

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 953

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S.P. 352

In Senate, March 28, 1989

Reference to the Committee on Banking and Insurance suggested and ordered printed.

*Joy J. O'Brien*

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator MATTHEWS of Kennebec.

Cosponsored by Senator RANDALL of Washington, Representative DONALD of Buxton and Representative GARLAND of Bangor.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

---

An Act to Establish a Patient Compensation Fund.

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1 Be it enacted by the People of the State of Maine as follows:

3 24 MRSA c. 21, sub-c. IX is enacted to read:

5 SUBCHAPTER IX

7 PATIENT COMPENSATION FUND

9 §2971. Definitions

11 As used in this subchapter, unless the context indicates  
13 otherwise, the following words have the following meanings:

15 1. Bureau. "Bureau" means the Bureau of Insurance.

17 2. Claimant. "Claimant" means any person, including a  
19 patient, who has a claim of any kind, whether derivative or  
21 otherwise, as a result of alleged professional negligence on the  
23 part of a health care practitioner or health care provider.  
Derivative claims include, but are not limited to, the claim of a  
parent or parents, guardian, trustee, child, relative, attorney  
or other representative of the patient including claims for loss  
of services, loss of consortium, expenses and all similar claims.

25 3. Cost of periodic payments agreement. "Cost of periodic  
27 payments agreement" means the amount expended by the following  
29 persons at the time the periodic payments agreement is made to  
31 obtain the commitment from a 3rd party to make available money  
for use as future payment, the total of which may exceed the  
limit provided in section 2973:

33 A. The health care provider or health care practitioner or  
the insurer of the health care provider or health care  
practitioner;

35 B. The superintendent; or

37 C. The superintendent and the health care provider or  
39 health care practitioner or the insurer of the health care  
provider or health care practitioner.

41 4. Fund. "Fund" means the Patient Compensation Fund as  
43 established in section 2977.

45 5. Insurer. "Insurer" means an insurance company licensed  
47 in the State, offering any policies insuring health care  
practitioners or health care providers in actions for  
professional negligence.

49 6. Patient. "Patient" means an individual who receives or  
51 should have received health care from a licensed health care

1 provider or health care practitioner, under a contract, express  
2 or implied.

3  
4 7. Periodic payments agreement. "Periodic payments  
5 agreement" means a contract between a health care provider or  
6 health care practitioner or the insurer of the health care  
7 provider or health care practitioner and the claimant under which  
8 the health care provider or health care practitioner is relieved  
9 from possible liability for consideration of:

11 A. A present payment of money to the claimant; and

13 B. One or more payments to the claimant in the future  
14 whether some or all of the payments are contingent on the  
15 claimant's survival to the proposed date of payment.

17 8. Superintendent. "Superintendent" means the  
18 Superintendent of Insurance.

19  
20 9. Surcharge. "Surcharge" means the amount assessed  
21 against a health care provider or health care practitioner by the  
22 superintendent under section 2977.

23 **§2972. Applicability**

24  
25 1. Qualified health care provider or health care  
26 practitioner. This subchapter does not apply to any health care  
27 provider or health care practitioner who fails to qualify  
28 according to section 2974, or any officer, agent or employee of a  
29 health care provider or health care practitioner who fails to  
30 qualify according to section 2974. If a health care provider or  
31 health care practitioner does not qualify according to section  
32 2974, the claimant's remedy is not affected by this subchapter.

33  
34 2. Duration of coverage. Only while malpractice liability  
35 insurance remains in force are the health care provider or health  
36 care practitioner and the insurer of the health care provider or  
37 health care practitioner liable to a claimant for professional  
38 negligence to the extent and in the manner specified in this  
39 subchapter.

40  
41 3. Prospective application. This subchapter does not apply  
42 to any act of professional negligence which occurred before the  
43 effective date of this subchapter.

44 **§2973. Limitation of recovery**

45  
46  
47 1. Limit on total damages. In an action for professional  
48 negligence against a health care provider or health care  
49 practitioner qualified according to section 2974, the total award  
50 of damages may not exceed \$500,000.  
51

1           2. Limit on health care provider's or health care  
2           practitioner's liability for damages. A health care provider or  
3           a health care practitioner qualified according to section 2974 is  
4           not liable for more than \$100,000 in an action for professional  
5           negligence.

7           3. Jury trial; informed of limits; reduction. If the trial  
8           of the action is to a jury, the jury shall not be informed of the  
9           damage award limitation established in this subsection. If the  
10           jury awards total damages in excess of \$500,000, the court shall  
11           reduce the award to that amount, unless a further reduction is  
12           warranted by exercise of the powers described in subsection 4.

13           4. Additur and remittitur. Nothing in this section is  
14           intended to eliminate the court's powers of additur and  
15           remittitur with regard to all damages, except to the extent that  
16           the power of additur is limited with regard to damages beyond the  
17           limitation established in subsection 1.

19           §2974. Qualifications for health care provider or health care  
20           practitioner and for officers, agents or employees

21           1. Qualifications; financial responsibility; surcharge. To  
22           qualify under this subchapter, a health care provider or health  
23           care practitioner shall:

24           A. Maintain financial responsibility as provided by section  
25           2975, and file with the superintendent proof of financial  
26           responsibility; and

27           B. Pay the surcharge assessed under section 2977.

28           2. Officers, agents and employees. The officers, agents or  
29           employees of a health care provider or health care practitioner,  
30           while acting in the course and scope of their employment, qualify  
31           under this subchapter if:

32           A. They are individually named, or are members of a named  
33           class, in the proof of financial responsibility filed by the  
34           health care provider or health care practitioner under  
35           section 2975; and

36           B. The surcharge assessed under section 2977 is paid.

37           §2975. Proof of financial responsibility

38           1. Satisfaction of financial responsibility. Financial  
39           responsibility may be established:

40           A. By the health care practitioner filing with the  
41           superintendent proof that the practitioner is insured by a  
42           health care provider or health care practitioner.

1 policy of malpractice liability insurance in the amount of  
3 at least \$100,000 per occurrence and \$300,000 in the annual  
5 aggregate;

7 B. By the health care provider filing with the  
9 superintendent proof that the health care provider is  
11 insured by a policy of malpractice liability insurance in  
13 the amount of at least \$100,000 per occurrence and:

15 (1) \$1,000,000 in the annual aggregate if the health  
17 care provider is a hospital of 100 beds or less;

19 (2) \$2,000,000 in the annual aggregate if the health  
21 care provider is a hospital of more than 100 beds; or

23 (3) \$500,000 in the annual aggregate if the health  
25 care provider is not a hospital;

27 C. By the health care provider or health care practitioner  
29 filing and maintaining with the superintendent cash or  
31 surety bond approved by the superintendent in the amount set  
33 forth in paragraph A. Security provided under this  
35 paragraph may be held in any manner mutually agreeable to  
37 the superintendent and the health care provider or health  
39 care practitioner. The agreement must provide that the  
41 principal may not be withdrawn prior to receiving the  
43 written permission of the superintendent, although any  
45 interest earned may be withdrawn at any time by the health  
47 care provider or health care practitioner; or

49 D. If the health care provider is a hospital, by submitting  
51 annually a verified financial statement which, in the  
53 discretion of the superintendent, adequately demonstrates  
55 that the current and future financial responsibility of the  
57 health care provider is sufficient to satisfy all potential  
59 professional negligence claims incurred by it or its  
61 officers, agents and employees while acting in the cause and  
63 scope of their employment up to a total of \$100,000 per  
65 occurrence and annual aggregates consistent with paragraph  
67 B, subparagraphs (1) and (2). The superintendent may  
69 require the deposit of security to ensure continued  
71 financial responsibility.

73 3. Partnerships or professional corporations. To establish  
75 financial responsibility under this section, each individual who  
77 is a member of a partnership or professional corporation shall  
79 establish financial responsibility separate from that partnership  
81 or professional corporation, as well as pay the surcharge  
83 required under section 2977.

1        §2976. Admission of liability

3        Except as provided in section 2985, any advanced payment  
5        made by a health care provider or health care practitioner or the  
7        insurer of a health care provider or health care practitioner to  
9        the claimant or any other person shall not be construed as an  
11       admission of liability for injuries or damages suffered by the  
13       claimant in an action brought for professional negligence.

11       §2977. Patient Compensation Fund

13       1. Patient Compensation Fund established. There is  
15       established the Patient Compensation Fund for the exclusive use  
17       for the purposes stated in this subchapter. The fund and any  
19       income from it shall be held in trust, deposited in a segregated  
21       account, invested and reinvested by the superintendent and shall  
23       not become a part of the General Fund.

25       2. Surcharge. The superintendent shall levy an annual  
27       surcharge on all health care providers and health care  
29       practitioners in this State to create the fund. The  
31       superintendent shall set the surcharge by rule. The surcharge  
33       must be based on actuarial studies and must be adequate for the  
35       payment of claims and expenses from the Patient Compensation Fund.

37       3. Collection and payment of surcharge. The manner of  
39       collection and payment of the surcharge shall depend on the  
41       method of establishing financial responsibility under section  
43       2975.

45       A. If the health care provider or health care practitioner  
47       is insured by a policy of malpractice liability insurance,  
49       the insurer shall collect the surcharge at the time the  
51       health care provider or health care practitioner pays the  
53       insurance premium. The insurer shall transfer the surcharge  
55       to the superintendent within 30 days after the insurer  
57       receives the premium and surcharge from the health care  
59       provider or health care practitioner.

61       B. The superintendent shall adopt rules providing for the  
63       manner in which the surcharge for health care providers and  
65       health care practitioners, establishing financial  
67       responsibility other than by a policy of malpractice  
69       liability insurance, shall be determined and shall adopt  
71       rules providing for the manner and time of payment. The  
73       surcharge may not exceed the surcharge that would be charged  
75       if the health care provider or health care practitioner were  
77       insured.

79       4. Date of compliance. Receipt by the superintendent of  
81       proof of financial responsibility and the surcharge constitutes  
83       compliance with this subchapter on:

85       A. The date of the receipt; or

1           B. The effective date of the insurance policy, provided  
3           proof of the policy is filed with and the surcharge paid to  
5           the superintendent not later than 90 days after the  
7           effective date of the insurance policy. If proof of  
9           financial responsibility and the payment of the surcharge is  
          not made within 90 days after the effective date of the  
          insurance policy, compliance occurs on the date when proof  
          is filed and the surcharge is paid.

11           5. Late payment of surcharge; penalties. If the annual  
13           premium surcharge is not paid within the time limit in subsection  
          3:

15           A. The superintendent shall suspend the certificate of  
17           authority of the insurer until the surcharge is paid; and

19           B. The insurer shall be liable for the surcharge plus a  
          penalty of 10% of the surcharge due.

21           6. Expenses of fund. The superintendent may contract for  
23           the services of persons to aid in protecting the fund against  
25           claims. All expenses of collecting, protecting and administering  
          the fund shall be paid from the fund.

27           §2978. Payments from health care provider or health care  
          practitioner

29           1. Single lump-sum payment; application of limit. If the  
31           health care provider or health care practitioner agrees to  
33           discharge its liability to the claimant solely through a single  
35           lump-sum payment, the limitation on recovery from a health care  
          provider or health care practitioner stated in section 2973  
          applies without adjustment.

37           2. Periodic payments; application of limit. If the health  
39           care provider or health care practitioner agrees to discharge its  
41           liability to the claimant through a periodic payments agreement,  
43           the amount of the claimant's recovery from a health care provider  
45           or health care practitioner is the amount of any immediate  
47           payment made by the health care provider or health care  
49           practitioner, or the insurer of the health care provider or  
51           health care practitioner, to the claimant, plus the cost of the  
          periodic payments agreement to the health care provider or health  
          care practitioner, or the insurer of the health care provider or  
          health care practitioner. For the purpose of determining the  
          limitations on recovery stated in section 2973 and for the  
          purpose of determining whether the health care provider or health  
          care practitioner, or the insurer of the health care provider or  
          health care practitioner, has agreed to settle its liability by  
          payment of its policy limits, the sum of the present payment of  
          money to the claimant by the health care provider or health care



1 practitioner, or the insurer of the health care provider or  
2 health care practitioner, plus the cost of the periodic payments  
3 agreement expended by the health care provider or health care  
4 practitioner, or the insurer of the health care provider or  
5 health care practitioner, must exceed \$75,000.

6  
7 3. Multiple health care providers or health care  
8 practitioners. More than one health care provider or health care  
9 practitioner may contribute to the cost of a periodic payments  
10 agreement, in which case the sum of the amounts expended by each  
11 health care provider or health care practitioner for immediate  
12 payments and for the cost of the periodic payments agreement  
13 shall be used to determine whether the \$75,000 requirement in  
14 subsection 2 has been satisfied; however, one health care  
15 provider or health care practitioner or the insurer of the health  
16 care provider or health care practitioner must be liable for at  
17 least \$50,000.

18 §2979. Claims against fund

19  
20 The only claim against the fund shall be a voucher or other  
21 appropriate request by the superintendent after the  
22 superintendent receives:

23  
24 1. Final judgment. A certified copy of a final judgment  
25 against a health care provider or health care practitioner; or

26  
27 2. Court-approved settlement. A certified copy of a  
28 court-approved settlement against a health care provider or  
29 health care practitioner.

30 §2980. Discharge of obligation to pay amount from fund

31  
32 The obligation to pay an amount from the Patient  
33 Compensation Fund may be discharged only through:

34 1. Lump sum. Payment in one lump sum;

35  
36 2. Periodic payments. An agreement requiring periodic  
37 payments from the fund over a period of years. The  
38 superintendent may contract with approved insurers to ensure the  
39 ability of the fund to make periodic payments;

40  
41 3. Annuity. The purchase of an annuity payable to the  
42 claimant; or

43  
44 4. Combination. Any combination of subsections 1, 2 and 3.

45 §2981. Payment from Patient Compensation Fund after exhaustion  
46 of insurance coverage

1           1. Annual aggregate paid. If an annual aggregate for a  
3 health care provider or health care practitioner qualified under  
5 this subchapter has been paid by or on behalf of the health care  
7 provider or health care practitioner, all additional sums which  
9 become due and payable to a claimant arising out of an act of  
professional negligence of the health care provider or health  
care practitioner occurring during the year in which the annual  
aggregate was exhausted, shall be paid from the Patient  
Compensation Fund under the following terms and conditions:

11           A. The health care provider or health care  
13 practitioner whose annual aggregate has been exhausted  
15 may not object to or refuse permission to settle any  
such claim;

17           B. If the health care provider or health care  
19 practitioner or the superintendent and claimant agree  
on a settlement the following procedure must be  
followed.

21           (1) The claimant shall file a petition with the  
23 court in which the action is pending against the  
25 health care provider or health care practitioner  
or, if no action is pending, in the Superior Court  
of Kennebec County, seeking approval of the agreed  
settlement.

27           (2) A copy of the petition shall be served on the  
29 superintendent and the health care provider or  
31 health care practitioner at least 10 days before  
33 filing and must contain sufficient information to  
inform the other parties about the nature of the  
claim and the amount of the proposed settlement;  
and

35           C. The superintendent may agree to the settlement or  
37 the superintendent may file written objections. The  
39 superintendent shall file the agreement or objections  
within 20 days after the petition is filed.

41           2. Rules. The superintendent may adopt rules according to  
43 Title 5, chapter 375, implementing this section.

45           §2982. Payments from fund

47           1. Single lump sum; application of limit. If the liability  
49 of the fund to the claimant is discharged solely through a single  
lump-sum payment, the limitations on recovery from the Patient  
Compensation Fund apply without adjustment.

51           2. Periodic payments agreement; application of limit. If  
53 an agreement is made to discharge the fund's liability to the  
claimant through a periodic payments agreement, the amount of the

1 claimant's recovery from the fund for the purposes of the  
2 limitation on recovery established under section 2973 is:

3  
4 A. The amount of any immediate payment made directly to the  
5 claimant from the fund; and

6  
7 B. The cost of the periodic payments agreement paid by the  
8 superintendent on behalf of the fund.

9  
10 3. Periodic payments agreement; from fund or combined. The  
11 superintendent may:

12  
13 A. Discharge the liability of the Patient Compensation Fund  
14 to a claimant through a periodic payments agreement; or

15  
16 B. Combine money from the fund with money from the health  
17 care provider or health care practitioner or the insurer of  
18 the health care provider or health care practitioner to pay  
19 the cost of the periodic payments agreement with the  
20 claimant, but in no event may the amount provided by the  
21 superintendent exceed 80% of the total amount expended for  
22 the agreement.

23  
24 §2983. Procedure upon failure of health care provider or health  
25 care practitioner to pay agreed settlement

26  
27 If a health care provider or health care practitioner or the  
28 insurer of the health care provider or health care practitioner  
29 fails to pay any agreed settlement or final judgment within 90  
30 days, the superintendent shall pay the amount from the Patient  
31 Compensation Fund and the fund shall be subrogated to any and all  
32 of the claimant's rights against the health care provider or  
33 health care practitioner or the insurer of the health care  
34 provider or health care practitioner with interest, reasonable  
35 costs and attorney fees.

36  
37 §2984. Excessive claims; procedure

38  
39 If a health care provider or health care practitioner or the  
40 insurer of a health care provider or health care practitioner has  
41 agreed to settle its liability on a claim by payment of its  
42 policy limits of \$100,000 and the claimant is demanding an amount  
43 in excess of \$100,000, then the following procedure must be  
44 followed.

45  
46 1. Petition filed. The claimant shall file a petition in  
47 the court named in the proposed complaint or in the Superior  
48 Court of Kennebec County, at the claimant's election, seeking:

49  
50 A. Approval of an agreed settlement, if any; or  
51

1           B. Demanding payment of damages from the Patient  
2           Compensation Fund.

3  
4           2. Notice of claim. A copy of the petition with summons  
5           shall be served on the superintendent, the health care provider  
6           or health care practitioner and the insurer of the health care  
7           provider or health care practitioner. The notice must contain  
8           sufficient information to inform the other parties about the  
9           nature of the claim and the additional amount demanded.

10           3. Agreement or objections. The superintendent and either  
11           the health care provider or health care practitioner or the  
12           insurer of the health care provider or health care practitioner  
13           may agree to a settlement with the claimant from the Patient  
14           Compensation Fund or the superintendent, the health care provider  
15           or health care practitioner or the insurer of the health care  
16           provider or health care practitioner may file written objections  
17           to the payment of the amount demanded. The agreement or  
18           objections to the payment demanded must be filed within 20 days  
19           after service of the summons with a copy of the petition attached.

20           4. Hearing scheduled; notice. The court in which the  
21           petition is filed shall schedule a hearing on the petition and  
22           the agreement or objections as soon as practicable. The court  
23           shall give notice of the hearing to the claimant, the  
24           superintendent and the health care provider or health care  
25           practitioner or the insurer of the health care provider or health  
26           care practitioner.

27  
28           5. Hearing; determination of damages. At the hearing the  
29           superintendent, the claimant and the health care provider or  
30           health care practitioner and the insurer of the health care  
31           provider or health care practitioner may introduce relevant  
32           evidence to enable the court to determine whether the petition  
33           should be approved if it is submitted on agreement without  
34           objections. If objections have been filed and the  
35           superintendent, the health care provider or health care  
36           practitioner, the insurer of the health care provider or health  
37           care practitioner and the claimant cannot agree on the amount, if  
38           any, to be paid out of the Patient Compensation Fund, then the  
39           court, after hearing any relevant evidence on the issue of the  
40           claimant's damages submitted by any of the parties described in  
41           this section, shall determine the amount of the claimant's  
42           damages, if any, in excess of the \$100,000 already paid by the  
43           health care provider, health care practitioner or the insurer of  
44           the health care provider or health care practitioner. The court  
45           shall determine the amount for which the fund is liable and issue  
46           a finding and judgment accordingly. In approving a settlement or  
47           determining the amount, if any, to be paid from the Patient  
48           Compensation Fund, the court shall consider the liability of the  
49           health care provider or health care practitioner as admitted and  
50           established.

1  
2 6. Appeals. Any settlement approved by the court may not  
3 be appealed. Any judgment of the court fixing damages  
4 recoverable in any contested proceeding may be appealed according  
5 to the rules governing appeals in any other civil case tried by  
6 the court.

7  
8 7. Release. A release executed between the parties shall  
9 not bar access to the Patient Compensation Fund unless the  
10 release specifically provides otherwise.

11 §2985. Advance payment

12  
13 Evidence of an advance payment is not admissible until there  
14 is a final judgment in favor of the claimant, in which event the  
15 court shall reduce the judgment to the claimant to the extent of  
16 the advance payment. The advance payment shall inure to the  
17 exclusive benefit of the health care provider or health care  
18 practitioner or the insurer making the payment. In the event the  
19 advance payment exceeds the liability of the health care provider  
20 or health care practitioner or the insurer making it, the court  
21 shall order any adjustment necessary to equalize the amount which  
22 each health care provider or health care practitioner or insurer  
23 is obligated to pay not including costs. In no case may an  
24 advance payment in excess of an award be repayable by the person  
25 receiving it.

26  
27 §2986. Malpractice coverage

28  
29 1. Insurer's acceptance. The filing of proof of financial  
30 responsibility by the health care provider or health care  
31 practitioner with the superintendent shall constitute, on the  
32 part of the insurer of the health care provider or health care  
33 practitioner, a conclusive and unqualified acceptance of this  
34 subchapter.

35  
36 2. Void provisions. Any provision in an insurance policy  
37 attempting to limit or modify the liability of the insurer  
38 contrary to the provisions of this subchapter is void.

39  
40 3. Obligations; cancellation. Every insurance policy  
41 issued under this article is deemed to include the following  
42 provisions as if it were written in the policy:

43  
44 A. The insurer assumes all obligations to pay an award  
45 imposed against its insured under this subchapter; and

46  
47 B. Any termination of the policy by cancellation is  
48 not effective as to claims against the insured covered  
49 by the contract, unless at least 30 days before the  
50 effective date of the cancellation, a written notice  
51

1 giving the date on which termination becomes effective  
3 has been received by the insured and the superintendent  
at their offices.

5 4. Failure of insurer to pay obligations. If an insurer  
7 fails or refuses to pay a final judgment, except during the  
9 pendency of an appeal, or fails or refuses to comply with this  
11 subchapter, in addition to any other legal remedy, the  
13 superintendent may revoke the approval of its policy form until  
15 the insurer pays the award or judgment or has complied with the  
17 violated provisions of this subchapter and has resubmitted its  
19 policy form and received the approval of the superintendent.

21 §2987. Maximum fee; fee arrangements

23 1. Claimant's attorney fees limitation. When a claimant is  
25 represented by an attorney in the prosecution of the claim, the  
27 claimant's attorney fees from any award made from the Patient  
29 Compensation Fund may not exceed 15% of any recovery from the  
31 fund.

33 2. Attorney fees contract. A claimant may elect to pay for  
35 the attorney's services on a mutually satisfactory per diem  
37 basis. The election, however, must be exercised in written form  
39 at the time of employment.

41 **STATEMENT OF FACT**

43 The purpose of this bill is to stabilize medical malpractice  
45 insurance rates by creating a patient compensation fund and  
47 capping the liability of health care providers and health care  
49 practitioners who contribute to the fund. This bill is modeled  
51 after the highly successful malpractice law in Indiana which is  
credited with keeping Indiana's malpractice premiums the lowest  
in the nation.

The bill adds a subchapter to the Maine Health Security Act,  
which currently defines several terms used in this bill. Under  
the Act, "professional negligence" is the term used for what is  
commonly called medical malpractice. "Health care provider"  
means any hospital, clinic, nursing home or other facility in  
which skilled nursing care or medical services are prescribed by  
or performed under the general direction of persons licensed to  
practice medicine, dentistry, podiatry or surgery in this State  
and which is licensed or otherwise authorized by the laws of this  
State. "Health care practitioner" means physicians and all  
others certified, registered or licensed in the healing arts,  
including, but not limited to, nurses, podiatrists, optometrists,  
chiropractors, physical therapists, dentists, psychologists and  
physicians' assistants.

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Under the bill, qualified health care providers and health care practitioners can limit their liability for medical malpractice to \$100,000 per occurrence, and a varying level for the total liability in one year based on the type of provider or practitioner. A provider or practitioner may qualify under the bill by paying the surcharge set by the Superintendent of Insurance and by proving to the superintendent that the health care provider is financially responsible up to the minimum limits established by law. Proof of financial responsibility can be established:

1. By the purchase of medical malpractice liability insurance;
2. By filing cash or surety bond with the superintendent; or
3. If the health care provider is a hospital, by filing a verified financial statement that demonstrates current and future financial responsibility.

Once the health care provider or health care practitioner has qualified under the bill, a person with a medical malpractice claim against the provider or practitioner may not recover more than \$500,000 for that claim. Any amount of damages awarded over \$100,000 is paid out of the Patient Compensation Fund, up to the \$500,000 damage cap. In addition, if the provider or practitioner, or their insurer, has already paid out the annual aggregate in damages for the year, any additional claims against that provider or practitioner will be paid from the fund.

The Superintendent of Insurance will administer the Patient Compensation Fund. The superintendent shall determine the appropriate amount of surcharge each health care provider or health care practitioner must pay into the fund. The superintendent shall determine the amount of the surcharge, based on actuarial studies, which will produce sufficient money in the fund to cover anticipated claims and expenses against the fund.

If the health care provider or health care practitioner is insured, the insurer shall collect the surcharge at the time the provider or practitioner pays the insurance premium. The insurer then transfers the surcharge to the superintendent to be deposited in the fund. The superintendent shall adopt rules determining surcharge collection procedures for providers and practitioners who establish financial responsibility other than by purchasing insurance.

Awards or settlements which require payment from the fund may be in the form of a single lump sum or as a periodic payments agreement. If a periodic payments agreement is entered into, the \$500,000 cap applies to the total of any immediate payment and

1 the amount of money paid in the present to secure the appropriate  
amount of future payments.

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5 The bill sets out procedures for court approval of  
settlements, court determination of liability and court  
7 determination of liability above the \$100,000 liability of the  
provider or practitioner.

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The bill also limits the fee a lawyer may charge the  
claimant to 15% of any recovery from the fund.