

## CONFERENCE COMMITTEE REPORT DIGEST FOR SB 390

**Citations Affected:** IC 34-18-5-2; IC 34-18-8-8.

**Synopsis:** Medical malpractice. Conference committee report for ESB 390. Provides that a health care provider for whom an insurer submits proof of financial responsibility and payment of the surcharge to the department of insurance in an untimely manner may be in compliance with patient compensation fund requirements if certain conditions are met by the insurer. Permits a malpractice insurer to settle the liability of the insured without the consent of the insured if there was a unanimous medical review panel opinion against the insured. 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.) Requires that a health maintenance organization or limited service health maintenance organization carry an annual aggregate policy of malpractice liability insurance of at least \$1,750,000. Requires that a health facility with not more than 100 beds carry an annual aggregate policy of malpractice liability insurance of at least \$750,000, and that a health facility with more than 100 beds carry an annual aggregate policy of malpractice liability insurance of at least \$1,250,000. Increases from \$25 to \$100 the minimum annual surcharge each health care provider is required to pay. Provides methods of calculation of the annual surcharge for physicians and hospitals. Provides for changes in the calculation of the annual surcharge for health care providers. Requires the commissioner to pay an attorney to protect the patient compensation fund. Requires the commissioner to retain legal counsel to represent the department when a trial court determination is necessary to resolve a patient compensation fund claim. Provides that the commissioner has sole authority for making decisions regarding the settlement of claims 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 panels. Specifies the circumstances under which the name of a negligent health care provider must be referred to the appropriate board of professional registration. Requires the commissioner to order a hearing 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. This conference committee report adds a provision that permits a malpractice insurer to settle the liability of the insured without the consent of the insured if there was a unanimous medical review panel opinion against the insured.

**Effective:** July 1, 1998; July 1, 1999.

# CONFERENCE COMMITTEE REPORT

**MR. PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 390 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Page 1, delete lines 1 through 15.
- 2 Delete pages 2 through 4.
- 3 Page 5, delete lines 1 through 25.
- 4 Page 5, replace the effective date in SECTION 4 with
- 5 "[EFFECTIVE JULY 1, 1999]".
- 6 Page 6, line 37, delete "27-12" and insert "**34-18**".
- 7 Page 6, line 39, delete "is not in favor of the insured." and insert
- 8 "**under IC 34-18-10-22(b)(1) is that the evidence supports the**
- 9 **conclusion that the defendant failed to comply with the appropriate**
- 10 **standard of care as charged in the complaint.**".
- 11 Page 6, line 40, delete "27-12-2-24.5" and insert "34-18-2-24.5".
- 12 Page 7, line 1, after "article" insert "**(or IC 27-12 before its**
- 13 **repeal)**".
- 14 Page 7, line 2, delete "27-12-3" and insert "**34-18-3 (or**
- 15 **IC 27-12-3 before its repeal)**".
- 16 Page 7, line 3, delete "27-12-3-5" and insert "34-18-3-5, AS
- 17 ADDED BY HEA 1011-1998,".
- 18 Page 7, line 24, delete "failed to transmit" and insert "**erred in**
- 19 **transmitting**".
- 20 Page 7, line 26, after "must" insert "**, in addition to any penalties**
- 21 **under IC 34-18-5-3,**".
- 22 Page 8, line 1, delete "27-12-4-1, AS AMENDED BY
- 23 P.L.26-1994,".
- 24 Page 8, line 2, delete "SECTION 24," and insert "34-18-4-1, AS
- 25 ADDED BY HEA 1011-1998,".

- 1 Page 9, line 40, delete "other than" and insert ".".
- 2 Page 9, line 41, delete "a physician licensed under IC 25-22.5 and  
3 a hospital".
- 4 Page 9, line 42, delete "licensed under IC 16-21.".
- 5 Page 11, between lines 2 and 3, begin a new paragraph and insert:  
6 "SECTION 9. IC 34-18-5-2, AS ADDED BY HEA 1011-1998, IS  
7 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:  
8 Sec. 2. (a) **As used in this section, "actuarial program" means a  
9 program used or created by the department to determine the  
10 actuarial risk posed to the patient compensation fund under  
11 IC 34-18-6 (or IC 27-12-6 before its repeal) by a hospital. The  
12 program must be:**
- 13 (1) **developed to calculate actuarial risk posed by a hospital,  
14 taking into consideration risk management programs used  
15 by the hospital;**
- 16 (2) **an efficient and accurate means of calculating a hospital's  
17 malpractice actuarial risk;**
- 18 (3) **publicly identified by the department by July 1 of each  
19 year; and**
- 20 (4) **made available to a hospital's malpractice insurance  
21 carrier for purposes of calculating the hospital's surcharge  
22 under subsection (g).**
- 23 (b) **Beginning July 1, 1999, the amount of the annual surcharge  
24 shall be set by a rule one hundred percent (100%) of the cost to each  
25 health care provider for maintenance of financial responsibility.  
26 Beginning July 1, 2001, the annual surcharge shall be set by a rule  
27 adopted by the commissioner under IC 4-22-2.**
- 28 ~~(b)~~ (c) The amount of the surcharge shall be determined based  
29 upon actuarial principles and actuarial studies and must be adequate for  
30 the payment of claims and expenses from the patient's compensation  
31 fund.
- 32 ~~(c)~~ (d) The surcharge may not exceed ~~two hundred percent (200%)~~  
33 **the actuarial risk posed to the patient's compensation fund under  
34 IC 34-18 (or IC 27-12 before its repeal) by qualified providers. of  
35 the cost to each health care provider, for maintenance of financial  
36 responsibility.**
- 37 ~~(d)~~ (e) There is imposed a minimum annual surcharge of  
38 ~~twenty-five one hundred~~ dollars ~~(\$25)~~. **(\$100).**
- 39 (f) **Notwithstanding subsections (b), (c), and (e), beginning July  
40 1, 1999, the surcharge for a qualified provider who is licensed  
41 under IC 25-22.5 is calculated as follows:**
- 42 (1) **The commissioner shall contract with an actuary that has  
43 experience in calculating the actuarial risks posed by  
44 physicians. Not later than July 1 of each year, the actuary  
45 shall calculate the median of the premiums paid for  
46 malpractice liability policies to the three (3) malpractice  
47 insurance carriers in the state that have underwritten the  
48 most malpractice insurance policies for all physicians  
49 practicing in the same specialty class in Indiana during the  
50 previous twelve (12) month period. In calculating the  
51 median, the actuary shall consider the:**

- 1 (A) manual rates of the three (3) leading malpractice  
 2 insurance carriers in the state; and  
 3 (B) aggregate credits or debits to the manual rates given  
 4 during the previous twelve (12) month period.  
 5 (2) After making the calculation described in subdivision (1),  
 6 the actuary shall establish a uniform surcharge for all  
 7 licensed physicians practicing in the same specialty class.  
 8 This surcharge must be based on a percentage of the median  
 9 calculated in subdivision (1) for all licensed physicians  
 10 practicing in the same specialty class under rules adopted by  
 11 the commissioner under IC 4-22-2. The surcharge:  
 12 (A) must be sufficient to cover; and  
 13 (B) may not exceed;  
 14 the actuarial risk posed to the patient compensation fund  
 15 under IC 34-18-6 (or IC 27-12-6 before its repeal) by  
 16 physicians practicing in the specialty class.  
 17 (g) Beginning July 1, 1999, the surcharge for a hospital  
 18 licensed under IC 16-21 that establishes financial responsibility  
 19 under IC 34-18-4 after June 30, 1999, is established by the  
 20 department through the use of an actuarial program. At the time  
 21 financial responsibility is established for the hospital, the hospital  
 22 shall pay the surcharge amount established for the hospital under  
 23 this section. The surcharge:  
 24 (1) must be sufficient to cover; and  
 25 (2) may not exceed;  
 26 the actuarial risk posed to the patient compensation fund under  
 27 IC 34-18-6 by the hospital.  
 28 (h) An actuarial program used or developed under subsection  
 29 (a) shall be treated as a public record under IC 5-14-3."  
 30 Page 11, line 3, delete "27-12-6-2" and insert "34-18-6-2, AS  
 31 ADDED BY HEA 1011-1998,".  
 32 Page 11, line 24, delete "27-12-8-7" and insert "34-18-8-7".  
 33 Replace the effective date in SECTION 10 with "[EFFECTIVE  
 34 JULY 1, 1999]".  
 35 Page 11, line 35, delete "27-12-8-8" and insert "**34-18-8-8 (or**  
 36 **IC 27-12-8-8 before its repeal)**".  
 37 Page 11, line 36, delete "27-12-11" and insert "**34-18-11 (or**  
 38 **IC 27-12-11 before its repeal)**".  
 39 Page 12, between lines 7 and 8, begin a new paragraph and insert:  
 40 "SECTION 12. IC 34-18-8-8 IS ADDED TO THE INDIANA  
 41 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 42 [EFFECTIVE JULY 1, 1998]: **Sec. 8. If action has not been taken in**  
 43 **a case before the department of insurance for a period of at least**  
 44 **two (2) years, the commissioner, on the:**  
 45 (1) motion of a party; or  
 46 (2) commissioner's own initiative;  
 47 **may file a motion in Marion county circuit court to dismiss the case**  
 48 **under Rule 41(E) of the Indiana Rules of Trial Procedure."**  
 49 Page 12, line 8, delete "27-12-9-3" and insert "34-18-9-3, AS  
 50 ADDED BY HEA 1011-1998,".  
 51 Page 12, line 29, delete "27-12-9-4" and insert "34-18-9-4, AS

- 1 ADDED BY HEA 1011-1998,".
- 2 Page 12, line 33, after "article" insert "~~or IC 27-12~~ before its
- 3 repeal".
- 4 Page 12, line 36, delete "27-12-10)" and insert "**34-18-10)**".
- 5 Page 12, line 38, delete "27-12-10-22" and insert "**34-18-10-22**".
- 6 Page 13, line 20, delete "27-12-10-25" and insert "34-18-10-25,
- 7 AS ADDED BY HEA 1011-1998,".
- 8 Page 13, line 40, delete "27-12-14-3" and insert "34-18-14-3, AS
- 9 ADDED BY HEA 1011-1998,".
- 10 Page 14, line 13, after "article" insert "(or IC 27-12 before its
- 11 repeal)".
- 12 Page 14, line 19, delete "27-12-15" and insert "34-18-15".
- 13 Page 14, line 20, after "article" insert "(or IC 27-12 before its
- 14 repeal)".
- 15 Page 14, line 24, after "article" insert "(or IC 27-12 before its
- 16 repeal)".
- 17 Page 14, line 31, delete "27-12-14-4" and insert "34-18-14-4, AS
- 18 ADDED BY HEA 1011-1998,".
- 19 Page 15, line 4, delete "27-12-15-3" and insert "34-18-15-3".
- 20 Page 15, delete lines 22 through 42.
- 21 Delete pages 16 through 18.
- 22 Page 19, delete lines 1 through 33.
- 23 Page 19, line 34, delete "27-12-6-3" and insert "34-18-6-3".
- 24 Page 19, line 38, delete "January" and insert "**July**".
- 25 Page 20, line 1, after "act," insert "**or, after June 30, 1998,**
- 26 **IC 34-18-5-2,**".
- 27 Page 20, line 6, delete "February" and insert "**January**".
- 28 Renumber all SECTIONS consecutively.  
(Reference is to ESB 390 as reprinted February 23, 1998.)

**Conference Committee Report**  
**on**  
**Senate Bill 390**

**S**igned by:

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Senator Harrison

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Representative Fry

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Senator Lewis

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Representative Torr

**Senate Conferees**

**House Conferees**