

**YOUR PROFESSIONAL LIABILITY BROKER,**



**PROFESSIONAL LIABILITY CONSULTANTS**

is pleased to be sending you, our *Cornerstone Quarterly Newsletter*.

Many of your colleagues may be in need of our assistance. Please have them give us a call at 800-508-1355.

Thank you,  
Chris Zuccarini  
President



# CORNERSTONE

## PROFESSIONAL LIABILITY CONSULTANTS

A QUARTERLY NEWSLETTER

### GOVERNOR RENDELL DELIVERS ON HIS COMMITMENT TO MAKE SURE PENNSYLVANIANS HAVE CONTINUED ACCESS TO HEALTH CARE

**HARRISBURG** — Governor Edward G. Rendell has signed a bill that underscores his commitment to making sure Pennsylvanians have continued access to health care. House Bill 2041 extends for a fourth year the Governor's Mcare abatement program, an innovative way to help physicians pay their malpractice premiums until reforms that have been passed have a chance to take affect. The Governor developed the abatement program as a way to encourage physicians to continue practicing in Pennsylvania, ensuring that residents had continued access to health care. Pennsylvania was the first state to create such a program.

*"The data suggests that we're turning the corner on the medical malpractice crisis that hit Pennsylvania a few years ago, and another year of the abatement will ensure that the reforms that have been passed have a chance to become fully effective and that people have access to the care they've come to expect,"* the Governor said.

The Governor pointed to the following examples as proof of the improvements in the medical malpractice situation:

- Availability of health care services for consumers — The number of physicians paying the Mcare surcharge has remained fairly constant over the past few years at about 34,000, meaning that consumers still have access to health care services in Pennsylvania.
- Affordability of the primary layer (\$500,000 worth of coverage) of medical liability insurance for physicians — This year, the state's three largest medical malpractice insurers – PMSLIC, Med Pro and the JUA (Joint Underwriting Association) – have kept their rates flat, something that hasn't happened in a long time. For example, in 2002, PMSLIC increased its rates an average of 40 percent and another 54 percent in 2003.
- Affordability of the secondary, or Mcare layer of insurance — Each year, the Insurance Department sets the level of the next year's Mcare surcharge. The surcharge is a percentage of the amount that each physician pays for his or her primary layer of coverage. For 2006, the Mcare surcharge will be reduced from 39 percent to 29 percent – a 25 percent reduction.
- Availability of med mal insurance for physicians – There is renewed interest in underwriting in the Pennsylvania market. The med mal situation fostered a host of risk retention groups – physicians that banded together to cover their own liability costs instead of going through an insurance company. But large companies are also showing interest. For example, in the past month, the state's largest med mal writer, PMSLIC, has announced that, for the first time in three years, it will begin to write new business. *(continued on page 2)*

### THE DO'S AND DON'TS WHEN YOU FACE A CLAIM.....

#### The Do's

- Collect all the pertinent patient records concerning the claimant, and maintain them in a separate and secure location
- Keep correspondence and any other communications from your lawyer or your insurance company in a file separate from the patient chart
- Your lawyer has been assigned to represent you, so be sure to ask questions in the event you are unclear about any of the proceedings
- Assist your attorney in your defense. You are the best source of information and expertise, and your assistance is a vital element of an effective and successful defense.

#### The Don'ts

- Do not discuss the case with anyone other than your appointed defense counsel
- Do not change, discard or otherwise alter the patient records
- Do not send (mail, email or fax) patient records regarding a claim to anyone other than your attorney or your Professional Liability Carrier's claim specialist without first clearing it with your attorney or your insurance company
- Do not rely solely on your attorney to defend you in your case. Your active participation is key to an effective successful defense.

(continued from page 1)

- Claim payouts from the primary layer of insurance— According to statistics from the Pennsylvania Supreme Court, the number of med mal cases filed in 2004 dropped 34 percent statewide over 2000-2002, a significant decline. In addition, the venue law has had a tremendous effect of moving cases out of Philadelphia and into their proper counties.
- Claim payouts from the secondary, or Mcare Fund, layer of insurance — In 1999, Mcare paid claims of a little more than \$300 million. In 2000, the amount increased to \$341 million, and, by 2003, had climbed again to nearly \$379 million. In 2004, the first year when you likely would have started to see the effects of Act 13 and some of the reforms, the number dropped to \$320 million. For 2005, Mcare payouts will be \$232 million – a dramatic decrease.

Under the abatement, high-risk specialists, including orthopedic surgeons, neurosurgeons, ob/gyns and other high-risk surgeons, had 100 percent of their Mcare payment abated in 2003, 2004 and 2005. All other physicians received a 50-percent abatement. The bill the Governor has signed extends that abatement for another year and expands the program to include nursing homes. The bill adds emergency physicians certified by the American Osteopathic Board of Emergency Medicine and people employed by trauma centers as those eligible for the 100 percent abatement. In 2004, some 36,000 physicians, 200 nurse midwives and 1,000 podiatrists received the abatement, helping them keep viable medical practices in Pennsylvania. In addition to the Mcare abatement extension through the end of calendar year 2006, House Bill 2041, which was sponsored by Rep. Steven R. Nickol (R-Adams/York), does the following:

- Establishes the Patient Safety Authority as an independent agency. The Authority will be the sole public entity eligible to be certified as a patient safety organization for purposes of the federal Public Health Service Act, which provides federal grants, loan guarantees and interest subsidies for health facilities.
- Changes the application deadline for the abatement to the second Monday of February and permits hospitals to submit electronic applications on behalf of all health care providers for whom the hospital is responsible for payment of the Mcare assessment. In such cases, the hospital will be responsible for ensuring compliance with the certificate of retention and will compensate the retention account for each provider who fails to continue to provide medical services in the state for the year following receipt of the benefit of the abatement.
- Requires the Insurance Department to notify the appropriate licensing board of any failure to pay an amount required related to a certificate of retention, and provides for license suspension;
- Requires that by May 15, 2006, the Insurance Department report to the Governor and the appropriate legislative committee chairpersons the number of abatement applicants, recipients of full or partial abatement, reasons for providers leaving Pennsylvania, unapproved applications and related information.
- Requires health care providers that conduct less than 50 percent of their health care practice or business within Pennsylvania to insure that their professional liability is consistent with the act.
- Establishes a seven-member Commission to review the Mcare Fund unfunded liability and recommend appropriate and effective methods of addressing future unfunded liabilities of the Mcare fund. The Commission will establish an advisory committee, limited to up to 15 persons with expertise in the areas of health care, medical professional insurance, the law, and finance and actuarial analysis. They will be charged with studying the future scope and obligations of the fund and, by Nov. 15, 2006, submit a report to the Governor and the General Assembly, including recommendations related to continuation of the Mcare abatement; elimination or phasing out the fund; and any related issues. The Commission will be sunset on Nov. 30, 2006.

The bill passed the House 194-0 and the Senate, with amendments, 50-0. The House concurred 192-0. The bill becomes effective immediately.

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### **REMINDER: MCARE ABATEMENTS FOR 2006 ...**

The abatement for 2006 has been approved. Mcare has again made public an on-line application form for those seeking to qualify for an abatement of the Mcare assessments at either the 50% or 100% levels for 2006. An application will have to be completed even though you have completed one for 2003, 2004 and 2005. Health care providers are required to submit the request for abatement to the Department using this electronic form no later than February 15, 2007. All supporting documents as indicated on the on-line application form must be postmarked by February 15, 2007. **It is encouraged that you submit your application as soon as possible due to the fact that the insurance carriers have been instructed by Mcare to bill the full amount unless the approval letter is accompanied with the abated amount.** To find the application for 2006 please visit the Mcare website at [www.mcare.state.pa.us](http://www.mcare.state.pa.us) . If you have any questions please call the Mcare help line at 717-783-3770 ext. 243

***If you have not completed your Mcare abatement application for 2005 please do so immediately – the deadline for this is February 15, 2006.***

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# Signs of 'crisis' fading

By Josh Goldstein

Philadelphia Inquire January 2, 2006

The billboard that asked the last doctor leaving Pennsylvania to turn off the lights is gone. No hospital trauma center here threatened to close its doors on New Year's Eve because its emergency-room doctors couldn't get liability insurance. And the heated arguments among doctors, hospital administrators and malpractice lawyers have cooled.

Five years after the latest medical malpractice insurance 'crisis' began to roil Pennsylvania, New Jersey and other parts of the nation, a balance has returned to the system here.

While rates are still high, the largest malpractice insurers in Pennsylvania did not increase premiums this year.

The Mcare Fund, a state government program that pays malpractice awards and settlements between \$500,000 and \$1 million, saw its spending drop to \$232.6 million in 2005 from \$320.3 million a year ago and \$378.7 million in 2003.

And the number of malpractice suits filed in the state declined by more than one-third between 2000 and 2004. The number of suits brought in Philadelphia – viewed as the epicenter of the malpractice 'crisis' – was reduced by nearly half during that period.

"In Pennsylvania, the malpractice crisis is over," said William M. Sage, the Columbia University professor who headed the Project on Medical Liability in Pennsylvania. The project, paid for by the Pew Charitable Trusts, studied malpractice over the last three years.

While he would not go quite that far, Gov. Rendell said: "It is clear from every bit of evidence that the crisis had abated significantly."

Doctors and hospital executives, however, continue to worry that high malpractice costs will limit patient access to health care, including emergency care.

The sharp increases in medical malpractice premium that began in 2000 led many local doctors – particularly high-risk specialists such as obstetricians, orthopedic surgeons and neurosurgeons – to say they would restrict their practices or leave the state.

While some doctors did leave Pennsylvania or, for example, stopped delivering babies, there is no evidence that patients in this region were unable to get necessary care.

Hospitals and other health-care providers said they also were hurt.

"The crisis is not over," said Andrew Wigglesworth, president of the Delaware Valley Healthcare Council, which represents area hospitals. "The only thing that had happened is some moderation in the rate of increases of our premiums, but we still have issues in terms of recruitment and retention of physicians. We are still spending tremendous resources on this issue which means we cannot hire needed caregivers or spend money on new medical equipment.

"There has been improvement, but there continues to be a need form an ongoing effort to prevent a recurrence of the crisis that have occurred periodically over the last four decades; said Chip Hummer, a Delaware County Orthopedic Surgeon.

Similar spikes in malpractice costs occurred in the mid-1970s, mid 1980s, and mid-1990. That has led some experts to view the most recent problem as part of a broader insurance cycle.

In 2002, the Pennsylvania General Assembly passed legislation to address the increases in malpractice costs.

Hummer, 42, heads a nonprofit coalition of high-risk specialists pushing for changes in the legal system to preserve patient access to care. He said Pennsylvania Physicians for the Protection of Specialty Care wanted additional measures "to prevent another crisis" and to ensure that specialists in the state were not driven out of practice by high malpractice costs.

Some health-care advocates and trial lawyers warn that some of the changes already may bear an unseen cost. "There are malpractice victims with legitimate claims which are no longer practical to litigate because of costs and barriers to bringing suit," said Gerald A. McHugh Jr., a trial lawyer with Raynes McCarty. "Now that we have made changes in the legal system prospectively, we need to focus on improving patient safety, because better care will mean fewer claims."

Sage, the Columbia professor, who is both a doctor and a lawyer; said now that the “crisis” had ebbed, policymakers, doctors, trial lawyers and others must work together to craft policies to prevent another.

“Pennsylvania is a good laboratory for reform,” he said; While the state had been ground zero for the latest round of malpractice wars between doctors and trial lawyers, it had also implemented changes in the last several years that put it at the forefront of nation’s efforts to improve patient safety.

Act 13, the law enacted in 2002 by the General Assembly, established the Patient Safety Authority. Now hospitals must report serious medical mishaps that injure patients as well as “near misses,” acts that might have done harm.

The Pennsylvania Supreme Court established a rule that medical-malpractice cases should be brought in the county where case was rendered, significantly decreasing the number filed in Philadelphia, which is viewed as a more patient-friendly venue to try cases.

Rendell and the legislature have used tobacco-tax revenue and excess money in the state’s automobile catastrophic loss fund to subsidize by more than \$220 million a year over the last three years the surcharges doctors and other providers pay to the Mcare Fund.

The Mcare Fund abatement pays all of the surcharge for high-risk specialists and half of the amount for other doctors in the state. Last month, the General Assembly reauthorized the abatement for 2006.

Ultimately, legislators hope private insurers will be able to replace the Mcare Fund, but last year Insurance Commissioner M. Diane Koken ruled that there was not yet enough capacity in the malpractice insurance industry to retire the government fund. Rendell has said that Koken and the Insurance Department will have key roles in preventing a recurrence of the problem.

Many have argued that a major factor contributing to the crisis was poor business practices by malpractice insurers that caused some to withdraw from Pennsylvania and other to fail.

“In the insurance market, many problems were caused by the unrealistically low premiums carriers set in order to increase their market share,” McHugh said. “The Rendell administration’s determination not to let that happen again is an important reform.”

Rendell said that legislative, regulatory and legal changes implemented before and after he was elected had stabilized the situation and would cause continued improvement over time.

Going forward, Rendell said he wanted to focus on mediation to resolve disputes over care before lawsuits were filed. And he said he wanted to use taxes on cigarettes and other tobacco products to eliminate the Mcare Fund’s estimated \$2 billion unfunded liability.

## **PA PHYSICIANS – DON’T WAIT COMPELTE YOUR 2006 MCARE ABATEMENT APPLICATIONS NOW**