
A BILL FOR AN ACT

RELATING TO THE HAWAII PATIENT COMPENSATION FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that over the years
2 Hawaii's medical climate has endured rising medical malpractice
3 rates, low reimbursement rates, and an alarming exodus of
4 qualified doctors that serve our communities. According to
5 recent reports released by the American Medical Association,
6 Hawaii is one of many states that are currently either showing
7 signs of problems associated with the current medical liability
8 crisis or are already in full blown crisis.

9 Patient compensation funds, which are becoming increasingly
10 popular and notably effective, are a medical malpractice
11 insurance mechanism created by state law and designed to
12 increase professional liability coverage availability and
13 affordability primarily by providing coverage for a specific
14 type of injury or an excess layer of coverage. Legislatures in
15 thirteen states, including four of the six states labeled as
16 "currently ok" by the American Medical Association,
17 specifically, Louisiana, Ohio, Indiana, and New Mexico, have
18 enacted legislation establishing patient compensation funds with



1 the intent of ensuring a stable and affordable market for
2 malpractice insurance, thereby keeping qualified doctors in the
3 State, and maintaining a reasonable level of patient protection.
4 These four states have generally been viewed as successful
5 models of medical malpractice systems, with their patient
6 compensation funds playing a key role in that success.

7 As Hawaii loses more and more doctors and finds itself
8 struggling to recruit and retain new doctors, particularly on
9 the neighbor islands and other underserved areas, it has become
10 even more apparent that some type of reform is needed. Failure
11 to do so will result in the loss of even more qualified doctors,
12 something that the State cannot afford.

13 Now more than ever it is imperative that action be taken.
14 In 1976, Hawaii became one of the forefront leaders in medical
15 malpractice law when the legislature established a patient
16 compensation fund. Despite the legislature's forethought in
17 1976, the patient compensation fund was later repealed in 1984,
18 even as other states began establishing their own patient
19 compensation funds. Reestablishing the patient compensation
20 fund is a critical step to reforming Hawaii's medical
21 malpractice landscape. It is also a step that has a proven



1 track record and that is being utilized in several other states
2 across the country.

3 The purpose of this Act, to be known as "The Hawaii Patient
4 Compensation Fund Act of 2009" is to reestablish a patient
5 compensation fund in the State so that the State's healthcare
6 providers can have stable and reasonable surcharge rates that
7 are sufficient to fairly compensate legitimate victims of
8 medical malpractice.

9 This Act is one of eight proposals introduced during the
10 regular session of 2009 designed to address the increasingly
11 problematic medical environment in Hawaii. Collectively these
12 eight proposals shall be known as "the Hawaii doctor recruitment
13 and retention action plan of 2009".

14 SECTION 2. The Hawaii Revised Statutes is amended by
15 adding a new part to chapter 671 to be appropriately designated
16 and to read as follows:

17 **"PART. PATIENT COMPENSATION FUND**

18 **§671-A Definitions.** Whenever used in this chapter, unless
19 the context otherwise requires:

20 "Claimant" means the primary party who brings charges
21 against another party.

22 "Commissioner" means the insurance commissioner.



1 "Department" means the department of commerce and consumer
2 affairs.

3 "Director" means the director of the department of commerce
4 and consumer affairs.

5 "Fund" means the patient compensation fund as established
6 under this part.

7 **§671-B Establishment of patient's compensation fund. (a)**

8 There shall be established in the department of commerce and
9 consumer affairs, separate and apart from all other moneys or
10 funds and not a part of the state general fund, a patient's
11 compensation fund to be administered and held in trust by the
12 insurance commissioner. The fund may sue and be sued under its
13 name. By no later than July 1, 2010, the fund shall offer
14 medical malpractice insurance in excess of the basic insurance
15 coverage necessary to participate in the fund.

16 (b) The fund shall consist of:

17 (1) The annual surcharge levied on all health care
18 providers in the State;

19 (2) Any income derived from the fund that shall be held in
20 trust and deposited into the segregated account and
21 may be invested and reinvested by the commissioner;

22 (3) Any interest earned on the fund; and



1 (4) Any loans from the general fund.
2 (c) The annual surcharge amount shall be set by rule
3 established by the insurance commissioner pursuant to chapter
4 91, and shall be based upon actuarial principles and shall be
5 levied in terms of a stated percentage of the annual premium
6 cost to each health care provider for basic insurance coverage;
7 provided that the liability of the fund for any policy shall not
8 exceed \$1,000,000 per claim and \$3,000,000 per policy period
9 aggregate.

10 **§671-C Participation in fund; basic insurance coverage.**

11 All health care providers in the State shall be permitted to
12 participate in the patient's compensation fund; provided that
13 the health care provider presents evidence to the commissioner
14 of medical malpractice insurance coverage in the following
15 amounts:

- 16 (1) For individual physicians or surgeons, \$100,000 per
17 claim and \$300,000 per policy period aggregate; and
18 (2) For hospitals and other healthcare providers, \$100,000
19 per claim and \$1,000,000 per policy period aggregate;
20 provided that in lieu of the required insurance, a health care
21 provider may participate in the fund upon presenting evidence to
22 the commissioner of a surety bond, proof of qualifications as a



1 self-insurer, or other securities affording coverage for medical
2 torts substantially equivalent to that afforded under a medical
3 malpractice insurance in the required amounts, as approved by
4 the commissioner under rules adopted pursuant to chapter 91 and
5 to this part.

6 **§671-D Payment of claims from the patient's compensation**
7 **fund.** Subject to the limits of liability of the insurance
8 coverage purchased from the fund by a health care provider, the
9 commissioner shall pay an amount from the fund to a claimant for
10 damages on account of a medical tort when and to the extent a
11 final judgment, a binding arbitration award, or a settlement of
12 the claim arising as a result of the medical tort or alleged
13 medical tort is in excess of the basic insurance coverage
14 necessary to participate in the fund or is pursuant to section
15 671-F, and the judgment, award, or settlement is against a
16 healthcare provider who was a participant in the fund at the
17 time the medical tort or alleged medical tort occurred. Should
18 the fund become exhausted by payment in full of all final claims
19 in a fiscal year, then the amount paid to each claimant shall be
20 prorated and any amounts due and unpaid shall be paid in the
21 following fiscal year.



1 **§671-E Insurance commissioner approval of payment of**
2 **claims from the fund.** The commissioner shall approve payment of
3 a claim from the fund upon receipt of:

4 (1) A certified copy of a final judgment in excess of the
5 basic insurance coverage for a claimant against a
6 participating health care provider;

7 (2) A certified copy of a binding arbitration award in
8 excess of the basic insurance coverage for a claimant
9 against a participating health care provider;

10 (3) A certified copy of a settlement in excess of the
11 basic insurance coverage for a claimant against a
12 participating health care provider; or

13 (4) A certified copy of a judgment, binding arbitration
14 award, or settlement for a claimant against a health
15 care provider and satisfactory evidence that the claim
16 for which payment is to be made falls within the
17 provisions of section 671-F.

18 **§671-F Claims after six years; payment by patient's**
19 **compensation fund.** (a) Subject to the limits of liability of
20 the insurance coverage purchased from the fund by a health care
21 provider, the fund shall pay the entire amount of damages
22 arising as a result of a medical tort for which a health care



1 provider becomes legally liable if the claim for the medical
2 tort is filed with the medical claims conciliation panel as
3 established in section 671-11 more than six years after the
4 occurrence of the medical tort or alleged medical tort and the
5 health care provider was a participant in the fund at the time
6 of the occurrence.

7 (b) The liability of the fund under this part shall arise
8 only for medical torts or alleged medical torts that occurred
9 after enactment of this part and if the health care provider
10 against whom the claim is made or the insurer give timely notice
11 to the commissioner of the filing of a claim that may fall under
12 this section.

13 **§671-G Powers of the insurance commissioner.** If the
14 plaintiff in a medical tort claim offers in writing to settle at
15 a sum within the limits of liability of the basic insurance
16 coverage necessary to participate in the fund, the offer to
17 settle is not accepted by the insurer of the participating
18 health care provider or the participating self-insured health
19 care provider, and the claim subsequently results in a judgment
20 or arbitration award that exceeds the limits of liability of the
21 basic insurance coverage, and it is determined that the offer to
22 settle was rejected in bad faith, the fund shall have a cause of



1 action against the insurer or self-insured health care provider
2 for the amount paid by the fund as a result of the bad faith
3 failure to settle. The commissioner, on behalf of the fund, may
4 bring an action to recover on the cause of action and, if the
5 judgment is for the fund, the commissioner, on behalf of the
6 fund, shall also recover reasonable attorney fees and costs of
7 suit.

8 **§671-H Administrative rules.** The department shall adopt
9 rules pursuant to chapter 91 necessary for the purposes of this
10 part."

11 SECTION 3. The insurance commissioner shall conduct a
12 study to gather information, including but not limited to the
13 frequency and severity of all medical malpractice claims and the
14 loss ratios and market shares of insurance companies, court
15 disposition process, number of settlements, average dollar
16 amount of settlements and awards, and any other information
17 pertaining to the maintenance of the fund and any data necessary
18 to track the effect of the fund on number of doctors serving in
19 the State. The commission shall submit a report of finding and
20 recommendations, including any proposed legislation, to the
21 legislature no later than twenty days prior to the convening of
22 the Regular Session of 2011.

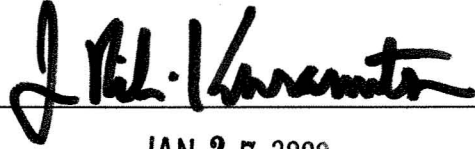


H.B. NO. 1515

1 SECTION 4. This Act shall take effect on July 1, 2009.

2

INTRODUCED BY:



JAN 27 2009



Report Title:

Patient Compensation Fund

Description:

Establishes a patient compensation fund to offer medical malpractice insurance in excess of the basic insurance coverage necessary to participate in the fund.

