

SENATE, No. 1118

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 30, 2020

Sponsored by:
Senator JOSEPH F. VITALE
District 19 (Middlesex)

SYNOPSIS

Extends Medical Malpractice Liability Insurance Premium Assistance Fund and collection of annual surcharges for 5 years.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the Medical Malpractice Liability Insurance
2 Premium Assistance Fund, amending and supplementing
3 P.L.2004, c.17, and repealing sections 29 and 30 of
4 P.L.2004, c.17.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. Section 27 of P.L.2004, c.17 (C.17:30D-29) is amended to
10 read as follows:

11 27. a. There is established a Medical Malpractice Liability
12 Insurance Premium Assistance Fund within the Department of the
13 Treasury as a nonlapsing, revolving fund.

14 b. The fund shall be comprised of the following revenue:

15 (1) an annual surcharge of \$3 per employee for all employers
16 who are subject to the New Jersey "unemployment compensation
17 law," R.S.43:21-1 et seq., collected by the comptroller for the New
18 Jersey Unemployment Compensation Fund and paid over to the
19 State Treasurer for deposit in the fund annually, as provided by the
20 commissioner, which surcharge may, at the option of the employer,
21 be treated as a payroll deduction to each covered employee;

22 (2) an annual charge of \$75 to be imposed by the State Board of
23 Medical Examiners on every physician and podiatrist licensed by
24 the board pursuant to the provisions of R.S.45:9-1 et seq., collected
25 by the board and remitted to the State Treasurer for deposit into the
26 fund;

27 (3) an annual charge of \$75 to be imposed by the State Board of
28 Chiropractic Examiners on every chiropractor licensed by the board
29 pursuant to the provisions of P.L.1989, c.153 (C.45:9-41.17 et seq.),
30 collected by the board and remitted to the State Treasurer for
31 deposit into the fund;

32 (4) an annual charge of \$75 to be imposed by the New Jersey
33 State Board of Dentistry on every dentist licensed pursuant to the
34 provisions of R.S.45:6-1 et seq., collected by the board and remitted
35 to the State Treasurer for deposit into the fund;

36 (5) an annual charge of \$75 to be imposed by the New Jersey
37 State Board of Optometrists on every optometrist licensed by the
38 board pursuant to the provisions of R.S.45:12-1 et seq., collected by
39 the board and remitted to the State Treasurer for deposit into the
40 fund; and

41 (6) an annual fee of \$75 to be assessed by the State Treasurer
42 and payable by each person licensed to practice law in this State,
43 for deposit into the fund.

44 The provisions of paragraphs (2) through (5) of this subsection
45 shall not apply to physicians, podiatrists, chiropractors, dentists, or
46 optometrists who: are statutorily or constitutionally barred from the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 practice of their respective profession; can show that they do not
2 maintain a bona fide office for the practice of their profession in
3 this State; are completely retired from the practice of their
4 profession; are on full-time duty with the armed forces, VISTA, or
5 the Peace Corps and not engaged in practice; or have not practiced
6 their profession for at least one year.

7 The provisions of paragraph (6) of this subsection shall not apply
8 to attorneys who: are constitutionally or statutorily barred from the
9 practice of law; can show that they do not maintain a bona fide
10 office for the practice of law in this State; are completely retired
11 from the practice of law; are on full-time duty with the armed
12 forces, VISTA, or the Peace Corps and not engaged in practice; are
13 ineligible to practice law because they have not made their New
14 Jersey Lawyers' Fund for Client Protection payment; or have not
15 practiced law for at least one year.

16 c. The State Treasurer shall deposit all monies collected
17 pursuant to this section into the fund. Monies credited to the fund
18 may be invested in the same manner as assets of the General Fund
19 and any investment earnings on the fund shall accrue to the fund
20 and shall be available subject to the same terms and conditions as
21 other monies in the fund.

22 d. The fund shall be administered by the Department of
23 Banking and Insurance in accordance with the provisions of
24 P.L.2004, c.17 (C.2A:53A-37 et al.).

25 e. The monies in the fund are specifically dedicated and shall
26 be utilized exclusively for the following purposes:

27 (1) \$17 million shall be allocated annually for the purpose of
28 providing relief towards the payment of medical malpractice
29 liability insurance premiums to health care providers in the State
30 who have experienced or are experiencing a liability insurance
31 premium increase in an amount as established by the commissioner
32 by regulation and meet the criteria established pursuant to section
33 28 of P.L.2004, c.17 (C.17:30D-30);

34 (2) \$6.9 million shall be allocated annually to the Health Care
35 Subsidy Fund established pursuant to section 8 of P.L.1992, c.160
36 (C.26:2H-18.58) for the purpose of providing payments to hospitals
37 in accordance with the formula used for the distribution of charity
38 care subsidies that are provided pursuant to [P.L.1992, c.160
39 (C.26:2H-18.51 et al.)] section 3 of P.L.2004, c.113 (C.26:2H-
40 18.59i);

41 (3) \$1 million shall be allocated annually for a student loan
42 expense reimbursement program for obstetrician/gynecologists, to
43 be established pursuant to section [29 of
44 P.L.2004, c.17 (C.18A:71C-49)] 3 of P.L. , c. (C.)(pending
45 before the Legislature as this bill); and

46 (4) \$1.2 million shall be allocated annually to the Division of
47 Medical Assistance and Health Services in the Department of

1 Human Services for the **purposes provided in section 30 of**
2 **P.L.2004, c.17 (C.30:4J-7)] NJ FamilyCare Program established**
3 **pursuant to P.L.2005, c.156 (C.30:4J-8 et al.).**

4 f. The fund and the annual surcharge, charges, and fee
5 provided for in subsection b. of this section shall **expire three**
6 **years after the effective date of P.L.2004, c.17 (C.2A:53A-37 et**
7 **al.)] be reestablished on the effective date of P.L. , c. (pending**
8 **before the Legislature as this bill), and shall expire five years after**
9 **the effective date of P.L. , c. .**

10 g. The commissioner, in consultation with the Commissioner of
11 Health, shall adopt rules and regulations pursuant to the
12 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
13 seq.), to carry out the purposes of sections 26 through **[29] 28** of
14 P.L.2004, c.17 (C.17:30D-28 through C.17:30D-30 **[and**
15 **C.18A:71C-49]) and section 3 of P.L. , c. (C.)**
16 **(pending before the Legislature as this bill);** except that,
17 notwithstanding any provision of P.L.1968, c.410 to the contrary,
18 the commissioner may adopt, immediately upon filing with the
19 Office of Administrative Law, such regulations as the commissioner
20 deems necessary to implement the provisions of sections 26 through
21 **[29] 28** of P.L.2004, c.17 (C.17:30D-28 through C.17:30D-30 **[and**
22 **C.18A:71C-49]) and section 3 of P.L. , c. (C.)**
23 **(pending before the Legislature as this bill);** which shall be
24 effective for a period not to exceed six months and may thereafter
25 be amended, adopted, or readopted by the commissioner in
26 accordance with the requirements of P.L.1968, c.410.
27 (cf: P.L.2012, c.17, s.32)

28
29 2. Section 28 of P.L.2004, c.17 (C.17:30D-30) is amended to
30 read as follows:

31 28. a. In order to carry out the purposes of section 27 of
32 P.L.2004, c.17 (C.17:30D-29), the commissioner shall, at a
33 minimum:

34 (1) establish a program to provide medical malpractice liability
35 insurance premium subsidies to health care providers from monies
36 that are contained in the fund;

37 (2) establish a methodology and procedures for determining
38 eligibility for, and providing subsidies from, the fund;

39 (3) maintain confidential records on each health care provider
40 who receives assistance from the fund;

41 (4) take all necessary action to recover the cost of the subsidy
42 provided to a health care provider that the commissioner determines
43 to have been incorrectly provided; and

44 (5) provide for subsidies to all practitioners who are members of
45 specialties and subspecialties who qualify for relief under
46 subsection b. of this section, including those whose professional

1 liability insurance protection is provided by hospital funding
2 supplemented by purchased commercial insurance coverage.

3 b. The commissioner shall certify classes of practitioners by
4 specialty and subspecialty for each type of practitioner, whose
5 average medical malpractice premium, as a class, on or after
6 December 31, ~~【2002】 2019~~, is in excess of an amount per year as
7 determined by the commissioner by regulation. In certifying
8 classes eligible for the subsidy, the commissioner, in consultation
9 with the Commissioner of Health, may also consider if access to
10 care is threatened by the inability of a significant number of
11 practitioners, as applicable, in a particular specialty or subspecialty,
12 to continue practicing in a geographic area of the State.

13 (1) In order to be eligible for a subsidy from the fund, a
14 practitioner shall have received a medical malpractice liability
15 insurance premium increase in an amount as determined by the
16 commissioner by regulation, for one or more of the following: upon
17 renewal on or after January 1, ~~【2004】 2020~~, from the amount paid
18 by that practitioner in calendar year ~~【2003】 2019~~; upon renewal on
19 or after January 1, ~~【2005】 2021~~, from the amount paid by that
20 practitioner in calendar year ~~【2004】 2020~~; and upon renewal on or
21 after January 1, ~~【2006】 2022~~, from the amount paid by that
22 practitioner in calendar year ~~【2005】 2021~~; upon renewal on or after
23 January 1, 2023, from the amount paid by that practitioner in
24 calendar year 2022; and upon renewal on or after January 1, 2024,
25 from the amount paid by that practitioner in calendar year 2023; or

26 (2) In the case of a health care provider providing professional
27 liability insurance protection through self-insured hospital funding
28 supplemented with purchased commercial insurance coverage, in
29 order to be eligible for a subsidy from the fund, that provider shall
30 have increased its total professional liability funding obligation in
31 an amount as determined by the commissioner by regulation, for
32 one or more of the following: upon renewal on or after January 1,
33 ~~【2004】 2020~~, from the professional liability funding obligation paid
34 by that provider in calendar year ~~【2003】 2019~~; upon renewal on or
35 after January 1, ~~【2005】 2021~~, from the professional liability
36 funding obligation paid by that provider in calendar year ~~【2004】~~
37 ~~2020~~; and upon renewal on or after January 1, ~~【2006】 2022~~, from
38 the professional liability funding obligation paid by that provider in
39 calendar year ~~【2005】 2021~~; upon renewal on or after January 1,
40 2023, from the amount paid by that practitioner in calendar year
41 2022; and upon renewal on or after January 1, 2024, from the
42 amount paid by that practitioner in calendar year 2023.

43 (3) The amount of the subsidy shall be an amount, as
44 determined by the commissioner by regulation, of the increase from
45 the preceding year's premium or self-insured professional liability
46 funding obligation; except that no health care provider shall receive

1 a subsidy in any year that is greater than an amount as determined
2 by the commissioner by regulation.

3 c. A practitioner who has been subject to a disciplinary action
4 or civil penalty by the practitioner's respective licensing board
5 pursuant to section 8, 9 or 12 of P.L.1978, c.73 (C.45:1-21, 22 or
6 25), when that action or penalty relates to the practitioner's
7 provision of, or failure to provide, treatment or care to a patient, is
8 not eligible for a subsidy from the fund.

9 d. (1) A practitioner who receives a subsidy from the fund shall
10 be required to practice in that practitioner's specialty or subspecialty
11 in this State for a period of at least two years after receipt of the
12 subsidy.

13 (2) A practitioner who fails to comply with the provisions of
14 paragraph (1) of this subsection shall be required to repay to the
15 commissioner the amount of the subsidy, in whole or in part as
16 determined by the commissioner.

17 e. The commissioner may waive the criteria for eligibility for a
18 subsidy established pursuant to this section, if the commissioner
19 determines that access to care for a particular specialty is threatened
20 because of an inability of a sufficient number of practitioners in that
21 specialty or subspecialty to practice in a geographic area of the
22 State.

23 f. The State Board of Medical Examiners, the State Board of
24 Chiropractic Examiners, the New Jersey State Board of Dentistry,
25 and the New Jersey Board of Nursing shall each provide to the
26 commissioner, on a quarterly basis, the names of the practitioners
27 who have been subject to a disciplinary action or civil penalty by
28 the practitioner's respective licensing board.

29 g. For the purposes of section **【29** of
30 P.L.2004, c.17 (C.18A:71C-49)**】** 3 of P.L. , c. (C.) (pending
31 before the Legislature as this bill), the commissioner, in
32 consultation with the State Board of Medical Examiners, shall
33 provide to the Higher Education Student Assistance Authority the
34 names of obstetrician/gynecologists licensed by the board who may
35 qualify for the student loan reimbursement program established
36 pursuant to **【P.L.2004, c.17】** section 3 of P.L. , c. (pending
37 before the Legislature as this bill). A physician who has been
38 subject to a disciplinary action or civil penalty by the board, as
39 provided in subsection c. of this section, shall not be eligible for the
40 program.

41 (cf: P.L.2012, c.17, s.28)

42
43 3. (New section) a. There is established a student loan
44 expense reimbursement program within the Higher Education
45 Student Assistance Authority for obstetrician/gynecologists who
46 agree to practice in State designated underserved areas as
47 established pursuant to section 1 of P.L.1999, c.46 (C.18A:71C-35).

1 Any loans provided through the NJCLASS Loan Program pursuant
2 to P.L.1999, c.46 (C.18A:71C-21 et seq.) or a student loan program
3 of the federal government shall be eligible for reimbursement under
4 this program.

5 The authority shall implement the program in consultation with
6 the Commissioners of Banking and Insurance and Health and the
7 State Board of Medical Examiners.

8 b. (1) An obstetrician/gynecologist who receives a payment
9 under the student loan expense reimbursement program shall be
10 required to practice as an obstetrician/gynecologist in an
11 underserved area in this State for a period of at least four years after
12 receipt of the payment.

13 (2) An obstetrician/gynecologist who fails to comply with the
14 provisions of paragraph (1) of this subsection shall be required to
15 repay to the Higher Education Student Assistance Authority the
16 amount of the payment, in whole or in part as determined by the
17 authority.

18 c. The authority shall adopt rules and regulations, pursuant to
19 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
20 et seq.), to effectuate the purposes of this section, including, but not
21 limited to: eligibility for the program, procedures for application,
22 selection of participants, establishment and nullification of
23 contracts established with participants under the program, and
24 reports to the program by participants.

25

26 4. The following are repealed:
27 Section 29 of P.L.2004, c.17 (C.18A:71C-49); and
28 Section 30 of P.L.2004, c.17 (C.30:4J-7).

29

30 5. This act shall take effect on the 30th day following
31 enactment.

32

33

34 STATEMENT

35

36 This bill extends the Medical Malpractice Liability Insurance
37 Premium Assistance Fund for five years and reestablishes the
38 collection of annual surcharges for the fund for the five-year period.

39 The primary purpose of the fund is to provide medical
40 malpractice liability insurance premium subsidies to health care
41 providers who, as a class of providers, are most severely impacted
42 by high medical malpractice premium rates. In addition, monies
43 from the fund are allocated for various health care purposes,
44 including funds: to the Health Care Subsidy Fund for charity care
45 subsidies to hospitals, to the NJ FamilyCare Program, and to
46 provide student loan expense reimbursement for certain
47 obstetrician/gynecologists.

1 The surcharges apply to all employers subject to the
2 “unemployment compensation law,” (\$3 per employee each year),
3 and to practicing physicians, podiatrists, chiropractors, dentists,
4 optometrists, and attorneys licensed in this State (\$75 each year).

5 The bill repeals sections 29 and 30 of P.L.2004, c.17. The
6 provisions of section 29, concerning student loan expense
7 reimbursement for certain obstetricians/gynecologists, had expired
8 three years after the effective date of P.L.2004, c.17, and this bill
9 reenacts those provisions as section 3 of the bill. The provisions of
10 section 30 concerning NJ FamilyCare coverage for certain pregnant
11 women whose income is up to 100 percent of the federal poverty
12 level, are no longer necessary since eligibility for Medicaid was
13 expanded in 2005 to cover parents and children whose income is up
14 to 133 percent of the federal poverty level. The monies from the
15 Medical Malpractice Liability Insurance Premium Assistance Fund
16 that had been allocated in 2004 to the coverage of pregnant women
17 will now be allocated to the NJ FamilyCare Program.