

SENATE, No. 1939

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED JUNE 9, 2008

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator ROBERT W. SINGER

District 30 (Burlington, Mercer, Monmouth and Ocean)

Co-Sponsored by:

Senator Weinberg

SYNOPSIS

Extends Medical Malpractice Liability Insurance Premium Assistance Fund and collection of annual surcharges for 5 years.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/3/2008)

1 AN ACT concerning the Medical Malpractice Liability Insurance
2 Premium Assistance Fund, amending and supplementing
3 P.L.2004, c.17, and repealing section 29 of P.L.2004, c.17.

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

7
8 1. Section 27 of P.L.2004, c.17 (C.17:30D-29) is amended to
9 read as follows:

10 27. a. There is established a Medical Malpractice Liability
11 Insurance Premium Assistance Fund within the Department of the
12 Treasury as a nonlapsing, revolving fund.

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

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

21 (2) an annual charge of \$75 to be imposed by the State Board of
22 Medical Examiners on every physician and podiatrist licensed by
23 the board pursuant to the provisions of R.S.45:9-1 et seq., collected
24 by the board and remitted to the State Treasurer for deposit into the
25 fund;

26 (3) an annual charge of \$75 to be imposed by the State Board of
27 Chiropractic Examiners on every chiropractor licensed by the board
28 pursuant to the provisions of P.L.1989, c.153 (C.45:9-41.17 et seq.),
29 collected by the board and remitted to the State Treasurer for
30 deposit into the fund;

31 (4) an annual charge of \$75 to be imposed by the New Jersey
32 State Board of Dentistry on every dentist licensed pursuant to the
33 provisions of R.S. 45:6-1 et seq., collected by the board and
34 remitted to the State Treasurer for deposit into the fund;

35 (5) an annual charge of \$75 to be imposed by the New Jersey
36 State Board of Optometrists on every optometrist licensed by the
37 board pursuant to the provisions of R.S.45:12-1 et seq., collected by
38 the board and remitted to the State Treasurer for deposit into the
39 fund; and

40 (6) an annual fee of \$75 to be assessed by the State Treasurer
41 and payable by each person licensed to practice law in this State,
42 for deposit into the fund.

43 The provisions of paragraphs (2) through (5) of this subsection
44 shall not apply to physicians, podiatrists, chiropractors, dentists or
45 optometrists who: are statutorily or constitutionally barred from the

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 practice of their respective profession; can show that they do not
2 maintain a bona fide office for the practice of their profession in
3 this State; are completely retired from the practice of their
4 profession; are on full-time duty with the armed forces, VISTA or
5 the Peace Corps and not engaged in practice; or have not practiced
6 their profession for at least one year.

7 The provisions of paragraph (6) of this subsection shall not apply
8 to attorneys who: are constitutionally or statutorily barred from the
9 practice of law; can show that they do not maintain a bona fide
10 office for the practice of law in this State; are completely retired
11 from the practice of law; are on full-time duty with the armed
12 forces, VISTA or the Peace Corps and not engaged in practice; are
13 ineligible to practice law because they have not made their New
14 Jersey Lawyers' Fund for Client Protection payment; or have not
15 practiced law for at least one year.

16 c. The State Treasurer shall deposit all moneys collected by
17 him pursuant to this section into the fund. Monies credited to the
18 fund may be invested in the same manner as assets of the General
19 Fund and any investment earnings on the fund shall accrue to the
20 fund and shall be available subject to the same terms and conditions
21 as other monies in the fund.

22 d. The fund shall be administered by the Department of
23 Banking and Insurance in accordance with the provisions of
24 P.L.2004, c.17 (C.2A:53A-37 et al.).

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

27 (1) \$17 million shall be allocated annually for the purpose of
28 providing relief towards the payment of medical malpractice
29 liability insurance premiums to health care providers in the State
30 who have experienced or are experiencing a liability insurance
31 premium increase in an amount as established by the commissioner
32 by regulation and meet the criteria established pursuant to section
33 28 of P.L.2004, c.17 (C.17:30D-30);

34 (2) \$6.9 million shall be allocated annually to the Health Care
35 Subsidy Fund established pursuant to section 8 of P.L.1992, c.160
36 (C.26:2H-18.58) for the purpose of providing payments to hospitals
37 in accordance with the formula used for the distribution of charity
38 care subsidies that are provided pursuant to [P.L.1992, c.160
39 (C.26:2H-18.51 et al.)] section 3 of P.L.2004, c.113 (C.26:2H-
40 18.59i);

41 (3) \$1 million shall be allocated annually for a student loan
42 expense reimbursement program for obstetrician/gynecologists, to
43 be established pursuant to section [29 of P.L.2004, c.17
44 (C.18A:71C-49)] 3 of P.L. , c. (C.)(pending before the
45 Legislature as this bill); and

46 (4) \$1.2 million shall be allocated annually to the Division of
47 Medical Assistance and Health Services in the Department of

1 Human Services for the [purposes provided in section 30 of
2 P.L.2004, c.17 (C.30:4J-7)] NJ FamilyCare Program established
3 pursuant to P.L.2005, c.156 (C.30:4J-9 et seq.).

4 f. The fund and the annual surcharge, charges and fee provided
5 for in subsection b. of this section shall [expire three years after the
6 effective date of P.L.2004, c.17 (C.2A:53A-37 et al.)] be
7 reestablished on the effective date of P.L. , c. (pending before the
8 Legislature as this bill), and shall expire five years after the
9 effective date of P.L., c. .

10 g. The commissioner, in consultation with the Commissioner of
11 Health and Senior Services, shall adopt rules and regulations
12 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
13 (C.52:14B-1 et seq.), to carry out the purposes of sections 26
14 through 29 of P.L.2004, c.17 (C.17:30D-28 through C.17:30D-30
15 and C.18A:71C-49); except that, notwithstanding any provision of
16 P.L.1968, c.410 to the contrary, the commissioner may adopt,
17 immediately upon filing with the Office of Administrative Law,
18 such regulations as the commissioner deems necessary to
19 implement the provisions of sections 26 through 29 of P.L.2004,
20 c.17 (C.17:30D-28 through C.17:30D-30 and C.18A:71C-49),
21 which shall be effective for a period not to exceed six months and
22 may thereafter be amended, adopted or readopted by the
23 commissioner in accordance with the requirements of P.L.1968,
24 c.410.
25 (P.L.2004, c.17, s.27)

26
27 2. Section 28 of P.L.2004, c.17 (C.17:30D-30) is amended to
28 read as follows:

29 28. a. In order to carry out the purposes of section 27 of
30 P.L.2004, c.17 (C.17:30D-29), the commissioner shall, at a
31 minimum:

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

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

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

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

42 (5) provide for subsidies to all practitioners who are members of
43 specialties and subspecialties who qualify for relief under
44 subsection b. of this section, including those whose professional
45 liability insurance protection is provided by hospital funding
46 supplemented by purchased commercial insurance coverage.

47 b. The commissioner shall certify classes of practitioners by
48 specialty and subspecialty for each type of practitioner, whose

1 average medical malpractice premium, as a class, on or after
2 December 31, ~~2002~~ 2006, is in excess of an amount per year as
3 determined by the commissioner by regulation. In certifying
4 classes eligible for the subsidy, the commissioner, in consultation
5 with the Commissioner of Health and Senior Services, may also
6 consider if access to care is threatened by the inability of a
7 significant number of practitioners, as applicable, in a particular
8 specialty or subspecialty, to continue practicing in a geographic
9 area of the State.

10 (1) In order to be eligible for a subsidy from the fund, a
11 practitioner shall have received a medical malpractice liability
12 insurance premium increase in an amount as determined by the
13 commissioner by regulation, for one or more of the following: upon
14 renewal on or after January 1, ~~2004~~ 2008, from the amount paid
15 by that practitioner in calendar year ~~2003~~ 2007; upon renewal on
16 or after January 1, ~~2005~~ 2009, from the amount paid by that
17 practitioner in calendar year ~~2004~~ 2008; ~~and~~ upon renewal on
18 or after January 1, ~~2006~~ 2010, from the amount paid by that
19 practitioner in calendar year ~~2005~~ 2009; upon renewal on or after
20 January 1, 2011, from the amount paid by that practitioner in
21 calendar year 2010; and upon renewal on or after January 1, 2012,
22 from the amount paid by that practitioner in calendar year 2011; or

23 (2) In the case of a health care provider providing professional
24 liability insurance protection through self-insured hospital funding
25 supplemented with purchased commercial insurance coverage, in
26 order to be eligible for a subsidy from the fund, that provider shall
27 have increased its total professional liability funding obligation in
28 an amount as determined by the commissioner by regulation, for
29 one or more of the following: upon renewal on or after January 1,
30 ~~2004~~ 2008, from the professional liability funding obligation paid
31 by that provider in calendar year ~~2003~~ 2007; upon renewal on or
32 after January 1, ~~2005~~ 2009, from the professional liability
33 funding obligation paid by that provider in calendar year ~~2004~~
34 2008; ~~and~~ upon renewal on or after January 1, ~~2006~~ 2010, from
35 the professional liability funding obligation paid by that provider in
36 calendar year ~~2005~~ 2009; upon renewal on or after January 1,
37 2011, from the professional liability funding obligation paid by that
38 provider in calendar year 2010; and upon renewal on or after
39 January 1, 2012, from the professional liability funding obligation
40 paid by that provider in calendar year 2011.

41 (3) The amount of the subsidy shall be an amount, as
42 determined by the commissioner by regulation, of the increase from
43 the preceding year's premium or self-insured professional liability
44 funding obligation; except that no health care provider shall receive
45 a subsidy in any year that is greater than an amount as determined
46 by the commissioner by regulation.

1 c. A practitioner who has been subject to a disciplinary action
2 or civil penalty by the practitioner's respective licensing board
3 pursuant to section 8, 9 or 12 of P.L.1978, c.73 (C.45:1-21, 22 or
4 25), when that action or penalty relates to the practitioner's
5 provision of, or failure to provide, treatment or care to a patient, is
6 not eligible for a subsidy from the fund.

7 d. (1) A practitioner who receives a subsidy from the fund shall
8 be required to practice in that practitioner's specialty or subspecialty
9 in this State for a period of at least two years after receipt of the
10 subsidy.

11 (2) A practitioner who fails to comply with the provisions of
12 paragraph (1) of this subsection shall be required to repay to the
13 commissioner the amount of the subsidy, in whole or in part as
14 determined by the commissioner.

15 e. The commissioner may waive the criteria for eligibility for a
16 subsidy established pursuant to this section, if the commissioner
17 determines that access to care for a particular specialty is threatened
18 because of an inability of a sufficient number of practitioners in that
19 specialty or subspecialty to practice in a geographic area of the
20 State.

21 f. The State Board of Medical Examiners, the State Board of
22 Chiropractic Examiners, the New Jersey State Board of Dentistry
23 and the New Jersey Board of Nursing shall each provide to the
24 commissioner, on a quarterly basis, the names of the practitioners
25 who have been subject to a disciplinary action or civil penalty by
26 the practitioner's respective licensing board.

27 g. For the purposes of section [29 of P.L.2004, c.17
28 (C.18A:71C-49)] 3 of P.L. , c. (C.)(pending before the
29 Legislature as this bill), the commissioner, in consultation with the
30 State Board of Medical Examiners, shall provide to the Higher
31 Education Student Assistance Authority the names of
32 obstetrician/gynecologists licensed by the board who may qualify
33 for the student loan reimbursement program established pursuant to
34 [P.L.2004, c.17] P.L. , c. (pending before the Legislature as this
35 bill). A physician who has been subject to a disciplinary action or
36 civil penalty by the board, as provided in subsection c. of this
37 section, shall not be eligible for the program.
38 (cf: P.L.2004, c.17, s.28)

39
40 3. (New section) a. There is established a student loan expense
41 reimbursement program within the Higher Education Student
42 Assistance Authority for obstetrician/gynecologists who agree to
43 practice in State designated underserved areas as established
44 pursuant to section 1 of P.L.1999, c.46 (C.18A:71C-35). Any loans
45 provided through the NJCLASS Loan Program pursuant to
46 P.L.1999, c.46 (C.18A:71C-21 et seq.) or a student loan program of
47 the federal government shall be eligible for reimbursement under
48 this program.

1 The authority shall implement the program in consultation with
2 the Commissioners of Banking and Insurance and Health and Senior
3 Services and the State Board of Medical Examiners.

4 b. (1) An obstetrician/gynecologist who receives a payment
5 under the student loan expense reimbursement program shall be
6 required to practice as an obstetrician/gynecologist in an
7 underserved area in this State for a period of at least four years after
8 receipt of the payment.

9 (2) An obstetrician/gynecologist who fails to comply with the
10 provisions of paragraph (1) of this subsection shall be required to
11 repay to the Higher Education Student Assistance Authority the
12 amount of the payment, in whole or in part as determined by the
13 authority.

14 c. The authority shall adopt rules and regulations, pursuant to
15 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
16 et seq.), to effectuate the purposes of this section, including, but not
17 limited to: eligibility for the program, procedures for application,
18 selection of participants, establishment and nullification of
19 contracts established with participants under the program, and
20 reports to the program by participants.

21

22 4. The following are repealed:
23 Section 29 of P.L.2004, c.17 (C.18A:71C-49); and
24 Section 30 of P.L.2004, c.17 (C.30:4J-7).

25

26 5. This act shall take effect on the 30th day following
27 enactment.

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STATEMENT

31

32 This bill extends the Medical Malpractice Liability Insurance
33 Premium Assistance Fund for five years and reestablishes the
34 collection of annual surcharges for the fund for the five-year period.

35 The primary purpose of the fund is to provide medical
36 malpractice liability insurance premium subsidies to health care
37 providers who, as a class of providers, are most severely impacted
38 by high medical malpractice premium rates. In addition, monies
39 from the fund are allocated for various health care purposes,
40 including funds: to the Health Care Subsidy Fund for charity care
41 subsidies to hospitals, to the NJ FamilyCare Program, and to
42 provide student loan expense reimbursement for certain
43 obstetrician/gynecologists.

44 The surcharges apply to all employers subject to the
45 "unemployment compensation law," (\$3 per employee each year),
46 and to practicing physicians, podiatrists, chiropractors, dentists,
47 optometrists, and attorneys licensed in this State (\$75 each year).

S1939 VITALE, SINGER

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1 The bill repeals sections 29 and 30 of P.L.2004, c.17. The
2 provisions of section 29 concerning student loan expense
3 reimbursement for certain obstetricians/gynecologists, had expired
4 three years after the effective date of P.L.2004, c.17, and this bill
5 reenacts those provisions as section 3 of the bill. The provisions of
6 section 30 concerning NJ FamilyCare coverage for certain pregnant
7 women whose income is up to 100% of the federal poverty level,
8 are no longer necessary since eligibility for Medicaid was expanded
9 in 2005 to cover parents and children whose income is up to 133%
10 of the federal poverty level. The monies from the Medical
11 Malpractice Liability Insurance Premium Assistance Fund that had
12 been allocated in 2004 to the coverage of pregnant women will now
13 be allocated to the NJ FamilyCare Program.