

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4151

(By Mr. Speaker, Mr. Charles, + Del. R. Byrd)

— ● —

Passed March 10, 1990

In Effect From Passage

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COMMITTEE SUBSTITUTE
FOR
H. B. 4151

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE R. BURK)
[By Request of the Executive]

[Passed March 10, 1990; in effect from passage.]

AN ACT to amend and reenact section five-c, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing the amount and type of insurance coverage for obstetric treatment of medicaid patients; including provisions for primary insurance coverage for specified medical practitioners; excess insurance coverage for specified medical practitioners; and authorizing the board of risk and insurance management, with approval of the insurance commissioner, to promulgate rules and regulations.

Be it enacted by the Legislature of West Virginia:

That section five-c, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-5c. Insurance for damages allegedly resulting from obstetric treatment of medicaid patients.

1 (a) In accordance with the provisions of this article,
2 the state board of risk and insurance management shall
3 provide professional malpractice insurance for all
4 medical practitioners who provide obstetric treatment to
5 patients which is reimbursed or reimbursable by state
6 medicaid funds: *Provided*, That such medical practi-
7 tioner has, prior to the alleged negligent act or acts,
8 become a participant in the primary professional
9 malpractice insurance program.

10 Said primary insurance shall cover any claim,
11 demand, action, suit or judgment by reason of alleged
12 negligence in the course of providing such obstetric
13 treatment which results in injury. Such primary
14 insurance coverage shall be in an amount to be deter-
15 mined by the state board of risk and insurance manage-
16 ment, but in no event less than one million dollars for
17 each occurrence.

18 Such primary insurance coverage shall be mandatory
19 for medical practitioners covered for obstetric treatment
20 by the board of risk and insurance management. Such
21 primary coverage shall be optional for any other
22 medical practitioner who treats medicaid obstetric
23 patients.

24 The board of risk and insurance management shall
25 establish the criteria for the program for the approval
26 of the insurance commissioner on or before the fifteenth
27 day of June, one thousand nine hundred ninety.

28 The insurance coverage specified in this subsection
29 shall not apply to any hospital which is the site of the
30 obstetric treatment or to any employee of said hospital,
31 except that a medical practitioner providing the
32 obstetric treatment who is also an employee of the
33 hospital which is the site of the treatment shall be
34 included in the insurance coverage required by this
35 section.

36 (b) In accordance with the provisions of this article,
37 the state board of risk and insurance management shall
38 provide optional excess professional malpractice insu-
39 rance for all medical practitioners who provide obstetric

40 treatment to patients which is reimbursed or reimburs-
41 sable by state medicaid funds: *Provided*, That such
42 medical practitioner has, prior to the alleged negligent
43 act or acts, become a participant in the excess insurance
44 program. Such excess insurance coverage shall, in no
45 event, exceed three million dollars.

46 For the purposes of this subsection, excess insurance
47 shall be defined as coverage over and above any other
48 primary or collectible malpractice liability coverage. In
49 no event shall this coverage be primary. Each insured
50 must carry primary insurance of at least one million
51 dollars. Such liability excess malpractice coverage shall
52 be in an amount to be determined by the state board
53 of risk and insurance management, but in no event less
54 than one million dollars for each occurrence.

55 The board of risk and insurance management shall
56 establish the criteria for an optional program of excess
57 professional malpractice insurance for the approval of
58 the insurance commissioner on or before the fifteenth
59 day of June, one thousand nine hundred ninety.

60 (c) For the purpose of this section, the definition of
61 medical practitioner shall be limited to physicians,
62 obstetric/gynecological nurse practitioners, certified
63 nurse midwives, nurse anesthetists, and physicians
64 assistants.

65 (d) Any premiums assessed and collected under the
66 provisions of this section, or rules and regulations
67 promulgated pursuant to the provisions of this section,
68 shall be placed in a separate insurance pool known as
69 the obstetrical/gynecological liability pool. Said pool is
70 to be administered and maintained by the board of risk
71 and insurance management.

72 (e) The board of risk and insurance management,
73 with approval of the insurance commissioner, shall have
74 the authority to make needful rules and regulations for
75 the administration of this section, as provided in the
76 State Administrative Procedures Act in chapter twenty-
77 nine-a of this code: *Provided*, That the board of risk and
78 insurance management, with approval of the insurance

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79 commissioner, shall have the authority to promulgate
80 rules and regulations regarding the discontinuance of
81 the program if participation in the program is insuffi-
82 cient to make said program economically feasible.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick S. Purser
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

David C. Adams
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Keith Hundette
President of the Senate

Robert C. Auburn
Speaker of the House of Delegates

The within *is approved* this the *31st*
day of *March*, 1990.

Caston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date

3/27/90

Time

10:11 am