurer or insurance association from outside the State, shall notify the
9 review panel in writing of any medical malpractice claim settlement,
10 judgment or arbitration award to which the practitioner is a party. The
11 review panel or board, as the case may be, shall not presume that the
12 judgment or award is conclusive evidence in any disciplinary
13 proceeding and the fact of a settlement is not admissible in any
14 disciplinary proceeding.

15 In any malpractice action against a practitioner, a settlement
16 prohibiting a complaint against the practitioner or the providing of
17 information to the review panel or board concerning the underlying
18 facts or circumstances of the action is void and unenforceable.

19 b. An insurer or insurance association authorized to issue medical
20 malpractice liability insurance in the State shall notify the review panel
21 in writing of any termination or denial of coverage to a practitioner or
22 surcharge assessed on account of the practitioner's practice method or
23 medical malpractice claims history.

24 c. The form of notification shall be prescribed by the Commissioner
25 of Banking and Insurance, shall contain such information as may be
26 required by the board and the review panel, and shall be made within
27 seven days of the settlement, judgment or award or the final action for
28 a termination or denial of, or surcharge on, the medical malpractice
29 liability insurance. Upon request of the board, the review panel or the
30 commissioner, an insurer or insurance association shall provide all
31 records regarding the defense of a malpractice claim, the processing
32 of the claim and the legal proceeding; except that nothing in this
33 subsection shall be construed to authorize disclosure of any
34 confidential communication which is otherwise protected by statute,
35 court rule or common law.

36 An insurer or insurance association, or any employee thereof, shall
37 be immune from liability for furnishing information to the review panel
38 and the board in fulfillment of the requirements of this section unless
39 the insurer or insurance association, or any employee thereof,
40 knowingly provided false information.

41 d. An insurer, insurance association or practitioner who fails to
42 notify the review panel as required pursuant to this section shall be
43 subject to such penalties as the Commissioner of Banking and
44 Insurance may determine pursuant to section 12 of P.L.1975, c.301
45 (C.17:30D-12). In addition to, or in lieu of suspension or revocation,
46 the commissioner may assess a fine which shall not exceed \$1,000 for

1 the first offense and \$2,000 for the second and each subsequent
2 offense, which may be recovered in a summary proceeding, brought in
3 the name of the State in a court of competent jurisdiction pursuant to
4 ["the penalty enforcement law," N.J.S.2A:58-1 et seq.] the "Penalty
5 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

6 e. A practitioner who fails to notify the review panel as required
7 pursuant to this section shall be subject to disciplinary action and civil
8 penalties pursuant to sections 8, 9 and 12 of P.L.1978, c.73
9 (C.45:1-21 to 45:1-22 and 45:1-25).

10 f. An insurer or insurance association shall make available to the
11 review panel or the board, upon request, any records of termination or
12 denial of coverage to a practitioner or surcharge assessed on account
13 of the practitioner's practice method or medical malpractice claims
14 history, which occurred up to five years prior to the effective date of
15 P.L.1989, c.300 (C.45:9-19.4 et al.).

16 g. For the purposes of this section, "practitioner" means a person
17 licensed to practice: medicine and surgery under chapter 9 of Title 45
18 of the Revised Statutes or a medical resident or intern; or podiatry
19 under chapter 5 of Title 45 of the Revised Statutes.

20 h. Any insurer or insurance association authorized to issue medical
21 malpractice liability insurance in the State shall notify the
22 Commissioner of Banking and Insurance, in a form and manner
23 specified by the commissioner, of any medical malpractice claim
24 settlement, judgment or arbitration award involving any practitioner
25 licensed by the State Board of Medical Examiners and insured by the
26 insurer or insurance association. The notification shall include the
27 specialty or area of professional practice of the practitioner and the
28 amount of the settlement, judgment or arbitration award, but shall not
29 include the name or other identifying information of the practitioner.
30 (cf: P.L.1989, c.300, s.4)

31

32 24. (New section) a. As used in this section:

33 "Annuity" means an annuity issued by an insurer licensed or
34 authorized to do business in this State which is a qualified assignment
35 under section 130 of the federal Internal Revenue Code of 1986, 26
36 U.S.C. s.130.

37 "Judgment creditor" means a claimant who is the recipient of an
38 award for economic or noneconomic damages, or both, that is the
39 result of an action filed against a health care provider for medical
40 malpractice, which award is subject to the provisions of subsection b.
41 of this section.

42 "Judgment debtor" means a health care provider who, as a
43 defendant in an action brought for medical malpractice, is required to
44 pay the claimant an award that is subject to the provisions of this
45 section.

46 "Noneconomic damages" means damages for physical and

1 emotional pain, suffering, inconvenience, physical impairment, mental
2 anguish, disfigurement, loss of enjoyment of life, loss of society and
3 companionship, loss of consortium, hedonic damages, injury to
4 reputation, and all other nonpecuniary losses of any kind or nature.

5 "Structured payment agreement" means an agreement made to
6 settle a claim or lawsuit or respond to a judgment in an action brought
7 for medical malpractice by an injured person whereby a series of
8 periodic payments, rather than a lump sum payment, is made over time
9 to a claimant, in accordance with the needs of the claimant or the
10 claimant's family, either through the purchase of an annuity or the
11 establishment of a trust fund, or by another means approved by the
12 court.

13 b. (1) Unless otherwise agreed to by the parties, in any judgment
14 resulting from a medical malpractice action brought by a claimant for
15 medical malpractice in which the noneconomic damages are less than
16 or equal to \$1,000,000, the court shall enter a judgment ordering that
17 all of the money damages, both economic and noneconomic, be paid
18 immediately.

19 (2) Unless otherwise agreed to by the parties, in any judgment
20 resulting from a medical malpractice action brought by a claimant for
21 medical malpractice in which the noneconomic damages exceed
22 \$1,000,000, the court shall enter a judgment ordering that 50% of the
23 noneconomic damages be paid immediately, with the costs and
24 attorney's fees to be paid from that amount. The remaining 50% of the
25 judgment shall be paid over 60 months in the form of a structured
26 payment agreement by any person, organization, group, or insurer that
27 is contractually liable to pay the judgment.

28 c. The structured payment agreement shall specify: the recipient
29 of the payments; the dollar amount of the payments; the interval
30 between payments; the number of payments or the period of time over
31 which payments are to be made; and the persons to whom money
32 damages are owed, if any, in the event of the judgment creditor's
33 death.

34 d. In the event of the judgment creditor's death, any amounts due
35 and owing pursuant to subsection b. of this section shall be paid to the
36 judgment creditor's estate.

37 e. The judgment debtor or the judgment debtor's insurer shall be
38 required to: post a bond or security; or, as otherwise provided by
39 regulation of the Department of Banking and Insurance, assure full
40 payment of the noneconomic damages awarded. A bond shall not be
41 deemed adequate unless it is written by a company authorized to do
42 business in this State and is rated A-, or better, by A.M. Best
43 Company or such other company as is approved by the Department of
44 Banking and Insurance. If the judgment debtor is unable to adequately
45 assure full payment of the judgment, the judgment, reduced to present
46 value, shall be paid to the claimant in a lump sum. No bond may be

1 canceled or be subject to cancellation unless at least 60 days' advance
2 written notice is filed with the court and the claimant. Upon
3 termination of periodic payments, the security, or so much as remains,
4 shall be returned to the judgment debtor.

5 f. Upon the purchase of an annuity, establishment of a trust, or
6 approval of another arrangement for periodic payments by a court, any
7 obligation of the judgment debtor with respect to the judgment shall
8 cease.

9
10 25. Section 1 of P.L.1997, c.365 (C.45:9-19.17) is amended to
11 read as follows:

12 1. a. A physician who maintains a professional medical practice in
13 this State and has responsibility for patient care is required to be
14 covered by medical malpractice liability insurance in the sum of
15 \$1,000,000 per occurrence and \$3,000,000 per policy year, with
16 extended reporting endorsement coverage for claims made policies,
17 also known as "tail coverage," issued by a carrier authorized to write
18 medical malpractice liability insurance policies in this State, or, if such
19 liability coverage is not available, by a letter of credit for at least [the
20 minimum amount required by the State Board of Medical Examiners]
21 \$500,000 .

22 The physician shall notify the State Board of Medical Examiners of
23 the name and address of the insurance carrier or the institution issuing
24 the letter of credit, pursuant to section 7 of P.L.1989, c.300
25 (C.45:9-19.7).

26 b. A physician who is in violation of this section is subject to
27 disciplinary action and civil penalties pursuant to sections 8, 9 and 12
28 of P.L.1978, c.73 (C.45:1-21 to 22 and 45:1-25).

29 c. The State Board of Medical Examiners [shall] may, pursuant to
30 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
31 seq.), [adopt regulations which] establish [the] by regulation,
32 minimum [amount of a line] amounts for medical malpractice liability
33 insurance coverage and lines of credit [that is] in excess of those
34 amounts required pursuant to subsection a. of this section.

35 d. The State Board of Medical Examiners shall notify all physicians
36 licensed by the board of the requirements of this section within 30 days
37 of the date of enactment of [this act] P.L. , c. (now before the
38 Legislature as this bill).

39 (cf: P.L.1997, c.365, s.1)

40
41 26. (New section) For the purposes of sections 27 and 28 of
42 P.L. , c. (C.)(pending before the Legislature as this bill):

43 "Commissioner" means the Commissioner of Banking and
44 Insurance.

45 "Fund" means the Medical Malpractice Liability Insurance Premium
46 Assistance Fund established pursuant to section 27 of P.L. , c.

1 (C.)(pending before the Legislature as this bill).

2 "Health care provider" means a physician, podiatrist, dentist and
3 chiropractor licensed pursuant to the provisions of Title 45 of the
4 Revised Statutes, a nurse licensed pursuant to the provisions of Title
5 45 of the Revised Statutes who is employed by a licensed hospital,
6 long-term care facility or assisted living facility in this State and any
7 person who purchases professional liability insurance on behalf of or
8 for a practitioner, including professional liability insurance protection
9 which is provided for hospital employed physicians through hospital
10 funding supplemented by purchased commercial insurance coverage.

11 "Practitioner" means a physician, podiatrist, dentist and
12 chiropractor and a nurse employed by a licensed hospital, long-term
13 care facility or assisted living facility in this State.

14

15 27. (New section) a. There is established a Medical Malpractice
16 Liability Insurance Premium Assistance Fund within the Department
17 of the Treasury as a nonlapsing, revolving fund.

18 b. The fund shall be comprised of the following revenue:

19 (1) an annual surcharge of \$3 per employee for all employers who
20 are subject to the New Jersey "unemployment compensation law,"
21 R.S.43:21-1 et seq., collected by the comptroller for the New Jersey
22 Unemployment Compensation Fund and paid over to the State
23 Treasurer for deposit in the fund annually, as provided by the
24 commissioner, which surcharge may, at the option of the employer, be
25 treated as a payroll deduction to each covered employee;

26 (2) an annual charge of \$50 to be imposed by the State Board of
27 Medical Examiners on every physician and podiatrist licensed by the
28 board pursuant to the provisions of R.S.45:9-1 et seq., collected by
29 the board and remitted to the State Treasurer for deposit into the fund;

30 (3) an annual charge of \$50 to be imposed by the State Board of
31 Chiropractic Examiners on every chiropractor licensed by the board
32 pursuant to the provisions of P.L.1989, c.153 (C.45:9-41.17 et seq.),
33 collected by the board and remitted to the State Treasurer for deposit
34 into the fund;

35 (4) an annual charge of \$50 to be imposed by the New Jersey State
36 Board of Dentistry on every dentist licensed pursuant to the provisions
37 of R.S.45:6-1 et seq., collected by the board and remitted to the State
38 Treasurer for deposit into the fund;

39 (5) an annual charge of \$50 to be imposed by the New Jersey State
40 Board of Optometrists on every optometrist licensed by the board
41 pursuant to the provisions of R.S.45:12-1 et seq., collected by the
42 board and remitted to the State Treasurer for deposit into the fund;
43 and

44 (6) an annual fee of \$50 to be assessed by the State Treasurer and
45 payable by each person licensed to practice law in this State, for
46 deposit into the fund.

1 The provisions of paragraphs (2) through (5) of this subsection
2 shall not apply to physicians, podiatrists, chiropractors, dentists or
3 optometrists who: are statutorily or constitutionally barred from the
4 practice of their respective profession; can show that they do not
5 maintain a bona fide office for the practice of their profession in this
6 State; are completely retired from the practice of their profession; are
7 on full-time duty with the armed forces, VISTA or the Peace Corps
8 and not engaged in practice; or have not practiced their profession for
9 at least one year.

10 The provisions of paragraph (6) of this subsection shall not apply
11 to attorneys who: are constitutionally or statutorily barred from the
12 practice of law; can show that they do not maintain a bona fide office
13 for the practice of law in this State; are completely retired from the
14 practice of law; are on full-time duty with the armed forces, VISTA or
15 the Peace Corps and not engaged in practice; are ineligible to practice
16 law because they have not made their New Jersey Lawyers' Fund for
17 Client Protection payment; or have not practiced law for at least one
18 year.

19 c. The State Treasurer shall deposit all moneys collected by him
20 pursuant to this section into the fund. Monies credited to the fund
21 may be invested in the same manner as assets of the General Fund and
22 any investment earnings on the fund shall accrue to the fund and shall
23 be available subject to the same terms and conditions as other monies
24 in the fund.

25 d. The fund shall be administered by the Department of Banking
26 and Insurance in accordance with the provisions of P.L. , c.
27 (C.)(pending before the Legislature as this bill).

28 e. The monies in the fund are specifically dedicated and shall be
29 utilized exclusively for the following purposes:

30 (1) \$20 million shall be allocated annually for the purpose of
31 providing relief towards the payment of medical malpractice liability
32 insurance premiums to health care providers in the State who have
33 experienced or are experiencing a liability insurance premium increase
34 in an amount as established by the commissioner by regulation and
35 meet the criteria established pursuant to section 28 of P.L. , c.
36 (C.)(pending before the Legislature as this bill);

37 (2) \$8 million shall be allocated annually to the Health Care
38 Subsidy Fund established pursuant to section 8 of P.L.1992, c.160
39 (C.26:2H-18.58) for the purpose of providing payments to hospitals
40 in accordance with the formula used for the distribution of charity care
41 subsidies that are provided pursuant to P.L.1992, c.160 (C.26:2H-
42 18.51 et al.);

43 (3) \$1 million shall be allocated annually for a student loan expense
44 reimbursement program for obstetrician/gynecologists, to be
45 established pursuant to section 29 of P.L. , c. (C.)(pending
46 before the Legislature as this bill); and

1 (4) \$1 million shall be allocated annually to the Division of Medical
2 Assistance and Health Services in the Department of Human Services
3 for the purposes provided in section 30 of P.L. , c. (C.)(pending
4 before the Legislature as this bill).

5 f. The fund shall expire three years after the effective date of P.L. ,
6 c. (C.)(pending before the Legislature as this bill).

7
8 28. (New section) a. In order to carry out the purposes of section
9 27 of P.L. , c. (C.)(pending before the Legislature as this bill), the
10 commissioner shall, at a minimum:

11 (1) establish a program to provide medical malpractice liability
12 insurance premium subsidies to health care providers from monies that
13 are contained in the fund;

14 (2) establish a methodology and procedures for determining
15 eligibility for, and providing subsidies from, the fund;

16 (3) maintain confidential records on each health care provider who
17 receives assistance from the fund;

18 (4) take all necessary action to recover the cost of the subsidy
19 provided to a health care provider that the commissioner determines
20 to have been incorrectly provided; and

21 (5) provide for subsidies to all practitioners who are members of
22 specialties and subspecialties who qualify for relief under subsection
23 b. of this section, including those whose professional liability insurance
24 protection is provided by hospital funding supplemented by purchased
25 commercial insurance coverage.

26 b. The commissioner shall certify classes of practitioners by
27 specialty and subspecialty for each type of practitioner, whose average
28 medical malpractice premium, as a class, on or after December 31,
29 2002, is in excess of an amount per year as determined by the
30 commissioner by regulation. In certifying classes eligible for the
31 subsidy, the commissioner, in consultation with the Commissioner of
32 Health and Senior Services, may also consider if access to care is
33 threatened by the inability of a significant number of practitioners, as
34 applicable, in a particular specialty or subspecialty, to continue
35 practicing in a geographic area of the State.

36 (1) In order to be eligible for a subsidy from the fund, a
37 practitioner shall have received a medical malpractice liability
38 insurance premium increase in an amount as determined by the
39 commissioner by regulation, for one or more of the following: upon
40 renewal on or after January 1, 2004, from the amount paid by that
41 practitioner in calendar year 2003; upon renewal on or after January
42 1, 2005, from the amount paid by that practitioner in calendar year
43 2004; and upon renewal on or after January 1, 2006, from the amount
44 paid by that practitioner in calendar year 2005; or

45 (2) In the case of a health care provider providing professional
46 liability insurance protection through self-insured hospital funding

1 supplemented with purchased commercial insurance coverage, in order
2 to be eligible for a subsidy from the fund, that provider shall have
3 increased its total professional liability funding obligation in an amount
4 as determined by the commissioner by regulation, for one or more of
5 the following: upon renewal on or after January 1, 2004, from the
6 professional liability funding obligation paid by that provider in
7 calendar year 2003; upon renewal on or after January 1, 2005, from
8 the professional liability funding obligation paid by that provider in
9 calendar year 2004; and upon renewal on or after January 1, 2006,
10 from the professional liability funding obligation paid by that provider
11 in calendar year 2005.

12 (3) The amount of the subsidy shall be an amount, as determined
13 by the commissioner by regulation, of the increase from the preceding
14 year's premium or self-insured professional liability funding obligation;
15 except that no health care provider shall receive a subsidy in any year
16 that is greater than an amount as determined by the commissioner by
17 regulation.

18 c. A practitioner who has been subject to a disciplinary action or
19 civil penalty by the practitioner's respective licensing board pursuant
20 to sections 8, 9 or 12 of P.L.1978, c.73 (C.45:1-21, 22 or 25), when
21 that action or penalty relates to the practitioner's provision of, or
22 failure to provide, treatment or care to a patient, is not eligible for a
23 subsidy from the fund.

24 d. (1) A practitioner who receives a subsidy from the fund shall be
25 required to practice in that practitioner's specialty or subspecialty in
26 this State for a period of at least two years after receipt of the subsidy.

27 (2) A practitioner who fails to comply with the provisions of
28 paragraph (1) of this subsection shall be required to repay to the
29 commissioner the amount of the subsidy, in whole or in part as
30 determined by the commissioner.

31 e. The commissioner may waive the criteria for eligibility for a
32 subsidy established pursuant to this section, if the commissioner
33 determines that access to care for a particular specialty is threatened
34 because of an inability of a sufficient number of practitioners in that
35 specialty or subspecialty to practice in a geographic area of the State.

36 f. The State Board of Medical Examiners, the State Board of
37 Chiropractic Examiners, the New Jersey State Board of Dentistry and
38 the New Jersey Board of Nursing shall each provide to the
39 commissioner, on a quarterly basis, the names of the practitioners who
40 have been subject to a disciplinary action or civil penalty by the
41 practitioner's respective licensing board.

42

43 29. (New section) a. There is established a student loan expense
44 reimbursement program within the Higher Education Student
45 Assistance Authority for obstetrician/gynecologists who agree to
46 practice in State designated underserved areas as established pursuant

1 to section 1 of P.L.1999, c.46 (C.18A:71C-35). The authority shall
2 implement the program in consultation with the Commissioners of
3 Banking and Insurance and Health and Senior Services.

4 b. (1) An obstetrician/gynecologist who receives a payment under
5 the student loan expense reimbursement program shall be required to
6 practice as an obstetrician/gynecologist in an underserved area in this
7 State for a period of at least four years after receipt of the payment.

8 (2) An obstetrician/gynecologist who fails to comply with the
9 provisions of paragraph (1) of this subsection shall be required to
10 repay to the Higher Education Student Assistance Authority the
11 amount of the payment, in whole or in part as determined by the
12 authority.

13 c. The authority shall adopt rules and regulations, pursuant to the
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
15 seq.), to effectuate the purposes of subsection a. of this section,
16 including, but not limited to: eligibility for the program, procedures
17 for application, selection of participants, establishment and
18 nullification of contracts established with participants under the
19 program, reports to the program by participants, and recruitment of
20 participants.

21

22 30. (New section) Within the limits of funds appropriated pursuant
23 to section 27 of P.L. , c. (C.)(pending before the Legislature as
24 this bill) and such other funds as may be available for this purpose, the
25 FamilyCare Health Coverage Program established pursuant to
26 P.L.2000, c.71 (C.30:4J-1 et seq.) shall enroll into the program
27 women whose eligibility under the Medicaid New Jersey Care pregnant
28 women program or the "New Jersey Standardized Parent Service
29 Package," Demonstration Population 3, Medicaid expansion for
30 uninsured pregnant woman, has expired and whose family income does
31 not exceed 100% of the federal poverty level.

32 The Commissioner of Human Services shall establish a presumptive
33 eligibility process to provide for an efficient transition into the
34 FamilyCare Health Coverage Program from the Medicaid program
35 pursuant to this section.

36

37 31. There is established the "Medical Care Availability Task
38 Force."

39 a. The task force shall consist of 17 members as follows:

40 (1) the Commissioners of Banking and Insurance, Health and
41 Senior Services, and Human Services, and the Director of the
42 Administrative Office of the Courts, or their designees, who shall serve
43 ex officio; and

44 (2) 13 public members, who shall include: one person appointed
45 upon the recommendation of an organization that represents
46 physicians; one person appointed upon the recommendation of an

1 organization that represents osteopathic physicians and surgeons; one
2 person appointed upon the recommendation of an organization that
3 represents dentists; one person appointed upon the recommendation
4 of an organization that represents hospitals; one person appointed
5 upon the recommendation of an organization that represents teaching
6 hospitals; one person appointed upon the recommendation of an
7 organization that represents trial lawyers; one person appointed upon
8 the recommendation of an organization that represents attorneys; one
9 person appointed upon the recommendation of an organization that
10 represents medical malpractice insurers; one person appointed upon
11 the recommendation of an organization that represents managed care
12 carriers; and four persons who represent the interests of health care
13 consumers.

14 Of the 13 public members, five shall be appointed by the Governor,
15 with the advice and consent of the Senate; four shall be appointed by
16 the President of the Senate; and four shall be appointed by the Speaker
17 of the General Assembly. The Governor, the President of the Senate,
18 and the Speaker of the General Assembly shall consult with each other
19 on the appointment of the public members.

20 b. Vacancies in the membership of the task force shall be filled in
21 the same manner provided for the original appointments. The public
22 members of the task force shall serve without compensation but may
23 be reimbursed for traveling and other miscellaneous expenses
24 necessary to perform their duties, within the limits of funds made
25 available to the task force for its purposes.

26 c. (1) The task force shall organize as soon as practicable, but no
27 later than the 30th day after the appointment of its members, and shall
28 select a chairperson and vice-chairperson from among the members.
29 The chairperson shall appoint a secretary who need not be a member
30 of the task force.

31 (2) The task force may meet at the call of the chairperson and hold
32 hearings at the times and in the places it may deem appropriate and
33 necessary to fulfill its charge. The task force shall be entitled to call
34 to its assistance, and avail itself of the services of, the employees of
35 any State, county or municipal department, board, bureau, commission
36 or agency as it may require and as may be available to it for its
37 purposes.

38 (3) The Department of Banking and Insurance shall provide staff
39 services to the task force.

40 d. The purpose of the task force shall be to study the following
41 issues:

42 (1) the advantages and disadvantages of establishing limitations on
43 noneconomic damages for medical malpractice judgments and on
44 extending current limitations on liability that apply to nonprofit
45 hospitals to employees, other than physicians, of those hospitals;

- 1 (2) the impact of third party reimbursement policies by insurers and
2 health maintenance organizations on access to health care services in
3 the context of the current affordability crisis in the State affecting
4 health care providers in the purchase of necessary liability coverage;
5 (3) the advantages and disadvantages of adopting additional
6 changes to the statute of limitations regarding medical malpractice
7 actions;
8 (4) the advantages and disadvantages of establishing additional
9 procedures for mediation of actions alleging medical malpractice and
10 for screening for frivolous medical malpractice lawsuits; and
11 (5) the advantages and disadvantages of establishing a pre-suit
12 procedure.
13 e. The task force shall present a report of its findings and
14 recommendations to the Governor and the Legislature no later than 24
15 months after the date of its initial meeting, and shall be authorized to
16 periodically issue a summary of its deliberations prior to the
17 presentation of its report.

18

19 32. This act shall take effect on the 30th day after enactment and
20 shall apply to causes of action for medical malpractice that accrue on
21 or after that effective date; except that sections 14 through 16 and
22 section 22 shall take effect on the 180th day after the date of
23 enactment, sections 17 and 19 shall take effect on the 90th day after
24 the date of enactment, and the amendatory provisions of sections 3 and
25 4 shall apply to injuries sustained at birth on or after the effective date
26 of this act. Section 29 shall expire three years after the effective date.

27

28

29

STATEMENT

30

31 This bill, which is designated the "New Jersey Medical Care Access
32 and Responsibility and Patients First Act," is designed to implement a
33 number of reforms relating to tort liability as it concerns medical
34 malpractice, as well as health care system and medical malpractice
35 liability insurance reforms.

36 Specifically, the bill provides for the following:

37

Tort Liability Reforms:

38 The bill amends N.J.S.2A:14-2 and N.J.S.2A:14-21 to provide that
39 actions by or on behalf of a minor that have accrued for medical
40 malpractice for injuries sustained at birth must be commenced prior to
41 the minor's 13th birthday. These statutory changes would not affect
42 the discovery doctrine in any way. The bill also provides that in the
43 event that an action by or on behalf of a minor that has accrued for
44 medical malpractice for injuries sustained at birth is not commenced by
45 the minor's parent or guardian prior to the minor's 12th birthday, the
46

1 minor or a person 18 years of age or older designated by the minor to
2 act on the minor's behalf would be permitted to commence such an
3 action.

4 The bill provides for court referral of a medical malpractice action
5 to a complementary dispute resolution mechanism if the judge
6 presiding over the action determines, within 30 days after the
7 discovery end date, that the referral may encourage early disposition
8 or settlement of the action. If the judge makes that determination, the
9 matter is to be referred to complementary dispute resolution pursuant
10 to Rule 1:40 of the New Jersey Rules of Court.

11 The bill also provides that a health care provider named as a
12 defendant in a medical malpractice action may file an affidavit of
13 noninvolvement with the court. The affidavit of noninvolvement is to
14 set forth the facts that demonstrate that the provider was misidentified
15 or otherwise not involved, individually or through its servants or
16 employees, in the care and treatment of the claimant, and was not
17 obligated, either individually or through its servants or employees, to
18 provide for the care and treatment of the claimant. The bill also
19 provides penalties for false statements made in the affidavit or in
20 challenging the affidavit.

21 The bill establishes qualifications for expert witnesses in medical
22 malpractice actions and for the purpose of executing an affidavit of
23 merit, and provides that an expert must have the same type of practice
24 and possess the same credentials, as applicable, as the defendant health
25 care provider, unless waived by the court. The bill prohibits expert
26 witnesses from testifying on a contingency fee basis. The bill also
27 provides for penalties for an individual or entity who threatens to take
28 or takes adverse action against a person in retaliation for that person
29 providing or agreeing to provide expert testimony, or for that person
30 executing an affidavit of merit, which adverse action relates to that
31 person's employment, accreditation, certification, credentialing or
32 licensure.

33 With respect to the payment of medical malpractice judgments, the
34 bill provides that in any medical malpractice judgment in which the
35 noneconomic damages (those for pain and suffering) are \$1 million or
36 less, unless otherwise agreed to by the parties, the court is to enter a
37 judgment ordering that money damages be paid immediately. In any
38 judgment in which the noneconomic damages exceed \$1 million, unless
39 otherwise agreed to by the parties, 50% of the money damages are to
40 be paid immediately, with the costs and attorney's fees paid from that
41 amount. The remaining 50% of the judgment is to be paid over 60
42 months in the form of a structured payment agreement.

43 Further, in order to provide the court with discretion to modify jury
44 awards, the bill modifies the standard of review to be used by the court
45 in reviewing the amount of a jury award to require the court to
46 consider the evidence in the light most favorable to the non-moving

1 party and to allow the court to determine whether the award is clearly
2 inadequate or excessive in view of the nature of the medical condition
3 or injury that is the cause of action or because of passion or prejudice
4 by the jury.

5

6 **Health Care System Reforms:**

7 The bill expands the State's "Good Samaritan" law to provide
8 immunity from civil damages to licensed health care professionals,
9 emergency medical technicians and mobile intensive care paramedics
10 whose duty does not require a response to a patient emergency
11 situation, who, in good faith, respond to a life-threatening emergency
12 or respond to a request for emergency assistance in a life-threatening
13 emergency within a hospital or other licensed health care facility or a
14 State psychiatric hospital operated by the Department of Human
15 Services. The immunity shall not apply: to acts or omissions
16 constituting gross negligence, recklessness or willful misconduct; if a
17 provider-patient relationship existed before the emergency; if
18 consideration in any form is provided to the health care professional
19 for the service rendered; or if a general hospital has not reasonably and
20 adequately staffed its emergency department.

21 Further, the bill provides that a health care professional is not liable
22 for civil damages for injury or death caused in an emergency situation
23 occurring in the health care professional's private practice or in a
24 health care facility or State psychiatric hospital on account of a failure
25 to inform a patient of the possible consequences of a medical
26 procedure when the failure to inform is caused by any of the following:

- 27 - the patient was unconscious;
28 - the medical procedure was undertaken without the consent of the
29 patient because the health care professional reasonably believed that
30 the medical procedure should be undertaken immediately and that
31 there was insufficient time to fully inform the patient; or
32 - the medical procedure was performed on a person legally
33 incapable of giving informed consent, and the health care professional
34 reasonably believed that the medical procedure should be undertaken
35 immediately and that there was insufficient time to obtain the informed
36 consent of the person authorized to give such consent for the patient.

37 The immunity provided is applicable only to actions for damages for
38 an injury or death arising as a result of a health care professional's
39 failure to inform, and not to actions for damages arising as a result of
40 a health care professional's negligence in rendering or failing to render
41 treatment.

42 The bill strengthens reporting requirements by physicians to the
43 State Board of Medical Examiners (BME) to ensure that the BME is
44 promptly informed of any pending or final action by any criminal
45 authority in this State or any other state or federal jurisdiction or any
46 arrest or conviction for a criminal or quasi-criminal act, by requiring

1 that a physician report, within 10 days, the action or his arrest or
2 conviction, for crimes that include, but are not limited to, criminal
3 homicide, aggravated assault, sexual assault, criminal sexual contact
4 or lewdness, or an offense involving any controlled dangerous
5 substance or controlled substance analog.

6 The bill also ensures that health care facilities, State psychiatric
7 hospitals and other physicians affiliated with a physician who has been
8 disciplined by the BME, are notified of its action, within 30 days of the
9 action. Similarly, the bill ensures that a health care facility, State
10 psychiatric hospital or health maintenance organization is promptly
11 notified by the BME if, during the course of an investigation of a
12 physician, it requests information from that facility or health
13 maintenance organization regarding that physician, and subsequently
14 determines that no disciplinary action is warranted.

15

16 **Medical Malpractice Liability Insurance Reforms:**

17 To avoid the appearance of any conflicts of interest, the bill
18 prohibits any person who is an officer, director or board member of a
19 professional association for health care providers to serve concurrently
20 as an officer, director or board member of a State-domiciled medical
21 malpractice liability insurer that issues policies in the State.

22 For the purpose of negotiating a reduced medical malpractice
23 liability insurance premium, the bill would permit physicians to join
24 together, by means of a joint contract, to form a "Medical Malpractice
25 Liability Insurance Purchasing Alliance."

26 The bill provides that a medical malpractice liability insurance
27 policy may contain a provision that provides a person insured under
28 the policy with the exclusive right to require the insurer to obtain the
29 consent of the insured to settle any claim filed against the insured; but,
30 if the policy contains that provision, the insurer would be required to
31 offer an endorsement to the policy that permits the insurer to settle a
32 claim filed under the policy without first having obtained the insured's
33 consent. The insurer would be required to establish a premium for the
34 endorsement which reflects any savings or reduced costs attributable
35 to the endorsement, and the insured would have the option of
36 accepting or refusing the endorsement.

37 Another provision to provide premium relief to health care
38 providers is the requirement that every medical malpractice liability
39 insurer offer individual or group medical malpractice liability insurance
40 policies with a deductible, at the option of the insured, in an amount
41 of at least \$5,000 per claim and up to \$1 million per claim, with the
42 insurer being permitted to require the insured to provide collateral for
43 the deductible amount to the insurer. The deductibles offered by an
44 insurer are subject to the approval of the Commissioner of Banking
45 and Insurance. For policies with any deductible, the insurer would be
46 responsible for payment of the deductible and would be reimbursed for

1 that amount by the insured.

2 To provide increased oversight of medical malpractice insurers, the
3 bill requires that every annual statement filed by a medical malpractice
4 insurer in this State with the Department of Banking and Insurance
5 include a certification by the chief executive officer or chief financial
6 officer that the rates for every category, subcategory or risk
7 classification are adequate to cover expected losses and expenses of
8 the insurer and to ensure the safety and soundness of the insurer.

9 The bill requires insurers authorized to transact medical malpractice
10 liability insurance in this State to provide at least 60 days' notice to the
11 insured for policy renewals and nonrenewals. Also, in the case of a
12 nonrenewal, the insurer must provide the reason for the nonrenewal.

13 The bill provides that if the Commissioner of Banking and
14 Insurance finds, after a hearing, that a rate in effect for any medical
15 malpractice insurer is not in compliance with the provisions of
16 N.J.S.A.17:29AA-1 et seq., the commissioner is to issue an order
17 specifying in what respects it so fails, and stating when the rate will no
18 longer be deemed effective. The order may provide for the retroactive
19 adjustment of rates and require the payment or credit of interest to
20 insureds covered during the adjusted rate period. Interest is to be
21 calculated at the percentage of interest prescribed in the Rules
22 Governing the Courts of the State of New Jersey for judgments,
23 awards and orders for the payment of money.

24 The bill also directs the commissioner, subject to standards adopted
25 by the National Association of Insurance Commissioners, to review the
26 current capitalization and reserve requirements applicable to medical
27 malpractice insurers, and to modify those requirements, as necessary,
28 to ensure the solvency of those insurers and the availability and
29 affordability of medical malpractice liability insurance in the State.

30 Also, the bill requires medical malpractice liability insurers to offer
31 their insureds the option to make premium payments in installments,
32 as prescribed by the Commissioner of Banking and Insurance, by
33 regulation.

34 In addition, N.J.S.A.17:30D-17, which requires all medical
35 malpractice insurers to notify the BME of every medical malpractice
36 judgment, settlement and award involving a physician or podiatrist
37 licensed in this State, is amended to also require notification to the
38 Commissioner of Banking and Insurance of these payments. The
39 notification to the commissioner is to enable the commissioner to
40 compile statistical data about medical malpractice payouts, and would
41 not include the name of or other identifying information about the
42 practitioner.

43 The bill removes from the BME the authority and discretion to set
44 the minimum amounts of medical malpractice liability insurance that
45 a physician who maintains a professional medical practice in this State
46 and has responsibility for patient care is required to carry, and instead

1 establishes those minimum amounts by statute. The bill sets the limits
2 at those currently in effect by virtue of regulations promulgated by the
3 BME, that is: medical malpractice liability insurance in the sum of \$1
4 million per occurrence and \$3 million per policy year, with extended
5 reporting endorsement coverage for claims made, also known as "tail
6 coverage;" or, if liability coverage is not available, by a letter of credit
7 for at least \$500,000. The BME may, however, increase these
8 minimum amounts by regulation.

9 The bill establishes the Medical Malpractice Liability Insurance
10 Premium Assistance Fund in the Department of the Treasury to
11 provide relief towards the payment of medical malpractice liability
12 insurance premiums to certain health care providers in the State who
13 have experienced or are experiencing a liability insurance premium
14 increase in an amount as established by the Commissioner of Banking
15 and Insurance by regulation. The fund will be administered by the
16 Department of Banking and Insurance, and will expire three years after
17 the effective date of the bill.

18 The bill provides that the Commissioner of Banking and Insurance
19 will certify classes of health care practitioners, by specialty and
20 subspecialty for each type of practitioner, whose average medical
21 malpractice premium, as a class, on or after December 31, 2002, is in
22 excess of an amount determined by the commissioner, or in the case
23 of health care practitioners whose professional liability insurance
24 protection is provided through self-insured hospital funding
25 supplemented with purchased commercial insurance, the total
26 professional liability funding obligation has increased in excess of an
27 amount determined by the commissioner. In certifying classes eligible
28 for the subsidy, the commissioner, in consultation with the
29 Commissioner of Health and Senior Services, may also consider if
30 access to care is threatened by the inability of a significant number of
31 practitioners, in a particular specialty or subspecialty, to continue
32 practicing in a geographic area of the State.

33 In order to be eligible for a subsidy from the fund, a practitioner
34 must have received a medical malpractice liability insurance premium
35 increase in an amount determined by the commissioner by regulation,
36 for one or more of the following: upon renewal on or after January 1,
37 2004, from the amount paid by that practitioner in 2003; upon renewal
38 on or after January 1, 2005, from the amount paid by that practitioner
39 in 2004; and upon renewal on or after January 1, 2006, from the
40 amount paid by that practitioner in 2005. The amount of the subsidy
41 will be determined by the commissioner by regulation.

42 In the case of a health care provider providing professional liability
43 insurance protection through self-insured hospital funding
44 supplemented with purchased commercial insurance coverage, that
45 provider must have increased its total professional liability funding
46 obligation in an amount as determined by the commissioner by

1 regulation, for one or more of the following: upon renewal on or after
2 January 1, 2004, from the professional liability funding obligation paid
3 by that practitioner in calendar year 2003; upon renewal on or after
4 January 1, 2005, from the professional liability funding obligation paid
5 by that practitioner in calendar year 2004; and upon renewal on or
6 after January 1, 2006, from the professional liability funding obligation
7 paid by that practitioner in calendar year 2005.

8 The Medical Malpractice Liability Insurance Premium Assistance
9 Fund is to be comprised of the following revenue:

10 -- an annual surcharge of \$3 per employee for all employers who
11 are subject to the New Jersey "unemployment compensation law";

12 -- an annual charge of \$50 imposed on each licensed physician,
13 podiatrist, chiropractor, dentist and optometrist by the appropriate
14 professional licensing board; and

15 -- an annual fee of \$50 imposed on each licensed attorney by the
16 State Treasurer.

17 The above charges and fees will not apply to physicians, podiatrists,
18 chiropractors, dentists, optometrists or attorneys who: are statutorily
19 or constitutionally barred from the practice of their respective
20 profession; can show that they do not maintain a bona fide office for
21 the practice of their profession in this State; are completely retired
22 from the practice of their profession; are on full-time duty with the
23 armed forces, VISTA or the Peace Corps and not engaged in practice;
24 have not practiced their profession for at least one year; or, in the case
25 of attorneys, are ineligible to practice law because they have not made
26 their New Jersey Lawyers' Fund for Client Protection payment.

27 The bill also specifies that a practitioner who has been subject to a
28 disciplinary action or civil penalty by the practitioner's licensing board,
29 when that action or penalty relates to the practitioner's provision of,
30 or failure to provide, treatment or care to a patient, is not eligible for
31 a subsidy from the fund.

32 The bill requires that a health care practitioner who receives a
33 subsidy from the fund practice in that practitioner's specialty or
34 subspecialty in this State for a period of at least two years after receipt
35 of the subsidy; and a practitioner who fails to comply with this
36 requirement must repay the Commissioner of Banking and Insurance
37 the amount of the subsidy, in whole or in part as determined by the
38 commissioner.

39 The monies in the Medical Malpractice Liability Insurance Premium
40 Assistance Fund are specifically dedicated and to be utilized
41 exclusively for the following purposes:

42 -- \$20 million is to be allocated annually for the purpose of
43 providing relief towards the payment of medical malpractice liability
44 insurance premiums to health care providers in the State who have
45 experienced or are experiencing a liability insurance premium increase
46 in an amount as established by the commissioner by regulation and

1 meet the criteria established under the bill;

2 -- \$8 million is to be allocated annually to the Health Care Subsidy
3 Fund established pursuant to N.J.S.A.26:2H-18.58 for the purpose of
4 providing payments to hospitals in accordance with the formula used
5 for the distribution of charity care subsidies that are provided pursuant
6 to N.J.S.A.26:2H-18.51 et al.;

7 -- \$1 million is to be allocated annually for a student loan expense
8 reimbursement program for obstetrician/gynecologists (as described
9 below); and

10 -- \$ 1 million is to be allocated annually to the Division of Medical
11 Assistance and Health Services in the Department of Human Services
12 to expand the NJ FamilyCare program (as described below).

13 The bill establishes a three-year student loan expense
14 reimbursement program within the Higher Education Student
15 Assistance Authority for obstetrician/gynecologists who agree to
16 practice in State designated underserved areas as established pursuant
17 to N.J.S.A.18A:71C-35. An obstetrician/gynecologist who receives
18 a payment under the program is required to practice as an
19 obstetrician/gynecologist in an underserved area in this State for a
20 period of at least four years after receipt of the payment; and an
21 obstetrician/gynecologist who fails to comply with this requirement
22 must repay the authority the amount of the payment, in whole or in
23 part as determined by the authority. The authority is to implement the
24 program in consultation with the Commissioners of Banking and
25 Insurance and Health and Senior Services, and to adopt rules and
26 regulations, pursuant to the "Administrative Procedure Act," to
27 effectuate the purposes of this new program, including, but not limited
28 to: eligibility for the program, procedures for application, selection of
29 participants, establishment and nullification of contracts established
30 with participants under the program, reports to the program by
31 participants, and recruitment of participants.

32 The bill provides that, within the limits of funds appropriated
33 pursuant to the bill and such other funds as may be available for this
34 purpose, NJ FamilyCare is to enroll into the program women whose
35 eligibility under the Medicaid New Jersey Care pregnant women
36 program or the "New Jersey Standardized Parent Service Package,"
37 Demonstration Population 3, Medicaid expansion for uninsured
38 pregnant woman, has expired and whose family income does not
39 exceed 100% of the federal poverty level. The Commissioner of
40 Human Services is to establish a presumptive eligibility process to
41 provide for an efficient transition into NJ FamilyCare from the
42 Medicaid program pursuant to this provision.

43 Finally, the bill establishes a 17-member "Medical Care Availability
44 Task Force" to study the following issues:

45 -- the advantages and disadvantages of establishing limitations on
46 non-economic damages for medical malpractice judgments and on

1 extending current limitations on liability that apply to nonprofit
2 hospitals to employees, other than physicians, of those hospitals;
3 -- the impact of third party reimbursement policies by insurers and
4 health maintenance organizations on access to health care services in
5 the context of the current affordability crisis in the State affecting
6 health care providers in the purchase of necessary liability coverage;
7 -- the advantages and disadvantages of adopting additional changes
8 to the statute of limitations regarding medical malpractice actions;
9 -- the advantages and disadvantages of establishing additional
10 procedures for mediation of actions alleging medical malpractice and
11 for screening for frivolous medical malpractice lawsuits; and
12 -- the advantages and disadvantages of establishing a pre-suit
13 procedure.

SENATE, No. 551

STATE OF NEW JERSEY
211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:
Senator JOSEPH F. VITALE
District 19 (Middlesex)

SYNOPSIS

"New Jersey Health Care Access and Patient Protection Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



S551 VITALE

2

1 AN ACT concerning medical professional liability, insurance reform
2 and patient protection and revising parts of statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. (New section) This act shall be known and may be cited as the
8 "New Jersey Medical Care Availability and Patient Protection Act."

9

10 2. (New section) The Legislature finds and declares that:

11 a. One of the most vital interests of the State is to ensure that high-
12 quality health care continues to be available in this State and that the
13 residents of this State continue to have access to a full spectrum of
14 health care providers, including highly trained physicians in all
15 specialties;

16 b. The State's health care system and its residents' access to health
17 care providers are threatened by a dramatic escalation in medical
18 malpractice liability insurance premiums, which is creating a crisis of
19 affordability in the purchase of necessary liability coverage for our
20 health care providers;

21 c. One particularly alarming result of rising premiums is that there
22 are increasing reports of doctors retiring or moving to other states
23 where insurance premiums are lower, dropping high-risk patients and
24 procedures, and practicing defensive medicine in a manner that may
25 significantly increase the cost of health care for all our citizens;

26 d. The reasons for the steep increases in the cost of medical
27 malpractice liability insurance are complex and involve issues related
28 to: the State's tort liability system; the State's health care system,
29 which includes issues related to patient safety and medical error
30 reporting; and the State's regulation and requirements concerning
31 medical malpractice liability insurers;

32 e. It is necessary and appropriate for the State to take meaningful
33 and prompt action to address the various interrelated aspects of these
34 issues that are impacted by, or impact on, the State's health care
35 system; and

36 f. To that end, this act provides for a comprehensive set of reforms
37 affecting the State's tort liability system, health care system and
38 medical malpractice liability insurance carriers to ensure that health
39 care services continue to be available and accessible to residents of the
40 State and that patient safety at health care facilities is enhanced.

41

42 3. (New section) As used in sections 3 through 9 of P.L. , c.
43 (C.) (pending before the Legislature as this bill):

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

S551 VITALE

1 "Health care provider" means an individual or entity, which, acting
2 within the scope of its licensure or certification, provides health care
3 services, and includes, but is not limited to, a physician, dentist, nurse,
4 pharmacist or other health care professional whose professional
5 practice is regulated pursuant to Title 45 of the Revised Statutes, and
6 a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1
7 et seq.).

8 "Medical malpractice" means a negligent act or omission by a health
9 care provider in the rendering of professional services, which act or
10 omission is the proximate cause of a personal injury or wrongful death.

11

12 4. N.J.S.2A:14-2 is amended to read as follows:

13 2A:14-2. Every action at law for an injury to the person caused by
14 the wrongful act, neglect or default of any person within this
15 [state] State shall be commenced within 2 years next after the cause
16 of any such action shall have accrued; except that an action by or on
17 behalf of a minor that has accrued for medical malpractice for injuries
18 sustained at birth shall be commenced prior to the minor's 10th
19 birthday.

20 (cf: N.J.S.2A:14-2)

21

22 5. N.J.S.2A:14-21 is amended to read as follows:

23 2A:14-21. If any person entitled to any of the actions or
24 proceedings specified in [sections] N.J.S.2A:14-1 to 2A:14-8 or
25 [sections] N.J.S.2A:14-16 to 2A:14-20 [of this title] or to a right or
26 title of entry under [section] N.J.S.2A:14-6 [of this title] is or shall
27 be, at the time of any such cause of action or right or title accruing,
28 under the age of 21 years, or insane, such person may commence such
29 action or make such entry, within such time as limited by [said
30 sections] those statutes, after his coming to or being of full age or of
31 sane mind. Notwithstanding the provisions of this section to the
32 contrary, an action by or on behalf of a minor that has accrued for
33 medical malpractice for injuries sustained at birth shall be commenced
34 prior to the minor's 10th birthday, as provided in N.J.S.2A:14-2.

35 (cf: N.J.S.2A:14-21)

36

37 6. (New section) a. A person shall not commence an action
38 alleging medical malpractice against a health care provider, unless the
39 person has given the health care provider written notice of that
40 proposed action at least 180 days before the action is filed.

41 b. The notice of intent to file an action shall be mailed, by certified
42 or registered mail, to the last known professional business address or
43 residential address of the health care provider who is the subject of the
44 proposed action. Proof of the mailing of the notice required pursuant
45 to this section shall be prima facie evidence of compliance. If no
46 professional business or residential address is known, notice may be

S551 VITALE

1 mailed to the health care facility where the care that is the subject of
2 the proposed action was rendered.

3 c. A notice given to a health care provider pursuant to this section
4 shall contain, at a minimum, a statement of the following:

5 (1) the factual basis for the proposed action;

6 (2) the applicable standard of practice or care alleged by the
7 claimant;

8 (3) the manner in which it is claimed that the applicable standard
9 of practice or care was breached by the health care provider;

10 (4) the alleged action that should have been taken to achieve
11 compliance with the alleged standard of practice or care;

12 (5) the manner in which it is alleged that the breach of the standard
13 of practice or care was the proximate cause of the injury that is the
14 subject of the proposed action; and

15 (6) the names of all health care providers that the claimant is
16 notifying pursuant to this section in connection with the proposed
17 action.

18 d. No later than 90 days after receipt of the notice pursuant to this
19 section, a health care provider who is a recipient of the notice shall
20 furnish to the claimant a written response that contains a statement of
21 the following:

22 (1) the factual basis for the defense of the proposed action;

23 (2) the standard of practice or care that the health care provider
24 claims to be applicable to the proposed action and that the health care
25 provider complied with that standard;

26 (3) the manner in which it is claimed by the health care provider
27 that there was compliance with the applicable standard of practice or
28 care; and

29 (4) the manner in which the health care provider contends that the
30 alleged negligence was not the proximate cause of the claimant's
31 alleged injury.

32 e. No earlier than 60 days, but before 180 days, after the notice is
33 mailed, the claimant and health care provider notice recipient shall
34 conduct a pre-suit information session to determine the appropriate
35 parties to the proposed action and such other issues as the parties may
36 agree to discuss.

37 (1) The session shall be conducted by a neutral third party, to be
38 called a "discovery master," who shall be selected from a list of
39 qualified discovery masters that is maintained by the Department of
40 Banking and Insurance. The claimant shall initiate the session and
41 make any necessary arrangements to hold the session, at a time and
42 place that is acceptable to all parties. If necessary, multiple sessions
43 may be scheduled.

44 (2) The claimant shall request from the department a list of three
45 discovery masters, from which one master shall be chosen. The
46 selection of a master shall be pursuant to the written agreement of the

1 parties. If the parties cannot agree on a master from the list of three
2 masters provided by the department, the parties may submit the names
3 of other masters to each other for consideration. If the parties cannot
4 agree on a master from that list, the master shall be selected from the
5 next available master on the list maintained by the department.

6 A person serving as a master shall comply with neutrality standards
7 established by the Commissioner of Banking and Insurance, which
8 shall include ensuring against conflicts of interest, professional
9 relationships and such other issues as determined by the commissioner.

10 (3) Attorneys and parties to the proposed action have an obligation
11 to participate in the pre-suit information session in good faith in
12 accordance with department regulations.

13 (4) The discovery master and parties to the proposed action shall
14 review the notice of intent to file an action, the health care provider's
15 response and such other documents that the master or a party deems
16 relevant to the issue.

17 (5) If the session results in the parties' total or partial agreement
18 concerning which health care provider shall be named and which shall
19 not be named in an action, or any other issues, it shall be reduced to
20 writing and a copy thereof furnished to each party.

21 (6) Any necessary fees and expenses of the master with respect to
22 the information session shall be shared equally by the parties to the
23 proceeding.

24 (7) The outcome of the information session shall be filed with all
25 parties to the proposed action, including the health care provider's
26 medical malpractice insurer, within 10 days of the date of completion
27 of the session.

28 (8) The department shall adopt such rules and regulations, pursuant
29 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
30 et seq.), necessary to administer information sessions.

31 f. No later than 90 days after notice pursuant to this section is
32 mailed, a party seeking to investigate the matter may serve process to
33 compel both written and oral discovery, which shall be limited to
34 factual information directly related to the proposed action, including,
35 but not limited to, the production of medical records, test results,
36 films, videos and other items, as well as serving written interrogatories
37 and taking oral depositions. The claimant shall allow the health care
38 provider receiving the notice to have access to all of the medical
39 records related to the proposed action that are in the claimant's
40 control, and shall provide releases for any medical records related to
41 the proposed action that are not in the claimant's control, but of which
42 the claimant has knowledge.

43 g. No later than 90 days after notice pursuant to this section is
44 mailed, the health care provider who receives the notice shall allow the
45 claimant to have access to all medical records in his possession that are
46 related to the proposed action, but nothing in this subsection shall be

1 construed to restrict a health care provider who receives notice from
2 communicating with other health care providers and acquiring medical
3 records as may be necessary or pertinent to the proposed action.

4 h. The statute of limitations is tolled for 270 days, beginning on the
5 date the notice of intent to file is mailed, for all potential parties to the
6 proposed action.

7
8 7. (New section) a. A health care provider named as a defendant
9 in a medical malpractice action may cause the action against that
10 provider to be dismissed upon the filing of an affidavit of
11 noninvolvement with the court. The affidavit of noninvolvement shall
12 set forth, with particularity, the facts that demonstrate that the
13 provider was misidentified or otherwise not involved, individually or
14 through its servants or employees, in the care and treatment of the
15 claimant, and was not obligated, either individually or through its
16 servants or employees, to provide for the care and treatment of the
17 claimant.

18 b. A codefendant or claimant shall have the right to challenge an
19 affidavit of noninvolvement by filing a motion and submitting an
20 affidavit that contradicts the assertions of noninvolvement made by the
21 health care provider in the affidavit of noninvolvement.

22 c. If the court determines that a health care provider named as a
23 defendant falsely files or makes false or inaccurate statements in an
24 affidavit of noninvolvement, the court, upon motion or upon its own
25 initiative, shall immediately reinstate the claim against that provider.
26 Reinstatement of a party pursuant to this subsection shall not be barred
27 by any statute of limitations defense that was not valid at the time the
28 original action was filed.

29 In any action in which the health care provider is found by the court
30 to have knowingly filed a false or inaccurate affidavit of
31 noninvolvement, the court shall impose upon the person who signed
32 the affidavit or represented the party, or both, an appropriate sanction,
33 including, but not limited to, an order to pay to the other party or
34 parties the amount of the reasonable expenses incurred as a result of
35 the filing of the false or inaccurate affidavit, including a reasonable
36 attorney fee.

37 d. If the court determines that a plaintiff or his counsel falsely
38 objected to a health care provider's affidavit of noninvolvement, or
39 knowingly provided an inaccurate statement regarding a health care
40 provider's affidavit, the court shall impose upon the plaintiff or his
41 counsel, or both, an appropriate sanction, including, but not limited to,
42 an order to pay to the other party or parties the amount of the
43 reasonable expenses incurred as a result of the false objection or
44 inaccurate statement, including a reasonable attorney fee.

45
46 8. (New section) a. In an action alleging medical malpractice, a

1 person shall not give expert testimony or execute an affidavit pursuant
2 to the provisions of P.L.1995, c.139 (C.2A:53A-26 et seq.) on the
3 appropriate standard of care or practice unless the person is licensed
4 in the United States as a physician or other health care professional
5 and in the same profession as the defendant.

6 In order to qualify as an expert witness, the person shall meet the
7 following qualifications:

8 (1) If the party against whom or on whose behalf the testimony is
9 offered is a specialist, the person providing the testimony:

10 (a) shall have specialized at the time of the occurrence that is the
11 basis for the action in the same specialty as the party against whom or
12 on whose behalf the testimony is offered,

13 (b) shall be board certified in the same specialty as the party
14 against whom or on whose behalf the testimony is offered, and

15 (c) during the year immediately preceding the date of the
16 occurrence that is the basis for the claim or action, shall have devoted
17 a majority of his or her professional time to:

18 (i) the active clinical practice of the same health care profession in
19 which the defendant is licensed, and, if the defendant is a specialist, the
20 active clinical practice of that specialty;

21 (ii) the instruction of students in an accredited medical school,
22 other accredited health care professional school or accredited
23 residency or clinical research program in the same health care
24 profession in which the defendant is licensed, and, if that party is a
25 specialist, an accredited medical school, health care professional
26 school or accredited residency or clinical research program in the same
27 specialty; or

28 (iii) both; and.

29 (2) If the party against whom or on whose behalf the testimony is
30 offered is a general practitioner, the expert witness, during the year
31 immediately preceding the date of the occurrence that is the basis for
32 the claim or action, shall have devoted a majority of his professional
33 time to:

34 (a) active clinical practice as a general practitioner;

35 (b) the instruction of students in an accredited medical school,
36 health care professional school or accredited residency or clinical
37 research program in the same health care profession in which the party
38 against whom or on whose behalf the testimony is provided is licensed;
39 or

40 (c) both.

41 b. In determining the qualifications of an expert witness the court
42 shall, at a minimum, evaluate all of the following:

43 (1) the educational and professional training of the expert witness;

44 (2) the area of specialization of the expert witness;

45 (3) the length of time the expert witness has been engaged in the
46 active clinical practice or instruction of the health care profession or

1 specialty; and

2 (4) the relevancy of the expert witness' testimony.

3 c. The court may waive the requirements in subsection a. of this
4 section if it determines that, upon representation by an affidavit by the
5 plaintiff or defendant, as applicable, no witnesses are reasonably
6 available that meet the criteria set forth therein, and the person
7 testifying possesses sufficient training, experience and knowledge to
8 provide credible testimony. Under the provisions of this subsection,
9 with respect to a physician, the court may allow an expert who is
10 board certified in a specialty area of medicine to serve as an expert or
11 sign an affidavit when the medical service, procedure or care being
12 addressed is one that is performed by both the specialty of the
13 defendant physician and the specialty of the expert witness.

14 d. Nothing in this section shall limit the power of the court to
15 disqualify an expert witness on grounds other than the qualifications
16 set forth in this section.

17 e. In an action alleging medical malpractice, an expert witness shall
18 not testify on a contingency fee basis.

19

20 9. (New section) In any civil action for damages sustained as a
21 result of the death or injury of a person caused by medical malpractice
22 in which the jury has rendered a verdict in favor of the complaining
23 party, if there is a motion for additur or remittitur on the issue of the
24 quantum of non-economic damages, the court shall consider the
25 evidence in the light most favorable to the non-moving party and
26 determine whether the award constitutes palpably unreasonable
27 compensation to the complaining party for damages sustained as a
28 result of the medical malpractice.

29

30 10. (New section) a. For the purposes of this section:

31 "Annuity" means an annuity issued by an insurer licensed or
32 authorized to do business in this State which is a qualified assignment
33 agreement under section 130 of the federal Internal Revenue Code of
34 1986, 26 U.S.C. s.130;

35 "Judgment creditor" means a claimant who is the recipient of an
36 award for economic or non-economic damages, or both, that is the
37 result of an action filed against a health care provider for medical
38 malpractice, which award is subject to the provisions of subsection b.
39 of this section;

40 "Judgment debtor" means a health care provider who, as a
41 defendant in an action brought for medical malpractice, is required to
42 pay the claimant an award that is subject to the provisions of this
43 section;

44 "Structured payment agreement" means an agreement made to
45 respond to a judgment in an action brought for medical malpractice by
46 an injured person whereby a series of periodic payments, rather than

S551 VITALE

1 a lump sum payment, are made over time to a claimant, in accordance
2 with the needs of the claimant or his family, either through the
3 purchase of an annuity or the establishment of a trust fund, or by
4 another means approved by the court.

5 b. (1) Unless otherwise agreed to by the parties, in any judgment
6 resulting from a medical malpractice action brought by a claimant for
7 medical malpractice in which the damages are less than \$1,000,000,
8 the court shall enter a judgment ordering that the money damages shall
9 be paid immediately.

10 (2) Unless otherwise agreed to by the parties, in any judgment
11 resulting from a medical malpractice action brought by a claimant for
12 medical malpractice in which the damages exceed \$1,000,000, the
13 court shall enter a judgment ordering that 50% of the money damages
14 for economic and non-economic loss shall be paid immediately, with
15 the costs and attorney's fees paid from that amount. The remaining
16 50% of the judgment shall be paid over 36 months in the form of a
17 structured payment by any person, organization, group or insurer that
18 is contractually liable to pay the judgment.

19 c. The structured payment agreement shall specify the recipient of
20 the payments, the dollar amount of the payments, the interval between
21 payments, the number of payments or the period of time over which
22 payments are to be made and the persons to whom money damages are
23 owed, if any, in the event of the judgment creditor's death.

24 d. In the event of the judgment creditor's death, any amounts
25 attributable to the future medical treatment, care or custody, loss of
26 bodily function, or pain and suffering of the deceased judgment
27 creditor and any money damages awarded for loss of future earnings
28 shall not be reduced, nor payments terminated, by reason of the death
29 of the judgment creditor, but shall be paid to persons to whom the
30 judgment creditor owed a duty of support, as provided by law,
31 immediately prior to the judgment creditor's death, or if none, to the
32 judgment creditor's estate.

33 e. The judgment debtor, or his insurer, shall be required to post a
34 bond or security or otherwise to assure full payment of the damages
35 awarded. A bond is not adequate unless it is written by a company
36 authorized to do business in this State and is rated A-, or better, by
37 A.M. Best Company or such other company approved by the
38 Department of Banking and Insurance. If the judgment debtor is
39 unable to adequately assure full payment of the judgment, the
40 judgment, reduced to present value, shall be paid to the claimant in a
41 lump sum. No bond may be canceled or be subject to cancellation
42 unless at least 60 days' advance written notice is filed with the court
43 and the claimant. Upon termination of periodic payments, the security,
44 or so much as remains, shall be returned to the judgment debtor.

45 f. Upon the purchase of an annuity, establishment of a trust or
46 approval of another arrangement for periodic payments by a court, any

1 obligation of the judgment debtor with respect to the judgment shall
2 cease.

3
4 11. (New section) a. If an individual's actual health care facility
5 duty, including on-call duty, does not require a response to a patient
6 emergency situation, a health care professional who, in good faith,
7 responds to a life-threatening emergency or responds to a request for
8 emergency assistance in a life-threatening emergency within a hospital
9 or other health care facility, is not liable for civil damages as a result
10 of an act or omission in the rendering of emergency care. The
11 immunity granted pursuant to this section shall not apply to acts or
12 omissions constituting gross negligence, recklessness or willful
13 misconduct.

14 b. The provisions of subsection a. of this section do not apply to
15 a health care professional if a provider-patient relationship existed
16 before the emergency, or if consideration in any form is provided to
17 the health care professional for the service rendered.

18 c. The provisions of subsection a. of this section do not diminish
19 a general hospital's responsibility to reasonably and adequately staff its
20 emergency department.

21 d. A health care professional shall not be liable for civil damages
22 for injury or death caused in an emergency situation occurring in the
23 health care professional's private practice or in a health care facility on
24 account of a failure to inform a patient of the possible consequences
25 of a medical procedure when the failure to inform is caused by any of
26 the following:

27 (1) the patient was unconscious;

28 (2) the medical procedure was undertaken without the consent of
29 the patient because the health care professional reasonably believed
30 that a medical procedure should be undertaken immediately and that
31 there was insufficient time to fully inform the patient; or

32 (3) a medical procedure was performed on a person legally
33 incapable of giving informed consent, and the health care professional
34 reasonably believed that a medical procedure should be undertaken
35 immediately and that there was insufficient time to obtain the informed
36 consent of the person authorized to give such consent for the patient.

37 The provisions of this subsection are applicable only to actions for
38 damages for an injury or death arising as a result of a health care
39 professional's failure to inform, and not to actions for damages arising
40 as a result of a health care professional's negligence in rendering or
41 failing to render treatment.

42 e. As used in this section:

43 (1) "Health care professional" means a physician, dentist, nurse or
44 other health care professional whose professional practice is regulated
45 pursuant to Title 45 of the Revised Statutes and an emergency medical
46 technician or paramedic certified by the Commissioner of Health and
47 Senior Services pursuant to Title 26 of the Revised Statutes; and

1 (2) "Health care facility" means a health care facility licensed by
2 the Department of Health and Senior Services pursuant to P.L.1971,
3 c.136 (C.26:2H-1 et seq.).

4
5 12. Section 1 of P.L.1995, c.69 (C.45:9-19.16) is amended to read
6 as follows:

7 1. a. A physician licensed by the State Board of Medical
8 Examiners, or a physician who is an applicant for a license from the
9 State Board of Medical Examiners shall notify the board within 10
10 days of :

11 (1) any action taken against the physician's medical license by any
12 other state licensing board or any action affecting the physician's
13 privileges to practice medicine by any out-of-State hospital, health
14 care facility, health maintenance organization or other employer;

15 (2) the arrest or conviction of the physician for any of the
16 following offenses in this State or another state:

17 (a) criminal homicide pursuant to N.J.S.2C:11-2;

18 (b) aggravated assault pursuant to N.J.S.2C:12-1;

19 (c) sexual assault, criminal sexual contact or lewdness pursuant to
20 N.J.S.2C:14-2 through 2C:14-4; or

21 (d) an offense involving any controlled dangerous substance or
22 controlled substance analog as set forth in chapter 35 of Title 2C of
23 the New Jersey Statutes.

24 b. A physician who is in violation of this section is subject to
25 disciplinary action and civil penalties pursuant to sections 8, 9 and 12
26 of P.L.1978, c.73 (C.45:1-21 to 22 and 45:1-25).

27 c. The State Board of Medical Examiners shall notify all physicians
28 licensed by the board of the requirements of this section within 30 days
29 of the date of enactment of this act.

30 (cf: P.L.1995, c.69, s.1)

31
32 13. Section 13 of P.L.1989, c.300 (C.45:9-19.13) is amended to
33 read as follows:

34 13. a. In any case in which the State Board of Medical Examiners
35 refuses to issue, suspends, revokes or otherwise conditions the license,
36 registration, or permit of a physician, podiatrist or medical resident or
37 intern, the board shall, within 30 days of its action, notify each
38 licensed health care facility and health maintenance organization with
39 which the person is affiliated and every board licensee in the State with
40 which the person is directly associated in his private medical practice.

41 b. If, during the course of an investigation of a physician, the board
42 requests information from a health care facility or health maintenance
43 organization regarding that physician, and the board subsequently
44 determines that no disciplinary action is warranted, the board shall,
45 within 30 days, notify the health care facility or health maintenance
46 organization of its determination.

47 (cf: P.L.1989, c.300, s.13)

1 14. (New section) The State Board of Medical Examiners shall
2 report annually, by March 1 of each year, to the Senate Health, Human
3 Services and Senior Citizens and the Assembly Health and Human
4 Services Committees, or their successors. The board shall make the
5 information provided in the annual report available to the public by
6 posting the information on its web site.

7 The report shall include:

8 a. the number of complaint files against physicians that were
9 opened in the preceding calendar year;

10 b. the number of complaint files against physicians that were closed
11 in the preceding calendar year; and

12 c. the number of disciplinary sanctions imposed upon physicians in
13 the preceding calendar year, including the number of licensure
14 revocations and suspensions imposed, voluntary license surrenders
15 accepted, license applications denied and license reinstatements
16 denied.

17 The report issued in the first year shall contain the information
18 required in this section for the preceding three years.

19
20 15. (New section) The Legislature finds and declares that:

21 a. Adverse events, some of which are the result of preventable
22 errors, are inherent in all systems, and the health care literature
23 demonstrates that the great majority of medical errors result from
24 systems problems, not individual incompetence;

25 b. Well-designed systems have processes built in to minimize the
26 occurrence of errors, as well as to detect those that do occur; they
27 incorporate mechanisms to continually improve their performance;

28 c. To enhance patient safety, the goal is to craft a health care
29 delivery system that minimizes, to the greatest extent feasible, the
30 harm to patients that results from the delivery system itself;

31 d. An important component of a successful patient safety strategy
32 is a feedback mechanism that allows detection and analysis not only of
33 adverse events, but also of "near-misses";

34 e. To encourage disclosure of these events so that they can be
35 analyzed and used for improvement, it is critical to create a non-
36 punitive culture that focuses on improving processes rather than
37 assigning blame. Health care facilities and professionals must be held
38 accountable for serious preventable adverse events; however, the
39 current punitive medical malpractice environment, with its focus on
40 assigning blame and fixing liability, is not particularly effective in
41 promoting accountability and increasing patient safety, and is actually
42 a deterrent to the exchange of information required to reduce the
43 opportunity for errors to occur in the complex systems of care
44 delivery. Fear of sanctions induces health care professionals and
45 organizations to be silent about adverse events, resulting in serious
46 under-reporting; and

1 f. By establishing an environment that both mandates the
2 confidential disclosure of the most serious, preventable adverse events,
3 and also encourages the voluntary, anonymous and confidential
4 disclosure of less serious adverse events, as well as near misses, the
5 State seeks to increase the amount of information on systems failures,
6 analyze the sources of these failures and disseminate information on
7 effective practices for reducing systems failures and improving the
8 safety of patients.

9
10 16. (New section) a. As used in this section:

11 "Adverse event" means an event that is a negative consequence of
12 care that results in unintended injury or illness, which may or may not
13 have been preventable.

14 "Anonymous" means that information is presented in a form and
15 manner that prevents the identification of the person filing the report.

16 "Commissioner" means the Commissioner of Health and Senior
17 Services.

18 "Department" means the Department of Health and Senior Services.

19 "Event" means a discrete, auditable and clearly defined occurrence.

20 "Health care facility" or "facility" means a health care facility
21 licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.).

22 "Health care professional" means an individual, who, acting within
23 the scope of his licensure or certification, provides health care
24 services, and includes, but is not limited to, a physician, dentist, nurse,
25 pharmacist or other health care professional whose professional
26 practice is regulated pursuant to Title 45 of the Revised Statutes.

27 "Near-miss" means an occurrence that could have resulted in an
28 adverse event but the adverse event was prevented.

29 "Preventable event" means an event that could have been
30 anticipated and prepared against, but occurs because of an error or
31 other system failure.

32 "Serious preventable adverse event" means a preventable adverse
33 event that results in death or loss of a body part, or disability or loss
34 of bodily function lasting more than seven days or still present at the
35 time of discharge from a health care facility.

36 b. In accordance with the requirements established by the
37 commissioner by regulation, pursuant to this section, a health care
38 facility shall develop and implement a patient safety plan for the
39 purpose of improving the health and safety of patients at the facility.

40 The patient safety plan shall, at a minimum, include:

41 (1) a patient safety committee, as prescribed by regulation. The
42 commissioner may permit a facility to use its existing quality
43 improvement committee for this purpose if the existing committee
44 meets the requirements established for a patient safety committee;

45 (2) a process for multi-disciplinary teams of facility personnel with
46 appropriate competencies to conduct ongoing analysis and application

1 of evidence-based patient safety practices to reduce the probability of
2 adverse events resulting from exposure to the health care system
3 across a range of diseases and procedures;

4 (3) a process for multi-disciplinary teams of facility personnel with
5 appropriate competencies to conduct analyses of near-misses, with
6 particular attention to serious preventable adverse events and adverse
7 events; and

8 (4) a process for the provision of ongoing patient safety training
9 for facility personnel.

10 c. A health care facility shall report to the department, in a form
11 and manner established by the commissioner, every serious preventable
12 adverse event that occurs in that facility.

13 d. A health care facility shall assure that the patient affected by an
14 adverse event, or, in the case of a minor or a patient who is
15 incapacitated, the patient's parent or guardian or other family member,
16 as appropriate, is informed of the adverse event, no later than the end
17 of the episode of care, or, if discovery occurs after the end of the
18 episode of care, in a timely fashion as established by the commissioner
19 by regulation. If the patient's physician determines, in accordance with
20 criteria established by the commissioner by regulation that the
21 disclosure would seriously and adversely affect the patient's health,
22 then the facility shall notify the family member, if available. In the
23 event that an adult patient is not informed of the adverse event, the
24 facility shall assure that the physician includes a statement in the
25 patient's medical record that provides the reason for not informing the
26 patient pursuant to this section.

27 e. (1) A health care professional or other employee of a health
28 care facility is encouraged to make anonymous reports to the
29 department, in a form and manner established by the commissioner,
30 regarding near-misses, preventable events and adverse events that are
31 otherwise not subject to mandatory reporting pursuant to subsection
32 c. of this section.

33 (2) The commissioner shall establish procedures for and a system
34 to collect, store and analyze information voluntarily reported to the
35 department pursuant to this subsection. The repository shall function
36 as a clearinghouse for trend analysis of the information collected
37 pursuant to this subsection.

38 f. Any documents, materials or information received by the
39 department pursuant to the provisions of subsections c. and e. of this
40 section concerning preventable adverse events, serious preventable
41 adverse events and near-misses shall not be:

42 (1) subject to discovery or admissible as evidence or otherwise
43 disclosed in any civil, criminal or administrative action or proceeding;

44 (2) considered a public record under P.L.1963, c.73 (C.47:1A-1 et
45 seq.) or P.L.2001, c.404 (C.47:1A-5 et seq.); or

46 (3) used in an adverse employment action or in the evaluation of

1 decisions made in relation to accreditation, certification, credentialing
2 or licensing of an individual, which is based on the individual's
3 participation in the development, collection, reporting or storage of
4 information in accordance with this section.

5 The information received by the department may be used by the
6 department and the Attorney General for the purposes of this act and
7 for oversight of facilities and health care professionals; however, the
8 department and the Attorney General shall not use the information for
9 any other purpose.

10 g. Any documents, materials or information developed by a health
11 care facility as part of a process of self-critical analysis conducted
12 pursuant to subsection b. of this section concerning preventable
13 events, near-misses and adverse events, including serious preventable
14 adverse events, shall not be:

15 (1) subject to discovery or admissible as evidence or otherwise
16 disclosed in any civil, criminal or administrative action or proceeding;
17 or

18 (2) used in an adverse employment action or in the evaluation of
19 decisions made in relation to accreditation, certification, credentialing
20 or licensing of an individual, which is based on the individual's
21 participation in the development, collection, reporting or storage of
22 information in accordance with subsection b. of this section.

23 h. The commissioner shall, pursuant to the "Administrative
24 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt such
25 rules and regulations necessary to carry out the provisions of this
26 section. The regulations shall establish: criteria for a health care
27 facility's patient safety plan and patient safety committee; the time
28 frame and format for mandatory reporting of serious preventable
29 adverse events at a health care facility; the types of events that qualify
30 as serious preventable adverse events; and the circumstances under
31 which a health care facility is not required to inform a patient or the
32 patient's family about a serious preventable adverse event. In
33 establishing the criteria for reporting serious preventable adverse
34 events, the commissioner shall, to the extent feasible, use criteria for
35 these events that have been or are developed by organizations engaged
36 in the development of nationally recognized standards.

37
38 17. (New section) a. On or after the effective date of P.L. , c.
39 (pending before the Legislature as this bill) and except as provided in
40 subsection e. of this section, no person who is an officer, director or
41 board member of a professional association for health care providers
42 shall serve, simultaneously, as an officer, director or board member of
43 a State-domiciled medical malpractice liability insurer.

44 b. On or after the effective date of P.L. , c. (pending before the
45 Legislature as this bill) and except as provided in subsection e. of this
46 section, no more than one person who has been an officer, director or

1 board member of a professional association for health care providers
2 shall serve as an officer, director or board member of a State-
3 domiciled medical malpractice liability insurer.

4 c. As used in this section, "health care provider" means an
5 individual or entity, which, acting within the scope of its licensure or
6 certification, provides health care services, and includes, but is not
7 limited to, a physician, dentist, nurse or other health care professional
8 whose professional practice is regulated pursuant to Title 45 of the
9 Revised Statutes, and a health care facility licensed pursuant to
10 P.L.1971, c.136 (C.26:2H-1 et seq.).

11 d. A person or professional association who violates the provisions
12 of this section shall be liable for a civil penalty of \$10,000 for each
13 violation. The penalty shall be sued for and collected by the
14 Commissioner of Banking and Insurance in a summary proceeding in
15 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
16 c.274 (C.2A:58-10 et seq.).

17 e. In the case of an officer, director or board member of a medical
18 malpractice liability insurer who is an officer, director or board
19 member of a professional association for health care providers on the
20 effective date of P.L. , c. (pending before the Legislature as this
21 bill), the officer, director or board member shall have 180 days to
22 comply with the requirements of this section.

23

24 18. (New section) Physicians may join together, by means of a
25 joint contract under the procedures established by this section, to form
26 a "Medical Malpractice Liability Insurance Purchasing Alliance" for
27 the purpose of negotiating a reduced premium for its members
28 purchasing medical malpractice liability insurance. The joint contract
29 shall be executed by all members of the purchasing alliance.

30 a. As used in this section:

31 "Board" means a medical malpractice liability insurance purchasing
32 alliance board of directors provided for in this section.

33 "Commissioner" means the Commissioner of Banking and
34 Insurance.

35 "Medical Malpractice Liability Insurance Purchasing Alliance,"
36 "purchasing alliance" or "alliance" means a purchasing alliance
37 established pursuant to this section.

38 "Member" means a physician who is a member of a medical
39 malpractice liability insurance purchasing alliance as provided for in
40 this section.

41 b. The purchasing alliance, which may be a corporation, shall be
42 governed by a board of directors, elected by the members of the
43 purchasing alliance. No person may serve as an officer or director of
44 an alliance who has a prior record of administrative, civil or criminal
45 violations within the financial services industry. The directors shall
46 serve for terms of three years, and shall serve until their successors are

1 elected and qualified. The directors shall serve without compensation,
2 except for reimbursement for actual expenses.

3 c. The board shall adopt by-laws for the operation of the
4 purchasing alliance, which shall be effective upon ratification by a
5 two-thirds majority of the members. The by-laws shall include, but not
6 be limited to:

7 (1) the establishment of procedures for the organization and
8 administration of the alliance;

9 (2) procedures for the qualifications and admission of the members
10 of the alliance.

11 The bases for denial of membership shall include, but not be limited
12 to:

13 (a) performance of an act or practice that constitutes fraud or
14 intentional misrepresentation of material fact;

15 (b) previous denial of membership in the alliance; or

16 (c) previous expulsion from the alliance;

17 (3) procedures for the withdrawal of members from the alliance;

18 (4) procedures for the expulsion of members from the alliance.

19 The bases for expulsion shall include, but not be limited to:

20 (a) failure to pay membership or other fees required by the
21 purchasing alliance;

22 (b) failure to pay premiums in accordance with the terms of the
23 medical malpractice liability insurance policy or the terms of the joint
24 contract; or

25 (c) performance of an act or practice that constitutes fraud or
26 intentional misrepresentation of material fact; and

27 (5) procedures for the termination of the alliance.

28 d. In addition to the other powers authorized under this section, a
29 purchasing alliance shall have the authority to:

30 (1) set reasonable fees for membership in the alliance that will
31 finance reasonable and necessary costs incurred in administering the
32 purchasing alliance;

33 (2) negotiate premium rates for medical malpractice liability
34 insurance with insurers on behalf of the members of the alliance;

35 (3) provide premium collection services for insurance purchased
36 through the alliance for members; and

37 (4) contract with third parties for any services necessary to carry
38 out the powers and duties authorized or required pursuant to this
39 section.

40 e. A purchasing alliance established pursuant to the provisions of
41 this section shall not:

42 (1) assume risk for the cost or provision of medical malpractice
43 liability insurance;

44 (2) exclude a member who agrees to pay fees for membership and
45 the premium for medical malpractice liability insurance coverage and
46 who abides by the by-laws of the alliance; or

1 (3) engage in any trade practice or activity prohibited pursuant to
2 P.L.1947, c.379 (C.17:29B-1 et seq.).

3 f. Within 30 days after its organization, the purchasing alliance
4 board shall file with the commissioner a certificate that shall list the
5 members of the alliance, the names of the directors, chairman,
6 treasurer and secretary of the alliance, the address at which
7 communications for the alliance are to be received, a copy of the
8 certificate of incorporation of the alliance, if any, and a copy of the
9 joint contract executed by all of the members. Any change in the
10 information required by the provisions of this section shall be filed
11 with the commissioner within 30 days of the change.

12 g. The commissioner shall adopt such rules and regulations
13 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
14 (C.52:14B-1 et seq.), as are necessary to effectuate the provisions of
15 this section.

16
17 19. (New section) a. A medical malpractice liability insurance
18 policy made, issued or delivered pursuant to Subtitle 3 of Title 17 of
19 the Revised Statutes in this State on or after the effective date of
20 P.L. , c. (pending before the Legislature as this bill) may contain a
21 provision that provides a person insured under the policy with the
22 exclusive right to require the insurer to obtain the consent of the
23 insured to settle any claim filed against the insured; except that, if the
24 policy contains that provision, the insurer shall offer an endorsement,
25 to be included in the policy at the option of the insured, providing the
26 insurer the right to settle a claim filed under the policy without first
27 having obtained the insured's consent. The insurer shall establish a
28 reduced premium for the endorsement, which premium shall reflect
29 savings or reduced costs attributable to the endorsement.

30 b. The Commissioner of Banking and Insurance shall adopt rules
31 and regulations pursuant to the "Administrative Procedure Act,"
32 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
33 provisions of this section.

34
35 20. (New section) a. Every insurer authorized to transact medical
36 malpractice liability insurance in this State shall offer, to groups of 50
37 or more insureds, group medical malpractice liability insurance policies
38 with a deductible, at the option of the insureds, in amounts of at least
39 \$50,000 per occurrence and up to \$1,000,000 per occurrence.

40 (1) Physicians in the same specialty, or in different specialties, may
41 purchase the policies jointly, whether or not they are members of the
42 same practice group, and may elect to treat the deductible amount
43 under the policy as a self-insured retention, in which claims filed under
44 the policy are managed by either the insurer issuing the policy, on an
45 administrative-services-only basis, or by an independent third party
46 administrator approved by the Commissioner of Banking and

1 Insurance and the insurer issuing the policy.

2 (2) A physician group purchasing a policy issued pursuant to the
3 provisions of this section shall do so pursuant to a written agreement,
4 subscribed to by all of the participating physicians. The agreement
5 shall include provisions regarding the selection of an administrator,
6 allocation of contributions to the self-insured retention under the
7 policy, procedures for investment and management of the
8 contributions, allocation of the cost of the policy premium among
9 physician members of the group and such other matters as to the
10 administration of the program as may be necessary.

11 b. Every insurer authorized to transact medical malpractice liability
12 insurance in this State shall offer to individual physicians or practice
13 groups such deductibles on those policies as they may require, for a
14 commensurate reduction in premium, which deductibles shall be
15 straight deductibles and shall not be treated as self-insured retention.

16

17 21. (New section) Notwithstanding any other law or regulation to
18 the contrary:

19 a. An insurer authorized to transact medical malpractice liability
20 insurance in this State shall not increase the premium of any medical
21 malpractice liability insurance policy based on a claim of medical
22 negligence or malpractice against the insured unless the claim results
23 in a medical malpractice claim settlement, judgment or arbitration
24 award against the insured or the cost of defending against the claim
25 exceeds \$10,000.

26 b. An insurer authorized to transact medical malpractice liability
27 insurance in this State that provides medical malpractice liability
28 insurance to a health care provider who is a recipient of a notice of
29 intent to file an action pursuant to section 6 of P.L. , c. (C.)
30 (pending before the Legislature as this bill), which health care provider
31 is not subsequently made a party to an action, shall not consider the
32 notice or investigation therefrom as part of the insured's claims
33 experience or for the purposes of underwriting or establishing a
34 premium for the health care provider.

35 c. An insurer authorized to transact medical malpractice liability
36 insurance shall, in all policies and contracts issued in the State on and
37 after the effective date of P.L. , c. (pending before the Legislature
38 as this bill), define the term "claim" to mean any demand received by
39 an insured seeking damages that results from a medical incident, or an
40 insured's notice to the insurer of a specific professional services act or
41 omission that an insured reasonably believes may result in a demand
42 for damages.

43 d. An insurer who violates this section shall be subject to a penalty
44 of up to \$25,000 for each violation unless the insurer knew or
45 reasonably should have known it was in violation of this section, in
46 which case the penalty shall not be more than \$250,000 for each

1 violation. The penalty shall be sued for and collected by the
2 Commissioner of Banking and Insurance in a summary proceeding in
3 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
4 C.274 (C.2A:58-10 et seq.).

5
6 22. (New section) Every filing, made after the effective date of
7 P.L. , c. (pending before the Legislature as this bill), pursuant to the
8 provisions of section 16 of P.L. 1982, c. 114 (C.17:29AA-16) by an
9 insurer writing medical malpractice in this State, shall include a
10 certification by the chief executive officer or chief financial officer that
11 the rates for every category, subcategory, or risk classification are
12 adequate to cover expected losses and expenses of the insurer and to
13 ensure the safety and soundness of the insurer.

14
15 23. (New section) a. There is established in the Department of the
16 Treasury the "New Jersey Health Care Access Fund" as a nonlapsing,
17 revolving fund.

18 The State Treasurer shall credit to the fund, in addition to any sums
19 appropriated thereto, all monies designated in subsection b. of this
20 section. Monies credited to the fund may be invested in the same
21 manner as assets of the General Fund and any investment earnings on
22 the fund shall accrue to the fund and shall be available subject to the
23 same terms and conditions as other monies in the fund.

24 b. Monies from the following sources shall be credited to the fund:
25 monies collected by the State Board of Medical Examiners pursuant
26 to section 25 of P.L. , c. (C.)(pending before the Legislature as
27 this bill); monies collected by the State Board of Chiropractic
28 Examiners pursuant to section 26 of P.L. , c. (C.)(pending before
29 the Legislature as this bill); and monies collected by the State
30 Treasurer pursuant to section 27 of P.L. , c. (C.)(pending before
31 the Legislature as this bill).

32 c. The fund shall be administered by the Department of Banking
33 and Insurance in accordance with the provisions of section 24 of P.L.,
34 c. (C.)(pending before the Legislature as this bill).

35 d. The monies in the fund are specifically dedicated and shall be
36 utilized exclusively for the purpose of providing relief towards the
37 payment of medical malpractice liability insurance premiums to
38 physicians, podiatrists and chiropractors in the State who have
39 experienced or are experiencing a liability insurance premium increase
40 of 30% or greater and meet the criteria established pursuant to section
41 24 of P.L. , c. (C.)(pending before the Legislature as this bill).

42 e. The fund shall expire on December 31, 2005.

43
44 24. (New section) a. In order to carry out the purposes of section
45 23 of P.L. , c. (C.)(pending before the Legislature as this bill), the
46 Commissioner of Banking and Insurance shall, at a minimum:

1 (1) establish a three-year program to provide medical malpractice
2 liability insurance premium subsidies to physicians, podiatrists and
3 chiropractors from monies that are contained in the fund;

4 (2) establish a methodology and procedures for determining
5 eligibility for and providing subsidies from the fund;

6 (3) maintain confidential records on each physician, podiatrist and
7 chiropractor who receives assistance from the fund; and

8 (4) take all necessary action to recover the cost of the subsidy
9 provided to a physician, podiatrist or chiropractor that the
10 commissioner determines to have been incorrectly provided.

11 b. The Commissioner of Banking and Insurance shall certify classes
12 of physicians, podiatrists and chiropractors, by specialty for each type
13 of practitioner, whose average medical malpractice premium, as a
14 class, on or after August 2002, is in excess of \$50,000 per year. In
15 certifying classes eligible for the subsidy, the commissioner, in
16 consultation with the Commissioner of Health and Senior Services,
17 may also consider if access to care is threatened by the inability of a
18 significant number of physicians, podiatrists or chiropractors, as
19 applicable, in a particular specialty, to continue practicing in a
20 geographic area of the State.

21 (1) In order to be eligible for a subsidy from the fund, a physician,
22 podiatrist or chiropractor shall have received a medical malpractice
23 liability insurance premium increase of 30% or greater, upon renewal
24 on or after January 1, 2003, from the amount paid by that practitioner
25 in 2002. In 2004 and 2005, the premium increase shall be calculated
26 using the preceding year's premium as the base-year premium.

27 (2) The amount of the subsidy shall be 35% of the amount of the
28 increase from the preceding year's premium; except that no physician,
29 podiatrist or chiropractor shall receive a subsidy greater than \$25,000
30 in a year.

31 c. A physician, podiatrist or chiropractor who has been subject to
32 a disciplinary action or civil penalty by the practitioner's respective
33 licensing board pursuant to sections 8, 9 or 12 of P.L.1978, c.73
34 (C.45:1-21, 22 or 25), or who has been found by a court to be liable
35 for the payment of a medical malpractice judgment within the last five
36 years is not eligible for a subsidy from the fund.

37 d. The Commissioner of Banking and Insurance may waive the
38 criteria for eligibility for a subsidy established pursuant to this section,
39 if the commissioner determines that access to care for a particular
40 specialty is threatened because of an inability of a sufficient number
41 of practitioners in that specialty to practice in a geographic area of the
42 State.

43 e. The State Board of Medical Examiners and the State Board of
44 Chiropractic Examiners shall each provide to the Commissioner of
45 Banking and Insurance, on a quarterly basis, the names of the
46 practitioners who have been subject to a disciplinary action or civil

1 penalty by the practitioner's respective licensing board.

2 f. The Commissioner of Banking and Insurance may reduce the
3 amount of the assessment pursuant to sections 25, 26 and 27 of
4 P.L. , c. (C.)(pending before the Legislature as this bill) in the
5 second and third years of the assessment if the commissioner
6 determines that sufficient monies are available in the fund to permit a
7 reduced assessment and still meet the purposes of this section.

8 g. The Commissioner of Banking and Insurance shall, pursuant to
9 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
10 seq.), adopt such rules and regulations as are necessary to carry out
11 the provisions of this section.

12

13 25. (New section) The State Board of Medical Examiners shall
14 assess an annual fee in the amount of \$175 payable by:

15 a. each physician licensed in this State pursuant to the provisions
16 of R.S.45:9-1 et seq., except that physicians holding a certificate of
17 registration as a retired physician pursuant to section 1 of P.L.1971,
18 c.236 (C.45:9-6.1) shall not be required to pay the fee; and

19 b. each podiatrist licensed in this State pursuant to the provisions
20 of R.S.45:5-1 et seq.

21 Fees imposed pursuant to this section shall be payable on or before
22 July 1 of each calendar year, for three years, from 2003 through 2005.
23 Payments are to be remitted to the board and credited by the State
24 Treasurer to the "New Jersey Health Care Access Fund" established
25 pursuant to section 23 of P.L. , c. (C.)(pending before the
26 Legislature as this bill).

27

28 26. (New section) The State Board of Chiropractic Examiners shall
29 assess an annual fee in the amount of \$175 payable by each
30 chiropractor licensed in this State pursuant to the provisions of
31 P.L.1989, c.153 (C.45:9-41.17 et al.).

32 Fees imposed pursuant to this section shall be payable on or before
33 July 1 of each calendar year, for three years, from 2003 through 2005.
34 Payments are to be remitted to the board and credited by the State
35 Treasurer to the "New Jersey Health Care Access Fund" established
36 pursuant to section 23 of P.L. , c. (C.)(pending before the
37 Legislature as this bill).

38

39 27. (New section) The State Treasurer shall assess an annual fee
40 in the amount of \$175, payable by each person licensed to practice law
41 in this State who has engaged in the practice of law for at least one
42 year. Fees imposed pursuant to this section shall be payable on or
43 before July 1 of each calendar year, for three years, from 2003 through
44 2005. Payments are to be remitted to the State Treasurer and credited
45 to the "New Jersey Health Care Access Fund" established pursuant to
46 section 23 of P.L. , c. (C.)(pending before the Legislature as this
47 bill).

1 28. This act shall take effect on the 30th day after enactment,
2 except that sections 15 and 16 shall take effect 180 days after the date
3 of enactment and section 20 shall take effect 90 days after the date of
4 enactment.

5
6
7 STATEMENT

8
9 This bill, designated as the "New Jersey Medical Care Availability
10 and Patient Protection Act," provides for a comprehensive set of
11 reforms affecting the State's tort liability system, health care system
12 and medical malpractice liability insurance carriers to ensure that
13 health care services continue to be available and accessible to residents
14 of the State and that patient safety at health care facilities is enhanced.

15
16 **Tort Liability Reforms:**

17 The bill amends N.J.S.2A:14-2 to provide that actions by or on
18 behalf of a minor that have accrued for medical malpractice for injuries
19 sustained at birth shall be commenced by the minor's 10th birthday.

20 The bill provides that a person who intends to commence a medical
21 malpractice action shall notify all health care providers, who may be
22 party to the action, at least 180 days prior to filing the action. The
23 notice shall contain, at a minimum, a statement of the following:

24 (1) the factual basis for the proposed action;

25 (2) the applicable standard of practice or care alleged by the
26 claimant;

27 (3) the manner in which it is claimed that the applicable standard
28 of practice or care was breached by the health care provider;

29 (4) the alleged action that should have been taken to achieve
30 compliance with the alleged standard of practice or care;

31 (5) the manner in which it is alleged that the breach of the standard
32 of practice or care was the proximate cause of the injury that is the
33 subject of the proposed action; and

34 (6) the names of all health care providers that the claimant is
35 notifying pursuant to this bill in connection with the proposed action.

36 The health care provider then has 90 days after receipt of the notice
37 to furnish the claimant with a written response. The bill provides that
38 after the response is received, a party seeking to investigate the matter
39 may serve process to compel both written and oral discovery, which
40 shall be limited to factual information directly related to the proposed
41 action.

42 In addition, the bill requires all parties to the proposed action to
43 participate in a pre-suit information session, in good faith, to
44 determine the appropriate parties to the proposed action and such
45 other issues as the parties may agree to discuss. The session will be
46 conducted by a neutral third party, to be called a "discovery master,"

1 who shall be selected from a list of qualified discovery masters that is
2 maintained by the Department of Banking and Insurance. At the
3 session, the notice of intent to file an action, the health care provider's
4 response and such other documents that the master or a party deems
5 relevant to the issue shall be reviewed. If the session results in the
6 parties' total or partial agreement concerning which health care
7 provider shall be named and which shall not be named in an action, or
8 any other issues, it shall be reduced to writing and a copy thereof
9 furnished to each party. Any necessary fees and expenses of the
10 master with respect to the information session shall be shared equally
11 by the parties to the proceeding. The bill provides that to allow for
12 the proper conduct of the notice of intent and pre-suit information
13 session procedures, the statute of limitations for filing a complaint is
14 tolled for 270 days, beginning on the date the notice of intent to file is
15 mailed, for all potential parties to the proposed action.

16 The bill also provides that a health care provider named as a
17 defendant in a medical malpractice action may cause the action against
18 that provider to be dismissed upon the filing of an affidavit of
19 noninvolvement with the court. The affidavit of noninvolvement shall
20 set forth the facts that demonstrate that the provider was misidentified
21 or otherwise not involved, individually or through its servants or
22 employees, in the care and treatment of the claimant, and was not
23 obligated, either individually or through its servants or employees, to
24 provide for the care and treatment of the claimant.

25 The bill establishes qualifications for expert witnesses in medical
26 malpractice actions and for the purpose of executing an affidavit of
27 merit and provides that an expert must have the same type of practice
28 and possess the same credentials, as applicable, as the defendant health
29 care provider, unless waived by the court.

30 Further, the bill modifies the standard of review to be used by a
31 court in reviewing the amount of a jury award for non-economic
32 damages to require the court to consider the evidence in the light most
33 favorable to the non-moving party and to allow the court to determine
34 whether the award constitutes palpably unreasonable compensation to
35 the complaining party for damages sustained as a result of the medical
36 malpractice.

37 Finally, the bill provides for structured payment agreements for
38 judgments in excess of \$1,000,000. Specifically, the bill provides that
39 in any medical malpractice judgment in which the damages are
40 \$1,000,000 or less, and unless otherwise agreed to by the parties, the
41 court shall enter a judgment ordering that the money damages shall be
42 paid immediately. In judgments in which the damages exceed
43 \$1,000,000, unless otherwise agreed to by the parties, the court shall
44 enter a judgment ordering that 50% of the money damages for
45 economic and non-economic loss shall be paid immediately, with the
46 costs and attorney's fees paid from that amount. The remaining 50%

1 of the judgment shall be paid over 36 months in the form of a
2 structured payment by any person, organization, group or insurer that
3 is contractually liable to pay the judgment.

4

5 **Health Care System Reforms:**

6 The bill expands the State's "Good Samaritan" law to provide
7 immunity from civil damages to licensed health care professionals,
8 paramedics and emergency medical technicians whose duty does not
9 require a response to a patient emergency situation, who, in good
10 faith, responds to a life-threatening emergency or responds to a
11 request for emergency assistance in a life threatening emergency within
12 a hospital or other licensed health care facility. The immunity shall not
13 apply: to acts or omissions constituting gross negligence, recklessness
14 or willful misconduct; if a provider-patient relationship existed before
15 the emergency; or if consideration in any form is provided to the health
16 care professional for the service rendered.

17 Further, the bill provides that a health care professional shall not be
18 liable for civil damages for injury or death caused in an emergency
19 situation occurring in the health care professional's private practice or
20 in a health care facility on account of a failure to inform a patient of
21 the possible consequences of a medical procedure when the failure to
22 inform is caused by any of the following:

23 - the patient was unconscious;

24 - the medical procedure was undertaken without the consent of the
25 patient because the health care professional reasonably believed that
26 a medical procedure should be undertaken immediately and that there
27 was insufficient time to fully inform the patient; or

28 - a medical procedure was performed on a person legally incapable
29 of giving informed consent, and the health care professional reasonably
30 believed that a medical procedure should be undertaken immediately
31 and that there was insufficient time to obtain the informed consent of
32 the person authorized to give such consent for the patient.

33 The immunity provided is applicable only to actions for damages for
34 an injury or death arising as a result of a health care professional's
35 failure to inform, and not to actions for damages arising as a result of
36 a health care professional's negligence in rendering or failing to render
37 treatment.

38 The bill strengthens reporting requirements by physicians to the
39 State Board of Medical Examiners to ensure that the board is promptly
40 informed of a physician's arrest or conviction for certain crimes, by
41 requiring that a physician report, within 10 days, his arrest or
42 conviction, in this State or any other state, for criminal homicide,
43 aggravated assault, sexual assault, criminal sexual contact or lewdness,
44 or an offense involving any controlled dangerous substance or
45 controlled substance analog.

46 The bill also ensures that health care facilities and other physicians

1 affiliated with a physician who has been disciplined by the State Board
2 of Medical Examiners, are notified of the board's action, within 30
3 days of the action. Similarly, the bill ensures that a health care facility
4 or health maintenance organization is promptly notified by the board
5 if, during the course of an investigation of a physician, it requests
6 information from a that facility or health maintenance organization
7 regarding that physician, and subsequently determines that no
8 disciplinary action is warranted. The bill enables the Senate Health,
9 Human Services and Senior Citizens and the Assembly Health and
10 Human Services Committees, and the public, to be kept informed of
11 Board of Medical Examiners disciplinary actions by requiring the
12 board to report annually to the committees and post on the board's
13 web site information about actions on complaint files and the number
14 of disciplinary sanctions imposed upon physicians in the preceding
15 calendar year.

16 The bill establishes a medical error reporting system for health care
17 facilities that seeks to minimize the occurrence of errors, as well as to
18 detect those that do occur, and to incorporate mechanisms to
19 continually improve the performance of facilities to enhance patient
20 safety by minimizing, to the greatest extent feasible, the harm to
21 patients that results from the delivery system itself. In this regard, the
22 bill establishes a system that both mandates the confidential disclosure
23 to the Department of Health and Senior Services of the most serious
24 preventable adverse events, and also encourages the voluntary,
25 anonymous and confidential disclosure to the department of less
26 serious adverse events, as well as near-misses.

27 Specifically, the bill requires all licensed health care facilities in the
28 State to develop and implement a patient safety plan, which includes
29 a patient safety committee, for the purpose of improving the health and
30 safety of patients at the facility. Components of the plan would include
31 a process for multi-disciplinary teams of facility personnel with
32 appropriate competencies to conduct: ongoing analysis and application
33 of evidence-based patient safety practices to reduce the probability of
34 adverse events resulting from exposure to the health care system
35 across a range of diseases and procedures; and analyses of near-
36 misses, with particular attention to serious preventable adverse events
37 and adverse events.

38 A health care facility would be required to report to the Department
39 of Health and Senior Services, in a form and manner established by the
40 Commissioner of Health and Senior Services, every serious
41 preventable adverse event that occurs in that facility. The bill defines
42 "serious preventable adverse event" to mean a preventable adverse
43 event that results in death or loss of a body part, or disability or loss
44 of bodily function lasting more than seven days or still present at the
45 time of discharge from a health care facility.

46 The bill also provides that a health care professional or other

1 employee of a health care facility is encouraged to make anonymous
2 reports to the department, in a form and manner established by the
3 commissioner, regarding near-misses, preventable events and adverse
4 events that are otherwise not subject to mandatory reporting

5 A health care facility would be required to assure that the patient
6 affected by an adverse event, or, in the case of a minor or a patient
7 who is incapacitated, the patient's parent or guardian or other family
8 member, as appropriate, is informed of the adverse event, no later than
9 the end of the episode of care, or if discovery occurs after the end of
10 the episode of care, in a timely fashion as established by the
11 commissioner by regulation. "Adverse event" is defined as an event
12 that is a negative consequence of care that results in unintended injury
13 or illness, which may or may not have been preventable.

14 The bill provides that any documents, materials or information
15 received by the department concerning preventable adverse events,
16 serious preventable adverse events and near-misses shall not be:

17 (1) subject to discovery or admissible as evidence or otherwise
18 disclosed in any civil, criminal or administrative action or proceeding;

19 (2) considered a public record under P.L.1963, c.73 (C.47:1A-1 et
20 seq.) or P.L.2001, c.404 (C.47:1A-5 et seq.); or

21 (3) used in an adverse employment action or in the evaluation of
22 decisions made in relation to accreditation, certification, credentialing
23 or licensing of an individual, which is based on the individual's
24 participation in the development, collection, reporting or storage of
25 information.

26 Similarly, any documents, materials or information developed by a
27 health care facility as part of a process of self-critical analysis
28 conducted pursuant to this bill, concerning preventable events, near-
29 misses and adverse events, including serious preventable adverse
30 events, shall not be: (1) subject to discovery or admissible as evidence
31 or otherwise disclosed in any civil, criminal or administrative action or
32 proceeding; or (2) used in an adverse employment action or in the
33 evaluation of decisions made in relation to accreditation, certification,
34 credentialing or licensing of an individual, which is based on the
35 individual's participation in the development, collection, reporting or
36 storage of information.

37

38 **Medical Malpractice Liability Insurance Reforms:**

39 To avoid the appearance of any conflicts of interest, the bill
40 prohibits any person who is an officer, director or board member of a
41 professional association for health care providers to serve,
42 simultaneously, as an officer, director or board member of a State-
43 domiciled medical malpractice liability insurer. The bill also provides
44 that no more than one person who has been an officer, director or
45 board member of a professional association for health care providers
46 shall serve as an officer, director or board member of a State-

1 domiciled medical malpractice liability insurer.

2 For the purpose of negotiating a reduced medical malpractice
3 liability insurance premium, the bill would permit physicians to join
4 together, by means of a joint contract, to form a "Medical Malpractice
5 Liability Insurance Purchasing Alliance".

6 The bill provides that a medical malpractice liability insurance
7 policy may contain a provision that provides a person insured under
8 the policy the with the exclusive right to require the insurer to obtain
9 the consent of the insured to settle any claim filed against the insured;
10 but if the policy contains that provision, the insurer would be required
11 to offer an endorsement to the policy that provides the insurer the
12 right to settle a claim filed under the policy without first having
13 obtained the insured's consent. The insurer would be required to
14 establish a reduced premium for the endorsement, which premium shall
15 reflect savings or reduced costs attributable to the endorsement, and
16 the insured would have the option of accepting or refusing the
17 endorsement.

18 Another provision to provide premium relief to health care
19 providers is the requirement that every medical malpractice liability
20 insurer to offer, to groups of 50 or more insureds, group medical
21 malpractice liability insurance policies with a deductible, at the option
22 of the insureds, in amounts of at least \$50,000 per occurrence and up
23 to \$1,000,000 per occurrence. Insurers are also required to offer to
24 individual physicians or practice groups such deductibles on those
25 policies as they may require, for a commensurate reduction in
26 premium, which deductibles shall be straight deductibles and shall not
27 be treated as self-insured retention.

28 In addition, the bill provides that an insurer shall not increase the
29 premium of any medical malpractice liability insurance policy based on
30 a claim of medical negligence or malpractice against the insured unless
31 the claim results in a medical malpractice claim settlement, judgment
32 or arbitration award against the insured or the cost of defending
33 against the claim exceeds \$10,000. Further, the bill provides that an
34 insurer that provides coverage to a health care provider who is a
35 recipient of a notice of intent to file an action pursuant to this bill,
36 which health care provider is not subsequently made a party to an
37 action, shall not consider the notice or investigation therefrom as part
38 of the insured's claims experience or for the purposes of underwriting
39 or establishing a premium for the health care provider. The bill also
40 provides a uniform definition of the term "claim," that all medical
41 malpractice insurers would be required to use. "Claim" would mean
42 any demand received by an insured seeking damages that results from
43 a medical incident, or an insured's notice to the insurer of a specific
44 professional services act or omission that an insured reasonably
45 believes may result in a demand for damages.

46 To provide increased oversight of medical malpractice insurers, the

1 bill requires that every filing by a medical malpractice insurer in this
2 State shall include a certification by the chief executive officer or chief
3 financial officer that the rates for every category, subcategory or risk
4 classification are adequate to cover expected losses and expenses of
5 the insurer and to ensure the safety and soundness of the insurer.

6 Finally, the bill establishes the "New Jersey Health Care Access
7 Fund" to provide relief towards the payment of medical malpractice
8 liability insurance premiums to physicians, podiatrists and
9 chiropractors in the State who have experienced or are experiencing
10 a liability insurance premium increase of 30% or greater and meet
11 criteria established in the bill. The fund will be administered by the
12 Commissioner of Banking and Insurance, and will expire on December
13 31, 2005.

14 The bill provides that the Commissioner of Banking and Insurance
15 will certify classes of physicians, podiatrists and chiropractors
16 (practitioners), by specialty for each type of practitioner, whose
17 average medical malpractice premium, as a class, on or after August
18 2002, is in excess of \$50,000 per year. In certifying classes eligible for
19 the subsidy, the commissioner, in consultation with the Commissioner
20 of Health and Senior Services, may also consider if access to care is
21 threatened by the inability of a significant number of practitioners, in
22 a particular specialty, to continue practicing in a geographic area of
23 the State. In order to be eligible for a subsidy from the fund, a
24 practitioner shall have received a medical malpractice liability
25 insurance premium increase of 30% or greater, upon renewal on or
26 after January 1, 2003, from the amount paid by that practitioner in
27 2002. In 2004 and 2005, the premium increase shall be calculated
28 using the preceding year's premium as the base-year premium. The
29 amount of the subsidy will be 35% of the amount of the increase from
30 the preceding year's premium; except that no practitioner shall receive
31 a subsidy greater than \$25,000 in a year.

32 A practitioner who has been subject to a disciplinary action or civil
33 penalty by the practitioner's licensing board, or who has been found by
34 a court to be liable for the payment of a medical malpractice judgment
35 within the last five years, is not eligible for a subsidy from the fund.

36 In order to provide sufficient monies for the fund, the bill provides
37 that licensed physicians, podiatrists and chiropractors, as well as
38 attorneys, will be assessed an annual fee of \$175, for three years. This
39 amount may be reduced by the Commissioner of Banking and
40 Insurance if the commissioner determines that sufficient monies are
41 available in the fund to meet the purposes of the bill.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 50 and 551

STATE OF NEW JERSEY

DATED: MARCH 22, 2004

The Senate Health, Human Services and Senior Citizens Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 50 and 551.

As amended by committee, this substitute, which is designated the "New Jersey Medical Care Access and Responsibility and Patients First Act," is designed to implement a number of reforms relating to tort liability as it concerns medical malpractice, as well as health care system and medical malpractice liability insurance reforms.

Specifically, the substitute provides for the following:

Tort Liability Reforms:

The substitute amends N.J.S.2A:14-2 and N.J.S.2A:14-21 to provide that actions by or on behalf of a minor that have accrued for medical malpractice for injuries sustained at birth must be commenced prior to the minor's 13th birthday. These statutory changes would not affect the discovery doctrine in any way. The substitute also provides that in the event that an action by or on behalf of a minor that has accrued for medical malpractice for injuries sustained at birth is not commenced by the minor's parent or guardian prior to the minor's 12th birthday, the minor or a person 18 years of age or older designated by the minor to act on the minor's behalf would be permitted to commence such an action.

The substitute provides for court referral of a medical malpractice action to a complementary dispute resolution mechanism if the judge presiding over the action determines, within 30 days after the discovery end date, that the referral may encourage early disposition or settlement of the action. If the judge makes that determination, the matter is to be referred to complementary dispute resolution pursuant to Rule 1:40 of the New Jersey Rules of Court.

The substitute also provides that a health care provider named as a defendant in a medical malpractice action may file an affidavit of noninvolvement with the court. The affidavit of noninvolvement is to set forth the facts that demonstrate that the provider was misidentified

or otherwise not involved, individually or through its servants or employees, in the care and treatment of the claimant, and was not obligated, either individually or through its servants or employees, to provide for the care and treatment of the claimant. The substitute also provides penalties for false statements made in the affidavit or in challenging the affidavit.

The substitute establishes qualifications for expert witnesses in medical malpractice actions and for the purpose of executing an affidavit of merit, and provides that an expert must have the same type of practice and possess the same credentials, as applicable, as the defendant health care provider, unless waived by the court. The substitute prohibits expert witnesses from testifying on a contingency fee basis. The substitute also provides for penalties for an individual or entity who threatens to take or takes adverse action against a person in retaliation for that person providing or agreeing to provide expert testimony, or for that person executing an affidavit of merit, which adverse action relates to that person's employment, accreditation, certification, credentialing or licensure.

With respect to the payment of medical malpractice judgments, the substitute provides that in any medical malpractice judgment in which the noneconomic damages (those for pain and suffering) are \$1 million or less, unless otherwise agreed to by the parties, the court is to enter a judgment ordering that money damages be paid immediately. In any judgment in which the noneconomic damages exceed \$1 million, unless otherwise agreed to by the parties, 50% of the money damages are to be paid immediately, with the costs and attorney's fees paid from that amount. The remaining 50% of the judgment is to be paid over 60 months in the form of a structured payment agreement.

Further, in order to provide the court with discretion to modify jury awards, the substitute modifies the standard of review to be used by the court in reviewing the amount of a jury award to require the court to consider the evidence in the light most favorable to the non-moving party and to allow the court to determine whether the award is clearly inadequate or excessive in view of the nature of the medical condition or injury that is the cause of action or because of passion or prejudice by the jury. This provision shall take effect upon action by the court.

Health Care System Reforms:

The substitute expands the State's "Good Samaritan" law to provide immunity from civil damages to licensed health care professionals, emergency medical technicians and mobile intensive care paramedics whose duty does not require a response to a patient emergency situation, who, in good faith, respond to a life-threatening emergency or respond to a request for emergency assistance in a life-threatening emergency within a hospital or other licensed health care facility or a State psychiatric hospital operated by the Department of Human Services. The immunity shall not apply: to acts or omissions

constituting gross negligence, recklessness or willful misconduct; if a provider-patient relationship existed before the emergency; or if consideration in any form is provided to the health care professional for the service rendered. The immunity does not diminish a general hospital's responsibility to comply with all Department of Health and Senior Services licensure requirements concerning medical staff availability at the hospital.

Further, the substitute provides that a health care professional is not liable for civil damages for injury or death caused in an emergency situation occurring in the health care professional's private practice or in a health care facility or State psychiatric hospital on account of a failure to inform a patient of the possible consequences of a medical procedure when the failure to inform is caused by any of the following:

- the patient was unconscious;
- the medical procedure was undertaken without the consent of the patient because the health care professional reasonably believed that the medical procedure should be undertaken immediately and that there was insufficient time to fully inform the patient; or
- the medical procedure was performed on a person legally incapable of giving informed consent, and the health care professional reasonably believed that the medical procedure should be undertaken immediately and that there was insufficient time to obtain the informed consent of the person authorized to give such consent for the patient.

The immunity provided is applicable only to actions for damages for an injury or death arising as a result of a health care professional's failure to inform, and not to actions for damages arising as a result of a health care professional's negligence in rendering or failing to render treatment.

The substitute strengthens reporting requirements by physicians to the State Board of Medical Examiners (BME) to ensure that the BME is promptly informed of any pending or final action by any criminal authority in this State or any other state or federal jurisdiction or any arrest or conviction for a criminal or quasi-criminal act, by requiring that a physician report, within 10 days, the action or his arrest or conviction, for crimes that include, but are not limited to, criminal homicide, aggravated assault, sexual assault, criminal sexual contact or lewdness, or an offense involving any controlled dangerous substance or controlled substance analog.

The substitute also ensures that health care facilities, State psychiatric hospitals and other physicians affiliated with a physician who has been disciplined by the BME, are notified of its action, within 30 days of the action. Similarly, the substitute ensures that a health care facility, State psychiatric hospital or health maintenance organization is promptly notified by the BME if, during the course of an investigation of a physician, it requests information from that facility or health maintenance organization regarding that physician, and subsequently determines that no disciplinary action is warranted.

Medical Malpractice Liability Insurance Reforms:

To avoid the appearance of any conflicts of interest, the substitute prohibits any person who is an officer, director or board member of a professional association for health care providers to serve concurrently as an officer, director or board member of a State-domiciled medical malpractice liability insurer that issues policies in the State.

For the purpose of negotiating a reduced medical malpractice liability insurance premium, the substitute would permit physicians to join together, by means of a joint contract, to form a "Medical Malpractice Liability Insurance Purchasing Alliance."

The substitute provides that a medical malpractice liability insurance policy may contain a provision that provides a person insured under the policy with the exclusive right to require the insurer to obtain the consent of the insured to settle any claim filed against the insured; but, if the policy contains that provision, the insurer would be required to offer an endorsement to the policy that permits the insurer to settle a claim filed under the policy without first having obtained the insured's consent. The insurer would be required to establish a premium for the endorsement which reflects any savings or reduced costs attributable to the endorsement, and the insured would have the option of accepting or refusing the endorsement.

Another provision to provide premium relief to health care providers is the requirement that every medical malpractice liability insurer offer individual or group medical malpractice liability insurance policies with a deductible, at the option of the insured, in an amount of at least \$5,000 per claim and up to \$1 million per claim, with the insurer being permitted to require the insured to provide collateral for the deductible amount to the insurer. The deductibles offered by an insurer are subject to the approval of the Commissioner of Banking and Insurance. For policies with any deductible, the insurer would be responsible for payment of the deductible and would be reimbursed for that amount by the insured.

The substitute prohibits a medical malpractice insurer from increasing the premium of a policy based on a claim of medical negligence or malpractice against the insured if the insured is dismissed from an action alleging medical malpractice within 180 days of the filing of the last responsive pleading.

To provide increased oversight of medical malpractice insurers, the substitute requires that every annual statement filed by a medical malpractice insurer in this State with the Department of Banking and Insurance include a certification by the chief executive officer or chief financial officer that the rates for every category, subcategory or risk classification are adequate to cover expected losses and expenses of the insurer and to ensure the safety and soundness of the insurer.

The substitute requires insurers authorized to transact medical malpractice liability insurance in this State to provide at least 60 days' notice to the insured for policy renewals and nonrenewals. Also, in the case of a nonrenewal, the insurer must provide the reason for the nonrenewal.

The substitute provides that if the Commissioner of Banking and Insurance finds, after a hearing, that a rate in effect for any medical malpractice insurer is not in compliance with the provisions of N.J.S.A.17:29AA-1 et seq., the commissioner is to issue an order specifying in what respects it so fails, and stating when the rate will no longer be deemed effective. The order may provide for the retroactive adjustment of rates and require the payment or credit of interest to insureds covered during the adjusted rate period. Interest is to be calculated at the percentage of interest prescribed in the Rules Governing the Courts of the State of New Jersey for judgments, awards and orders for the payment of money.

The substitute also directs the commissioner, subject to standards adopted by the National Association of Insurance Commissioners, to review the current capitalization and reserve requirements applicable to medical malpractice insurers, and to modify those requirements, as necessary, to ensure the solvency of those insurers and the availability and affordability of medical malpractice liability insurance in the State.

Also, the substitute requires medical malpractice liability insurers to offer their insureds the option to make premium payments in installments, as prescribed by the Commissioner of Banking and Insurance, by regulation.

In addition, N.J.S.A.17:30D-17, which requires all medical malpractice insurers to notify the BME of every medical malpractice judgment, settlement and award involving a physician or podiatrist licensed in this State, is amended to also require notification to the Commissioner of Banking and Insurance of these payments. The notification to the commissioner is to enable the commissioner to compile statistical data about medical malpractice payouts, and would not include the name of or other identifying information about the practitioner.

The substitute removes from the BME the authority and discretion to set the minimum amounts of medical malpractice liability insurance that a physician who maintains a professional medical practice in this State and has responsibility for patient care is required to carry, and instead establishes those minimum amounts by statute. The substitute sets the limits at those currently in effect by virtue of regulations promulgated by the BME, that is: medical malpractice liability insurance in the sum of \$1 million per occurrence and \$3 million per policy year, with extended reporting endorsement coverage for claims made, also known as "tail coverage," (unless renewal coverage includes the premium retroactive date); or, if liability coverage is not available, by a letter of credit for at least \$500,000. The BME may, however, increase these minimum amounts by regulation.

The substitute establishes the Medical Malpractice Liability Insurance Premium Assistance Fund in the Department of the Treasury to provide relief towards the payment of medical malpractice liability insurance premiums to certain health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the Commissioner of Banking

and Insurance by regulation. The fund will be administered by the Department of Banking and Insurance, and will expire three years after the effective date of the substitute.

The substitute provides that the Commissioner of Banking and Insurance will certify classes of health care practitioners, by specialty and subspecialty for each type of practitioner, whose average medical malpractice premium, as a class, on or after December 31, 2002, is in excess of an amount determined by the commissioner, or in the case of health care practitioners whose professional liability insurance protection is provided through self-insured hospital funding supplemented with purchased commercial insurance, the total professional liability funding obligation has increased in excess of an amount determined by the commissioner. In certifying classes eligible for the subsidy, the commissioner, in consultation with the Commissioner of Health and Senior Services, may also consider if access to care is threatened by the inability of a significant number of practitioners, in a particular specialty or subspecialty, to continue practicing in a geographic area of the State.

In order to be eligible for a subsidy from the fund, a practitioner must have received a medical malpractice liability insurance premium increase in an amount determined by the commissioner by regulation, for one or more of the following: upon renewal on or after January 1, 2004, from the amount paid by that practitioner in 2003; upon renewal on or after January 1, 2005, from the amount paid by that practitioner in 2004; and upon renewal on or after January 1, 2006, from the amount paid by that practitioner in 2005. The amount of the subsidy will be determined by the commissioner by regulation.

In the case of a health care provider providing professional liability insurance protection through self-insured hospital funding supplemented with purchased commercial insurance coverage, that provider must have increased its total professional liability funding obligation in an amount as determined by the commissioner by regulation, for one or more of the following: upon renewal on or after January 1, 2004, from the professional liability funding obligation paid by that practitioner in calendar year 2003; upon renewal on or after January 1, 2005, from the professional liability funding obligation paid by that practitioner in calendar year 2004; and upon renewal on or after January 1, 2006, from the professional liability funding obligation paid by that practitioner in calendar year 2005.

The Medical Malpractice Liability Insurance Premium Assistance Fund is to be comprised of the following revenue:

- an annual surcharge (for three years) of \$3 per employee for all employers who are subject to the New Jersey "unemployment compensation law";
- an annual charge (for three years) of \$75 imposed on each licensed physician, podiatrist, chiropractor, dentist and optometrist by the appropriate professional licensing board; and
- an annual fee (for three years) of \$75 imposed on each licensed attorney by the State Treasurer.

The above charges and fees will not apply to physicians, podiatrists, chiropractors, dentists, optometrists or attorneys who: are statutorily or constitutionally barred from the practice of their respective profession; can show that they do not maintain a bona fide office for the practice of their profession in this State; are completely retired from the practice of their profession; are on full-time duty with the armed forces, VISTA or the Peace Corps and not engaged in practice; have not practiced their profession for at least one year; or, in the case of attorneys, are ineligible to practice law because they have not made their New Jersey Lawyers' Fund for Client Protection payment.

The substitute also specifies that a practitioner who has been subject to a disciplinary action or civil penalty by the practitioner's licensing board, when that action or penalty relates to the practitioner's provision of, or failure to provide, treatment or care to a patient, is not eligible for a subsidy from the fund.

The substitute requires that a health care practitioner who receives a subsidy from the fund practice in that practitioner's specialty or subspecialty in this State for a period of at least two years after receipt of the subsidy; and a practitioner who fails to comply with this requirement must repay the Commissioner of Banking and Insurance the amount of the subsidy, in whole or in part as determined by the commissioner.

The monies in the Medical Malpractice Liability Insurance Premium Assistance Fund are specifically dedicated and to be utilized exclusively for the following purposes:

- \$17 million is to be allocated annually for the purpose of providing relief towards the payment of medical malpractice liability insurance premiums to health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the commissioner by regulation and meet the criteria established under the substitute;

- \$6.9 million is to be allocated annually to the Health Care Subsidy Fund established pursuant to N.J.S.A.26:2H-18.58 for the purpose of providing payments to hospitals in accordance with the formula used for the distribution of charity care subsidies that are provided pursuant to N.J.S.A.26:2H-18.51 et al.;

- \$1.0 million is to be allocated annually for a student loan expense reimbursement program for obstetrician/gynecologists (as described below); and

- \$ 1.2 million is to be allocated annually to the Division of Medical Assistance and Health Services in the Department of Human Services to expand the NJ FamilyCare program (as described below).

The substitute establishes a three-year student loan expense reimbursement program within the Higher Education Student Assistance Authority for obstetrician/gynecologists who agree to practice in State designated underserved areas as established pursuant to N.J.S.A.18A:71C-35. An obstetrician/gynecologist who receives a payment under the program is required to practice as an

obstetrician/gynecologist in an underserved area in this State for a period of at least four years after receipt of the payment; and an obstetrician/gynecologist who fails to comply with this requirement must repay the authority the amount of the payment, in whole or in part as determined by the authority. The authority is to implement the program in consultation with the Commissioners of Banking and Insurance and Health and Senior Services and the State Board of Medical Examiners, and to adopt rules and regulations, pursuant to the "Administrative Procedure Act," to effectuate the purposes of this new program, including, but not limited to: eligibility for the program, procedures for application, selection of participants, establishment and nullification of contracts established with participants under the program, and reports to the program by participants.

The substitute provides that, within the limits of funds appropriated pursuant to the substitute and such other funds as may be available for this purpose, NJ FamilyCare is to enroll into the program women whose eligibility under the Medicaid New Jersey Care pregnant women program or the "New Jersey Standardized Parent Service Package," Demonstration Population 3, Medicaid expansion for uninsured pregnant woman, has expired and whose family income does not exceed 100% of the federal poverty level. The Commissioner of Human Services is to establish a presumptive eligibility process to provide for an efficient transition into NJ FamilyCare from the Medicaid program pursuant to this provision.

Finally, the substitute establishes a 17-member "Medical Care Availability Task Force" to study the following issues:

- the advantages and disadvantages of establishing limitations on non-economic damages for medical malpractice judgments and on extending current limitations on liability that apply to nonprofit hospitals to employees, other than physicians, of those hospitals;
- the impact of third party reimbursement policies by insurers and health maintenance organizations on access to health care services in the context of the current affordability crisis in the State affecting health care providers in the purchase of necessary liability coverage;
- the advantages and disadvantages of adopting additional changes to the statute of limitations regarding medical malpractice actions;
- the advantages and disadvantages of establishing additional procedures for mediation of actions alleging medical malpractice and for screening for frivolous medical malpractice lawsuits; and
- the advantages and disadvantages of establishing a pre-suit procedure.

This committee substitute is identical to the Assembly Committee Substitute for A-50 (1R)(SCA)(Roberts/Cohen/Weinberg/McKeon), which the committee also reported favorably on this date.

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News Releases

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McGreevey Signs Landmark Law Providing Access to Quality Health Care for New Jersey's Families

Comprehensive Medical Malpractice Reform Puts Patients First

(TRENTON) – Today Governor James E. McGreevey signed into law the “New Jersey Medical Care Access and Responsibility and Patients First Act” (A50), enacting comprehensive medical malpractice reform. The legislation provides for tort reform, health care system reform, and insurance reform, all in an effort to stem skyrocketing malpractice insurance premiums and ensure New Jersey’s families have access to quality health care from the physicians they trust.

“Health care is one of the most important quality of life issues for New Jersey’s families. That is why we have made access to quality health care a top priority,” said Governor McGreevey. “Today is another good day for the health of New Jersey’s families. Thanks to a focused commitment from all parties, this medical malpractice law is comprehensive, providing short-term relief and long-term reform. Our overriding priority is to ensure that patients have access to doctors and quality health care and this bill meets that objective in several ways.”

The act reforms the Health Care System through the following: expanding the “Good Samaritan Law” to provide immunity from civil damages to a licensed health care professional who, in good faith, responds to a life threatening incident even though their duty does not require a response; strengthening reporting requirements of physician misconduct to the Board of Medical Examiners and to the health care facilities affiliated with physicians who have been disciplined.

The new law enacts Insurance Reforms by: prohibiting individuals from dual membership on the boards of medical malpractice insurers and professional trade associations; allowing physicians to form medical malpractice liability insurance purchasing alliances in order to negotiate a reduced medical malpractice liability insurance premium; requiring insurers to provide a reduced premium for policies that do not include a “consent to settle” provision; requiring insurers to offer policies with deductibles of at least \$5,000 per claim and up to \$1,000,000 per claim; prohibiting a carrier from increasing the premium of an insured if the insured is dismissed from an action alleging medical malpractice within 180 days of the filing of the action; requiring all medical malpractice insurers to certify to the DOBI as to adequacy of their financial reserves as a way to ensure the safety and soundness of insurers; allows the Commissioner to order a rate roll back if it is determined that a carrier’s medical liability rates are not in compliance with the law.

In regards to Insurance Reforms, it also: requires medical malpractice insurers to offer its insureds the option to make premium payments in installments; requires medical malpractice insurers to notify the Medical Practitioner Review Panel and the commissioner of the Department of Banking and Insurance, in writing, of any medical malpractice claim settlement, judgment or arbitration award involving any practitioner licensed by the State Board of Medical Examiners and insured by the insurer or insurance association; requires physicians to maintain medical malpractice insurance coverage in the sum of \$1 million per occurrence and \$3 million per policy year; creates a 17-member task force to review relevant issues related to the medical malpractice affordability crisis and requires them to issue a report 24 months after the effective date of the bill; creates a 3-year, \$78 million fund to provide direct premium relief to doctors and self-insured hospitals, relief to hospitals, and a student loan forgiveness program for doctors in high risk specialties - the fund would be based on a \$75 assessment on certain professionals, such as doctors, dentists, lawyers, and a \$3 surcharge on all employers who are subject to the New Jersey "Unemployment Compensation Law."

Lastly, the law enacts Tort Reforms by: reducing the statute of limitations for birth injuries to age 13; providing for complementary dispute resolution to encourage early disposition of medical malpractice lawsuits; creating an affidavit of non-involvement mechanism to allow defendants who are misidentified or otherwise not involved in the care and treatment of the claimant to seek dismissal of action; establishing qualifications for expert witnesses for persons executing an affidavit of merit and for testimony in a malpractice action, providing for penalties for intentional misrepresentation; granting the court greater discretion to review awards; allowing for structured judgments – awards less than \$1 million dollars must be paid immediately, and awards exceeding \$1 million may be paid 50% immediately with 50% annuitized over 60 months.

"This new landmark law will ease the crisis in medical malpractice insurance rates that has forced doctors from the State, while keeping intact protections for injured patients," said Senator Joseph F. Vitale, D-Middlesex. "It represents a year and a half of negotiations to come up with the best compromise to get something done without overly burdening one group over another. This law will help doctors without unduly hurting someone else."

"The high malpractice insurance rates were causing a crisis in the access to health care, and we needed to act to protect patient safety," said Senator Raymond J. Lesniak, D-Union. "This law will provide the necessary relief to stem the exodus of specialty doctors from our State, and will ensure the high quality of health care that New Jerseyans have come to expect."

"This law represents nearly two years of efforts by the Assembly Democratic Caucus to provide doctors and patients with a fair and balanced solution to the medical malpractice crisis," said Assembly Majority Leader Joseph J. Roberts Jr.. "Doctors will get the financial relief they deserve and patients will get the quality care they need."

"The many constructive and progressive elements in this law will keep doctors on the job while protective a patient's right to sue," said Assembly Deputy Majority Leader Neil M. Cohen. "Our reform measure recognizes that doctors are under tremendous financial strain

because of the paltry reimbursement policies of health maintenance organizations (HMOs) and the Medicare and Medicaid programs."

"We're striking a constructive balance between competitive professional interest groups while ensuring continued protection of patients," said Assembly Majority Conference Chair Loretta Weinberg. "These tort reforms will enable doctors to stop practicing defensive medicine and aggressively provide quality care to patients."

"Serious consequences await consumers, physicians, hospitals, insurers, and our state economy if the medical malpractice insurance issue goes unattended much longer," said Assemblyman John McKeon. "This law will be good for patients and the doctors who provide their care. It will promote stability in the medical malpractice insurance marketplace and our health-care system."

State of New Jersey Governor's Office

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