

Chairman Linda W. Cropp

Councilmember Kwame R. Brown

Councilmember Marion Barry

Councilmember Adrian Fenty

Councilmember Jim Graham

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Risk-Based Capital Act of 1996 to authorize the Commissioner to consider a malpractice insurer's surplus in ratemaking if the surplus is unreasonably large; and 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, to make rate filings public information, and to enable physicians to obtain insurance quotations from multiple medical malpractice insurers.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Medical Malpractice Insurance Reform Amendment Act of 2005".

Sec. 2. Section 9 of the Risk-Based Capital Act of 1996, effective April 9, 1997 (D.C.

Law 11-233; D.C. Official Code § 31-2008), is amended as follows:

(a) Subsection (c) is amended to read as follows:

"(c) Except as provided in subsection (d) of this subsection, the RBC Instructions, RBC

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Reports, Adjusted RBC Reports, RBC Plans, and Revised RBC Plans shall not be used by the  
Commissioner for ratemaking or considered or introduced as evidence in any rate proceeding.”.

(b) A new subsection (d) is added to read as follows:

“(d)(1) The Commissioner may determine the total adjusted capital of a medical  
malpractice insurer to be excessive if:

“(A) The total adjusted capital is greater than the appropriate risk-based  
capital requirements as determined by the Commissioner for the immediately preceding calendar  
year; and

“(B) After a hearing, the Commissioner determines that the surplus is  
unreasonably large.

“(2) If the Commissioner has determined that the total adjusted capital of a  
medical malpractice insurer is excessive, the Commissioner shall not approve a rate increase  
sought by the insurer until he or she determines that the total adjusted capital of the insurer is no  
longer excessive.”.

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

“(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 open to public inspection as soon as filed.

“(3) The Commissioner shall notify the public of any application by a medical malpractice insurer for a rate change. The application shall be deemed approved 60 days after public notice unless the proposed rate change exceeds 7%. If the proposed rate change exceeds 7%, 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 challenge a proposed rate change and to participate in the hearing held by the Commissioner. The Commissioner shall promulgate rules governing the participation of the public.

“(4) If the Commissioner finds, after a hearing, that a rate used by a medical malpractice insurer does not comply with this subsection, he 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.”.

(b) Section 3(c) (D.C. Official Code § 31-2704 (c) ) is amended to read as follows:

“(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. If, after the hearing, the Commissioner determines that any or all of the rates are excessive or inadequate, he 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; and 1

“(B) An order of adjustment shall not affect an existing contract or policy 2

other than: 3

“(i) A medical malpractice, workmen's compensation, or 4

automobile liability insurance policy required by law, order, rule, or regulation of a public 5

authority; or 6

“(ii) A contract or policy of any type as to which the rates are not, 7

by general custom of the business or because of rarity and peculiar characteristics, written 8

according to normal classification or rating procedure.”. 9

(c) A new section 15 is added to read as follows: 10

“Sec. 15. Medical malpractice insurance quotation service. 11

“(a) Not later than October 1, 2005, and after consultation with medical malpractice 12

insurers, the Commissioner shall establish an interactive website which shall enable any 13

physician licensed in the District to obtain a quote from each insurer licensed to write the 14

medical malpractice insurance coverage sought by the physician (“medical malpractice insurer”). 15

“(b) The website established by the Commissioner shall enable physicians to complete an 16

online form which requires information sufficient for an insurer to provide a quotation for the 17

medical malpractice insurance coverage sought by the physician. The online form shall require, 18

at a minimum, the following information: 19

“(1) The medical specialty of the physician; 20

“(2) The number of years the physician has been in practice; 21

“(3) The claims experience of the physician; 22

“(4) The policy limits sought by the physician; and 1

“(5) Such other information regarding factors that the Commissioner determines 2  
will have a material effect on the medical malpractice insurance premiums of physicians. 3

“(c) After a physician has completed the online form, the website shall display quotations 4  
for the physician for the coverage from each medical malpractice insurer. 5

“(d) Quotations provided by the website shall at all times be accurate. Whenever the 6  
Commissioner approves any rate change for a medical malpractice insurer, the Commissioner 7  
shall implement the change at the website as soon as practicable, but not later than 10 days after 8  
the change has been approved. 9

“(e) The Commissioner shall design the website to incorporate user-friendly formats and 10  
self-help guidance materials and shall develop a user-friendly internet user-interface. 11

“(f) The website shall provide contact information for each medical malpractice insurer . 12  
The contact information shall consist of address, telephone number, fax number, e-mail address, 13  
and any additional information that the Commissioner may require. The website shall also 14  
display the name, address, and telephone number of each agent that each medical malpractice 15  
insurer has appointed in the District.”. 16

Sec. 4. Fiscal impact statement. 17

The Council adopts the fiscal impact statement in the committee report as the fiscal 18  
impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, 19  
approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)). 20

Sec. 5. Effective date. 21

This act shall take effect following approval by the Mayor (or in the event of veto by the 22

Mayor, action by the Council to override the veto), a 30-day period of Congressional review as 1  
provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 2  
24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of 3  
Columbia Register. 4

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