
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Greg Waddell.

DIGEST

Murray (SB 514)

Present law establishes the Patient's Compensation Fund as a special fund in the state treasury, to be funded by annual surcharges on qualified health care providers, for the purpose of paying medical malpractice claims over \$100,000. Provides that the fund is generally administered by the Patient's Compensation Fund Oversight Board with surcharge rates determined by the commissioner of insurance based upon actuarial principles.

Proposed law changes present law as follows:

- (1) Present law provides that the annual surcharge levied on qualified health care providers in this state shall be determined by the commissioner of insurance based upon actuarial principles and in accordance with an application for rates or rate changes filed by the Patient's Compensation Fund Oversight Board. Specifies that application for rate changes filed by the board shall be submitted to the commissioner at least annually on the basis of an annual actuarial study of the patient's compensation fund.

Proposed law makes the board and the fund exempt from rate regulation by the commissioner. Requires the board to cause to be prepared an annual actuarial study of the fund by a qualified competent actuary. Provides that the surcharge shall be determined by the board in a public meeting, held pursuant to present law, relative to open meetings and occasions for executive sessions, based upon actuarial principles and reports, experience, and prudent judgment of the board. Requires the board to give at least 15 days prior written or electronic notice of the meeting and to provide an opportunity for public comment at the meeting prior to determining rates.

- (2) Proposed law provides that surcharge rates shall not be excessive, inadequate, or unfairly discriminatory. Specifies that, in determining this, consideration may be given to the following:
 - (a) Basic rate factors. Provides that due consideration shall be given to past and prospective loss and expense experience, catastrophe hazards and contingencies, events, or trends, and all other relevant factors and judgments. Provides that fines and penalties against a health care provider, however levied, shall not be used by the board or considered in any manner in the loss or expense experience for the purpose of determining surcharge rates.
 - (b) Classification. Allows risks to be grouped by classification for the establishment of rates. Allows classification rates to be modified for individual risks in accordance with an experience-rating plan or schedule which apportions a greater

percentage of required surcharge increases to those health care providers who generate greater-than-expected losses.

- (c) Expenses. Requires that the expense provisions shall reflect the operating methods of the board and the fund, the past expense experience, and anticipated future expenses.
 - (d) Contingencies. Allows the rates to contain a provision for contingencies.
 - (e) Other relevant factors. Allows for use of any other factors available at the time of determining the rates.
- (3) Present law provides that the surcharge for self-insureds shall be the amount determined by the board in accordance with regulations promulgated under the APA and in accordance with the rate set by the commissioner of insurance to be the amount of surcharge which the health care provider would reasonably be required to pay were his qualification based upon filing a policy of malpractice liability insurance.

Proposed law provides that the amount of the surcharge shall be the same amount determined by the board to be the amount of surcharge which the health care provider would reasonably be required to pay were his qualification based upon filing a policy of malpractice liability insurance, deleting the requirement that the amount of such surcharge be determined in accordance with regulations promulgated under the APA and with the rate set by the commissioner.

- (4) Proposed law requires the board to prepare quarterly statements of the financial condition of the fund and publish the statements on the board's website.
- (5) Present law provides that at all times the fund shall be maintained so as to provide a surplus of 30% of the annual surcharge premiums, reserves established for individual claims, reserves established for incurred but not reported claims, and expenses. Further specifies that no reduction in the surcharge shall be made unless such surplus is available in the fund.

Proposed law instead provides that at all times the fund shall be maintained so as to provide assets on hand of at least 30% of the fund's outstanding liabilities, calculated using the most recent actuarial study and report for the fund. Further specifies that no reduction in the surcharge shall be made unless such balance on hand is available in the fund.

- (6) Present law provides for a nine-member board, including one member appointed from nominees provided by the principal professional organization of insurance executives. Requires that this member be an executive of a property and casualty insurance company that is licensed in this state which does not sell medical professional liability insurance.

Proposed law instead provides for a member appointed from nominees provided by the principal professional insurance agents organizations. Requires that this member be familiar with property and casualty insurance and licensed in this state as a producer.

- (7) Present law provides that among the powers and duties of the board is the authority to collect, accumulate, and maintain claims experience data from enrolled health care providers and insurance companies providing professional liability insurance coverage to health care providers in this state, in such form as may be necessary or appropriate to permit the fund to develop appropriate surcharge rates for the fund.

Proposed law instead provides that among the powers and duties of the board is the authority to collect, accumulate, and maintain claims experience data from enrolled health care providers and insurance companies providing professional liability insurance coverage to health care providers in this state, in such form as may be necessary or appropriate to permit the board to determine appropriate surcharge rates for the fund.

Effective August 15, 2010.

(Amends R.S. 40:1299.44(A)(2), (5), and (6) and (D)(1)(c) and (2)(b)(iii))