



LAWS OF ALASKA

1976

Source

Chapter No.

FCCS SCS CSHB 574

102

AN ACT

Relating to health care; changing the Alaska Supreme Court's Rules of Civil Procedure; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.01.050 is amended by adding a new paragraph to read:

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

* Sec. 2. AS 08.20.010 is amended to read:

Sec. 08.20.010. CREATION AND MEMBERSHIP OF BOARD OF CHIROPRACTIC EXAMINERS. There is created the Board of Chiropractic Examiners consisting of five members appointed by the governor.

* Sec. 3. AS 08.20.020 is amended to read:

Sec. 08.20.020. MEMBERS OF BOARD. Three members of the board shall be licensed chiropractic physicians who have practiced chiropractic in this state not less than two years. Two members of the board shall be persons with no direct financial interest in the health care industry. Each member serves without pay but is entitled to per diem and travel expenses allowed by law.

* Sec. 4. AS 08.20.030 is repealed and re-enacted to read:

Sec. 08.20.030. MEMBERS TERMS, VACANCIES. Members serve for staggered terms of three years. The terms of the public members of the board may not expire at the same time. Vacancies on the board shall be filled for the unexpired term.

* Sec. 5. AS 08.20 is amended by adding a new section to read:

Sec. 08.20.115. MALPRACTICE INSURANCE. If medical malpractice insurance for chiropractors becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of chiropractic services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

* Sec. 6. AS 08.20 is amended by adding a new section to read:

Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 7. AS 08.32 is amended by adding new sections to read:

Sec. 08.32.015. MALPRACTICE INSURANCE. If medical malpractice insurance for dental hygienists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of dental hygiene services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 160 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice dental hygiene should be limited or conditioned or the practitioner disciplined, the board may

reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 8. AS 08.36.010 is amended to read:

Sec. 08.36.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Dental Examiners, referred to in this chapter as the board, consisting of seven members. Five members shall be qualified resident dentists who have been engaged in the practice of dentistry in the state for five years immediately preceding appointment, one member shall be a dental hygienist licensed under AS 08.32, and one member with no direct financial interest in the health care industry.

* Sec. 9. AS 08.36.020 is amended to read:

Sec. 08.36.020. APPOINTMENT AND TERM OF SERVICE OF MEMBERS. Members of the board are appointed by the governor, subject to confirmation by the legislature in joint session. Each board member serves for a term of five years, and until his successor is appointed and qualified. The term begins on February 1. An appointment to a vacancy is for the unexpired term.

* Sec. 10. AS 08.36 is amended by adding new sections to read:

Sec. 08.36.115. MALPRACTICE INSURANCE. If medical malpractice insurance for dentists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of dental services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to actions under secs. 310 and 320 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health, the authority to practice dentistry should be limited or conditioned or the practitioner disciplined, the board may censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

- * Sec. 11. AS 08.64.010 is amended to read:

Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD. The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of five licensed physicians, residing in as many separate Alaska judicial districts as possible, and two persons with no direct financial interest in the health care industry.

- * Sec. 12. AS 08.64.020 is amended to read:

Sec. 08.64.020. STATE MEDICAL BOARD TERM OF OFFICE. Members shall be appointed for a term of four years, subject to confirmation by a majority of the members of the legislature in joint session, and shall hold office until their successors are appointed and qualified. The terms of the public members of the board shall be staggered so that they do not expire at the same time.

- * Sec. 13. AS 08.64.090 is amended to read:

Sec. 08.64.090. QUORUM. Four members of the board constitute a quorum for the transaction of all business properly before the board.

- * Sec. 14. AS 08.64 is amended by adding new sections to read:

Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person shall maintain insurance issued by the Medical Indemnity Corporation of Alaska against liability to patients for medical malpractice in limits of not less than \$200,000 per occurrence and \$600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska in the required amounts.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first.

Sec. 08.64.312. CONTINUING EDUCATION REQUIREMENTS. (a) The board shall promote a high degree of competence in the practice of medicine by requiring every physician licensed in the state to fulfill continuing education requirements.

(b) Before a license may be renewed the licensee shall submit evidence to the board that continuing education requirements prescribed by regulations adopted by the board have been met.

(c) The board may exempt a physician from the requirements of (b) of this section upon an application by him giving evidence satisfactory to the board that he is unable

to comply with the requirements because of extenuating circumstances. However, no person may be exempted from more than 15 hours of continuing education in a five-year period.

Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 330 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 15. AS 08.68.010 is amended to read:

Sec. 08.68.010. CREATION AND MEMBERSHIP OF BOARD OF NURSING. There is created a Board of Nursing, consisting of seven members appointed by the governor. One member shall be currently involved in institutional nursing service, one member in community or public health nursing and two members in basic or continuing nursing education, one nurse at large, and two persons who have no direct financial interest in the health care industry.

* Sec. 16. AS 08.68.020 is repealed and re-enacted to read:

Sec. 08.68.020. TERM OF OFFICE. Members serve staggered terms of five years and until their successors are appointed. The terms of the public members on the board shall be set so that they do not expire at the same time. Vacancies on the board shall be filled for the unexpired term.

* Sec. 17. AS 08.68.060 is amended to read:

Sec. 08.68.060. QUALIFICATIONS OF BOARD MEMBERS. The five members of the board who are nurses shall be licensed professional nurses in the state, and shall have been actively engaged in nursing for not less than four years before appointment, two years of which were within the five years preceding appointment.

* Sec. 18. AS 08.68 is amended by adding new sections to read:

Sec. 08.68.165. MALPRACTICE INSURANCE. If medical malpractice insurance for nurses becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of nursing services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this

chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 270 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 19. AS 08.71.020 is amended to read:

Sec. 08.71.020. MEMBERSHIP OF BOARD; SOURCE OF APPOINTMENTS; TERM OF OFFICE. The board consists of seven persons appointed by the governor. Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time. Vacancies on the board shall be filled for the unexpired term.

* Sec. 20. AS 08.71.030 is amended to read:

Sec. 08.71.030. QUALIFICATIONS OF BOARD MEMBERS. Five board members shall be licensed, practicing dispensing opticians residing in the state. Two shall be persons with no direct financial interest in the health care industry.

* Sec. 21. AS 08.71 is amended by adding new sections to read:

Sec. 08.71.085. MALPRACTICE INSURANCE. If medical malpractice insurance for opticians becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of optician services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice as a dispensing optician under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by procedure or facility,

require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

- * Sec. 22. AS 08.72.020 is amended to read:

Sec. 08.72.020. MEMBERSHIP OF BOARD AND TERMS OF OFFICE. The board consists of five persons, appointed by the governor. Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time.

- * Sec. 23. AS 08.72.040 is repealed and re-enacted to read:

Sec. 08.72.040. QUALIFICATIONS. Three board members shall be licensed, practicing optometrists who have been residents for at least three years. Two shall be persons who have no direct financial interest in the health care industry.

- * Sec. 24. AS 08.72 is amended by adding new sections to read:

Sec. 08.72.115. MALPRACTICE INSURANCE. If medical malpractice insurance for optometrists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of optometrist services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under secs. 240 and 250 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice optometry under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

- * Sec. 25. AS 08.80.010 is amended to read:

Sec. 08.80.010. CREATION AND MEMBERSHIP OF BOARD OF PHARMACY. There is created the Board of Pharmacy, composed of seven members, five of whom shall be pharmacists licensed in the state who have been actively engaged in the

practice of pharmacy in the state for a period of three years immediately preceding their appointment. Two shall be persons with no direct financial interest in the health care industry. Whenever possible, the board shall include at least one member from each judicial district.

- * Sec. 26. AS 08.80.020 is amended to read:

Sec. 08.80.020. TERM OF OFFICE. Members of the board are appointed by the governor, and confirmed by the legislature in joint session, for overlapping terms of five years, or until their successors are appointed and qualified. The terms of the public members shall be staggered so that they do not expire at the same time. An appointment to fill a vacancy is for the unexpired term. The term of office begins on April 1 of each year.

- * Sec. 27. AS 08.80.070 is amended to read:

Sec. 08.80.070. QUORUM. Four members constitute a quorum for the transaction of business. However, when the board meets for the purpose of examining applications for registration, three members of the board constitute a quorum.

- * Sec. 28. AS 08.80 is amended by adding new sections to read:

Sec. 08.80.115. MALPRACTICE INSURANCE. If medical malpractice insurance for pharmacists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of pharmacist services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 260 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice pharmacy under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

- * Sec. 29. AS 08.84 is amended by adding new sections to read:

Sec. 08.84.035. MALPRACTICE INSURANCE. If medical malpractice insurance for physical therapists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of physical therapist services to the public, the director of insurance may require all persons registered under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of registration under this chapter. The provisions of this section are satisfied if the registrant's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 180 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a registration.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

- * Sec. 30. AS 08.86.010 is amended to read:

Sec. 08.86.010. CREATION AND MEMBERSHIP OF BOARD. There is created a Board of Psychologist and Psychological Associate Examiners. It consists of three licensed psychologists, and two persons who have no direct financial interest in the health care industry.

- * Sec. 31. AS 08.86.020 is amended to read:

Sec. 08.86.020. APPOINTMENT AND TERM OF OFFICE. Members of the board are appointed by the governor and confirmed by the legislature for staggered terms of three years. The terms of the public members shall be set so that they do not expire at the same time. A member serves at the pleasure of the governor.

- * Sec. 32. AS 08.86 is amended by adding new sections to read:

Sec. 08.86.125. MALPRACTICE INSURANCE. If medical malpractice insurance for psychologists or psychological associates becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of psychologist or psychological associate services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and

impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) Upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 33. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.535. VOLUNTARY ARBITRATION. (a) A patient and any health care provider may execute an agreement to submit to arbitration any dispute, controversy, or issue arising out of care or treatment by the health care provider during the period that the agreement is in force or that has already arisen between the parties.

(b) An agreement to arbitrate executed before care or treatment is provided shall clearly provide in bold print on the face of the agreement that execution of the agreement by the patient is not a prerequisite to receiving care or treatment. If this subsection is not complied with by the health care provider, the agreement to arbitrate is void. The form to be used shall be approved in advance by the attorney general of the state to assure it fairly informs both parties to the agreement and properly protects their interests.

(c) The agreement shall provide that the person receiving health care may revoke the agreement within 30 days after execution by notifying the health care provider in writing. The period for revocation shall be tolled during any period that the person receiving health care is physically unable to execute a revocation. The health care provider may not revoke the agreement after its execution.

(d) An arbitration agreement entered into by the parents or legal guardian of a minor person receiving health care is binding upon the minor person.

(e) An agreement to arbitrate must be reexecuted each time a person is admitted to a hospital. The agreement may be extended by written agreement of all parties to apply to care after hospitalization. A person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital which provides for continuation of the agreement for a continuing program of treatment or during continued membership.

(f) Upon the filing of a malpractice claim which is subject to an agreement to arbitrate, the claim shall be submitted to an arbitration board. The arbitration board shall consist of three arbitrators: one arbitrator designated by the claimant or claimants, one arbitrator designated by the health care provider or providers against whom the claim is made, and a third arbitrator designated by mutual agreement who shall serve as chairperson of the board. If the parties cannot agree on the third person, the court will provide a choice of three or more persons who might serve as chairperson of the arbitration board, which shall be from a list of qualified arbitrators furnished by the attorney general. Claimant or claimants together and health care provider or providers together may each strike one or more names so that after each side has done so at least one name remains, providing a basis for the final selection by the court.

(g) The attorney general shall prepare a list of persons consisting of lawyers or other persons qualified to serve as chairperson of an arbitration board. They shall be selected on basis of their technical expertise, judicial temperament, and capability of impartially acting on malpractice claims. The attorney general shall submit a list of at least three names whenever requested to do so by the court along with detailed biographical information on each person listed.

(h) Each member of the arbitration board shall receive reasonable compensation to be paid by the court based on the extent and duration of services rendered. The court shall pay the costs of expert witnesses called by the board and the costs of expert witnesses called by the parties to the arbitration up to a maximum of three witnesses for each side and \$150 per day for each expert witness.

(i) The arbitration board may appoint an expert advisory panel, with the powers of the expert advisory panel under sec. 536 of this chapter, to advise the board on the medical facts of the case.

(j) The court shall specify the shortest practical deadline for completion of the work of the arbitration board, taking into account all the circumstances and the nature of the case.

(k) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180, apply to arbitrations under this section if they do not conflict with the provisions of this section; arbitrations under this section shall be conducted in accordance with procedures established by any rules of court which may be adopted and according to provisions of secs. 540 - 548 and 554 - 560 of this chapter, and AS 09.-65.090.

Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In an action for damages due to personal injury or death based upon the provision of professional services by a health care provider when the parties have not agreed to arbitration of the claim under sec. 535 of this chapter, the court shall appoint a three-person expert advisory panel unless the court decides that an expert advisory opinion is not

necessary for a decision in the case. When the action is filed the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel, giving the parties the opportunity to object or make suggestions.

(b) The expert advisory panel may compel the attendance of witnesses, interview the parties, physically examine the injured person if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care in issue. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall keep copies of all written statements it receives.

(c) Not more than 30 days after selection of the panel, it shall make a written report to the parties and to the court, answering the following questions and other questions submitted to the panel by the court:

(1) What was the disorder for which the plaintiff came to medical care?

(2) What would have been the probable outcome without medical care?

(3) Was the treatment selected appropriate for the case?

(4) Did an injury arise from the medical care?

(5) What is the nature and extent of the medical injury?

(6) What specifically caused the medical injury?

(7) Was the medical injury caused by unskillful care?

(8) If a medical injury had not occurred, how would the plaintiff's condition differ from his present condition?

(d) In any case in which the answer to one or more of the questions submitted to the panel depends upon the resolution of factual questions which are not the proper subject of expert opinion, the report shall so state and may answer questions based upon hypothetical facts that are fully set out in the opinion. The report shall include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; shall specify any medical or scientific authority relied upon by the panel; and shall include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and his signature constitutes his adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection. A member may not attest to

any portion of the report as to which he is not qualified to give expert testimony.

(e) The report of the panel with any dissenting or concurring opinion is admissible in evidence to the same extent as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of his dissenting or concurring opinion.

(f) No discovery may be undertaken in a case until the report of the expert advisory panel is received. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (b) of this section, the court may, upon application, grant it an additional 30 days.

(g) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report. If a panel member is called upon as a witness at trial or upon deposition, he is entitled to payment of an expert witness fee, which may not exceed \$150 per day. All expenses incurred by the panel shall be paid by the court. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(h) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

* Sec. 34. AS 09.55.540 is amended to read:

Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider, the plaintiff has the burden of proving by a preponderance of the evidence

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing;

(2) that the defendant either lacked this degree of knowledge or skill or failed to exercise this degree of care; and

(3) that as a proximate result of this lack of

knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.

(b) In malpractice actions there is no presumption of negligence on the part of the defendant.

* Sec. 35. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.546. ADVANCE PAYMENTS. In an action to recover damages under secs. 530 - 560 of this chapter, no advance payment made by the defendant health care provider or his professional liability insurer to or on behalf of the plaintiff is admissible as evidence or may be construed as an admission of liability for injuries or damages suffered by the plaintiff; however, a final award in favor of the plaintiff shall be reduced to the extent of any advance payment. The advance payment shall inure to the exclusive benefit of the defendant or the insurer making the payment.

Sec. 09.55.547. AD DAMNUM. In a cause of action against a health care provider for malpractice, the complaint or any other pleadings may not contain an ad damnum clause or monetary amount claimed against the defendant health care provider, except as necessary for jurisdictional purposes.

Sec. 09.55.548. AWARDS, COLLATERAL SOURCE. (a) Damages shall be awarded in accordance with principles of the common law. The fact finder in a malpractice action shall render any award for damages by category of loss. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump-sum payment; the judgment shall include, if necessary, other provisions to assure that funds are available as periodic payments become due. Insurance from an authorized insurer as defined in AS 21.90.080 or from the Medical Indemnity Corporation of Alaska is sufficient assurance that funds will be available. Any part of the award which is paid on a periodic basis shall be adjusted annually according to changes in the consumer price index in the community where the claimant resides. In this subsection, future damages includes damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(b) Except when the collateral source is a federal program which by law must seek subrogation and except death benefits paid under life insurance, a claimant may only recover damages from the defendant which exceed amounts received by the claimant as compensation for his injuries from collateral sources, whether private, group or governmental, and whether contributory or noncontributory. Evidence of collateral sources, other than a federal program which must by law seek subrogation and the death benefit paid under life insurance, is admissible after the fact finder has rendered an award. The court may take into account the value of claimant's rights to coverage exhausted or depleted by payment of these collateral benefits by adding back a reasonable estimate of their probable value, or by earmarking and holding for possible periodic payment

under (a) of this section that amount of the award that would otherwise have been deducted, to see if the impairment of claimant's rights actually takes place in the future.

* Sec. 36. AS 09.55.550 is amended to read:

Sec. 09.55.550. JURY INSTRUCTIONS. In medical malpractice actions the jury shall be instructed that the plaintiff has the burden of proving the health care provider's negligence or wilful misconduct in accordance with the standard of proof specified in sec. 540 of this chapter. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's negligence or misconduct.

* Sec. 37. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.554. ORAL CONTRACTS. No cause of action against a health care provider arises for breach of an oral contract to provide a cure or achieve a specific medical result.

Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider has failed to inform the patient of the common risks and reasonable alternatives to the proposed treatment or procedure, and that but for that failure the claimant would not have consented to the proposed treatment or procedure.

(b) It is a defense to any action for medical malpractice based upon an alleged failure to obtain informed consent that

(1) the risk not disclosed is too commonly known or is too remote to require disclosure;

(2) the patient stated to the health care provider that he would undergo the treatment or procedure regardless of the risk involved or that he did not want to be informed of the matters to which he would be entitled to be informed;

(3) under the circumstances consent by or on behalf of the patient was not possible; or

(4) the health care provider after considering all of the attendant facts and circumstances used reasonable discretion as to the manner and extent that the alternatives or risks were disclosed to the patient because he reasonably believed that a full disclosure would have a substantially adverse effect on the patient's condition.

Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter

(1) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under

AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(2) "board" means an arbitration board established under sec. 535 of this chapter;

(3) "panel" means an expert advisory panel established under sec. 536 of this chapter.

* Sec. 38. AS 09.65.090 is repealed and re-enacted to read:

Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID.

(a) A person at a hospital or any other location who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

* Sec. 39. AS 18.20 is amended by adding new sections to read:

Sec. 18.20.045. INSURANCE REQUIRED. (a) Every hospital, as a condition of licensure, shall maintain and submit to the department evidence of insurance against liability to inpatients and outpatients for malpractice issued by the Medical Indemnity Corporation of Alaska, in amounts of not less than \$200,000 per occurrence, and an aggregate liability per year of \$1,000,000 minimum, and an additional \$20,000 for each bed over 50.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a hospital if the hospital furnishes satisfactory evidence of having other insurance providing coverage in amounts not less than those specified in (a) of this section. A waiver granted under this subsection may not extend beyond the normal expiration date of the hospital's insurance policy or January 1, 1977, whichever occurs first.

(c) The director of insurance may permit a deductible provision in the policy for the hospital if the hospital

(1) demonstrates to the satisfaction of the director of insurance that without indemnity from any other source the hospital has the financial resources to discharge the maximum potential exposure to the hospital by reason of the deductible provision;

(2) agrees to permit the Medical Indemnity Corporation of Alaska to provide the defense and utilize a mutually agreed-upon attorney for any claim brought against

the hospital if any other health care provider insured by the corporation is or may become a party in the case, and agrees to reimburse the corporation for a pro rata portion of the costs of defense;

(3) agrees to waive any cross complaint, counterclaim or right of subrogation against a health care provider insured by the Medical Indemnity Corporation of Alaska, except that the agreement may provide for arbitration among health care providers to determine allocation of liability; and

(4) provides the Medical Indemnity Corporation of Alaska with notice of any claim brought against it.

(d) The director of insurance shall permit a hospital to insure directly all or any portion of its risk with a carrier authorized to sell medical malpractice insurance in the state if the director of insurance finds that permitting direct insurance will not jeopardize the insuring program of the Medical Indemnity Corporation of Alaska and if the hospital

(1) agrees to permit the Medical Indemnity Corporation of Alaska to provide the defense and utilize a mutually agreed-upon attorney for any claim brought against the hospital if any health care provider insured by the corporation is or may become a party in the case, and agrees to reimburse the corporation for a pro rata portion of the costs of defense;

(2) agrees to waive any cross complaint, counterclaim or right of subrogation against a health care provider insured by the Medical Indemnity Corporation of Alaska, except that the agreement may provide for arbitration among health care providers to determine allocation of liability; and

(3) provides the Medical Indemnity Corporation of Alaska with notice of any claim brought against it.

Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a license each hospital shall have in operation an internal risk management program which shall

(1) investigate the frequency and causes of incidents in hospitals which cause injury to patients;

(2) develop and implement measures to minimize the risk of injury to patients; in developing these measures each hospital shall take into account recommendations of its medical staff, the Medical Indemnity Corporation of Alaska, private underwriters, industry standards, experience of other hospitals, and recommendations of licensing boards of other health care providers; and

(3) analyze patient grievances which relate to patient care.

(b) The department shall adopt by regulation standards for the risk management programs in hospitals in the state which may vary according to the size of the hospital, the

type of care offered by the hospital, and other factors found relevant by the department. Regulations adopted under this subsection are subject to the Administrative Procedure Act (AS 44.62).

* Sec. 40. AS 18 is amended by adding a new chapter to read:

CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING INFORMATION TO REVIEW ORGANIZATION. (a) No person providing information to a review organization is subject to action for damages or other relief by reason of having furnished that information, unless the information is false and the person providing the information knew or had reason to know the information was false.

(b) No privilege of confidentiality arising from a physician-patient relationship may be invoked to withhold pertinent information from review by a review organization.

Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW ORGANIZATIONS. No person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to a review organization is liable for damages or other relief in an action brought by another whose activities have been or are being scrutinized or reviewed by a review organization, by reason of the performance of a duty, function or activity of the review organization, unless the performance of the duty, function or activity was motivated by malice toward the affected person. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that the action or recommendation is warranted by facts known to the person or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION. (a) Except as provided in (b) of this section, all data and information acquired by a review organization, in the exercise of its duties and functions, shall be held in confidence and may not be disclosed to anyone except to the extent necessary to carry out the purposes of the review organization, and is not subject to subpoena or discovery. Except as provided in (b) of this section, no person described in sec. 20 of this chapter may disclose what transpired at a meeting of a review organization except to the extent necessary to carry out the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter which is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or

who is a member of it be prevented from testifying as to matters within his knowledge, but a witness may not be asked about his testimony before a review organization or opinions formed by him as a result of its hearings, except as provided in (b) of this section.

(b) Testimony, documents, proceedings, records, and other evidence adduced before a review organization that are otherwise inaccessible under this section may be obtained by a health care provider who claims that denial is unreasonable, or may be obtained under subpoena or discovery proceedings brought by a plaintiff who claims that information provided to a review organization was false and claims that the person providing the information knew or had reason to know the information was false.

(c) Nothing in this chapter prevents a person whose conduct or competence has been reviewed under this chapter from obtaining, for the purpose of appellate review of the action of the review organization, any testimony, documents, proceedings, records and other evidence adduced before the review organization.

Sec. 18.23.040. PENALTY FOR VIOLATION. Other than as authorized by sec. 30 of this chapter, a disclosure of data and information acquired by a review committee or of what transpired at a review meeting is a misdemeanor and punishable under AS 11.05.010.

Sec. 18.23.050. PROTECTION OF PATIENT. Nothing in this chapter relieves a person of liability which he has incurred or may incur to a person as a result of furnishing health care to the patient.

Sec. 18.23.060. PARTIES BOUND BY REVIEW. When a review organization reviews matters under sec. 70(5)(H) of this chapter no party is bound by a ruling of the organization in a controversy, dispute or question unless he agrees in advance, either specifically or generally, to be bound by the ruling.

Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "administrative staff" means the staff of a hospital or clinic;

(2) "health care" means professional services rendered by a health care provider or an employee of a health care provider, and services furnished by a sanatorium, rest home, nursing home, boarding home or other institution for the hospitalization or care of human beings;

(3) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist registered under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in

AS 18.20.130, including a governmentally owned or operated hospital;

(4) "professional service" means service rendered by a health care provider of the type he is licensed to render;

(5) "review organization" means a hospital governing body or a committee whose membership is limited to health care providers and administrative staff, except where otherwise provided for by state or federal law, and which is established by a hospital, by a clinic, by one or more state or local associations of health care providers, by an organization of health care providers from a particular area or medical institution, or by a professional standards review organization established under 42 U.S.C., sec. 1320c-1 et seq., to gather and review information relating to the care and treatment of patients for the purposes of

(A) evaluating and improving the quality of health care rendered in the area or medical institution;

(B) reducing morbidity or mortality;

(C) obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illness and injuries;

(D) developing and publishing guidelines showing the norms of health care in the area or medical institution;

(E) developing and publishing guidelines designed to keep the cost of health care within reasonable bounds;

(F) reviewing the quality or cost of health care services provided to enrollees of health maintenance organizations;

(G) acting as a professional standards review organization under 42 U.S.C., sec. 1320c-1 et seq.;

(H) reviewing, ruling on, or advising on controversies, disputes or questions between

(i) a health insurance carrier or health maintenance organization and one or more of its insured or enrollees;

(ii) a professional licensing board, acting under its powers of discipline or license revocation or suspension, and a health care provider licensed by it when the matter is referred to a review organization by the professional licensing board;

(iii) a health care provider and his patients concerning diagnosis, treatment or care, or a charge or fee;

(iv) a health care provider and a health insurance carrier or health maintenance organization concerning a charge or fee for health care services provided to an insured or enrollee; or

(v) a health care provider or his patients and the federal or a state or local government, or an agency of the federal or a state or local government;

(I) acting on the recommendation of a credential review committee or a grievance committee.

* Sec. 41. AS 21 is amended by adding a new chapter to read:

CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

ARTICLE 1. PURPOSE.

Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide a means of furnishing health care providers with adequate insurance against liability for medical negligence.

ARTICLE 2. MEDICAL INDEMNITY CORPORATION OF ALASKA.

Sec. 21.88.020. CORPORATION CREATED. There is created the Medical Indemnity Corporation of Alaska which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors which is appointed by the governor of the state and confirmed by the legislature. Members of the board of governors shall be Alaska residents as follows:

(1) two physicians licensed in the state; one of the physicians shall be engaged in group practice in a clinic of six or more physicians;

(2) an administrator or senior executive officer employed by a hospital licensed in the state;

(3) two professionals from insurance companies authorized in the state;

(4) two persons who are not health care providers or financially interested in the field of health care or representatives of the insurance industry.

(b) The term of office of each governor is three years, except that the governor of the state shall designate two initially appointed governors to serve for one year and two initially appointed governors to serve for two years. Upon the expiration of the term of a governor, the governor of the state shall appoint a successor who shall be from the same class described in (a) of this section as the governor

whose term has expired.

(c) Upon a governor's early resignation, death or inability to serve, the governor of the state shall appoint a successor from the same class defined in (a) of this section as the terminating governor; who shall serve for the unexpired term.

(d) The director or his designee is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(e) Members of the board of governors receive compensation from the corporation of \$100 per day when the board meets and necessary travel expenses.

Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30 days after the effective date of this chapter, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair and reasonable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments to it become effective upon the director's approval. If the board of governors fails to submit a plan of operation, or if at a subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to carry out the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in sec. 50 of this chapter shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular times and places for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish the procedures for awarding contracts to carry out the provisions of this chapter;

(6) establish the procedures for issuing contracts of insurance as provided in sec. 50 of this chapter and for the determination of rates;

(7) contain additional provisions necessary for the execution of the powers and duties of the corporation.

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION.

(a) The corporation shall

(1) in the form approved by the director, issue to all physicians and hospitals who pay the premiums for it a contract or contracts indemnifying physicians and hospitals and their employees who are health care providers against loss by reason of liability for professional services rendered in the state on an occurrence basis, and agreeing to tender on behalf of the physicians and hospitals and their employees who are health care providers a defense in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage requirements to be maintained under AS 08.-64.215 and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; at the option of the physician or hospital and for an additional premium the contract may cover claims against the physician or hospital that arise out of professional services performed by the physician or hospital for any period after December 31, 1974 except that coverage will not be provided for a claim already filed or of which the physician or hospital had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) in a form approved by the director and for a premium determined under sec. 80 of this chapter, issue contracts of insurance on an occurrence basis indemnifying chiropractors, dental hygienists, dentists, nurses, dispensing opticians, optometrists, pharmacists, physical therapists, or psychologists and psychological associates for loss by reason of liability for professional services rendered in the state, if a finding of unavailability of insurance and impairment of services has been made under AS 08.20.115, AS 08.32.015, AS 08.36.115, AS 08.68.165, AS 08.71.085, AS 08.72.115, AS 08.80.115, AS 08.84.035, or AS 08.86.125; and agreeing to tender on behalf of the person insured under this paragraph a defense in a proceeding under AS 09.55.530 - 09.55.560; the contract shall cover the defense against but need not indemnify a claim for punitive damages;

(3) within two years after the effective date of this Act, adopt one of the following approaches regarding the risk incurred by contracts issued by the corporation: (A) keep all the risk incurred within the corporation; or (B) negotiate for and procure reinsurance from private casualty insurers or reinsurers for all liability incurred by contracts issued by the corporation, but if, after the exercise of diligence, reinsurance for all of the risk cannot be procured at reasonable rates from private casualty insurers or reinsurers, the corporation, through the board of governors, shall so certify to the director, and reinsurance for that portion of the risk not reinsured on the private market shall be provided by the Health Care Providers Joint Underwriting Association established under secs. 110 - 180 of this chapter; however, for the first two years after the effective date of this Act and before the corporation has adopted (A) or (B) of this paragraph, the corporation may reinsure any or all of the risk incurred by contracts issued by the corporation or it may retain all the risk incurred within the corporation;

(4) charge a premium for the protection provided by the contracts issued by the corporation which shall be

determined by the board of governors in accordance with sec. 80 of this chapter and subject to the approval of the director;

(5) comply with or be subject to AS 21.06.090; 21.06.120; 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.190; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Corporation;

(6) carry out the obligations of the contracts issued by the corporation by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(7) for an additional premium provide coverage to physicians and hospitals for liability in excess of the minimum limits required for licensure as a physician or hospital, but limited to \$1,000,000 for physicians and \$5,000,000 for hospitals, if there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation; if this paragraph is implemented, each physician or hospital obtaining excess coverage up to these amounts shall obtain it from the corporation; the corporation may procure reinsurance for all risks incurred by contracts issued under this paragraph from the private market.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for these services; employees of the corporation are not considered state employees;

(2) if it adopts the approach under sec. 50(a)-(3)(B) of this chapter, recommend that the director hold public hearings for the purpose of commencing operation of the joint underwriting association established under secs. 110 - 180 of this chapter; if the joint underwriting association begins operation, the corporation may purchase reinsurance from the association for any of the liability incurred by contracts issued by the corporation which is not reinsured on the private market;

(3) provide coverage to physicians and hospitals for other hazards when there is a finding by the director that this coverage is otherwise unavailable by reason of the operation of the corporation;

(4) borrow or advance funds necessary to carry out the purposes of the corporation;

(5) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

- (6) sue or be sued in the name of the corporation;
- (7) provide risk management advice and services to hospitals;
- (8) negotiate and become a party to contracts for management services for the corporation;
- (9) perform all other acts necessary and proper to carry out the duties of the corporation.

Sec. 21.88.060. PREMIUM TAX. The corporation shall pay a premium tax in the amount of one and one-half per cent of the total direct premium income received by the corporation during the year ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premiums, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. The tax shall be paid to the director annually before April 1 of each year.

Sec. 21.88.070. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. The information shall be on forms prescribed by the director, and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. At least annually the corporation shall report to the director the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to and the expenses incurred by the corporation during the year. This report shall be available to the public. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become available to the public may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All statistics shall be made available to the appropriate licensing board or agency.

Sec. 21.88.080. RATES. The rates and rating plans used by the corporation for the policies issued shall be determined by license category of health care providers in accordance with all of the following:

- (1) rates for physicians shall be set as a function of the physician's medical revenue earned in the state;
- (2) rates for hospitals shall be set as a function of the number of permanent beds in the hospital;
- (3) a minimum rate may be set for each category of health care provider or discipline or classification within the license category;
- (4) rates may not be excessive; rates are excessive if, after a period of time and with respect to an

amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported, provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the corporation, and reasonable expenses for the operation of the corporation;

(5) rates shall not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including claims paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported, provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the corporation, and reasonable expenses for the operation of the corporation;

(6) rates may not be unfairly discriminatory;

(7) rates shall be adjusted annually;

(8) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation as developed for the preceding four policy years;

(9) in considering losses to be incurred, changes in the law, national, regional or local trends in medical negligence awards, and other relevant factors may be considered;

(10) income from the investment of reserves shall be considered;

(11) individual risk underwriting factors shall be considered;

(12) disciplines and classifications within the license categories of health care providers shall be considered;

(13) amounts sufficient for repayment of loan obligations shall be considered;

(14) if the approach under sec. 50(a)(3)(B) of this chapter is adopted by the corporation, provision shall be made for underwriting profit at a reasonable level for any reinsurer, except that if the corporation is unable to purchase all its reinsurance from the private market and must purchase a portion from the association, no provision for underwriting profit for private carriers may be made.

Sec. 21.88.090. PAYMENT OF PREMIUMS; CANCELLATION OF INSURANCE. The corporation may provide for installment

payment of premiums in which case each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium, or other charge, by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice of cancellation. Cancellation is not effective until 30 days after the date notice is posted by the corporation.

ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Providers Joint Underwriting Association is created as an association having a legal existence independent of and separate from the state and consisting of all licensed (1) health care service corporations as defined in AS 21.87.330; (2) disability insurers as defined in AS 21.12.050; (3) property insurers as defined in AS 21.12.060; and (4) casualty insurers as defined in AS 21.12.070. Obligations issued by the association do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state.

(b) Every insurer described in (a) of this section is a member of the association and shall remain a member as a condition of its authority to continue to transact that kind of business in the state.

(c) The association shall commence operation if the corporation adopts the approach under sec. 50(a)(3)(B) of this chapter and if the director finds, after public hearing, that a market for reinsurance is needed by the association. If reinsurance from the association is found to be necessary, the association will reinsure only that portion of the risk for which there is no private market at reasonable rates. If the director finds, after public hearing, that reinsurance through the association is no longer needed by the corporation, the association shall cease its reinsurance operations.

Sec. 21.88.120. PURPOSE. The purpose of the association is to provide a market for medical malpractice reinsurance to the corporation on a self-supporting basis without subsidy from association members.

Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM; COMPENSATION. (a) The association shall be governed by a board of directors appointed by the governor of the state and consisting of two representatives of domestic casualty and property insurers, one representative of admitted disability insurers, one representative of health care service corporations, one representative of foreign casualty and property insurers, and two persons from the public.

(b) Members of the board of directors serve three-year terms.

(c) Members of the board of directors receive compensation from the association of \$100 per day when the board meets and necessary travel expenses.

Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30 days after the association commences operation the board of directors shall prepare and submit to the director for his approval a plan of operation which provides for the fair and reasonable administration of the affairs of the association and the discharge of the purposes for which it is created. The plan and any amendments to it become effective upon the director's approval. If the board of directors has failed to submit a plan of operation, or if at any subsequent time the board of directors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to carry out the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

- (1) establish procedures for carrying out the powers and duties of the association specified in sec. 150 of this chapter;
- (2) establish procedures for handling assets and discharging liabilities of the association;
- (3) establish regular times and places for meetings of the board of directors;
- (4) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
- (5) establish procedures for awarding contracts to indemnify or defend or to provide other services and to compensate the indemnitors or vendors;
- (6) establish procedures for issuing contracts of insurance as provided in sec. 150 of this chapter and for the determination of rates;
- (7) contain additional provisions necessary for the execution of the powers and duties of the association.

Sec. 21.88.150. POWERS AND DUTIES OF THE ASSOCIATION. (a) The association shall

- (1) provide reinsurance to the corporation covering contracts issued by the corporation for that portion of the liability incurred by the corporation which cannot be reinsured through private casualty insurers or reinsurers, indemnifying physicians and hospitals, and their employees who are health care providers, and other persons insured by the corporation against loss by reason of liability for professional services and agreeing to tender on behalf of the insureds a defense in an action brought under AS 09.55.530 - 09.55.560;
- (2) charge a premium for the protection provided by the reinsurance issued under (a)(1) of this section which shall be determined by the board of directors in accordance with secs. 80 and 160 of this chapter and are subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090; 21.06.120; 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Association;

(4) carry out the obligations of the contracts issued under (a)(1) of this section by defending all covered claims made against the insureds and paying all liabilities which are finally adjudicated against the insureds or which may in the opinion of the association reasonably be expected to be finally adjudicated against the insured to the extent of the contract obligation.

(b) The association may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services; employees of the association are not considered state employees;

(2) borrow or advance funds necessary to carry out the purposes of the association;

(3) negotiate and become a party to those contracts which are necessary to carry out the purposes of the association;

(4) sue or be sued in the name of the association;

(5) cede or assume reinsurance;

(6) perform all other acts necessary and proper to carry out the duties of the association.

Sec. 21.88.160. RATES AND RATE ADJUSTMENT. (a) The rates and rating plans shall be determined as provided in sec. 80 of this chapter, except that allowance may not be made for income from investment of member-contributed funds; and provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the association.

(b) If in any year an assessment is made under sec. 170 of this chapter, rates for the next period shall be increased from the rate determined under (a) of this section by an amount sufficient to reimburse all members the amounts assessed. No assessment may be reimbursed to members without prior approval of the director and no interest accrues in favor of members on amounts assessed.

(c) If after establishing required reserves and repaying all assessments to members there is an excess amount in reserve, the excess premium shall be refunded to the corporation for reimbursement to the insureds.

Sec. 21.88.170. ASSESSMENT. If sufficient funds are not available for the sound financial operation of the association, all members shall contribute to the financial

requirements of the association by paying to the association an assessment to be determined by the board of directors of the association, subject to the approval of the director; assessments shall be prorated among all members in proportion to their direct written premiums or revenues in the state in the insurance lines the writing of which require membership in the association, in the two years ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. If any member is prohibited by the law of its state of domicile from paying an assessment to the association, then in lieu of the assessment the member shall pay a tax to the director, in the same amount as the assessment as an obligation in addition to taxes required under AS 21.09.210 and notwithstanding the provisions of AS 21.09.210(e). An amount equal to taxes received under this section may be appropriated to the association.

Sec. 21.88.180. REPORTS. At least annually the association shall report to the director concerning its affairs. The report shall be in the form prescribed by the director.

ARTICLE 4. LOAN FUND.

Sec. 21.88.210. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans may be made from the fund to the corporation upon certification by the director that a loan is necessary and under the following circumstances:

(1) to provide surplus in respect to policyholders which may not exceed a total of \$3,000,000 outstanding at any time; these obligations shall be subordinated to all other obligations of the corporation; loans made under this paragraph shall be repaid to the fund in annual installments of at least 25 per cent of the excess of premiums collected over the total of claims, reserves, expenses, and assessments made by the association, if any; interest shall be paid on the outstanding balance at a rate equal to four percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District;

(2) if the corporation adopts the approach of sec. 50(a)(3)(A) of this chapter, additional loans up to an aggregate of \$6,000,000 when taken together with loans made under (1) of this subsection to compensate for fluctuations in loss experience; loans made under this paragraph shall be in parity with all other obligations of the corporation except that they shall be subordinated to obligations of policyholders and claimants for indemnity of loss; these loans shall be repaid within five years at an annual interest rate of six per cent.

(c) If a loan is made to the corporation from the fund, the corporation shall issue a note to the fund as evidence of the loan.

(d) The director may sell at par value to the Department of Revenue the notes, security instruments and pledge agreements held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of the notes purchased and held by the Department of Revenue equals \$6,000,000.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 21.88.900. DEFINITIONS. In this chapter

(1) "association" means the Health Care Providers Joint Underwriting Association;

(2) "corporation" means the Medical Indemnity Corporation of Alaska;

(3) "governor" means a member of the board of governors of the Medical Indemnity Corporation of Alaska;

(4) "health care provider" means a physician, hospital, chiropractor, dental hygienist, dentist, nurse, dispensing optician, optometrist, physical therapist, pharmacist, psychologist or psychological associate;

(5) "physician" means a person licensed under AS 08.64;

(6) "hospital" means an institution licensed under AS 18.20;

(7) "chiropractor" means a person licensed under AS 08.20;

(8) "dental hygienist" means a person licensed under AS 08.32;

(9) "dentist" means a person licensed under AS 08.36;

(10) "nurse" means a person licensed under AS 08.-68;

(11) "dispensing optician" means a person licensed under AS 08.71;

(12) "optometrist" means a person licensed under AS 08.72;

(13) "pharmacist" means a person licensed under AS 08.80;

(14) "physical therapist" means a person registered under AS 08.84;

(15) "psychologist" and "psychological associate"

means a person licensed under AS 08.86.

* Sec. 42. AS 21.18.090 is amended by adding new paragraphs to read:

(5) reserves for the Medical Indemnity Corporation of Alaska are to include only reserves for claims reported and unpaid and reserves for claims incurred but not reported but which may reasonably be expected to be reported within three years after the date of occurrence;

(6) reserves for the Health Care Providers Joint Underwriting Association are to include claims reported and unpaid; reserves for claims incurred but not reported, but those which may reasonably be expected to be reported beyond three years after the date of occurrence may be included on a different basis due to the additional financial flexibility of the association.

* Sec. 43. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except the Medical Indemnity Corporation of Alaska and the Health Care Providers Joint Underwriting Association established under ch. 88 of this title, either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

* Sec. 44. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except the Medical Indemnity Corporation of Alaska and the Health Care Providers Joint Underwriting Association established under ch. 88 of this title, who

(A) writes any kind of insurance to which this chapter applies under sec. 20 of this chapter including the exchange of reciprocal or inter-insurance contracts, and

(B) is licensed to transact insurance in this state;

* Sec. 45. AS 08.02 is amended by adding a new section to read:

Sec. 08.02.020. LIMITATION OF LIABILITY FOR MEMBERS OF LICENSING BOARDS. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made.

* Sec. 46. AS 08.64.365 and AS 08.68.040 are repealed.

* Sec. 47. Sections 33 - 38 of this Act apply to all causes of action for medical malpractice which have not been filed in a court of this state before the effective date of this Act.

* Sec. 48. AS 01.10.030 applies to this Act except that if any portion of AS 21.88.110 - 21.88.180 is held invalid all of AS 21.88.110 - 21.88.180 shall be void and the Medical Indemnity Corporation of Alaska shall assume all duties and liabilities incurred by the Health Care Providers Joint Underwriting Association before the declaration of invalidity; and except that if the requirement that health care providers purchase medical malpractice insurance from the Medical Indemnity Corporation of Alaska is found to be invalid, secs. 41, 42, 43, and 44 of this Act are void; however, the Medical Indemnity Corporation of Alaska and the Health Care Providers Joint Underwriting Association shall continue to discharge and assess to pay claims incurred before the declaration of invalidity.

* Sec. 49. AS 09.55.536, enacted in sec. 33 of this Act, has the effect of changing the Alaska Supreme Court's Rules of Civil Procedure by requiring the submission of medical malpractice actions against health care providers to expert advisory panels before discovery unless the court decides an expert advisory opinion is not necessary in the case.

* Sec. 50. Sections 1 - 32 and secs. 39 - 47 of this Act take effect 30 days after the effective date of this Act.

* Sec. 51. This Act takes effect immediately in accordance with AS 01.10.070(c).