

17:300-1 to 16

LEGISLATIVE HISTORY CHECKLIST

NJSA 17:300-1 to 17:300-16

Laws of 1975 Chapter 301

Bill No. A1552

Sponsor(s) Salkind & 16 Others

Date Introduced April 16, 1974

Committee: Assembly Commerce, Industry & Professions

Senate Labor, Industry & Professions

Amended during passage Yes ~~NO~~ Amendments during passage denoted by asterisks

Date of passage: Assembly Feb. 27, 1975

Senate July 31, 1975

Date of approval January 30, 1976

Following statements are attached if available:

Sponsor statement Yes ~~NO~~

Committee Statement: Assembly Yes ~~NO~~

Senate Yes ~~NO~~

Fiscal Note Yes ~~NO~~

Veto message Yes ~~NO~~

Message on signing Yes ~~NO~~

Following were printed:

Reports Yes ~~NO~~

Hearings Yes ~~NO~~

974.90 New Jersey. Legislature. Senate. Labor, Industry and Professions Committee.
I59 Public hearing on A1552 (Medical malpractice liability insurance).
1975a Held on 4/3/75.

974.90 New Jersey. Legislature. Special Committee to Investigate and study
I59 Medical/Insurance. Public hearing, held 10/24/75 and 4/21/76. 2 vol.
1975c **Malpractice**

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10/4/76

JUN 1977

[THIRD OFFICIAL COPY REPRINT]
ASSEMBLY, No. 1552

STATE OF NEW JERSEY

INTRODUCED APRIL 16, 1974

By Assemblymen SALKIND, FLYNN, VAN WAGNER, WORTHINGTON, Assemblywoman CURRAN, Assemblymen RYS, FITZPATRICK, KOZLOSKI, D'AMBROSA, GALLO, RUANE, Assemblywoman CROCE, Assemblymen HERMAN, BAER, NERI, NEWMAN and KEEGAN

Referred to Committee on Commerce, Industry and Professions

AN ACT concerning ***[the practice of medicine and surgery and supplementing chapter 9 of Title 45 of the Revised Statutes]*** *medical malpractice liability insurance, ***[requiring certain licensed medical practitioners and health care facilities to maintain such insurance, and]**** *creating a New Jersey Medical Malpractice Reinsurance Association******[.]***** *and**** *a New Jersey Medical Malpractice Reinsurance Recovery Fund and* *****[a New Jersey Health Care Facility Insurance Deductible Fund]***** *granting emergency powers to the Commissioner of Insurance****.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 ***[1. No license to practice medicine and surgery shall be issued**
2 **by the board unless the applicant therefor shall submit proof satis-**
3 **factory to the board that he has or will have on the effective date**
4 **of his license a professional liability insurance policy with minimum**
5 **limits of coverage as shall be specified by the board in its rules or**
6 **regulations, but in no event shall such coverage be less than**
7 **\$100,000.00 for any one claimant.]***

1 ***[2. No annual certificate of registration shall be issued or re-**
2 **newed, and any such certificate may be revoked or suspended, by**
3 **the board with respect to any licensee who fails to maintain pro-**
4 **fessional liability insurance as required in section 1 of this act.]***

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

1 *1. This act shall be known and may be cited as the “Medical
2 Malpractice Liability Insurance Act.”

1 2. a. The purpose of this act is to assure that ***[the public is
2 adequately protected against losses arising out of medical mal-
3 practice by requiring licensed medical practitioners and certain
4 health care facilities to carry medical malpractice liability in-
5 surance, to make such]*** **medical malpractice liability*** in-
6 surance ***is*** readily available to licensed medical practitioners
7 and health care facilities by requiring certain general liability
8 insurance carriers to write medical malpractice liability insurance
9 and establishing a reinsurance association to equitably spread the
10 risks for such insurance, to provide for recoupment of losses result-
11 ing from the operation of the association through surcharges on
12 insureds ***[and establishing a health care facility deductible fund
13 to permit substantial deductibles in the coverage for such facilities
13A without severe budgetary hardship]*** **and to grant the Com-
13B missioner of Insurance temporary, emergency powers to set up and
13C operate the reinsurance association if such insurance is unavailable
13D for any class of licensed medical practitioners or health care
13E facilities***.

14 b. This act shall apply to medical malpractice liability insurance
15 as defined herein.

1 3. As used in this act:

2 a. “Association” means the New Jersey Medical Malpractice
3 Reinsurance Association established pursuant to the provisions
4 of this act.

5 b. “Commissioner” means the Commissioner of Insurance.

6 c. “Licensed medical practitioner” means and includes all per-
7 sons licensed in this State to practice medicine and surgery,
8 chiropractic, podiatry, dentistry, optometry, psychology, phar-
9 macy***, nursing, physical therapy*** and as a bioanalytical
9A laboratory director.

10 d. “Medical malpractice liability insurance” means ***[direct in-
11 surance against loss or damage resulting from accident to or injury
12 suffered by any person arising out of or in connection with the
13 practice of any licensed medical practitioner or the operation of
14 any health care facility for which the practitioner or facility is
15 liable]*** **insurance coverage against the legal liability of the
15A insured and against loss, damage or expense incident to a claim
15B arising out of the death or injury of any person as the result of
15C negligence or malpractice in rendering professional service by any
15D licensed medical practitioner or health care facility or a claim

15E arising out of ownership, operation or maintenance of the practi-
 15F tioner's or facility's business premises, including primary and
 15G umbrella coverages***.

16 e. "Health care facility" means and includes all hospitals within
 17 this State, and any other health care facility as defined in the
 18 "Health Care Facilities Planning Act" (P. L. 1971, c. 136,
 19 C. 26:2H-1 et seq.) ***[whose inclusion hereunder is deemed
 20 necessary by the commissioner, after consultation with and upon
 21 the advice of the Commissioner of Health and the Health Care
 22 Administration Board, to adequately effectuate the purposes of this
 23 act and is provided for by rule or regulation of the commis-
 23A sioner]***.

24 f. "Plan of operation" means the plan of operation of the
 25 association approved or promulgated by the commissioner pur-
 26 suant to the provisions of this act.

1 4. There is hereby created an unincorporated, nonprofit associa-
 2 tion to be known as the New Jersey Medical Malpractice Rein-
 3 surance Association consisting of all insurers authorized to write,
 4 ***and engaged in writing*** within this State, on a direct
 5 basis***, personal injury and property damage liability insurance
 6 as provided in R. S. 17:17-1 d. and e., excluding such insurers which
 7 are engaged in writing only workmen's compensation and em-
 8 ployer's liability insurance written in connection therewith***
 9 ***[general liability insurance which have written during the 24
 10 months preceding the effective date of this act medical malpractice
 11 liability insurance of the type subject to the provisions of this act
 12 anywhere in the United States of America]***. Every such insurer
 13 shall ***be and shall*** continue to be a member of the association
 14 and shall be bound by the plan of operation thereof so long as the
 15 association is in existence as a condition of its authority to continue
 16 to transact ***[general]*** such personal injury and property
 17 damage*** liability insurance in this State. ***[Any other insurer
 18 may become a member of the association if the commissioner is
 19 satisfied that such insurer is willing and able to provide the
 20 necessary services to policyholders and claimants for the type of
 21 insurance required under this act and approves its membership in
 22 the association.]***

1 5. The association shall, pursuant to the provisions of this act
 2 and the plan of operation, have the power:

3 a. To assume ***or cede*** 100% reinsurance or a lesser per-
 4 centage on any policy of insurance or binder subject to this act;

- 5 *b. To provide for separate accounts of reinsurance assumed for*
6 *****[all]***** *categories and subcategories of insureds;*
- 7 *c. To maintain relevant loss, expense and premium data relative*
8 *to all risks reinsured in the association and to require each mem-*
9 *ber to furnish statistics in connection with insurance ceded to the*
10 *association at such times and in such form and detail as may be*
11 *deemed necessary;*
- 12 *d. To establish fair and reasonable procedures for the sharing*
13 *among the members of profit or loss on risks reinsured in the*
14 *association and other costs, charges, expenses, liabilities, income,*
15 *property and other assets of the association, and to assess members*
16 *for their appropriate shares in accordance with participation ratios*
17 *to be established in the plan of operation on the basis of the ratio*
18 *of the members' direct premiums written to the total direct pre-*
19 *mium written by all members in this State *****[for the coverages***
20 *subject to this act]*** *on insurance against liability for dam-*
20A *ages to persons or property as provided in R. S. 17:17-1 d. and e.,*
20B *excluding workmen's compensation and employer's liability in-*
20C *surance written in connection therewith***;**
- 21 *e. To receive and distribute all sums required by the operation*
22 *of the association;*
- 23 *f. To establish procedures for reviewing claims procedures and*
24 *practices of members and in the event that the claims procedures*
25 *or practices of any company are considered inadequate to properly*
26 *service the risks ceded by it to the association, the association may*
27 *establish a claims program that will undertake to adjust or assist*
28 *in the adjustment of claims for the company on risks ceded by it,*
29 *and in such event shall charge such company a reasonable fee for*
30 *establishing and operating such claims program;*
- 31 *g. To audit the operations of member companies to such extent*
32 *as the Board of Directors determines to be necessary to assure*
33 *compliance with this act, in a reasonable manner and at such*
34 *reasonable time or times prescribed by the Board of Directors;*
- 35 *h. To sue and be sued, provided that no judgment against the*
36 *association shall create *****[and]***** *any*** direct liability in*
37 *the individual member companies, and the association may provide*
38 *for the indemnification of its member companies, members of the*
39 *Board of Directors and officers and employees and such other per-*
40 *sons acting on behalf of the association to the extent permitted by*
40A *law;**
- 41 *i. To review the market for insurance subject to this act through-*
42 *out this State to make certain that eligible risks can readily obtain*

43 such insurance and to provide in the plan of operation a reasonable
 44 means for achieving this objective by requiring all members, in a
 45 fair and equitable manner, to discharge their responsibilities under
 46 this act.

1 6***,*** ***.*** Within 30 days after the effective date of this
 2 act, the commissioner shall call an organization meeting of the
 3 association for the purpose of constituting a ***temporary***
 4 board of directors. ***[Every member of the association shall be a
 5 member of the board of directors if the number of association
 6 members does not exceed nine. If the number of association
 7 members exceeds nine, the]*** ***The*** commissioner shall
 8 appoint nine members to serve as members of the board of directors
 9 after consultation with all the members of the association, and in
 10 making such appointments he shall give due consideration to the
 11 various methods of operation and the distribution by class of risks
 12 among the members.

12A The commissioner shall appoint three representatives of
 13 ***licensed*** producers to be members of the board of directors.

14 Each member of the board of directors shall be entitled to one
 15 vote. The producer representatives on the board of directors shall
 16 be eligible to vote on all matters not directly involving the associa-
 17 tion's budget and personnel administration.

18 ***[The plan of operation shall provide for rotation of the
 19 membership on the board if the membership of the association con-
 20 sists of more than nine insurers companies.]***

21 Except as may be delegated to others in the plan of operation
 22 or reserved to the members, the board of directors shall have full
 23 power and responsibility for the establishment and operation of the
 24 association.

1 7. a. Within such time as shall be prescribed by ***[regulation
 2 of]*** the commissioner ***in written notice to the board***, the
 3 directors shall submit to the commissioner, for his review and
 4 approval, a proposed plan of operation. Such plan shall provide
 5 for ***the establishment of a permanent board of directors, the
 6 length of terms of the directors and the method of their selection,
 7 for*** economical, fair and nondiscriminatory administration and
 7A for the prompt and efficient provision of medical malpractice
 7B liability insurance throughout the State. Such proposed plan
 7C shall include: preliminary assessment of all members for initial
 8 expenses necessary to commence operations; establishment of
 9 necessary facilities; management of the association; assessment
 10 of members to defray losses and expenses; underwriting standards;

11 *procedures for acceptance and cession of reinsurance; and such*
 12 *other provisions as may be deemed necessary by the commissioner*
 13 *to carry out the purposes of this act. The plan of operation shall*
 14 *provide that the premium charged for reinsurance shall be the*
 15 *primary premium charged for the coverages and limits ceded less*
 16 *the expense allowances. The expense allowances shall consist of*
 17 *the amounts actually incurred by the member on the ceded risk*
 18 ****[for commission and brokerage, taxes, licenses and fees as deter-*
 19 *mined in ratemaking for general liability lines of business, and*
 20 *an allowance for other acquisition and general administrative ex-*
 21 *penses based on the member's countrywide insurance expense*
 22 *exhibit and determined in the manner used in ratemaking, and an*
 23 *allowance for unallocated loss adjustment expenses as determined*
 24 *in relation to the definition of allocated loss adjustment expenses*
 25 *in the statistical plan used by the member. No expense allowance*
 26 *shall be permitted in excess]**** ****subject to a maximum*** of*
 27 *the total expense allowances provided in ratemaking for ***the*
 28 *respective categories and subcategories of*** medical malpractice*
 29 *liability insurance in the latest rate revision or experience review*
 29A ****[for a rating organization]**** ****for the member accepted by*
 29B *the commissioner***.*

30 *b. The proposed plan shall be reviewed by the commissioner*
 31 *and approved by him if he finds that such plan fulfills the purposes*
 32 *of this act. In his review of the proposed plan the commissioner*
 33 *may, in his discretion, consult with the directors and other mem-*
 34 *bers of the association and any other individual or organization.*
 35 *If the commissioner approves the proposed plan he shall certify*
 36 *such approval to the directors and said plan shall take effect 10*
 37 *days after such certification. If the commissioner disapproves all*
 38 *or any part of the proposed plan of operation he shall return*
 39 *same to the directors with a statement, in writing, of the reasons*
 40 *for his disapproval and any recommendations he may wish to make.*
 41 *The directors may accept the commissioner's recommendations, or*
 42 *may propose a new plan, which accepted recommendations or a*
 43 *new plan shall be submitted to the commissioner within 30 days*
 44 *after the return of a disapproved plan to the directors. If the*
 45 *directors do not submit a proposed plan of operation within ***[90*
 46 *days after the effective date of this act]**** ****the time prescribed*
 47 *by the commissioner***, or a new plan which is acceptable to the*
 48 *commissioner, or accept the recommendations of the commissioner*
 49 *within 30 days after the disapproval of a proposed plan, the com-*
 50 *missioner shall promulgate a plan of operation and certify same to*

51 *the directors. Any such plan promulgated by the commissioner*
 52 *shall take effect 10 days after certification to the directors.*

53 *c. The directors of the association may, on their own initiative,*
 54 *amend the plan of operation at any time, subject to the approval*
 55 *by the commissioner.*

56 *d. The commissioner may review the plan of operation whenever*
 57 *he deems expedient, and shall review same at least once a year,*
 58 *and may amend said plan after consultation with the directors and*
 59 *upon certification to the directors of such amendment.*

1 *8. On and after the date that reinsurance is available from the*
 2 *association:*

3 ****a. The commissioner may, upon finding that medical mal-*
 4 *practice liability insurance is not readily available for any category*
 5 *or subcategory of insureds to which this act applies, activate the*
 6 *facility with respect to such category or subcategory.*

7 *b. Upon such activation, the board shall issue an invitation to*
 8 *each member of the association which has written during the 24*
 9 *months preceding the date of such activation medical malpractice*
 10 *liability insurance of the type for which the association was*
 11 *activated anywhere in the United States of America, to become a*
 12 *qualified provider of such coverage in this State. If the board*
 13 *qualifies no company as a provider or if the commissioner deter-*
 14 *mines, after a review of the company or companies qualified by the*
 15 *board, that the company or companies were not properly qualified,*
 16 *the commissioner shall designate as providers of such coverage*
 17 *one or more companies from among the companies that have*
 18 *written, in descending order, the largest volumes of such coverage*
 19 *in this State during the latest year for which this information is*
 20 *available. Qualified or designated providers shall be compensated*
 21 *in accordance with the provisions of the plan of operation.****

22 ****[a.]*** **c.*** No member of the association ***qualified or*
 23 *designated as a provider in accordance with this section*** shall*
 24 *refuse to issue to any eligible risk a policy of insurance of the type*
 25 *normally afforded by such insurer to the public, utilizing the rates,*
 26 *rating plans, rules and classification systems then in effect for such*
 27 *insurer; provided, however, that the coverages and coverage limits*
 28 *to be afforded may be ceded to the association; and provided*
 29 *further that nothing herein contained shall require any insurer to*
 30 *accept any risk if such insurer's policy forms or rates do not*
 31 ****[provide for the acceptance of such risk, unless the association*
 32 *or the commissioner determine that such forms or rates are un-*

33 *fairly discriminatory or are otherwise inconsistent with the public*
 34 *policy of this State]**** *apply to such risk****;

35 ***[b.]*** *d.**** *No duly licensed insurance agent* ****of a*
 36 *qualified or designated provider**** *broker or solicitor* ***[regu-
 37 *larly engaged to solicit general liability insurance]**** *shall refuse*
 38 *to furnish to any eligible risk quotations of premises for* ***[any
 39 *insurer]**** *such provider**** *with whom such agent, broker or*
 40 *solicitor* ****regularly**** *places medical malpractice liability in-*
 41 *surance policies, or shall fail to submit any eligible risk to such*
 42 *insurer selected by the applicant when requested directly to*
 43 *do so by such applicant]**** *provider****;

44 ***[c.]*** *e.**** *No company shall terminate any agent or*
 45 *restrict the authority of any agent, directly or indirectly, or in any*
 46 *manner whatsoever, solely by reason of the volume of such agent's*
 47 *business it cedes to the association or the experience produced by*
 48 *such ceded business. Neither shall any company make any distinc-*
 49 *tion in remuneration to the agent between business retained and*
 50 *business ceded, or use any promise of reward or threat of penalty,*
 51 *present or future, or any device whatever, related to certain classes*
 52 *of risks or other classes of business, which would tend to induce the*
 53 *agent to avoid certain classes or types of risks.*

1 ***[9. *On or after the date the commissioner declares that medical*
 2 *malpractice liability insurance is available for the various cate-*
 3 *gories and subcategories of licensed medical practitioners and*
 4 *health care facilities subject to the provisions of this act, each*
 5 *licensed medical practitioner and health care facility shall maintain*
 6 *medical malpractice liability insurance in amounts at least equal*
 7 *to the minimum limits prescribed by rule or regulation of the*
 8 *commissioner for the category or subcategory of such practitioner*
 9 *or facility. Failure to maintain the insurance coverage required*
 10 *herein shall be grounds for revocation or suspension of the license*
 11 *of a licensed medical practitioner or health care facility, and no*
 12 *license for a licensed medical practitioner or a health care facility*
 13 *shall be issued or renewed unless adequate proof of the insurance*
 14 *required hereunder is submitted to the appropriate board or agency*
 15 *in the form and manner prescribed in the rules and regulations*
 16 *thereof.]***

1 ***[10.]** *9.**** *There* ***[are hereby created two funds,
 2 *one]**** *to be known as the New Jersey Medical Malpractice Rein-*
 3 *surance Recovery Fund (hereinafter referred to as the recovery*
 4 *fund)* ***[and the other to be known as the New Jersey Health
 5 *Care Facility Insurance Deductible Fund (hereinafter referred to*

6 as the deductible fund]***. The purpose of the recovery fund is to
 7 provide a financial backup for the plan of operation of the associa-
 8 tion and shall be used to reimburse the association for losses
 9 sustained in excess of premiums ceded and expenses incurred in the
 10 operation of the association***, including reimbursement of
 11 members for any and all assessments levied as a result of their
 12 participation in the association***. ***[The purpose of the deduct-
 13 ible fund is to provide a financial backup for that portion of in-
 14 curred losses under policies issued to health care facilities that are
 15 within the deductible limits of such policies and shall be used to
 16 reimburse a health care facility for 75% of the loss not covered
 17 because of a deductible provision for any claim which is paid by an
 18 insurer. Both funds]*** ***The fund*** shall consist of all pay-
 19 ments made to ***[them]*** ***it*** by insurers as hereinafter
 20 provided, of securities acquired by and through the use of moneys
 21 belonging to the ***[funds]*** ***fund***, moneys appropriated
 22 to the ***[funds]*** ***fund***, together with interest and
 23 accretions earned upon such payments or investments. The
 24 ***[funds]*** ***fund*** shall be administered by the commis-
 25 sioner and the State Treasurer in accordance with the provisions of
 26 this act.

1 **[11.]** **10.** For the purpose of providing moneys neces-
 2 sary to establish the recovery ***[and deductible funds]***
 3 ***fund*** in ***[amounts]*** ***amount*** sufficient to meet
 4 the requirements of this act, the commissioner shall establish
 5 reasonable provisions ***[in the rates]*** ***through additional
 6 premium charges*** for policies of ***[all]*** ***the various***
 7 categories and subcategories of medical malpractice liability in-
 8 surance. Such provisions ***[in the rates]*** may vary by
 9 category or subcategory of risk in reasonable relationship to the
 10 loss experience ***both past and prospective*** of the association
 11 ***and its members*** attributable to such category or sub-
 12 category.

1 **[12.]** **11.** The ***[funds]*** ***fund*** created by
 2 this act shall be separate and apart from any other fund and from
 3 all other State moneys. The State Treasurer shall be custodian of
 4 the ***[funds]*** ***funds*** and all disbursements from said
 5 ***[funds]*** ***fund*** shall be made by the treasurer upon
 6 vouchers signed by the commissioner. The moneys in the
 7 ***[funds]*** ***fund*** shall be invested and reinvested by the
 8 Director of the Division of Investment as other trust funds in the
 9 custody of the State Treasurer in the manner provided by law.

1 **[13.]** ***[**12.**] *The commissioner, after consultation with*
 2 *and upon the advice of the boards or agencies responsible for licens-*
 3 *ing and regulating the medical practitioners subject to the pro-*
 4 *visions of this act, and with respect to health care facilities, the*
 5 *Commissioner of Health and the Health Care Administration*
 6 *Board, shall establish categories and subcategories of risks for*
 7 *medical malpractice liability insurance based upon accepted in-*
 8 *surance principles, and shall prescribe reasonable minimum limits*
 9 *of coverage for each category and subcategory. The commissioner*
 10 *may establish minimum deductibles to be applicable to policies*
 11 *subject to this act, which deductibles may vary by category or*
 12 *subcategory of risk, and shall give due consideration to such*
 13 *deductibles in ratemaking by appropriate premium discounts.]****

1 **[14.]** ***[**13.**]*** ***12.** *The commissioner may*
 2 *promulgate reasonable rules and regulations to carry out the*
 3 *purposes of this act, and may suspend or revoke, after reasonable*
 4 *notice and a hearing, the certificate of authority to transact insur-*
 5 *ance in this State of any insurer which fails to comply with the*
 6 *provisions of this act, rules or regulations promulgated thereunder*
 7 *or any plan of operation.*

1 ***13. *Upon finding that immediate activation of the associa-*
 2 *tion for any category or subcategory of insureds is required be-*
 3 *cause medical malpractice liability insurance is or will be unavail-*
 4 *able for such category or subcategory, the commissioner shall have*
 5 *the following emergency powers:*

6 a. *To appoint a temporary board of directors or operate the*
 7 *association without such board.*

8 b. *To adopt a temporary plan of operation to meet the imme-*
 9 *diante needs of the association.*

10 c. *To perform on behalf of the association on a temporary basis*
 11 *all functions necessary for the operation of the association other-*
 12 *wise delegated to the board of directors or the members of the*
 13 *association.*

14 d. *To charge the association for reasonable expenses incurred*
 15 *on its behalf in the emergency operation of the association pur-*
 16 *suant to this section.*

17 e. *Subject to the same standards applicable for the approval of*
 18 *rates and rating-systems pursuant to P. L. 1944, c. 27 (C. 17:29A-1*
 19 *et seq.), to promulgate rates, rules, policy forms and rating plans*
 20 *for such category or subcategory of insureds for limits up to*
 21 *\$3,000,000.00 over primary limits to be used by any company*
 22 *qualifying or designated as a provider for such coverage which*

23 *does not have rates, rules, policy forms and rating plans in effect*
 24 *for such coverage.*

25 *These emergency powers shall terminate 60 days after the effec-*
 26 *tive date of this act.****

1 ***[15.]** **14.** If any provisions of this act or the application*
 2 *thereof to any person or circumstances is held invalid, the invalidity*
 3 *shall not affect other provisions or applications of this act which*
 4 *can be given effect without the invalid provision or application,*
 5 *and for this purpose the provisions of this act are declared to be*
 6 *severable.*

1 ***[16.]** **15.** This act shall be liberally construed to effectu-*
 2 *ate its purposes, and all laws or parts of laws of this State*
 3 *inconsistent with this act are hereby superseded to the extent of*
 4 *such inconsistency.**

1 **[3.]* **[17.]** **16.** This act shall take effect *[90 days*
 2 *after its enactment]* *immediately* ***and shall be inoperative*
 3 *commencing on the first day of the sixth year after the effective*
 4 *date of this act***.*

ASSEMBLY, No. 1552

STATE OF NEW JERSEY

INTRODUCED APRIL 16, 1974

By Assemblymen SALKIND, FLYNN, VAN WAGNER, WORTHINGTON, Assemblywoman CURRAN, Assemblymen RYS, FITZPATRICK, KOZLOSKI, D'AMBROSA, GALLO, RUANE, Assemblywoman CROCE, Assemblymen HERMAN, BAER, NERI, NEWMAN and KEEGAN

Referred to Committee on Commerce, Industry and Professions

AN ACT concerning the practice of medicine and surgery and supplementing chapter 9 of Title 45 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. No license to practice medicine and surgery shall be issued
2 by the board unless the applicant therefor shall submit proof satis-
3 factory to the board that he has or will have on the effective date
4 of his license a professional liability insurance policy with minimum
5 limits of coverage as shall be specified by the board in its rules or
6 regulations, but in no event shall such coverage be less than
7 \$100,000.00 for any one claimant.

1 2. No annual certificate of registration shall be issued or re-
2 newed, and any such certificate may be revoked or suspended, by
3 the board with respect to any licensee who fails to maintain pro-
4 fessional liability insurance as required in section 1 of this act.

1 3. This act shall take effect 90 days after its enactment.

STATEMENT

This bill requires physicians to obtain professional liability insurance with a minimum coverage of \$100,000.00 as a condition of licensure.

ASSEMBLY COMMERCE, INDUSTRY AND
PROFESSIONS COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1552

STATE OF NEW JERSEY

DATED: FEBRUARY 10, 1975

This bill makes malpractice liability insurance compulsory for all medical practitioners and health care facilities and makes provisions for making such insurance available through licensed New Jersey insurance companies.

Since it is realized that different medical practitioners require different limits of liability coverage, such as surgeons compared with nurses, the minimum required limits of coverage will be determined by regulation after consultation between the Commissioner of Insurance, the Commissioner of Health and the Health Care Administration Board.

The act contemplates the use of deductibles which may vary by category of risk; this feature will reduce the cost of insurance for those who maintain a claim free record.

In order to assure complete availability, the act provides for the establishment of a reinsurance facility. Those companies that are licensed to write general liability insurance in New Jersey and that have the expertise in providing appropriate policyholder service for this type of insurance, companies that write medical malpractice insurance anywhere, will form a panel of companies that will accept every applicant for medical malpractice insurance. Any risk that such insurer does not wish to carry on its own account can be ceded to the reinsurance facility. Funds to absorb any deficit of the reinsurance facility will be obtained through periodic premium adjustments to be determined by the Commissioner of Insurance on the basis of appropriate ratemaking procedures.

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1552

[SECOND OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: JULY 21, 1975

Assembly Bill No. 1552 (Second Official Copy Reprint), as passed by the General Assembly, provided one approach to the short-term resolution of the current problem concerning the availability of medical malpractice liability insurance. It would attempt to make such insurance available through the mechanism of a reinsurance association. General liability insurers who had written medical malpractice insurance anywhere in the country during the 24 months preceding the effective date of the act would be required to be members of the association. They would be prohibited from refusing to issue a policy of medical malpractice insurance to any eligible risk but they would be able to cede any risk to the association, retaining only the responsibility for servicing the policy (issuing the forms, collecting premiums, handling claims, etc.). To provide a financial backup for the association to cover losses from its operations, a recovery fund would be established. Moneys would be made available for the fund through provisions in the rates for medical malpractice insurance.

The committee held a public hearing on the bill on April 8, 1975 and has received numerous additional comments on the bill. Based upon the testimony and comments received by the committee, extensive amendments have been worked out and the committee is reporting the bill with such amendments. These amendments would make substantial changes in the nature and operation of the reinsurance association. The membership of the association would be expanded to include all general liability insurers except those which write only workmen's compensation and related employers liability insurance. Although the association would be established in due course as provided in the bill, it would not actually engage in any operation until it had been activated by the Commissioner of Insurance with respect to a class of medical practitioners or health care facilities for which malpractice insurance was not readily available. Upon such activation, malpractice insurance

for the affected class would be provided by insurers qualified as providers by the association or designated as such by the commissioner. Such providers would be prohibited from refusing to insure any eligible risk but they could cede any such risk to the association. The commissioner would be granted temporary, emergency powers to set up and operate the association if malpractice insurance was unavailable for any class of licensed medical practitioners or health care facilities. Losses from the operations of the association would be reimbursed from a recovery fund which would consist of moneys made available through additional premiums on the medical malpractice insurance policies of all members of the class for which the reinsurance association was activated. Members of the association would be entitled to reimbursement for any and all assessments levied as a result of their participation in the association. The act would remain operative only for 5 years from its effective date.