

## **IC 34-18-6**

### **Chapter 6. Patient's Compensation Fund**

#### **IC 34-18-6-1**

##### **Creation of fund**

Sec. 1. (a) The patient's compensation fund is created to be collected and received by the commissioner for exclusive use for the purposes stated in this article.

(b) The fund and any income from the fund shall be held in trust, deposited in a segregated account, invested, and reinvested by the commissioner as authorized by IC 27-1-13 and does not become a part of the state general fund.

(c) Proceeds of the annual surcharge levied on all health care providers in Indiana under IC 34-18-5 shall be deposited in the fund.  
*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-6-2**

##### **Protection of fund; legal services; expenses**

Sec. 2. (a) The commissioner, using money from the fund, as considered necessary, appropriate, or desirable, may purchase or retain the services of persons, firms, and corporations to aid in protecting the fund against claims. The commissioner shall retain the services of counsel described in subsection (b) to represent the department when a trial court determination will be necessary to resolve a claim against the patient's compensation fund.

(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.

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

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

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

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

*As added by P.L.1-1998, SEC.13. Amended by P.L.111-1998, SEC.8.*

#### **IC 34-18-6-3**

##### **Repealed**

*(Repealed by P.L.111-1998, SEC.16.)*

#### **IC 34-18-6-4**

##### **Payment of claims; time for payment**

Sec. 4. (a) Claims for payment from the patient's compensation fund that become final during the first six (6) months of the calendar year must be computed on June 30 and must be paid not later than the following July 15. Claims for payment from the fund that become final during the last six (6) months of the calendar year must be

computed on December 31 and must be paid not later than the following January 15.

(b) If the balance in the fund is insufficient to pay in full all claims that have become final during a six (6) month period, the amount paid to each claimant must be prorated. Any amount left unpaid as a result of the proration must be paid before the payment of claims that become final during the following six (6) month period.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-6-5**

##### **Warrant for payment from fund; vouchers**

Sec. 5. The auditor of state shall issue a warrant in the amount of each claim submitted to the auditor against the fund on June 30 and December 31 of each year. The only claim against the fund shall be a voucher or other appropriate request by the commissioner after the commissioner receives:

- (1) a certified copy of a final judgment against a health care provider; or
- (2) a certified copy of a court approved settlement against a health care provider.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-6-6**

##### **Processing of claims; conditions of payment; settlement**

Sec. 6. (a) If an annual aggregate for a health care provider qualified under this article has been paid by or on behalf of the health care provider, all amounts that may subsequently become due and payable to a claimant arising out of an act of malpractice of the health care provider occurring during the year in which the annual aggregate was exhausted shall be paid from the patient's compensation fund under the following terms and conditions:

- (1) A health care provider whose annual aggregate has been exhausted has no right to object to or refuse permission to settle such a claim.
- (2) If a health care provider or the commissioner and claimant agree on a settlement, the following procedure must be followed:

(A) A petition shall be filed by the claimant with the court in which the action is pending against the health care provider or, if none is pending, in the circuit or superior court of Marion County, seeking approval of the agreed settlement.

(B) A copy of the petition shall be served on the commissioner and the health care provider at least ten (10) days before filing and must contain sufficient information to inform the other parties about the nature of the claim and the amount of the proposed settlement.

(C) The commissioner may agree to the settlement, or the commissioner may file written objections to the settlement. The agreement or objections shall be filed within twenty

(20) days after the petition is filed.

(D) The judge of the court in which the petition is filed shall set the petition for approval or, if objections have been filed, for hearing, as soon as practicable. The court shall give notice of the hearing to the claimant, the health care provider, and the commissioner.

(E) At the hearing the commissioner, the claimant, and the health care provider may introduce relevant evidence to enable the court to determine whether or not the petition should be approved if the evidence is submitted on agreement without objections. If the commissioner and the claimant cannot agree on the amount, if any, to be paid out of the patient's compensation fund, the court shall determine the amount for which the fund is liable and render a finding and judgment accordingly. In approving a settlement or determining the amount, if any, to be paid from the patient's compensation fund, the court shall consider the liability of the health care provider as admitted and established.

(F) A settlement approved by the court may not be appealed. A judgment of the court fixing damages recoverable in a contested proceeding is appealable under the rules governing appeals in other civil cases tried by the court.

(b) The commissioner may adopt rules under IC 4-22-2 implementing this section.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-6-7**

##### **Exemptions from state procurement statutes**

Sec. 7. The following are exempt from IC 5-22 governing state purchasing:

(1) Technical contractual personnel and services retained by the commissioner for protecting and administering the patient's compensation fund.

(2) Purchasing of annuities for structuring settlements from the patient's compensation fund or in combination with the patient's compensation fund and the health care provider's insurer.

*As added by P.L.1-1998, SEC.13.*