ENROLLED ORIGINAL

AN ACT

Codification District of Columbia Official Code

2001 Edition

2007 Winter Supp.

West Group Publisher

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend AN ACT To provide for regulation of certain insurance rates in the District of Columbia, and for other purposes to require prior approval of rate increases exceeding 7%, to authorize refunds to physicians who have paid excessive rates, to enable physicians and consumers to challenge rate increases, and to make rate filings public information; to amend the District of Columbia Health Occupations Revision Act of 1985 to establish reporting requirements for physicians found liable for medical malpractice and for health care providers who discipline a physician employed by the health care provider, to authorize the Board of Medicine to establish a new physician license fee, and to improve the performance of the Board of Medicine by requiring the Mayor to dedicate a minimum number of full-time employees whose sole responsibility shall be to support the Board of Medicine; to require the creation of a centralized database for the collection of information for the analysis of adverse medical events to reduce medical errors and improve health care delivery; to require individuals who intend to file suit alleging medical malpractice to file with potential defendants a 90-day notice of intent to file suit in the Superior Court of the District of Columbia; to require parties to the suit to engage in mediation early in the litigation process; to make inadmissible as an admission of medical malpractice liability certain benevolent gestures made by the defendant; and to examine all closed liability claims against Obstetricians/Gynecologists in order to identify ways to improve health care delivery and share best practices.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Medical Malpractice Amendment Act of 2006".

TITLE I. MEDICAL MALPRACTICE RATEMAKING

Sec. 101. AN ACT To provide for regulation of certain insurance rates in the District of Columbia, and for other purposes, approved May 20, 1968 (62 Stat. 242; D.C. Official Code § 31-2701 *et seq*.), is amended as follows:

(a) Section 1 (D.C. Official Code § 31-2701) is amended by adding a new paragraph to

read as follows: **Note, § 31-2701**

""Medical malpractice insurer" means an insurer licensed to underwrite medical malpractice insurance.".

(b) Section 3 (D.C. Official Code § 31-2703) is amended by adding a new subsection (f-1) to read as follows: **Note, § 31-2703**

"(f-1)(1)(A) Every final rate or premium charge proposed to be used by a medical malpractice insurer shall be filed with the Commissioner and shall be adequate, not excessive, and not unfairly discriminatory. A medical malpractice rate shall be excessive if the rate is unreasonably high for the insurance provided. In determining whether rates are adequate, not excessive, and not unfairly discriminatory, due consideration shall be given to:

"(i) Past and prospective loss experience within the District;

"(ii) A reasonable margin for underwriting profit and contingencies;

"(iii) Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

"(iv) Past and prospective expenses in the District;

"(v) All investment income reasonably attributable to medical malpractice insurance in the District.

"(B) If District experience is not credible, the Commissioner may consider experience outside the District. The Commissioner shall promulgate rules setting forth the extent to which and the circumstances under which an insurer may rely on experience outside the District.

"(2) If a medical malpractice insurer wishes to change a rate, it shall file a complete rate application with the Commissioner. A complete rate application shall include all information, including all actuarial data, projections, and assumptions, that the medical malpractice insurer has relied on in calculating its proposed rates. All such information shall be made available when filed in accordance with the Freedom of Information Act of 1976, effective March 29, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq*.).

"(3) The Commissioner shall notify the public of any application by a medical malpractice insurer for a rate change increase. The application shall be deemed approved 60 days after public notice unless the proposed rate change increase exceeds 10%. If the proposed rate change increase exceeds 10%, the Commissioner shall hold a hearing on the proposed change and shall issue an order approving, denying, or modifying the proposed change within 90 days after public notice of the proposed change. Any person shall have a right to testify in a hearing held by the Commissioner. The Commissioner shall promulgate rules governing the public hearing.

"(4) If the Commissioner finds, after a hearing, that a rate used by a medical malpractice insurer does not comply with this subsection, the Commissioner shall order the insurer to discontinue using the rate and to issue a refund to any policyholder who has paid the

rate to the extent that the Commissioner has found it excessive.".

(c) Section 4(c) (D.C. Official Code § 31-2704(c)) is amended to read as follows: **Note, § 31-2704**

"(c)(1) After an investigation of the rates, the Commissioner shall, before ordering an adjustment, hold a hearing upon not less than 10 days' written notice specifying the matters to be considered at the hearing, to every company and rating organization which filed the rates; provided, that the Commissioner shall not be required to hold the hearing if he or she is advised by every such company and rating organization that they do not desire the hearing. The cost of the hearing shall be borne by the insurance company requesting the rate increase. If, after the hearing, the Commissioner determines that any or all of the rates are excessive or inadequate, he or she shall order an adjustment. Pending the investigation and order of the Commissioner, the rates shall be deemed to have been made in accordance with the terms of this act.

"(2)(A) An order of adjustment shall not affect any contract or policy made or issued prior to the effective date of the order unless:

"(i) The adjustment is substantial and exceeds the cost to the companies of making the adjustment; and

"(ii) The order is made after the prescribed investigation and hearing and within 30 days after the filing of rates affected.

"(B) An order of adjustment shall not affect an existing contract or policy other than:

"(i) A medical malpractice, workmen's compensation, or automobile liability insurance policy required by law, order, rule, or regulation of a public authority; or

"(ii) A contract or policy of any type as to which the rates are not, by general custom of the business or because of rarity and peculiar characteristics, written according to normal classification or rating procedure.".

TITLE II. IMPROVED PERFORMANCE BY THE BOARD OF MEDICINE; MANDATORY ADVERSE EVENT REPORTING

Sec. 201. The District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 *et seq*.), is amended as follows:

(a) Section 203(a)(7) (D.C. Official Code § 3-1202.03(a)(7)) is amended as follows: **Note, § 3-1202.03**

(A) Designate the existing text as subparagraph (A).

(B) A new subparagraph (B) is added to read as follows:

"(B) On or before January 1, 2007, in addition to the executive director, the Mayor shall require, at a minimum, that an investigator, an attorney, and 2 clerical support staff be hired, which persons shall be full-time employees of the District and whose work shall be limited solely to administering and implementing the orders of the Board in accordance with

this act and rules and regulations issued pursuant to this act. The mandatory minimum number of employees established under this section shall not restrict the Mayor's ability to authorize additional staff.".

(b) Section 409 (D.C. Official Code § 3-1204.09) is amended by striking the phrase "District law." and inserting the phrase "District law; provided, that the fee for the issuance of a medical license shall be set by the Board of Medicine; provided further, that the fee shall be no less than $500 and shall be sufficient to fund the programmatic needs of the Board." in its place.

Note, § 3-1204.09

(c) A new section 513a is added to read as follows:

"Sec. 513a. Physician and health care provider notice requirements, penalty for noncompliance; settlement agreement not a bar to filing a complaint or testifying.

"(a)(1) A physician licensed by the Board shall report to the Board within 60 days of the occurrence of any of the following:

"(A) Notice of a judgment against a physician named in a medical malpractice suit or notice of a confidential settlement of a medical malpractice claim to be paid by a physician, an insurer, or other entity on behalf of the physician; or

"(B) Disciplinary action taken against the physician by a health care licensing authority of another state.

"(2)(A) A health care provider who employs a physician who is licensed in the District of Columbia shall report to the Board any disciplinary action taken against the physician within 10 days of the action being taken. The resignation of a physician that occurs while the physician is being investigated by the health care provider shall also be reported to the Board by the health care provider within 10 days of the resignation.

"(B) The Board shall impose a penalty not to exceed $2,500 on a health care provider for failure to comply with the provisions of this paragraph.

"(b) Nothing in a confidential settlement agreement shall operate to prevent the parties to the agreement from filing a complaint with the Board or from testifying in any investigation conducted by the Board.".

Sec. 202. Mandatory adverse event reporting.

(a) For the purposes of this section, the term:

(1) "Adverse event" means an event, occurrence, or situation involving the medical care of a patient by a health care provider that results in death or an unanticipated injury to the patient.

(2) "Healthcare provider" means an individual or entity licensed or otherwise authorized under District law to provide healthcare service, including a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner's office, long-term care facility, behavior health residential treatment facility, health clinic, clinical laboratory, health center, physician, physician assistant, nurse practitioner,

clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner.

(3) "Medical facility" means a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner's office, long-term care facility, behavior health residential treatment facility, health clinic, clinical laboratory, or health center.

(4) "Primary health record" means the record of continuing care maintained by a health professional, group practice, or health care facility or agency containing all diagnostic and therapeutic services rendered to an individual patient by the health professional, group practice, or health care facility, or agency.

(b) On or before July 1, 2007, the Mayor shall establish, within the Department of Health, a centralized system for the collection and analysis of adverse events in the District of Columbia.

(c) The Mayor shall appoint an employee of the Department of Health to administer the system, whose responsibilities shall include:

(1) Collecting, organizing, and storing data on adverse events occurring at medical facilities in the District of Columbia;

(2) Tracking, assessing, and analyzing the incoming reports, findings, and corrective action plans;

(3) Identifying common adverse event patterns or trends;

(4) Recommending methods to reduce systematic adverse events;

(5) Providing technical assistance to healthcare providers and medical facilities on the development and implementation of patient safety plans to prevent adverse events;

(6) Disseminating information and advising healthcare providers and medical facilities in the District of Columbia on medical best practices;

(7) Monitoring national trends in best practices and disseminating relevant information and advice to healthcare providers and medical facilities in the District of Columbia; and

(8) Publishing an annual report that includes summary data of the number and types of adverse events of the prior calender year by type of healthcare providers and medical facility, rates of change, and other analyses and communicating recommendations to improve health care delivery in the District of Columbia.

(d)(1) Pursuant to this section, healthcare providers and medical facilities providing services in the District of Columbia shall submit biannual reports, on January 1 and July 1 of each calendar year, on adverse events to the system administrator. Each report shall contain, for each adverse event, the patient's full primary health record; provided, that medical information with respect to the patient's identity shall be de-identified and anonymous.

(2) Failure to submit a report as required by this section shall be punishable by a penalty of not less than $500 or more than $2,500.

(e)(1) Except as otherwise provided by this section, the files, records, findings, opinions, recommendations, evaluations, and reports of the system administrator, information provided to or obtained by the system administrator, the identity of persons providing information to the system administrator, and reports or information provided pursuant to section 204 shall be confidential, shall not be subject to disclosure pursuant to any other provision of law, and shall not be discoverable or admissible into evidence in any civil, criminal, or legislative proceeding. The information shall not be disclosed by any person under any circumstances. This subsection shall not preclude use of reports or information provided under section 204 by a board regulating a health profession or the Mayor in proceedings by the board or the Mayor.

(2) No person who provided information to the system administrator shall be compelled to testify in any civil, criminal, or legislative proceeding with respect to any confidential matter contained in the information provided to the system administrator.

(3) Notwithstanding subsections (a) or (b) of this section, a court may order a system administrator to provide information in a criminal proceeding in which an individual is accused of a felony if the court determines that disclosure is essential to protect the public interest and that the information being sought can be obtained from no other source. In determining whether disclosure is essential to protect the public interest, the court shall consider the seriousness of the offense with which the individual is charged, the need for disclosure of the party seeking it, and the probative value of the information. If the court orders disclosure, the identity of any patient shall not be disclosed without the consent of the patient or his or her legal representative.

(f) Implementation of this title shall be funded through the licensure fees collected by the Board of Medicine.

TITLE III. MEDICAL MALPRACTICE PROCEEDINGS

Sec. 301. This title may be cited as the "Medical Malpractice Proceedings Act of 2006".

Sec. 302. Title 16 of the District of Columbia Official Code is amended by adding a new Chapter 28 is added to read as follows:

"Chapter 28. Medical Malpractice.

"Subchapter I. Generally.

"Sec.

"Subchapter II. Mediation

"Subchapter III. Evidence.

"Subchapter I. Generally.

"§ 16-2801. Definitions.

"For the purposes of this chapter, the term:

"(1) "Court" means the Superior Court of the District of Columbia.

"(2) "Healthcare provider" means an individual or entity licensed or otherwise authorized under District law to provide healthcare service, including a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner's office, long-term care facility, behavior health residential treatment facility, health clinic, birth center, clinical laboratory, health center, physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner.

"§ 16-2802. Notice of intention to file suit.

“(a) Any person who intends to file an action in the court alleging medical malpractice against a healthcare provider shall notify the intended defendant of his or her action not less than 90 days prior to filing the action. Notice may be given by service on an intended defendant at his or her last known address registered with the appropriate licensing authority. Upon a showing of a good faith effort to give the required notice, the court may excuse the failure to give notice within the time prescribed.

"(b) The notice required in subsection (a) of this section shall include sufficient information to put the defendant on notice of the legal basis for the claim and the type and extent of the loss sustained, including information regarding the injuries suffered. Nothing herein shall preclude the person giving notice from adding additional theories of liability based upon information obtained in court-conducted discovery or adding injuries or loss which become known at a later time.

"(c) A legal action alleging medical malpractice shall not be commenced in the court unless the requirements of this section have been satisfied.

“§ 16-2803. Extension of statute of limitations.

"If the notice required under § 16-2802 is served within 90 days of the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended 90 days from the date of the service of the notice.

"§ 16-2804. Unknown defendant or unlicensed defendant.

“(a) Section 16-2802 shall not apply to:

(1) Any intended defendant whose name is unknown or who was not licensed at the time of the alleged occurrence or is unlicensed at the time notice is given;

(2) Any claim that is unknown to the person at the time of filing his or her notice; or

(3) Any intended defendant who is identified in the notice by a misnomer.

“(b) Nothing indicated herein shall prevent the court from waiving the requirements of

“§ 16-2802 upon a showing of good faith effort to comply or if the interests of justice dictate.

"Subchapter II. Mediation.

"§ 16-2821. Requirement for mediation.

"After an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference (“ISSC”), prior to any further litigation in an effort to reach a settlement agreement. The mediation schedule shall be included in the scheduling conference order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC.

“§ 16-28223. Mediator costs.

Unless otherwise agreed by the parties, the costs of mediation, if any, shall be equally shared by the parties.

"§ 16-2823. Mediators.

"(a) The court shall assign the parties to court-provided mediation and provide a roster of medical malpractice mediators from which the parties may hire an eligible medical malpractice mediator. In the alternative, all parties can agree to hire another individual outside the roster. To be eligible for inclusion in the roster of medical malpractice mediators, an individual shall be a judge or lawyer with at least 10 years of significant experience in medical malpractice litigation.

"(b) If the parties cannot agree on the selection of a mediator, the court shall appoint one.

"§ 16-2824. Attendance at mediation session.

"(a) For the purposes of this section, the term "a representative with settlement authority" means an individual with control of the financial settlement resources for the case and the authority to pledge those resources to settle the case on behalf of a party.

"(b) All parties shall personally attend mediation sessions.

"(c) If a party is not an individual, a representative with settlement authority for the party shall attend the mediation session.

"(d) In cases involving an insurance company, a representative of the company with settlement authority shall attend the mediation session.

"(e) Attorneys representing each party with primary responsibility for the case shall attend the mediation session.

"§ 16-2825. Mediation statements.

"(a) Each party shall submit a confidential mediation statement to the mediator no later than 10 days prior to the initial mediation session. The parties shall not send copies of the mediation statement to the clerk, the assigned judge, or the other parties.

"(b) Unless not already stated in the complaint and answer, the mediation statement shall:

"(1) Include a brief summary of facts;

"(2) Identify the issues of law and fact in dispute and summarize the party's position on those issues;

"(3) Discuss whether there are issues of law or fact the early resolution of which could facilitate early settlement or narrow the scope of the dispute;

"(4) Identify the attorney who will represent the party at the mediation session and the person with settlement authority who will attend the mediation session;

"(5) Include any documents or materials relevant to the case which may assist the mediator and advance the purposes of the mediation session; and

"(6) Present any other matters that may assist the mediator and facilitate the mediation.

"(c) Mediation statements are intended solely to facilitate the mediation and shall not be filed with the court.

"§ 16-2826. Mediator's report.

"A mediator's report shall be filed with the court no later than 10 days after the mediation has terminated, informing the court regarding:

"(1) Attendance;

"(2) Whether a settlement was reached; or

"(3) If a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation.

"§ 16-2827. Confidentiality.

"(a) The mediation session shall be confidential. All proceedings at the mediation, including any statement made by any party, attorney, or other participant, shall be privileged and shall not be construed as an admission against interest. Any statement at such proceedings shall not be used in court in connection with the case or any other litigation. A party shall not be

bound by anything said or done at the mediation unless a settlement is reached.

"(b) A mediator shall not be compelled to provide evidence of a mediation communication in any subsequent trial.

"Subchapter III. Evidence.

"§ 16-2841. Inadmissibility of benevolent gestures.

"For the purpose of any civil action or administrative proceeding alleging medical malpractice against a healthcare provider, an expression of sympathy or regret made in writing, orally, or by conduct made by or on behalf of the healthcare provider to a victim of the alleged medical malpractice, any member of the victim's family, or any individual who claims damages by or through that victim, is inadmissible as an admission of liability. Nothing herein shall preclude the court from permitting the introduction of an admission of liability into evidence.".

TITLE IV. MEDICAL MALPRACTICE ANALYSIS OF CLOSED OBSTETRICIAN/GYNECOLOGIST CLAIMS

Sec. 401. Short title.

This title may be cited as the "Medical Malpractice Analysis of Closed Obstetrician/Gynecologist Claims Act of 2006".

Sec. 402. Closed claim analysis.

(a) Within 180 days of the effective date of this title, the Mayor shall submit legislation to the Council for the establishment of a database of closed obstetrician/gynecologist malpractice claims reports to be submitted by providers of medical malpractice insurance.

(b) The legislation shall include a plan which shall:

(A) Contain provisions to identify trends and develop recommendations for preventative action for adverse Obstetrician/Gynecologist events;

(B) Ensure dissemination of best practices among Obstetrician/Gynecologist practitioners and facilities and shall include provisions for ensuring the implementation of these practices; and

(C) Include provisions to study recommendations based on closed Obstetrician/Gynecologist malpractice claims in other jurisdictions.”.

TITLE V. FISCAL IMPACT STATEMENT; EFFECTIVE DATE

Sec. 501. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 502. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

_____

Chairman
Council of the District of Columbia

_____

Mayor
District of Columbia