

Original Sponsor: Rules Committee by
request of the Governor

Offered: 5/21/76

1 IN THE HOUSE

BY THE FREE CONFERENCE COMMITTEE

2 FREE CONFERENCE CS FOR SENATE CS FOR CS FOR HOUSE BILL NO. 574

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE -- SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to health care; changing the Alaska
7 Supreme Court's Rules of Civil Procedure; and providing
8 for an effective date."

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

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

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

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

16 Sec. 08.20.010. CREATION AND MEMBERSHIP OF BOARD OF CHIROPRACTIC
17 EXAMINERS. There is created the Board of Chiropractic Examiners con-
18 sisting of five [THREE] members appointed by the governor.

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

20 Sec. 08.20.020. MEMBERS OF BOARD. Three members [EACH MEMBER] of
21 the board shall be [A] licensed chiropractic physicians who [PHYSICIAN
22 AND SHALL] have practiced chiropractic in this state not less than two
23 years. Two members of the board shall be persons with no direct finan-
24 cial interest in the health care industry. Each member serves without
25 pay but is entitled to per diem and travel expenses allowed by law.

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 AS 08.20.030 is repealed and re-enacted to read:

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

1 filled for the unexpired term.

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

3 Sec. 08.20.115. MALPRACTICE INSURANCE. If medical malpractice
4 insurance for chiropractors becomes unavailable on the voluntary market
5 and the director of insurance finds, after public hearing, that the
6 unavailability is impairing the delivery of chiropractic services to the
7 public, the director of insurance may require all persons licensed under
8 this chapter to carry medical malpractice insurance and to purchase
9 their insurance from the Medical Indemnity Corporation of Alaska estab-
10 lished under AS 21.88. If a finding of unavailability of insurance on
11 the voluntary market and impairment of services has been made under this
12 section, purchase of medical malpractice insurance from the Medical
13 Indemnity Corporation of Alaska is a condition of licensure under this
14 chapter. The provisions of this section are satisfied if the licensee's
15 employer maintains insurance for him from the Medical Indemnity Corpora-
16 tion of Alaska.

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

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

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

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

29 Sec. 08.32.015. MALPRACTICE INSURANCE. If medical malpractice

1 insurance for dental hygienists becomes unavailable on the voluntary
2 market and the director of insurance finds, after public hearing, that
3 the unavailability is impairing the delivery of dental hygiene services
4 to the public, the director of insurance may require all persons licensed
5 under this chapter to carry medical malpractice insurance and to pur-
6 chase their insurance from the Medical Indemnity Corporation of Alaska
7 established under AS 21.88. If a finding of unavailability of insurance
8 on the voluntary market and impairment of services has been made under
9 this section, purchase of medical malpractice insurance from the Medical
10 Indemnity Corporation of Alaska is a condition of licensure under this
11 chapter. The provisions of this section are satisfied if the licensee's
12 employer maintains insurance for him from the Medical Indemnity Cor-
13 poration of Alaska.

14 Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
15 In addition to action under sec. 160 of this chapter, upon a finding
16 that by reason of demonstrated problems of competence, experience,
17 education or health the authority to practice dental hygiene should be
18 limited or conditioned or the practitioner disciplined, the board may
19 reprimand, censure, place on probation, restrict practice by specialty,
20 procedure or facility, require additional education or training, or
21 revoke or suspend a license.

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

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

25 Sec. 08.36.010. CREATION AND MEMBERSHIP OF BOARD. There is
26 created the Board of Dental Examiners, referred to in this chapter as
27 the board, consisting of seven [FIVE] members. Five members [EACH
28 MEMBER] shall be [A CITIZEN OF THE UNITED STATES AND A] qualified
29 resident dentists who have [HAS] been engaged in the practice of

1 dentistry in the state for five years immediately preceding [HIS]
2 appointment, one member shall be a dental hygienist licensed under
3 AS 08.32, and one member with no direct financial interest in the health
4 care industry.

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

6 Sec. 08.36.020. APPOINTMENT AND TERM OF SERVICE OF MEMBERS.

7 Members of the board are appointed by the governor, subject to confirma-
8 tion by the legislature in joint session [ASSEMBLED]. Each board member
9 serves for a term of five years, and until his successor is appointed
10 and qualified. The term begins on February 1. An appointment to a
11 vacancy is for the unexpired term. [APPOINTMENTS SHALL BE MADE FROM A
12 LIST OF NAMES RECOMMENDED BY THE ALASKA DENTAL SOCIETY. THE LIST SHALL
13 BE SUPPLIED AT LEAST 30 DAYS BEFORE THE BEGINNING OF A TERM AND NOT MORE
14 THAN 60 DAYS AFTER THE OCCURRENCE OF A VACANCY. THE LIST SHALL CONTAIN
15 AT LEAST TWO RECOMMENDED NAMES FOR EACH APPOINTMENT. THE GOVERNOR SHALL
16 MAKE THE APPOINTMENT WITHIN 30 DAYS AFTER RECEIVING THE LIST.]

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

18 Sec. 08.36.115. MALPRACTICE INSURANCE. If medical malpractice
19 insurance for dentists becomes unavailable on the voluntary market and
20 the director of insurance finds, after public hearing, that the unavaila-
21 bility is impairing the delivery of dental services to the public, the
22 director of insurance may require all persons licensed under this
23 chapter to carry medical malpractice insurance and to purchase their
24 insurance from the Medical Indemnity Corporation of Alaska established
25 under AS 21.88. If a finding of unavailability of insurance on the
26 voluntary market and impairment of services has been made under this
27 section, purchase of medical malpractice insurance from the Medical
28 Indemnity Corporation of Alaska is a condition of licensure under this
29 chapter. The provisions of this section are satisfied if the licensee's

1 employer maintains insurance for him from the Medical Indemnity Corpora-
2 tion of Alaska.

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

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

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

14 Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD.
15 The governor shall appoint a board of medical examiners, to be known as
16 the State Medical Board, consisting of five licensed physicians, resid-
17 ing in as many separate Alaska judicial districts as possible, and two
18 persons with no direct financial interest in the health care industry.
19 [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH VACANCY,
20 SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIATION.]

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

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

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

29 Sec. 08.64.090. QUORUM. Four [THREE] members of the board consti-

1 tute a quorum for the transaction of all business properly before the
2 board.

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

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

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

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

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

25 (c) The board may exempt a physician from the requirements of (b)
26 of this section upon an application by him giving evidence satisfactory
27 to the board that he is unable to comply with the requirements because
28 of extenuating circumstances. However, no person may be exempted from
29 more than 15 hours of continuing education in a five-year period.

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

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

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

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

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

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

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

26 Sec. 08.68.060. QUALIFICATIONS OF BOARD MEMBERS. The five members
27 [EACH MEMBER] of the board who are nurses shall be [A CITIZEN OF THE
28 UNITED STATES, A RESIDENT OF THE STATE, AND A] licensed professional
29 nurses [NURSE] in the state, and [MEMBERS] shall have been actively

1 engaged in nursing for not less than four years before appointment, two
2 years of which were within the five years preceding appointment.

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

4 Sec. 08.68.165. MALPRACTICE INSURANCE. If medical malpractice
5 insurance for nurses becomes unavailable on the voluntary market and
6 the director of insurance finds, after public hearing, that the unavaila-
7 bility is impairing the delivery of nursing services to the public, the
8 director of insurance may require all persons licensed under this chap-
9 ter to carry medical malpractice insurance and to purchase their insur-
10 ance from the Medical Indemnity Corporation of Alaska established under
11 AS 21.88. If a finding of unavailability of insurance on the voluntary
12 market and impairment of services has been made under this section,
13 purchase of medical malpractice insurance from the Medical Indemnity
14 Corporation of Alaska is a condition of licensure under this chapter.
15 The provisions of this section are satisfied if the licensee's employer
16 maintains insurance for him from the Medical Indemnity Corporation of
17 Alaska.

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

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

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

29 Sec. 08.71.020. MEMBERSHIP OF BOARD; SOURCE OF APPOINTMENTS; TERM

1 OF OFFICE. The board consists of seven [FIVE] persons appointed by the
2 governor. Members serve staggered terms of three years. The terms of
3 the public members of the board shall be set so that they do not expire
4 at the same time. [THE GOVERNOR SHALL APPOINT BOARD MEMBERS FROM A LIST
5 OF QUALIFIED OPTICIANS PREPARED BY THE ASSOCIATION OF OPTICIANS IN THE
6 STATE AND SUBMITTED AT LEAST 30 DAYS BEFORE JULY 1, 1973, AT LEAST 30
7 DAYS BEFORE THE EXPIRATION OF A TERM AND NOT MORE THAN 60 DAYS AFTER A
8 VACANCY OCCURS IN AN UNEXPIRED TERM. THE LIST SHALL CONTAIN NOT LESS
9 THAN TWO RECOMMENDED CANDIDATES FOR EACH APPOINTMENT. THE GOVERNOR
10 SHALL MAKE APPOINTMENTS WITHIN 30 DAYS AFTER RECEIVING THE LIST. THE
11 TERM OF OFFICE OF EACH MEMBER IS THREE YEARS. HOWEVER, OF THE FIRST
12 MEMBERS OF THE BOARD, ONE SHALL BE APPOINTED FOR A ONE-YEAR TERM, TWO
13 FOR TWO-YEAR TERMS, AND TWO FOR THREE-YEAR TERMS.] Vacancies on the
14 board shall be filled for the unexpired term [IN THE SAME MANNER AS
15 ORIGINAL APPOINTMENT].

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

17 Sec. 08.71.030. QUALIFICATIONS OF BOARD MEMBERS. Five [A] board
18 members [MEMBER] shall be [A] licensed, practicing dispensing opticians
19 [OPTICIAN] residing in the state. Two shall be persons with no direct
20 financial interest in the health care industry.

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

22 Sec. 08.71.085. MALPRACTICE INSURANCE. If medical malpractice
23 insurance for opticians becomes unavailable on the voluntary market and
24 the director of insurance finds, after public hearing, that the unavaila-
25 bility is impairing the delivery of optician services to the public, the
26 director of insurance may require all persons licensed under this chap-
27 ter to carry medical malpractice insurance and to purchase their insur-
28 ance from the Medical Indemnity Corporation of Alaska established under
29 AS 21.88. If a finding of unavailability of insurance on the voluntary

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

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

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

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

18 Sec. 08.72.020. MEMBERSHIP OF BOARD AND TERMS OF OFFICE. The
19 board consists of five [THREE] persons, appointed by the governor.
20 Members serve staggered terms of three years. The terms of the public
21 members of the board shall be set so that they do not expire at the same
22 time. [THE TERM OF EACH MEMBER IS THREE YEARS. ONE MEMBER ONLY IS
23 APPOINTED EACH YEAR, EXCEPT WHEN VACANCIES FOR UNEXPIRED TERMS ARE
24 FILLED.]

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

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

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

2 Sec. 08.72.115. MALPRACTICE INSURANCE. If medical malpractice
3 insurance for optometrists becomes unavailable on the voluntary market
4 and the director of insurance finds, after public hearing, that the
5 unavailability is impairing the delivery of optometrist services to the
6 public, the director of insurance may require all persons licensed under
7 this chapter to carry medical malpractice insurance and to purchase
8 their insurance from the Medical Indemnity Corporation of Alaska estab-
9 lished under AS 21.88. If a finding of unavailability of insurance on
10 the voluntary market and impairment of services has been made under this
11 section, purchase of medical malpractice insurance from the Medical
12 Indemnity Corporation of Alaska is a condition of licensure under this
13 chapter. The provisions of this section are satisfied if the licensee's
14 employer maintains insurance for him from the Medical Indemnity Corpora-
15 tion of Alaska.

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

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

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

27 Sec. 08.80.010. CREATION AND MEMBERSHIP OF BOARD OF PHARMACY.
28 There is created the Board of Pharmacy, composed of seven [FIVE] mem-
29 bers, five [EACH] of whom shall be pharmacists [A PHARMACIST] licensed

1 in the state who have [HAS] been actively engaged in the practice of
2 pharmacy in the state for a period of three years immediately preceding
3 their [HIS] appointment. Two shall be persons with no direct financial
4 interest in the health care industry. Whenever possible, the board
5 shall include at least one member from each judicial district.

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

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

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

15 Sec. 08.80.070. QUORUM. Four [THREE] members constitute a quorum
16 for the transaction of business. However, when the board meets for the
17 purpose of examining applications for registration, three [TWO] members
18 of the board constitute a quorum.

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

20 Sec. 08.80.115. MALPRACTICE INSURANCE. If medical malpractice
21 insurance for pharmacists becomes unavailable on the voluntary market
22 and the director of insurance finds, after public hearing, that the
23 unavailability is impairing the delivery of pharmacist services to the
24 public, the director of insurance may require all persons licensed under
25 this chapter to carry medical malpractice insurance and to purchase
26 their insurance from the Medical Indemnity Corporation of Alaska estab-
27 lished under AS 21.88. If a finding of unavailability of insurance on
28 the voluntary market and impairment of services has been made under this
29 section, purchase of medical malpractice insurance from the Medical

1 Indemnity Corporation of Alaska is a condition of licensure under this
2 chapter. The provisions of this section are satisfied if the licensee's
3 employer maintains insurance for him from the Medical Indemnity Corpora-
4 tion of Alaska.

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

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

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

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

1 Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)

2 In addition to action under sec. 180 of this chapter, upon a finding
3 that by reason of demonstrated problems of competence, experience,
4 education or health the authority to practice physical therapy should be
5 limited or conditioned or the practitioner disciplined, the board may
6 reprimand, censure, place on probation, restrict practice by specialty,
7 procedure or facility, require additional education or training, or
8 revoke or suspend a registration.

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

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

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

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

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

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

23 Sec. 08.86.125. MALPRACTICE INSURANCE. If medical malpractice
24 insurance for psychologists or psychological associates becomes unavail-
25 able on the voluntary market and the director of insurance finds, after
26 public hearing, that the unavailability is impairing the delivery of
27 psychologist or psychological associate services to the public, the
28 director of insurance may require all persons licensed under this chap-
29 ter to carry medical malpractice insurance and to purchase their insur-

1 ance from the Medical Indemnity Corporation of Alaska established under
2 AS 21.88. If a finding of unavailability of insurance on the voluntary
3 market and impairment of services has been made under this section,
4 purchase of medical malpractice insurance from the Medical Indemnity
5 Corporation of Alaska is a condition of licensure under this chapter.
6 The provisions of this section are satisfied if the licensee's employer
7 maintains insurance for him from the Medical Indemnity Corporation of
8 Alaska.

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

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

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

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

25 (b) An agreement to arbitrate executed before care or treatment is
26 provided shall clearly provide in bold print on the face of the agree-
27 ment that execution of the agreement by the patient is not a prerequi-
28 site to receiving care or treatment. If this subsection is not complied
29 with by the health care provider, the agreement to arbitrate is void.

1 The form to be used shall be approved in advance by the attorney general
2 of the state to assure it fairly informs both parties to the agreement
3 and properly protects their interests.

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

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

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

20 (f) Upon the filing of a malpractice claim which is subject to an
21 agreement to arbitrate, the claim shall be submitted to an arbitration
22 board. The arbitration board shall consist of three arbitrators: one
23 arbitrator designated by the claimant or claimants, one arbitrator
24 designated by the health care provider or providers against whom the
25 claim is made, and a third arbitrator designated by mutual agreement who
26 shall serve as chairperson of the board. If the parties cannot agree on
27 the third person, the court will provide a choice of three or more
28 persons who might serve as chairperson of the arbitration board, which
29 shall be from a list of qualified arbitrators furnished by the attorney

1 general. Claimant or claimants together and health care provider or
2 providers together may each strike one or more names so that after each
3 side has done so at least one name remains, providing a basis for the
4 final selection by the court.

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

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

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

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

24 (k) The provisions of the Uniform Arbitration Act, AS 09.43.010 -
25 09.43.180, apply to arbitrations under this section if they do not
26 conflict with the provisions of this section; arbitrations under this
27 section shall be conducted in accordance with procedures established by
28 any rules of court which may be adopted and according to provisions of
29 secs. 540 - 548 and 554 - 560 of this chapter, and AS 09.65.090.

1 Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In an action for
2 damages due to personal injury or death based upon the provision of
3 professional services by a health care provider when the parties have
4 not agreed to arbitration of the claim under sec. 535 of this chapter,
5 the court shall appoint a three-person expert advisory panel unless the
6 court decides that an expert advisory opinion is not necessary for a
7 decision in the case. When the action is filed the court shall, by
8 order, determine the professions or specialties to be represented on the
9 expert advisory panel, giving the parties the opportunity to object or
10 make suggestions.

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

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

- 23 (1) What was the disorder for which the plaintiff came to
24 medical care?
25 (2) What would have been the probable outcome without medical
26 care?
27 (3) Was the treatment selected appropriate for the case?
28 (4) Did an injury arise from the medical care?
29 (5) What is the nature and extent of the medical injury?

1 (6) What specifically caused the medical injury?

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

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

5 (d) In any case in which the answer to one or more of the ques-
6 tions submitted to the panel depends upon the resolution of factual
7 questions which are not the proper subject of expert opinion, the report
8 shall so state and may answer questions based upon hypothetical facts
9 that are fully set out in the opinion. The report shall include copies
10 of all written statements, opinions, or records relied upon by the panel
11 and either a transcription or other record of any oral statements or
12 opinions; shall specify any medical or scientific authority relied upon
13 by the panel; and shall include the results of any physical or mental
14 examination performed on the plaintiff. Each member shall sign the
15 report and his signature constitutes his adoption of all statements and
16 opinions contained in it; however, a member may, instead of signing the
17 report, submit a concurring or dissenting report which complies with the
18 requirements of this subsection. A member may not attest to any portion
19 of the report as to which he is not qualified to give expert testimony.

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

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

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

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

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

22 Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action
23 based on the negligence or wilful misconduct of a health care provider
24 [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-
25 36], the plaintiff has [SHALL HAVE] the burden of proving by a prepon-
26 derance of the evidence

27 (1) the degree of knowledge or skill possessed or the degree
28 of care ordinarily exercised under the circumstances, at the time of
29 the act complained of, by health care providers in the field or spe-

1 cialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS
2 PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH
3 THE DEFENDANT PRACTICES];

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

6 (3) that as a proximate result of this lack of knowledge or
7 skill or the failure to exercise this degree of care the plaintiff
8 suffered injuries that would not otherwise have been incurred.

9 (b) In malpractice actions there is [SHALL BE] no presumption of
10 negligence on the part of the defendant.

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

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

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

26 Sec. 09.55.548. AWARDS, COLLATERAL SOURCE. (a) Damages shall be
27 awarded in accordance with principles of the common law. The fact
28 finder in a malpractice action shall render any award for damages by
29 category of loss. The court may enter a judgment that future damages be

1 paid in whole or in part by periodic payments rather than by a lump-sum
2 payment; the judgment shall include, if necessary, other provisions to
3 assure that funds are available as periodic payments become due.

4 Insurance from an authorized insurer as defined in AS 21.90.080 or from
5 the Medical Indemnity Corporation of Alaska is sufficient assurance that
6 funds will be available. Any part of the award which is paid on a
7 periodic basis shall be adjusted annually according to changes in the
8 consumer price index in the community where the claimant resides. In
9 this subsection, future damages includes damages for future medical
10 treatment, care or custody, loss of future earnings, or loss of bodily
11 function of the claimant.

12 (b) Except when the collateral source is a federal program which
13 by law must seek subrogation and except death benefits paid under life
14 insurance, a claimant may only recover damages from the defendant which
15 exceed amounts received by the claimant as compensation for his injuries
16 from collateral sources, whether private, group or governmental, and
17 whether contributory or noncontributory. Evidence of collateral sources
18 other than a federal program which must by law seek subrogation and the
19 death benefit paid under life insurance, is admissible after the fact
20 finder has rendered an award. The court may take into account the value
21 of claimant's rights to coverage exhausted or depleted by payment of
22 these collateral benefits by adding back a reasonable estimate of their
23 probable value, or by earmarking and holding for possible periodic
24 payment under (a) of this section that amount of the award that would
25 otherwise have been deducted, to see if the impairment of claimant's
26 rights actually takes place in the future.

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

28 Sec. 09.55.550. JURY INSTRUCTIONS. In medical malpractice actions
29 the jury shall be instructed that the plaintiff has the burden of

1 proving [, BY A PREPONDERANCE OF THE EVIDENCE,] the health care pro-
2 vider's negligence or wilful misconduct in accordance with the standard
3 of proof specified in sec. 540 of this chapter [OF THE PHYSICIAN OR
4 DENTIST]. The jury shall be further instructed that injury alone does
5 not raise a presumption of the health care provider's [PHYSICIAN'S OR
6 DENTIST'S] negligence or misconduct.

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

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

11 Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is
12 liable for failure to obtain the informed consent of a patient if the
13 claimant establishes by a preponderance of the evidence that the pro-
14 vider has failed to inform the patient of the common risks and reason-
15 able alternatives to the proposed treatment or procedure, and that but
16 for that failure the claimant would not have consented to the proposed
17 treatment or procedure.

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

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

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

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

28 (4) the health care provider after considering all of the
29 attendant facts and circumstances used reasonable discretion as to the

1 manner and extent that the alternatives or risks were disclosed to the
2 patient because he reasonably believed that a full disclosure would have
3 a substantially adverse effect on the patient's condition.

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

5 (1) "health care provider" means a chiropractor licensed
6 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
7 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
8 optician licensed under AS 08.71; an optometrist licensed under AS 08.-
9 72; a pharmacist licensed under AS 08.80; a physical therapist licensed
10 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a
11 psychologist and a psychological associate licensed under AS 08.86; and
12 a hospital as defined in AS 18.20.130, including a governmentally owned
13 or operated hospital;

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

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

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

19 Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person
20 at a hospital or any other location who renders emergency care or
21 emergency counseling to an injured, ill, or emotionally distraught
22 person who reasonably appears to the person rendering the aid to be in
23 immediate need of emergency aid in order to avoid serious harm or death
24 is not liable for civil damages as a result of an act or omission in
25 rendering emergency aid.

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

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

29 Sec. 18.20.045. INSURANCE REQUIRED. (a) Every hospital, as a

1 condition of licensure, shall maintain and submit to the department
2 evidence of insurance against liability to inpatients and outpatients
3 for malpractice issued by the Medical Indemnity Corporation of Alaska,
4 in amounts of not less than \$200,000 per occurrence, and an aggregate
5 liability per year of \$1,000,000 minimum, and an additional \$20,000 for
6 each bed over 50.

7 (b) The director of insurance or his designee shall waive the
8 requirement in (a) of this section for a hospital if the hospital fur-
9 nishes satisfactory evidence of having other insurance providing cover-
10 age in amounts not less than those specified in (a) of this section. A
11 waiver granted under this subsection may not extend beyond the normal
12 expiration date of the hospital's insurance policy or January 1, 1977,
13 whichever occurs first.

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

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

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

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

1 allocation of liability; and

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

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

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

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

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

23 Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a
24 license each hospital shall have in operation an internal risk manage-
25 ment program which shall

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

28 (2) develop and implement measures to minimize the risk of
29 injury to patients; in developing these measures each hospital shall

1 take into account recommendations of its medical staff, the Medical
2 Indemnity Corporation of Alaska, private underwriters, industry stan-
3 dards, experience of other hospitals, and recommendations of licensing
4 boards of other health care providers; and

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

6 (b) The department shall adopt by regulation standards for the
7 risk management programs in hospitals in the state which may vary
8 according to the size of the hospital, the type of care offered by the
9 hospital, and other factors found relevant by the department. Regula-
10 tions adopted under this subsection are subject to the Administrative
11 Procedure Act (AS 44.62).

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

13 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

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

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

23 Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW
24 ORGANIZATIONS. No person who is a member or employee of, or who acts in
25 an advisory capacity to, or who furnishes counsel or services to a
26 review organization is liable for damages or other relief in an action
27 brought by another whose activities have been or are being scrutinized
28 or reviewed by a review organization, by reason of the performance of a
29 duty, function or activity of the review organization, unless the

1 performance of the duty, function or activity was motivated by malice
2 toward the affected person. No person is liable for damages or other
3 relief in an action by reason of his performance of a duty, function, or
4 activity as a member of a review organization or by reason of a recom-
5 mendation or action of the review organization when the person acts in
6 the reasonable belief that the action or recommendation is warranted by
7 facts known to the person or to the review organization after reasonable
8 efforts to ascertain the facts upon which the review organization's
9 action or recommendation is made.

10 Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION.

11 (a) Except as provided in (b) of this section, all data and information
12 acquired by a review organization, in the exercise of its duties and
13 functions, shall be held in confidence and may not be disclosed to
14 anyone except to the extent necessary to carry out the purposes of the
15 review organization, and is not subject to subpoena or discovery.

16 Except as provided in (b) of this section, no person described in sec.
17 20 of this chapter may disclose what transpired at a meeting of a
18 review organization except to the extent necessary to carry out the
19 purposes of a review organization, and the proceedings and records of a
20 review organization are not subject to discovery or introduction into
21 evidence in a civil action against a health care provider arising out
22 of the matter which is the subject of consideration by the review
23 organization. Information, documents, or records otherwise available
24 from original sources are not immune from discovery or use in a civil
25 action merely because they were presented during proceedings of a
26 review organization, nor may a person who testified before a review
27 organization or who is a member of it be prevented from testifying as
28 to matters within his knowledge, but a witness may not be asked about
29 his testimony before a review organization or opinions formed by him as

1 a result of its hearings, except as provided in (b) of this section.

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

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

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

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

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

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

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

1 clinic;

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

7 (3) "health care provider" means a chiropractor licensed
8 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
9 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
10 optician licensed under AS 08.71; an optometrist licensed under AS 08.-
11 72; a pharmacist licensed under AS 08.80; a physical therapist regis-
12 tered under AS 08.84; a physician licensed under AS 08.64; a podiatrist;
13 a psychologist and a psychological associate licensed under AS 08.86;
14 and a hospital as defined in AS 18.20.130, including a governmentally
15 owned or operated hospital;

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

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

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

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(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

1 federal or a state or local government, or an agency of the
2 federal or a state or local government;

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

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

6 CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

7 ARTICLE 1. PURPOSE.

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

11 ARTICLE 2. MEDICAL INDEMNITY CORPORATION OF ALASKA.

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

17 Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The cor-
18 poration shall exercise its powers through a board of governors which
19 is appointed by the governor of the state and confirmed by the
20 legislature. Members of the board of governors shall be Alaska resi-
21 dents as follows:

22 (1) two physicians licensed in the state; one of the physi-
23 cians shall be engaged in group practice in a clinic of six or more
24 physicians;

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

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

29 (4) two persons who are not health care providers or finan-

1 cially interested in the field of health care or representatives of the
2 insurance industry.

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

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

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

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

21 Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30
22 days after the effective date of this chapter, the board of governors
23 shall prepare and submit to the director for approval a plan of opera-
24 tion which provides for the fair and reasonable administration of the
25 affairs of the corporation and the discharge of the purposes for which
26 it is created. The plan and any amendments to it become effective upon
27 the director's approval. If the board of governors fails to submit a
28 plan of operation, or if at a subsequent time the board of governors
29 fails to submit suitable amendments to the plan, the director shall,

1 after notice and hearing, adopt and promulgate a plan of operation or
2 amendments which are necessary or advisable to carry out the provisions
3 of this chapter. Adoption of the plan is not subject to the Adminis-
4 trative Procedure Act (AS 44.62).

5 (b) The plan of operation shall

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

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

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

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

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

18 (6) establish the procedures for issuing contracts of insur-
19 ance as provided in sec. 50 of this chapter and for the determination of
20 rates;

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

23 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
24 corporation shall

25 (1) in the form approved by the director, issue to all
26 physicians and hospitals who pay the premiums for it a contract or
27 contracts indemnifying physicians and hospitals and their employees who
28 are health care providers against loss by reason of liability for
29 professional services rendered in the state on an occurrence basis,

1 and agreeing to tender on behalf of the physicians and hospitals and
2 their employees who are health care providers a defense in a proceeding
3 brought under AS 09.55.530 - 09.55.560; the limit of liability shall be
4 no less than the minimum liability coverage requirements to be main-
5 tained under AS 08.64.215 and AS 18.20.045; the contract shall cover the
6 defense against but need not indemnify a claim for punitive damages; at
7 the option of the physician or hospital and for an additional premium
8 the contract may cover claims against the physician or hospital that
9 arise out of professional services performed by the physician or hos-
10 pital for any period after December 31, 1974 except that coverage will
11 not be provided for a claim already filed or of which the physician or
12 hospital had or reasonably should have had notice at the time the
13 retroactive insurance was purchased;

14 (2) in a form approved by the director and for a premium
15 determined under sec. 80 of this chapter, issue contracts of insurance
16 on an occurrence basis indemnifying chiropractors, dental hygienists,
17 dentists, nurses, dispensing opticians, optometrists, pharmacists,
18 physical therapists, or psychologists and psychological associates for
19 loss by reason of liability for professional services rendered in the
20 state, if a finding of unavailability of insurance and impairment of
21 services has been made under AS 08.20.115, AS 08.32.015, AS 08.36.115,
22 AS 08.68.165, AS 08.71.085, AS 08.72.115, AS 08.80.115, AS 08.84.035, or
23 AS 08.86.125; and agreeing to tender on behalf of the person insured,
24 under this paragraph a defense in a proceeding under AS 09.55.530 -
25 09.55.560; the contract shall cover the defense against but need not
26 indemnify a claim for punitive damages;

27 (3) within two years after the effective date of this Act,
28 adopt one of the following approaches regarding the risk incurred by
29 contracts issued by the corporation: (A) keep all the risk incurred

1 within the corporation; or (B) negotiate for and procure reinsurance
2 from private casualty insurers or reinsurers for all liability incurred
3 by contracts issued by the corporation, but if, after the exercise of
4 diligence, reinsurance for all of the risk cannot be procured at rea-
5 sonable rates from private casualty insurers or reinsurers, the corpora-
6 tion, through the board of governors, shall so certify to the director,
7 and reinsurance for that portion of the risk not reinsured on the pri-
8 vate market shall be provided by the Health Care Providers Joint Under-
9 writing Association established under secs. 110 - 180 of this chapter;
10 however, for the first two years after the effective date of this Act
11 and before the corporation has adopted (A) or (B) of this paragraph, the
12 corporation may reinsure any or all of the risk incurred by contracts
13 issued by the corporation or it may retain all the risk incurred within
14 the corporation;

15 (4) charge a premium for the protection provided by the
16 contracts issued by the corporation which shall be determined by the
17 board of governors in accordance with sec. 80 of this chapter and
18 subject to the approval of the director;

19 (5) comply with or be subject to AS 21.06.090; 21.06.120;
20 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.190; 21.09.200;
21 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18,
22 21, 24, and 36 of this title; and shall be exempt from participation as
23 a member insurer in the Alaska Insurance Guaranty Corporation;

24 (6) carry out the obligations of the contracts issued by the
25 corporation by defending all covered claims made against insured health
26 care providers and by paying all liabilities which are finally adjudi-
27 cated against the insured health care provider or which may in the
28 opinion of the corporation reasonably be expected to be finally adjudi-
29 cated against the health care provider to the extent of the contract

1 obligation;

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

12 (b) The corporation may

13 (1) employ or retain persons, individual or corporate, to dis-
14 charge its obligations and pay reasonable compensation for these ser-
15 vices; employees of the corporation are not considered state employees;

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

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

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

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

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

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

16 Sec. 21.88.070. STATISTICS. The corporation shall collect,
17 maintain and report information concerning claims against health care
18 providers. The information shall be on forms prescribed by the direc-
19 tor, and shall be sufficient to enable a proper determination of losses
20 for rate making and to identify causes and sources of loss for loss
21 control. At least annually the corporation shall report to the director
22 the number and amount of claims filed, reserved, paid, settled and
23 adjudicated during the year, the premiums paid to and the expenses
24 incurred by the corporation during the year. This report shall be
25 available to the public. The director may require that supplemental
26 reports include the names of insured health care providers and the
27 claimants; however, no reports which become available to the public may
28 include the names of health care providers or claimants or information
29 that will permit by inference the identity of specific health care

1 providers or claimants. All statistics shall be made available to the
2 appropriate licensing board or agency.

3 Sec. 21.88.080. RATES. The rates and rating plans used by the
4 corporation for the policies issued shall be determined by license
5 category of health care providers in accordance with all of the fol-
6 lowing:

7 (1) rates for physicians shall be set as a function of the
8 physician's medical revenue earned in the state;

9 (2) rates for hospitals shall be set as a function of the
10 number of permanent beds in the hospital;

11 (3) a minimum rate may be set for each category of health
12 care provider or discipline or classification within the license cate-
13 gory;

14 (4) rates may not be excessive; rates are excessive if, after
15 a period of time and with respect to an amount of gross premium which
16 are actuarially credible, the premiums exceed losses incurred by the
17 corporation, including losses paid, reserves for claims reported and
18 unpaid, reserves for claims incurred during the policy period and not
19 reported, provided that reserves for claims incurred during the policy
20 period and reasonably expected to be reported after three years after
21 the incident may be included on a different basis due to the additional
22 financial flexibility provided by the corporation, and reasonable ex-
23 penses for the operation of the corporation;

24 (5) rates shall not be inadequate; rates are inadequate if,
25 based on available actuarial data, the premiums to be paid by the
26 health care providers are or may reasonably be expected to be insuf-
27 ficient to pay for losses incurred by the corporation, including claims
28 paid, reserves for claims reported and unpaid, reserves for claims
29 incurred during the policy period and not reported, provided that

1 reserves for claims incurred during the policy period and reasonably
2 expected to be reported after three years after the incident may be
3 included on a different basis due to the additional financial flexi-
4 bility provided by the corporation, and reasonable expenses for the
5 operation of the corporation;

6 (6) rates may not be unfairly discriminatory;

7 (7) rates shall be adjusted annually;

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

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

14 (10) income from the investment of reserves shall be con-
15 sidered;

16 (11) individual risk underwriting factors shall be considered;

17 (12) disciplines and classifications within the license cate-
18 gories of health care providers shall be considered;

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

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

27 Sec. 21.88.090. PAYMENT OF PREMIUMS; CANCELLATION OF INSURANCE.

28 The corporation may provide for installment payment of premiums in which
29 case each installment is due by the date specified. The corporation

1 may cancel any of its policies in the event of nonpayment of any premium
2 or installment on a premium, or other charge, by mailing or delivering
3 to the insured at the address shown on the policy and to the agency of
4 the state issuing the insured's license written notice of cancellation.
5 Cancellation is not effective until 30 days after the date notice is
6 posted by the corporation.

7 ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

8 Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Pro-
9 viders Joint Underwriting Association is created as an association
10 having a legal existence independent of and separate from the state and
11 consisting of all licensed (1) health care service corporations as
12 defined in AS 21.87.330; (2) disability insurers as defined in AS 21.12.
13 050; (3) property insurers as defined in AS 21.12.060; and (4) casualty
14 insurers as defined in AS 21.12.070. Obligations issued by the associa-
15 tion do not constitute a debt, liability or obligation of the state or a
16 pledge of full faith and credit of the state.

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

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

29 Sec. 21.88.120. PURPOSE. The purpose of the association is to

1 provide a market for medical malpractice reinsurance to the corporation
2 on a self-supporting basis without subsidy from association members.

3 Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM; COMPENSA-
4 TION. (a) The association shall be governed by a board of directors
5 appointed by the governor of the state and consisting of two representa-
6 tives of domestic casualty and property insurers, one representative of
7 admitted disability insurers, one representative of health care service
8 corporations, one representative of foreign casualty and property
9 insurers, and two persons from the public.

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

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

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

27 (b) The plan of operation shall

28 (1) establish procedures for carrying out the powers and
29 duties of the association specified in sec. 150 of this chapter;

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

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

5 (4) establish procedures for records to be kept of all
6 financial transactions of the association, its agents, and the board of
7 directors;

8 (5) establish procedures for awarding contracts to indemnify
9 or defend or to provide other services and to compensate the indemnitors
10 or vendors;

11 (6) establish procedures for issuing contracts of insurance
12 as provided in sec. 150 of this chapter and for the determination of
13 rates;

14 (7) contain additional provisions necessary for the execution
15 of the powers and duties of the association.

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

18 (1) provide reinsurance to the corporation covering contracts
19 issued by the corporation for that portion of the liability incurred by
20 the corporation which cannot be reinsured through private casualty
21 insurers or reinsurers, indemnifying physicians and hospitals, and
22 their employees who are health care providers, and other persons insured
23 by the corporation against loss by reason of liability for professional
24 services and agreeing to tender on behalf of the insureds a defense in
25 an action brought under AS 09.55.530 - 09.55.560;

26 (2) charge a premium for the protection provided by the
27 reinsurance issued under (a)(1) of this section which shall be deter-
28 mined by the board of directors in accordance with secs. 80 and 160 of
29 this chapter and are subject to the approval of the director;

1 (3) comply with or be subject to AS 21.06.090; 21.06.120;
2 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250;
3 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and
4 36 of this title; and shall be exempt from participation as a member
5 insurer in the Alaska Insurance Guaranty Association;

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

12 (b) The association may

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

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

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

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

22 (5) cede or assume reinsurance;

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

25 Sec. 21.88.160. RATES AND RATE ADJUSTMENT. (a) The rates and
26 rating plans shall be determined as provided in sec. 80 of this chapter,
27 except that allowance may not be made for income from investment of
28 member-contributed funds; and provided that reserves for claims incurred
29 during the policy period and reasonably expected to be reported after

1 three years after the incident may be included on a different basis due
2 to the additional financial flexibility provided by the association.

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

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

13 Sec. 21.88.170. ASSESSMENT. If sufficient funds are not available
14 for the sound financial operation of the association, all members shall
15 contribute to the financial requirements of the association by paying to
16 the association an assessment to be determined by the board of directors
17 of the association, subject to the approval of the director; assessments
18 shall be prorated among all members in proportion to their direct
19 written premiums or revenues in the state in the insurance lines the
20 writing of which require membership in the association, in the two years
21 ending on the preceding December 31, after deducting the applicable
22 cancellations, returned premium, the unabsorbed portion of any deposit
23 premium, all policy dividends, unabsorbed premiums refunded to policy-
24 holders, refunds, savings, savings coupons and other similar returns
25 paid or credited to policyholders with respect to their policies. If
26 any member is prohibited by the law of its state of domicile from paying
27 an assessment to the association, then in lieu of the assessment the
28 member shall pay a tax to the director, in the same amount as the
29 assessment as an obligation in addition to taxes required under

1 AS 21.09.210 and notwithstanding the provisions of AS 21.09.210(e). An
2 amount equal to taxes received under this section may be appropriated to
3 the association.

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

7 ARTICLE 4. LOAN FUND.

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

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

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

23 (2) if the corporation adopts the approach of sec. 50(a)(3)(A)
24 of this chapter, additional loans up to an aggregate of \$6,000,000 when
25 taken together with loans made under (1) of this subsection to compen-
26 sate for fluctuations in loss experience; loans made under this para-
27 graph shall be in parity with all other obligations of the corporation
28 except that they shall be subordinated to obligations of policyholders
29 and claimants for indemnity of loss; these loans shall be repaid within

1 five years at an annual interest rate of six per cent.

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

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

10 ARTICLE 5. GENERAL PROVISIONS.

11 Sec. 21.88.900. DEFINITIONS. In this chapter

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

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

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

18 (4) "health care provider" means a physician, hospital,
19 chiropractor, dental hygienist, dentist, nurse, dispensing optician,
20 optometrist, physical therapist, pharmacist, psychologist or psychologi-
21 cal associate;

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

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

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

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

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

28 (10) "nurse" means a person licensed under AS 08.68;

29 (11) "dispensing optician" means a person licensed under

1 AS 08.71;

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

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

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

6 (15) "psychologist" and "psychological associate" means a
7 person licensed under AS 08.86.

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

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

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

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

20 (5) "insolvent insurer" means an insurer

21 (A) authorized to transact insurance in this state,
22 except the Medical Indemnity Corporation of Alaska and the Health
23 Care Providers Joint Underwriting Association established under ch.
24 88 of this title, either at the time the policy was issued or when
25 the insured event occurred, and

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

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

29 (6) "member insurer" means a person, except the Medical

1 Indemnity Corporation of Alaska and the Health Care Providers Joint
2 Underwriting Association established under ch. 88 of this title, who

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

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

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

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

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

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

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

1 incurred before the declaration of invalidity.

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

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

9 * Sec. 51. This Act takes effect immediately in accordance with AS 01.-
10 10.070(c).

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