

January 23, 1998

HOUSE BILL No. 1286

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-12; noncode.

Synopsis: Medical malpractice. Requires a health care provider to carry a policy of malpractice liability insurance of at least \$250,000 per occurrence and \$750,000 in the annual aggregate in order to be covered under the medical malpractice act. (Current law requires policy limits of \$100,000 per occurrence and \$300,000 in the annual aggregate.) Requires a hospital to carry a policy of malpractice liability insurance of at least \$5,000,000 in the annual aggregate if the hospital has 100 or fewer beds, and a policy of at least \$7,500,000 in the annual aggregate if the hospital has more than 100 beds. (Current law provides limits of \$2,000,000 and \$3,000,000, respectively.) Increases from \$25 to \$100 the minimum annual surcharge each health care provider is required to pay. Provides methods for the calculation of the annual surcharge for physicians and hospitals. Provides that the commissioner has sole authority for making decisions regarding the settlement of claims
(Continued next page)

Effective: Upon passage; July 1, 1998; January 1, 1999; July 1, 1999.

Fry, M. Smith, Torr, Fesko

January 13, 1998, read first time and referred to Committee on Insurance, Corporations and Small Business.
January 22, 1998, amended, reported — Do Pass.

HB 1286—LS 7170/DI 88+



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Digest Continued

against the patient compensation fund and determining the reasonableness of any fee submitted by an attorney who defends the patient compensation fund. Allows a malpractice claimant to initiate a confidential action in court at the same time the claimant's proposed complaint is being considered by a medical review panel. Allows the commissioner to file a motion in Marion County Circuit Court on the motion of a party or on the commissioner's own initiative to dismiss a case before the department of insurance if no action has been taken in the case for at least two years. Increases from \$1,250 to \$2,000 the maximum a medical review panel chairman may be paid. Increases the maximum amount recoverable for an injury or death of a patient from \$750,000 to \$1,250,000 for an act of malpractice that occurs after December 31, 1998. Increases from \$100,000 to \$250,000 the maximum amount for which a qualified provider may be held liable for an act of malpractice. Repeals a provision allowing the commissioner to decrease the amount of the surcharge paid by providers if the patient compensation fund maintains a balance of at least \$125,000,000 at the end of two consecutive 6 month periods.

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HB 1286—LS 7170/DI 88+



January 23, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

HOUSE BILL No. 1286

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-12-2-24.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 1998]: **Sec. 24.5. "Qualified provider" means**
4 **a health care provider that is qualified under this article by**
5 **complying with the procedures set forth in IC 27-12-3.**

6 SECTION 2. IC 27-12-4-1, AS AMENDED BY P.L.26-1994,
7 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 1999]: Sec. 1. Financial responsibility of a health care
9 provider and the provider's officers, agents, and employees while acting
10 in the course and scope of their employment with the health care
11 provider may be established under subdivision (1), (2), or (3):

12 (1) By the health care provider's insurance carrier filing with the
13 commissioner proof that the health care provider is insured by a
14 policy of malpractice liability insurance in the amount of at least
15 ~~one~~ **two** hundred ~~fifty~~ thousand dollars ~~(\$100,000)~~ **(\$250,000)**

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1 per occurrence and ~~three seven~~ hundred **fifty** thousand dollars
 2 ~~(\$300,000)~~ **(\$750,000)** in the annual aggregate, except for the
 3 following:

4 (A) If the health care provider is a hospital, as defined in this
 5 article, the minimum annual aggregate insurance amount is as
 6 follows:

7 (i) For hospitals of not more than one hundred (100) beds,
 8 ~~two five~~ million dollars ~~(\$2,000,000)~~: **(\$5,000,000)**.

9 (ii) For hospitals of more than one hundred (100) beds, ~~three~~
 10 ~~seven~~ million **five hundred thousand** dollars ~~(\$3,000,000)~~:
 11 **(\$7,500,000)**.

12 (B) If the health care provider is a health maintenance
 13 organization (as defined in IC 27-13-1-19) or a limited service
 14 health maintenance organization (as defined in
 15 IC 27-13-34-4), the minimum annual aggregate insurance
 16 amount is seven hundred thousand dollars (\$700,000).

17 (C) If the health care provider is a health facility, the minimum
 18 annual aggregate insurance amount is as follows:

19 (i) For health facilities with not more than one hundred
 20 (100) beds, three hundred thousand dollars (\$300,000).

21 (ii) For health facilities with more than one hundred (100)
 22 beds, five hundred thousand dollars (\$500,000).

23 (2) By filing and maintaining with the commissioner cash or
 24 surety bond approved by the commissioner in the amounts set
 25 forth in subdivision (1).

26 (3) If the health care provider is a hospital or a psychiatric
 27 hospital, by submitting annually a verified financial statement
 28 that, in the discretion of the commissioner, adequately
 29 demonstrates that the current and future financial responsibility
 30 of the health care provider is sufficient to satisfy all potential
 31 malpractice claims incurred by the provider or the provider's
 32 officers, agents, and employees while acting in the course and
 33 scope of their employment up to a total of ~~one two~~ hundred **fifty**
 34 thousand dollars ~~(\$100,000)~~ **(\$250,000)** per occurrence and
 35 annual aggregates as follows:

36 (A) For hospitals of not more than one hundred (100) beds,
 37 ~~two five~~ million dollars ~~(\$2,000,000)~~: **(\$5,000,000)**.

38 (B) For hospitals of more than one hundred (100) beds, ~~three~~
 39 ~~seven~~ million **five hundred thousand** dollars ~~(\$3,000,000)~~:
 40 **(\$7,500,000)**.

41 The commissioner may require the deposit of security to assure
 42 continued financial responsibility.

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1 SECTION 3. IC 27-12-5-2 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) As used in
 3 this section, "actuarial program" means a program used or
 4 created by the department to determine the actuarial risk posed to
 5 the patient compensation fund under IC 27-12-6 by a hospital. The
 6 program must be:

- 7 (1) developed to calculate actuarial risk;
 8 (2) an efficient and accurate means of calculating a hospital's
 9 malpractice actuarial risk; and
 10 (3) publicly identified by the department by July 1 of each
 11 year.

12 (b) The amount of the annual surcharge shall be set by a rule
 13 adopted by the commissioner under IC 4-22-2.

14 ~~(b)~~ (c) The amount of the surcharge shall be determined based upon
 15 actuarial principles and actuarial studies and must be adequate for the
 16 payment of claims and expenses from the patient's compensation fund.

17 ~~(c)~~ (d) The surcharge may not exceed two hundred percent (200%)
 18 of the cost to each health care provider, **except for a physician**
 19 **licensed under IC 25-22.5 and a hospital licensed under IC 16-21**
 20 for maintenance of financial responsibility.

21 ~~(d)~~ (e) There is imposed a minimum annual surcharge of ~~twenty-five~~
 22 **one hundred** dollars ~~(\$25)~~. **(\$100)**.

23 (f) **Notwithstanding subsections (b), (c), and (e), beginning July**
 24 **1, 1999, the surcharge for a qualified provider who is licensed**
 25 **under IC 25-22.5 is calculated as follows:**

26 (1) **The commissioner shall contract with an actuary that has**
 27 **experience in calculating the actuarial risks posed by**
 28 **physicians. Not later than July 1 of each year, the actuary**
 29 **shall calculate the median of the premiums paid for**
 30 **malpractice liability policies to the three (3) malpractice**
 31 **insurance carriers in the state that have underwritten the**
 32 **most malpractice insurance policies for all physicians**
 33 **practicing in the same specialty class or discipline in Indiana**
 34 **during the previous twelve (12) month period. In calculating**
 35 **the median, the actuary shall consider the:**

36 (A) **manual rates of the three (3) leading malpractice**
 37 **insurance carriers in the state; and**

38 (B) **aggregate credits or debits to the manual rates given**
 39 **during the previous twelve (12) month period.**

40 (2) **After making the calculation described in subdivision (1),**
 41 **the actuary shall establish a uniform surcharge for all**
 42 **licensed physicians practicing in the same medical specialty or**

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1 **discipline. This surcharge must be based on a percentage of**
 2 **the median calculated in subdivision (1) for all licensed**
 3 **physicians practicing in the same medical specialty or**
 4 **discipline under rules adopted by the commissioner under**
 5 **IC 4-22-2. The surcharge:**

6 (A) must be sufficient to cover; and

7 (B) may not exceed;

8 **the actuarial risk posed to the patient compensation fund**
 9 **under IC 27-12-6 by physicians practicing in the medical**
 10 **specialty or discipline.**

11 (g) **Beginning July 1, 1999, the surcharge for a hospital licensed**
 12 **under IC 16-21 that establishes financial responsibility under**
 13 **IC 27-12-4 after June 30, 1999, is established through the use of an**
 14 **actuarial program. At the time financial responsibility is**
 15 **established for the hospital, the hospital shall pay the surcharge**
 16 **amount established for the hospital under this section. The**
 17 **surcharge:**

18 (1) must be sufficient to cover; and

19 (2) may not exceed;

20 **the actuarial risk posed to the patient compensation fund under**
 21 **IC 27-12-6 by the hospital.**

22 SECTION 4. IC 27-12-6-2 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The
 24 commissioner, using money from the fund, as considered necessary,
 25 appropriate, or desirable, may purchase **or retain** the services of
 26 persons, firms, and corporations to aid in protecting the fund against
 27 claims.

28 (b) **When retaining legal services under subsection (a), the**
 29 **commissioner shall retain competent and experienced legal counsel**
 30 **licensed to practice law in Indiana to assist in litigation or other**
 31 **matters pertaining to the fund.**

32 (c) **The commissioner has sole authority for the following:**

33 (1) **Making a decision regarding the settlement of a claim**
 34 **against the patient compensation fund.**

35 (2) **Determining the reasonableness of any fee submitted to the**
 36 **department of insurance by an attorney who defends the**
 37 **patient compensation fund under this section.**

38 (d) **All expenses of collecting, protecting, and administering the**
 39 **fund shall be paid from the fund.**

40 SECTION 5. IC 27-12-8-7 IS ADDED TO THE INDIANA CODE
 41 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 42 **1, 1998]: Sec. 7. Notwithstanding section 4 of this chapter,**



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1 beginning July 1, 1999, a claimant may commence an action in
 2 court for malpractice at the same time the claimant's proposed
 3 complaint is being considered by a medical review panel. In order
 4 to comply with this section, the:

- 5 (1) complaint filed in court may not contain information that
 6 would allow a third party to identify the defendant;
 7 (2) claimant is prohibited from pursuing the action; and
 8 (3) court is prohibited from taking any action except setting
 9 a date for trial, an action under IC 27-12-8-8, or an action
 10 under IC 27-12-11;

11 until section 4 of this chapter has been satisfied.

12 SECTION 6. IC 27-12-8-8 IS ADDED TO THE INDIANA CODE
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 14 UPON PASSAGE]: Sec. 8. **If action has not been taken in a case**
 15 **before the department of insurance for a period of at least two (2)**
 16 **years, the commissioner, on the:**

- 17 (1) motion of a party; or
 18 (2) commissioner's own initiative;

19 **may file a motion in Marion County Circuit Court to dismiss the**
 20 **case under Rule 41(E) of the Indiana Rules of Trial Procedure.**

21 SECTION 7. IC 27-12-10-25 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 25. (a) Each
 23 health care provider member of the medical review panel is entitled to
 24 be paid:

- 25 (1) up to three hundred fifty dollars (\$350) for all work performed
 26 as a member of the panel, exclusive of time involved if called as
 27 a witness to testify in court; and
 28 (2) reasonable travel expense.

29 (b) The chairman of the panel is entitled to be paid:

- 30 (1) at the rate of two hundred fifty dollars (\$250) per diem, not to
 31 exceed ~~one two thousand two hundred fifty~~ dollars (~~\$1,250~~);
 32 **(\$2,000)**; and
 33 (2) reasonable travel expenses.

34 (c) The chairman shall keep an accurate record of the time and
 35 expenses of all the members of the panel. The record shall be submitted
 36 to the parties for payment with the panel's report.

37 (d) Fees of the panel, including travel expenses and other expenses
 38 of the review, shall be paid by the side in whose favor the majority
 39 opinion is written. If there is no majority opinion, each side shall pay
 40 ~~one-half (1/2)~~ **fifty percent (50%)** of the cost.

41 SECTION 8. IC 27-12-14-3 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) The total amount

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1 recoverable for an injury or death of a patient may not exceed **the**
 2 **following:**

3 (1) Five hundred thousand dollars (\$500,000) ~~except that, as to~~
 4 **for an act of malpractice that occurs on or after before** January 1,
 5 1990. ~~the total amount recovered for an injury or death may not~~
 6 ~~exceed~~

7 (2) Seven hundred fifty thousand dollars (\$750,000) **for an act of**
 8 **malpractice that occurs:**

9 (A) **after December 31, 1989; and**

10 (B) **before July 1, 1999.**

11 (3) **One million two hundred fifty thousand dollars**
 12 **(\$1,250,000) for an act of malpractice that occurs after June**
 13 **30, 1999.**

14 (b) A health care provider qualified under this article is not liable
 15 for an amount in excess of ~~one two~~ **hundred fifty** thousand dollars
 16 ~~(\$100,000)~~ **(\$250,000)** for an occurrence of malpractice.

17 (c) Any amount due from a judgment or settlement that is in excess
 18 of the total liability of all liable health care providers, subject to
 19 subsections (a), (b), and (d), shall be paid from the patient's
 20 compensation fund under IC 27-12-15.

21 (d) If a health care provider qualified under this article admits
 22 liability or is adjudicated liable solely by reason of the conduct of
 23 another health care provider who is an officer, agent, or employee of
 24 the health care provider acting in the course and scope of employment
 25 and qualified under this article, the total amount that shall be paid to
 26 the claimant on behalf of the officer, agent, or employee and the health
 27 care provider by the health care provider or its insurer is ~~one two~~
 28 **hundred fifty** thousand dollars ~~(\$100,000)~~ **(\$250,000)**. The balance of
 29 an adjudicated amount to which the claimant is entitled shall be paid
 30 by other liable health care providers or the patient's compensation fund,
 31 or both.

32 SECTION 9. IC 27-12-14-4 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) If the possible
 34 liability of the health care provider to the patient is discharged solely
 35 through an immediate payment, the limitations on recovery from a
 36 health care provider stated in section 3(b) and 3(d) of this chapter apply
 37 without adjustment.

38 (b) If the health care provider agrees to discharge its possible
 39 liability to the patient through a periodic payments agreement, the
 40 amount of the patient's recovery from a health care provider in a case
 41 under this subsection is the amount of any immediate payment made by
 42 the health care provider or the health care provider's insurer to the



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1 patient, plus the cost of the periodic payments agreement to the health
 2 care provider or the health care provider's insurer. For the purpose of
 3 determining the limitations on recovery stated in section 3(b) and 3(d)
 4 of this chapter and for the purpose of determining the question under
 5 IC 27-12-15-3 of whether the health care provider or the health care
 6 provider's insurer has agreed to settle its liability by payment of its
 7 policy limits, the sum of:

8 (1) the present payment of money to the patient (or the patient's
 9 estate) by the health care provider (or the health care provider's
 10 insurer); plus

11 (2) the cost of the periodic payments agreement expended by the
 12 health care provider (or the health care provider's insurer);
 13 must exceed ~~seventy-five one hundred eighty-seven~~ thousand dollars
 14 (~~\$75,000~~): **(\$187,000)**.

15 (c) More than one (1) health care provider may contribute to the cost
 16 of a periodic payments agreement, and in such an instance the sum of
 17 the amounts expended by each health care provider for immediate
 18 payments and for the cost of the periodic payments agreement shall be
 19 used to determine whether the ~~seventy-five one hundred eighty-seven~~
 20 thousand dollar (~~\$75,000~~) **(\$187,000)** requirement in subsection (b) has
 21 been satisfied. However, one (1) health care provider or its insurer
 22 must be liable for at least fifty thousand dollars (\$50,000).

23 SECTION 10. IC 27-12-6-3 IS REPEALED [EFFECTIVE
 24 JANUARY 1, 1999].

25 SECTION 11. [EFFECTIVE UPON PASSAGE] (a) **After the**
 26 **department establishes the annual surcharge for physicians under**
 27 **IC 27-12-5-2, as amended by this act, the department shall publish**
 28 **in the Indiana Register an estimated surcharge for all physicians**
 29 **practicing in the same medical specialty or discipline.**

30 (b) **The department of insurance shall publish the estimated**
 31 **surcharges under subsection (a) in the Indiana Register not later**
 32 **than February 1, 1999.**

33 (c) **This SECTION expires January 1, 2000.**

34 SECTION 12. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, Corporations and Small Business, to which was referred House Bill 1286, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 3, delete "commercially available".

Page 3, line 4, after "used" insert "**or created**".

Page 3, line 8, delete "widely recognized as being".

Page 4, line 13, delete "by the department".

Page 4, line 14, delete "The surcharge".

Page 4, delete lines 15 through 16.

Page 4, line 17, delete "the department under subsection (h)".

Page 4, delete lines 25 through 42.

Page 5, delete lines 1 through 25.

Page 5, line 28, reset in roman "as considered necessary,".

Page 5, line 29, reset in roman line 29.

Page 5, line 29, after "purchase" insert "**or retain**".

Page 5, line 30, reset in roman "and corporations to aid in protecting".

Page 5, line 30, delete "shall pay an attorney who is".

Page 5, line 31, delete "licensed to practice law in Indiana to protect".

Page 5, line 31, after "claims" insert ".".

Page 5, delete lines 32 through 42, begin a new paragraph and insert:

"(b) When retaining legal services under subsection (a), the commissioner shall retain competent and experienced legal counsel licensed to practice law in Indiana to assist in litigation or other matters pertaining to the fund."

Page 6, delete lines 1 through 2.

Page 6, line 3, delete "(b)" and insert "(c)".

Page 6, line 9, delete "(c)" and insert "(d)".

Page 6, line 18, delete "any".

Page 6, line 21, after "except" insert "**setting a date for trial, an action under IC 27-12-8-8, or**".

Page 6, line 25, delete "JULY" and insert "UPON PASSAGE]".

Page 6, line 26, delete "1, 1998]".

Page 6, line 26, delete "(a) Beginning July 1, 1999, if" and insert "**If**".

Page 6, delete lines 31 through 42, begin a new line blocked left and insert: "**may file a motion in Marion County Circuit Court to dismiss the case under Rule 41(E) of the Indiana Rules of Trial**

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Procedure."

Delete page 7.

Page 8, delete lines 1 through 21.

Page 10, delete lines 26 through 30.

Page 10, line 31, delete "The actuary" and insert "**After the department**".

Page 10, line 32, delete "that".

Page 10, line 33, after "act," insert "**the department**".

Page 10, line 33, delete "provide" and insert "**publish in the Indiana Register**".

Page 10, line 35, delete "to the department of insurance not later than" and insert ".".

Page 10, delete line 36.

Page 10, line 37, delete "mail" and insert "**publish**".

Page 10, line 38, delete "to each licensed physician" and insert "**in the Indiana Register**".

Page 10, line 39, delete "March" and insert "**February**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to House Bill 1286 as introduced.)

FRY, Chair

Committee Vote: yeas 14, nays 0.

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