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HOUSE BILL 851

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Danice Picraux

AN ACT

RELATING TO INSURANCE; ENACTING THE MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION ACT; CREATING A JOINT UNDERWRITING ASSOCIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Medical Malpractice Joint Underwriting Association Act"."

Section 2. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] PURPOSE OF ACT.--The purpose of the Medical Malpractice Joint Underwriting Association Act is to promote the health and welfare of the people of New Mexico by making available professional liability insurance for health

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1 care providers in New Mexico."

2 Section 3. A new section of the New Mexico Insurance Code
3 is enacted to read:

4 "[NEW MATERIAL] DEFINITIONS.--As used in the Medical
5 Malpractice Joint Underwriting Association Act:

6 A. "association" means the joint underwriting
7 association established pursuant to the provisions of the
8 Medical Malpractice Joint Underwriting Association Act;

9 B. "board" means the board of directors of the
10 association;

11 C. "licensed health care provider" means a person,
12 corporation, organization, facility or institution licensed or
13 certified by this state to provide health care services;

14 D. "medical malpractice insurance" means medical
15 professional liability insurance protection against the legal
16 liability of the insured arising out of the death or injury of
17 a person as the result of negligence or malpractice in
18 rendering or failing to render professional service by a
19 licensed health care provider;

20 E. "member" means a member of the association as
21 provided for in Subsection A of Section 4 of the Medical
22 Malpractice Joint Underwriting Association Act;

23 F. "net direct premiums" means gross direct
24 premiums written on bodily injury liability insurance,
25 including automobile and homeowners liability insurance as well

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1 as the liability component of multiple peril package policies,
2 as computed by the superintendent, less return premiums or the
3 unused or unabsorbed portions of premium deposits; and

4 G. "plan of operation" means the plan of operation
5 as provided for in Section 7 of the Medical Malpractice Joint
6 Underwriting Association Act."

7 Section 4. A new section of the New Mexico Insurance Code
8 is enacted to read:

9 "[NEW MATERIAL] JOINT UNDERWRITING ASSOCIATION CREATED.--

10 A. A "joint underwriting association" is created,
11 consisting of all insurers authorized to write within New
12 Mexico, on a direct basis, bodily injury liability insurance
13 other than automobile, homeowners and farmowners liability
14 insurance. Every such insurer is and shall remain a member of
15 the association as a condition of its authority to continue to
16 transact this kind of insurance in the state.

17 B. The purpose of the association is to provide
18 medical malpractice insurance on a self-supporting basis.

19 C. The association shall be called into operation
20 immediately and shall be utilized in the event of the
21 unavailability of medical malpractice liability insurance or of
22 medical malpractice liability insurance on a reasonable basis
23 through normal channels.

24 D. The association shall be an authorized insurer
25 in New Mexico."

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1 Section 5. A new section of the New Mexico Insurance Code
2 is enacted to read:

3 "[NEW MATERIAL] BOARD OF DIRECTORS.--

4 A. The association shall be governed by a board of
5 five directors as follows:

6 (1) a representative appointed by the New
7 Mexico trial lawyers association;

8 (2) a representative appointed by the New
9 Mexico medical society;

10 (3) a member appointed by the governor
11 representing the allied health care providers;

12 (4) a member appointed by the governor
13 representing the insurance industry; and

14 (5) a representative appointed by the private
15 insurance company that has issued the greatest number of
16 medical malpractice insurance policies for practitioners in New
17 Mexico during the prior calendar year.

18 B. The directors specified in Paragraphs (1)
19 through (4) of Subsection A of this section shall serve two-
20 year terms. The director specified in Paragraph (5) of
21 Subsection A of this section shall serve a one-year term.

22 C. The superintendent shall serve as an ex-officio
23 member of the board.

24 D. The terms of directors shall coincide with the
25 calendar year. Directors shall serve until their successors

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1 have been appointed. A director shall not be removed during a
2 term except for cause."

3 Section 6. A new section of the New Mexico Insurance Code
4 is enacted to read:

5 "[NEW MATERIAL] POWERS OF THE ASSOCIATION.--The
6 association has the power on behalf of its members to:

7 A. issue or cause to be issued policies of
8 insurance, including incidental coverage and premises or
9 operations liability coverage on the premises where services
10 are rendered, all subject to limits of liability as specified
11 in the plan of operation of at least one million dollars
12 (\$1,000,000) for each claimant under one policy and three
13 million dollars (\$3,000,000) for all claimants under one policy
14 in any one policy year. The minimum set forth herein shall
15 increase annually by the consumer price index for medical
16 expenses. Policies shall be issued on a claims-made basis;

17 B. appoint a service company to underwrite medical
18 malpractice insurance, issue contracts of insurance and adjust
19 and pay losses with respect thereto. The service company shall
20 be physically located in New Mexico. Preference shall be given
21 to qualified companies domiciled in New Mexico;

22 C. cede and assume reinsurance; and

23 D. assess members for funds to pay the
24 association's operating expenses and obligations pursuant to
25 policies of insurance issued by the association."

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1 Section 7. A new section of the New Mexico Insurance Code
2 is enacted to read:

3 "[NEW MATERIAL] PLAN OF OPERATION.--

4 A. The association shall operate pursuant to a plan
5 of operation that shall provide for:

6 (1) economic, fair and nondiscriminatory
7 administration;

8 (2) prompt and efficient distribution of
9 medical malpractice insurance;

10 (3) conditions that more precisely define the
11 thresholds of unavailability or reasonableness of cost that
12 trigger the issuance of policies by the joint underwriting
13 association;

14 (4) reasonable preconditions of practice
15 before which policies will be issued to a particular class of
16 health care providers; and

17 (5) conditions under which the joint
18 underwriting association may refuse to issue policies to a
19 particular class of health care providers or to any particular
20 health care provider.

21 B. The plan of operation shall include the
22 following:

23 (1) preliminary assessment of all members for
24 initial expenses necessary to commence operations;

25 (2) establishment of necessary facilities;

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- 1 (3) management of the association;
2 (4) assessment of the members to defray losses
3 and expenses;
4 (5) reasonable and objective underwriting
5 standards;
6 (6) guidelines for evaluating claims and
7 paying losses;
8 (7) acceptance and cession of reinsurance; and
9 (8) procedures for determining amounts and
10 types of insurance to be provided by the association.

11 C. Amendments to the plan of operation may be made
12 after due notice and public hearing.

13 D. The plan of operation becomes effective and
14 operative no later than forty-five days after notice to the
15 public and a hearing on its content."

16 Section 8. A new section of the New Mexico Insurance Code
17 is enacted to read:

18 "[NEW MATERIAL] APPLICATION FOR COVERAGE.--A licensed
19 health care provider in a category for which the board has
20 declared insurance is unavailable or not obtainable at a
21 reasonable cost through normal channels is entitled to apply to
22 the association for coverage. The application may be made on
23 behalf of the applicant by a licensed agent or broker
24 authorized in writing by the applicant. If the association
25 determines the applicant meets the underwriting standards of

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1 the association and there is no unpaid, uncontested premium due
2 from the applicant for any prior insurance of the same kind,
3 the association, upon receipt of the premium or a portion
4 thereof as prescribed by the plan of operation, shall cause to
5 be issued a policy of medical malpractice liability insurance
6 for a term of up to one year."

7 Section 9. A new section of the New Mexico Insurance Code
8 is enacted to read:

9 "[NEW MATERIAL] STATISTICAL DATA AND PLAN.--The
10 superintendent shall obtain complete statistical data regarding
11 medical malpractice losses and reparation costs and all other
12 costs or expenses that underlie or are related to medical
13 malpractice liability insurance issued by admitted and
14 nonadmitted companies. The superintendent shall promulgate any
15 statistical plan considered necessary for the purpose of
16 gathering data referring to loss and loss adjustment expense
17 experience and other expense experience."

18 Section 10. A new section of the New Mexico Insurance
19 Code is enacted to read:

20 "[NEW MATERIAL] INITIAL FILINGS.--Within a time frame set
21 by the board, the association shall submit an initial filing to
22 the insurance department, in proper form, of policy forms,
23 classifications, rates, rating plans and rating rules
24 applicable to medical malpractice liability insurance to be
25 written by the association. The filing shall be processed and

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1 reviewed in the same manner as any other insurance filing."

2 Section 11. A new section of the New Mexico Insurance
3 Code is enacted to read:

4 "[NEW MATERIAL] POLICY FORMS AND RATE STRUCTURE.--

5 A. The board shall specify whether policy forms and
6 the rate structure are to be on a claims-made or occurrence
7 basis, and coverage may be provided by the association only on
8 the basis specified by the board. The board shall specify the
9 claims-made basis only if the policy makes provision for
10 residual occurrence coverage upon the retirement, death or
11 permanent disability of the insured. Provision may be made for
12 a premium charge allocable to any such residual occurrence
13 coverage, and the premium charges for the residual coverage
14 shall be segregated and separately maintained for such purpose,
15 which may include the reinsurance of all or a part of that
16 portion of the risk.

17 B. The policy form, whether on a claims-made or
18 occurrence basis, shall not require, as a condition precedent
19 to settlement or compromise of a claim, the consent or
20 acquiescence of the insured. However, such settlement or
21 compromise shall not be held or considered to be an admission
22 of fault or wrongdoing by the insured.

23 C. Effective after the initial year of operation,
24 rates, rating plans, rating rules and premium rate increases
25 shall be based upon the association's loss and expense

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1 experience and investment income, together with other
2 information based upon such experience and income as the board
3 considers appropriate. The resultant premium rates shall be on
4 an actuarially sound basis and shall be calculated to be
5 self-supporting."

6 Section 12. A new section of the New Mexico Insurance
7 Code is enacted to read:

8 "[NEW MATERIAL] ASSOCIATION ASSESSMENTS OF MEMBERS.--

9 A. If sufficient funds are not available for the
10 sound financial operation of the association, additional funds
11 shall be raised by making an assessment on all members.
12 Assessments shall be made against members in the proportion
13 that the net direct premiums for the preceding calendar year of
14 each member for each line of insurance requiring it to
15 participate in the plan bear to the net direct premiums for the
16 preceding calendar year of all members for such line of
17 insurance; provided that, assessments made shall not exceed in
18 any calendar year one percent of each member's surplus.

19 B. The assessment of a member may be ordered
20 deferred in whole or in part upon application by the member if
21 in the opinion of the superintendent payment of the assessment
22 may render the member insolvent or in danger of insolvency or
23 otherwise may leave the member in a condition such that further
24 transaction of the member's business may be hazardous to its
25 policyholders, creditors, members, subscribers, stockholders or

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1 the public. If payment of an assessment against a member is
2 deferred by order of the superintendent in whole or in part,
3 the amount by which the assessment is deferred shall be
4 assessed against other members in the same manner as provided
5 in this section. In the order of deferral or in subsequent
6 orders as may be necessary, the superintendent shall prescribe
7 a plan by which the assessment deferred shall be repaid to the
8 association by the impaired member with interest at the
9 six-month treasury bill rate adjusted semiannually. Profits,
10 dividends or other funds of the association to which the member
11 is otherwise entitled shall not be distributed to the impaired
12 member but shall be applied toward repayment of an assessment
13 until the obligation has been satisfied. The association shall
14 distribute the repayments, including interest on them, to the
15 other members on the basis on which assessments were made.

16 C. All members shall deduct the amount of an
17 assessment from past or future premium taxes due but not yet
18 paid the state."

19 Section 13. A new section of the New Mexico Insurance
20 Code is enacted to read:

21 "[NEW MATERIAL] OBLIGATIONS OF TERMINATED MEMBERS AND
22 RESPONSIBILITY OF THE STATE.--

23 A. If the authority of a member to transact bodily
24 injury liability insurance, other than automobile, homeowners
25 or farmowners liability insurance, in this state terminates for

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1 any reason, its obligations as a member of the association
2 continue until all its obligations have been fulfilled and the
3 superintendent has so found and certified to the board.

4 B. If a member merges into or consolidates with
5 another insurer authorized to transact such insurance in New
6 Mexico or another insurer authorized to transact such insurance
7 in New Mexico has reinsured the member's entire general
8 liability business in New Mexico, the member and its successor
9 or assuming reinsurer are liable for the member's obligations
10 in respect to the association.

11 C. An unsatisfied net liability of an insolvent
12 member of the association shall be assumed by and apportioned
13 among the remaining members in the same manner in which
14 assessments or gains and losses are apportioned. The
15 association shall thereby acquire and have all rights and
16 remedies allowed by law on behalf of the remaining members
17 against the estate or funds of the insolvent member for funds
18 due the association.

19 D. The state is not responsible for any costs,
20 expenses, liabilities, judgments or other obligations of the
21 association."

22 Section 14. A new section of the New Mexico Insurance
23 Code is enacted to read:

24 "[NEW MATERIAL] ANNUAL STATEMENT AND EXAMINATION OF
25 ASSOCIATION.--

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1 A. The association shall file with the insurance
2 division by April 1 of every year a statement that contains
3 information with respect to its transactions, condition,
4 operations and affairs during the preceding year. The
5 statement shall contain such matters and information as are
6 prescribed by the division and shall be in the form the
7 division directs. The division at any reasonable time may
8 require the association to furnish additional information with
9 respect to its transactions, condition or any matter considered
10 to be material and of assistance in evaluating the scope,
11 operation and experience of the association.

12 B. The board shall file an annual report with the
13 insurance division. The expenses of the examination shall be
14 paid by the association."

15 Section 15. SEVERABILITY.--If any part or application of
16 the Medical Malpractice Joint Underwriting Association Act is
17 held invalid, the remainder or its application to other
18 situations or persons shall not be affected.

19 Section 16. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2006.