

1 IN THE SENATE

BY RODEY AND KERTTULA

2 SENATE BILL NO. 651

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 liability for the provision of
7 health care services; and providing for an effective
8 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 dis-
14 cipline.

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

16 Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (a)
17 In addition to action under sec. 170 of this chapter, upon a finding
18 that by reason of demonstrated lack of competence, experience, or educa-
19 tion the authority to practice chiropractic should be limited or condi-
20 tioned or the practitioner disciplined, the board may reprimand, cen-
21 sure, place on probation, restrict practice by specialty, procedure, or
22 facility, or require continuing education or retraining.

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

25 * Sec. 3. AS 08.32 is amended by adding a new section to read:

26 Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
27 to action under sec. 160 of this chapter, upon a finding that by reason
28 of demonstrated lack of competence, experience, or education the author-
29 ity to practice dental hygiene should be limited or conditioned or the

1 practitioner disciplined, the board may reprimand, censure, place on
2 probation, restrict practice by specialty, procedure, or facility, or
3 require continuing education or retraining.

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

6 * Sec. 4. AS 08.36 is amended by adding a new section to read:

7 Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
8 to action under sec. 320 of this chapter, upon a finding that by reason
9 of demonstrated lack of competence, experience, or education the author-
10 ity to practice dentistry should be limited or conditioned or the
11 practitioner disciplined, the board may censure, place on probation,
12 restrict practice by specialty, procedure, or facility, or require
13 continuing education or retraining.

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

16 * Sec. 5. AS 08.64 is amended by adding new sections to read:

17 Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an
18 active license under this chapter, a person must maintain insurance
19 issued by the Health Care Providers Indemnity Corporation against
20 liability to patients for medical malpractice in limits of not less than
21 \$200,000 per occurrence and \$600,000 aggregate liability per year.

22 (b) The commissioner of commerce and economic development or his
23 designee may waive the requirement in (a) of this section for a person
24 if that person furnishes satisfactory evidence of his having other
25 insurance providing coverage in amounts not less than those specified in
26 (a) of this section. No waiver granted under this subsection may extend
27 beyond the normal expiration date of the person's insurance policy or
28 January 1, 1977, whichever occurs first.

29 Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)

1 In addition to action under sec. 330 of this chapter, upon a finding
2 that by reason of demonstrated lack of competence, experience, or educa-
3 tion the authority to practice under this chapter should be limited or
4 conditioned or the practitioner disciplined, the board may reprimand,
5 censure, place on probation, restrict practice by specialty, procedure,
6 or facility, or require continuing education or retraining.

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

9 * Sec. 6. AS 08.68 is amended by adding a new section to read:

10 Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
11 to action under sec. 270 of this chapter, upon a finding that by reason
12 of demonstrated lack of competence, experience, or education the author-
13 ity to practice nursing should be limited or conditioned or the practi-
14 tioner disciplined, the board may reprimand, censure, place on probation,
15 restrict practice by specialty, procedure, or facility, or require
16 continuing education or retraining.

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

19 * Sec. 7. AS 08.71 is amended by adding a new section to read:

20 Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
21 In addition to action under sec. 170 of this chapter, upon a finding
22 that by reason of demonstrated lack of competence, experience, or educa-
23 tion the authority to practice as a dispensing optician under this
24 chapter should be limited or conditioned or the practitioner disciplined,
25 the board may reprimand, censure, place on probation, restrict practice
26 by procedure, or facility, or require continuing education or retraining.

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

29 * Sec. 8. AS 08.72 is amended by adding a new section to read:

1 Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)

2 In addition to action under secs. 240 and 250 of this chapter, upon a
3 finding that by reason of demonstrated lack of competence, experience,
4 or education the authority to practice optometry under this chapter
5 should be limited or conditioned or the practitioner disciplined, the
6 board may reprimand, censure, place on probation, restrict practice by
7 specialty, procedure, or facility, or require continuing education or
8 retraining.

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

11 * Sec. 9. AS 80.80 is amended by adding a new section to read:

12 Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)

13 In addition to action under sec. 260 of this chapter, upon a finding
14 that by reason of demonstrated lack of competence, experience, or educa-
15 tion the authority to practice pharmacy under this chapter should be
16 limited or conditioned or the practitioner disciplined, the board may
17 reprimand, censure, place on probation, restrict practice by specialty,
18 procedure, or facility, or require continuing education or retraining.

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

21 * Sec. 10. AS 08.84 is amended by adding a new section to read:

22 Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
23 to action under sec. 180 of this chapter, upon a finding that by reason
24 of demonstrated lack of competence, experience, or education the author-
25 ity to practice physical therapy should be limited or conditioned or the
26 practitioner disciplined, the board may reprimand, censure, place on
27 probation, restrict practice by specialty, procedure, or facility, or
28 require continuing education or retraining.

29 (b) The Administrative Procedure Act (AS 44.62) applies to any

1 action taken by the board under this section.

2 * Sec. 11. AS 08.86 is amended by adding a new section to read:

3 Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
4 Upon a finding that by reason of demonstrated lack of competence, experi-
5 ence, or education the authority to practice psychology or as a psycho-
6 logical associate under this chapter should be limited or conditioned or
7 the practitioner disciplined, the board may reprimand, censure, place on
8 probation, restrict practice by time, specialty, procedure, or facility,
9 or require continuing education or retraining.

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

12 * Sec. 12. 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 had
19 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
29 a 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 review
18 organization except to the extent necessary to carry out the purposes of
19 a review organization, and the proceedings and records of a review
20 organization are not subject to discovery or introduction into evidence
21 in a civil action against a health care provider arising out of the
22 matter which is the subject of consideration by the review organization.
23 Information, documents, or records otherwise available from original
24 sources are not immune from discovery or use in a civil action merely
25 because they were presented during proceedings of a review organization,
26 nor may a person who testified before a review organization or who is a
27 member of it be prevented from testifying as to matters within his
28 knowledge, but a witness may not be asked about his testimony before a
29 review organization or opinions formed by him as a result of its hear-

1 ings, 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
11 AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist
12 licensed under AS 08.84; a physician licensed under AS 08.64; a
13 podiatrist; a psychologist and a psychological associate licensed
14 under AS 08.86; and a hospital as defined in AS 18.20.130, including a
15 governmentally 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
19 or a committee whose membership is limited to health care providers
20 and administrative staff, except where otherwise provided for by state
21 or federal law, and which is established by a hospital, by a clinic,
22 by one or more state or local associations of health care providers,
23 by an organization of health care providers from a particular area or
24 medical institution, or by a professional standards review organiza-
25 tion established under 42 U.S.C., sec. 1320c-1 et seq., to gather and
26 review information relating to the care and treatment of patients for
27 the purposes of

28 (A) evaluating and improving the quality of health
29 care 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. 13. 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 by concen-
11 trating all such insurance in one entity which can negotiate more
12 successfully for insurance from casualty insurers and to distribute
13 equitably the true cost of the insurance among the health care providers
14 insured.

15 ARTICLE 2. INDEMNITY CORPORATION.

16 Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska
17 Health Care Providers Indemnity Corporation.

18 Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The cor-
19 poration shall exercise its powers through a board of governors which
20 shall be appointed by the director as provided in (b) of this section.

21 (b) The appointments to the board of governors shall be Alaska
22 residents as follows:

23 (1) one member of the Alaska State Medical Association,
24 appointed from a list of no less than three persons recommended by the
25 governing board of that association;

26 (2) one member of the Alaska State Hospital Association,
27 appointed from a list of no less than three persons recommended by the
28 governing board of that association;

29 (3) three professionals in the insurance field;

1 (4) two persons who are not health care providers, attorneys,
2 or representatives of the insurance industry.

3 (c) The term of office of each governor is three years, except
4 that the director shall designate two initially appointed governors to
5 serve for one year and two initially appointed governors to serve for
6 two years.

7 (d) Upon the expiration of the term of a governor, the director
8 shall appoint a successor who shall be from the same class described in
9 (b) of this section as the governor whose term has expired.

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

14 (f) 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 (g) Each member of the board of governors shall be allowed com-
19 pensation for services and reimbursement for reasonable expenses in-
20 curred in attending meetings of the board and transacting corporation
21 business, as set out in the plan of operation.

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

1 board of governors fails to submit suitable amendments to the plan, the
2 director shall, after notice and hearing, adopt and promulgate a plan of
3 operation or amendments which are necessary or advisable to effectuate
4 the provisions of this chapter. Adoption of the plan is not subject to
5 the Administrative Procedure Act (AS 44.62).

6 (b) The plan of operation shall

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

10 (2) establish procedures for handling assets and dis-
11 charging liabilities of the corporation;

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

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

17 (5) establish the amount and method of reimbursing and
18 compensating members of the board of governors;

19 (6) establish the procedures for awarding contracts to
20 indemnify or defend or to provide other services and to compensate the
21 indemnitors or vendors;

22 (7) establish the procedures for issuing contracts of insur-
23 ance as provided in sec. 50 of this chapter and for the determination of
24 rates;

25 (8) contain additional provisions necessary or proper for the
26 execution of the powers and duties of the corporation.

27 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
28 corporation shall

29 (1) in the form approved by the director, issue to all

1 health care providers who pay the premiums for it a contract indemnify-
2 ing the health care provider and his employees who are health care
3 providers against loss by reason of liability for professional services
4 and agreeing to tender on behalf of the health care provider and his
5 employees who are health care providers a defense in a proceeding
6 brought under AS 09.55.530 - 09.55.550; the limit of liability shall be
7 no less than the minimum liability coverage requirements to be main-
8 tained under AS 08.64.215; the contract shall cover the defense against
9 but need not indemnify a claim for punitive damages; the contract shall
10 cover claims against health care providers

11 (A) that arise out of professional services performed by
12 the health care provider during the period for which the premium is
13 paid and that are filed within three years after those services
14 were performed; and

15 (B) at the option of the health care provider, claims
16 that arise out of professional services performed by the health
17 care provider after January 1, 1975 and that are filed within three
18 years after those services were performed but were not known to the
19 health care provider when he chose to take this coverage;

20 (2) charge a premium for the protection provided by the
21 contracts issued under (1) of this subsection which shall be determined
22 by the board of governors in accordance with sec. 80 of this chapter and
23 subject to the approval of the director;

24 (3) negotiate for and procure reinsurance from a casualty
25 insurer or reinsurer for all of its liability incurred by contracts
26 issued under (1) of this subsection; the corporation may not incur or
27 retain under those contracts liability which is not reinsured as pro-
28 vided in this paragraph; if, after the exercise of due diligence, no
29 reinsurance can be procured at reasonable rates from a casualty insurer

1 or reinsurer, the corporation through the board of governors, shall so
2 certify to the director; reinsurance shall then be provided by the
3 Health Care Joint Underwriting Association as provided in sec. 110 et
4 seq. of this chapter;

5 (4) comply with or be subject to AS 21.06.090; 21.06.120;
6 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.190; 21.09.200;
7 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18,
8 21, 24, and 36 of this title;

9 (5) carry out the obligations of the contracts issued under
10 (1) of this subsection by defending all covered claims made against
11 insured health care providers and by paying all liabilities which are
12 finally adjudicated against the insured health care provider or which
13 may in the opinion of the corporation reasonably be expected to be
14 finally adjudicated against the health care provider to the extent of
15 the contract obligation;

16 (6) provide coverage to health care providers for liability
17 in excess of the minimum limits required for licensure as a health care
18 provider, but limited to \$1,000,000 for individual health care providers
19 and \$5,000,000 for hospitals, if there is a finding by the director that
20 this coverage is unavailable at a reasonable cost and that this coverage
21 can be made available at a reasonable cost through the corporation; if
22 this paragraph is implemented, then each health care provider obtaining
23 excess coverage up to these amounts shall obtain it from the corpora-
24 tion.

25 (b) The corporation may

26 (1) in the form approved by the director, issue contracts of
27 professional liability insurance to hospitals licensed under AS 18.20,
28 chiropractors licensed under AS 08.20, dental hygienists licensed under
29 AS 08.32, dentists licensed under AS 08.36, nurses licensed under

1 AS 08.68, dispensing opticians licensed under AS 08.71, optometrists
2 licensed under AS 08.72, pharmacists licensed under AS 08.80, physical
3 therapists licensed under AS 08.84, and psychologists and psychological
4 associates licensed under AS 08.86;

5 (2) employ or retain persons, individual or corporate, to
6 discharge its obligations and pay reasonable compensation for those
7 services; employees of the corporation are not considered state em-
8 ployees;

9 (3) provide coverage to health care providers for other
10 hazards where there is a finding by the director that this coverage is
11 otherwise unavailable by reason of the operation of the corporation;

12 (4) borrow or advance funds necessary to effectuate the
13 purposes of the corporation;

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

16 (6) sue or be sued in the name of the corporation;

17 (7) perform all other acts necessary and proper to effectuate
18 the corporation.

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

28 Sec. 21.88.070. STATISTICS. The corporation shall collect,
29 maintain and report information concerning claims against health care

1 providers. The information shall be on forms prescribed by the director
2 and shall be sufficient for a proper determination of losses for rate
3 making and to identify causes and sources of loss for loss control. The
4 corporation shall annually report to the director, which report shall be
5 kept available to the public, the number and amount of claims filed,
6 reserved, paid, settled and adjudicated during the year, the premiums
7 paid to and the expenses incurred by the corporation during the year.
8 The director may require that supplemental reports include the names of
9 insured health care providers and the claimants; however, no reports
10 which become publicly available may include the names of health care
11 providers or claimants or information that will permit by inference the
12 identity of specific health care providers or claimants. All statistics
13 shall be made available to the appropriate licensing boards or agencies.

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

18 (1) rates shall not be excessive; rates are excessive if,
19 after a period of time and with respect to an amount of gross premium
20 which are actuarially credible, the premiums exceed losses incurred by
21 the corporation, including losses paid, reserves for cases reported and
22 unpaid, reserves for incurred but unreported claims, reasonable expenses
23 for the operation of the corporation, and a reasonable profit to the
24 indemnifying carrier;

25 (2) rates shall not be inadequate; rates are inadequate if,
26 based on available actuarial data, the premiums to be paid by the
27 health care providers are or may reasonably be expected to be insuf-
28 ficient to pay for losses incurred by the corporation, including claims
29 paid, reserves for cases reported but unpaid, reserves for cases in-

1 curred but unreported, reasonable expenses incurred for the operation of
2 the corporation and a reasonable profit to the indemnifying carrier;

3 (3) rates shall be adjusted annually;

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

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

10 (6) income from the investment of reserves shall be con-
11 sidered;

12 (7) individual risk underwriting factors shall be considered.

13 Sec. 21.88.090. REQUIRED INSURANCE; CANCELLATION. The corporation
14 shall provide insurance to all health care providers otherwise eligible
15 for licensure under AS 08.64. The corporation may provide for install-
16 ment payment of premiums in which event each installment is due by the
17 date specified. However, the corporation may cancel any of its policies
18 in the event of nonpayment of any premium or installment on a premium,
19 or other charge, by mailing or delivering to the insured at the address
20 shown on the policy and to the agency of the state issuing the insured's
21 license written notice stating when, not less than 10 days after notice
22 is received by the insured, the cancellation is effective.

23 ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

24 Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Pro-
25 viders Joint Underwriting Association is created consisting of all
26 health care service corporations as defined in AS 21.87.330 and all
27 insurers licensed by this state to write

28 (1) disability insurance as defined in AS 21.12.050;

29 (2) property insurance as defined in AS 21.12.060; and

1 (3) casualty insurance as defined in AS 21.12.070.

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

6 (c) The association shall commence operation upon a finding by the
7 director, after public hearing, that after the exercise of due diligence
8 no reinsurance could be procured at reasonable rates by the corporation
9 from a casualty insurer or reinsurer. After the association has com-
10 menced operation if the director determines, after public hearing, that
11 health care malpractice insurance is available through insurers with
12 respect to which he has previously made the former finding, the associa-
13 tion shall cease its underwriting operations. At any time, after notice
14 and hearing, the director may, upon a finding that it is no longer
15 needed, terminate the operation of the association.

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

19 Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS. The association
20 shall be governed by a board of directors consisting of two representa-
21 tives of domestic and casualty insurers, one representative of admitted
22 disability insurers, one representative of health care service corpora-
23 tions, one representative of foreign property and casualty insurers, and
24 two persons from the public.

25 Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30
26 days after the association's creation the board of directors shall
27 prepare and submit to the director for his approval a plan of operation
28 which provides for the fair, reasonable and equitable administration of
29 the affairs of the association and the discharge of the purposes for

1 which it is created. The plan and any amendments to it become effective
2 upon the director's approval. If the board of directors has failed to
3 submit a plan of operation, or if at any subsequent time the board of
4 directors fails to submit suitable amendments to the plan, the director
5 shall, after notice and hearing, adopt and promulgate a plan of opera-
6 tion or amendments which are necessary or advisable to effectuate the
7 provisions of this chapter. Adoption of the plan is not subject to the
8 Administrative Procedure Act (AS 44.62).

9 (b) The plan of operation shall

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

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

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

16 (4) establish procedures for records to be kept of all
17 financial transactions of the association, its agents, and the board of
18 directors;

19 (5) establish the amount and method of reimbursing members of
20 the board of directors;

21 (6) establish the procedures for awarding contracts to
22 indemnify or defend or to provide other services and to compensate the
23 indemnitors or vendors;

24 (7) establish the procedures for issuing contracts of insur-
25 ance as provided in sec. 150 of this chapter and for the determination
26 of rates;

27 (8) contain additional provisions necessary or proper for the
28 execution of the powers and duties of the association.

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

1 association shall

2 (1) provide reinsurance to the corporation covering contracts
3 issued by the corporation indemnifying health care providers and their
4 employees who are health care providers against loss by reason of
5 liability for professional services and agreeing to tender on behalf of
6 the health care providers and their employees who are health care
7 providers a defense in an action brought under AS 09.55.530 - 09.55.550;
8 the limit of liability shall be no less than the minimum liability
9 required to be indemnified as provided in AS 08.64.215, and the coverage
10 shall be the same as that which the Health Care Providers Indemnity
11 Corporation is required to provide under sec. 50 of this chapter;

12 (2) charge a premium for the protection provided by the
13 contracts issued under sec. 50 of this chapter which shall be determined
14 by the board of governors in accordance with sec. 80 of this chapter and
15 subject to the approval of the director;

16 (3) comply with or be subject to AS 21.06.090; 21.06.120;
17 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250;
18 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and
19 36 of this title;

20 (4) carry out the obligations of the contracts issued under
21 sec. 50 of this chapter by defending all covered claims made against
22 insured health care providers and paying all liabilities which are
23 finally adjudicated against the insured health care provider or which
24 may in the opinion of the association reasonably be expected to be
25 finally adjudicated against the health care provider to the extent of
26 the contract obligation.

27 (b) The association may

28 (1) employ or retain persons, individual or corporate, to
29 discharge its obligations and pay reasonable compensation for those

1 services;

2 (2) provide reinsurance to the corporation for coverage to
3 health care providers for other hazards where there is a finding by
4 the director that this coverage is otherwise unavailable by reason of
5 the operation of the corporation;

6 (3) provide reinsurance to the corporation for coverage to
7 health care providers for liability under AS 09.55.530 - 09.55.550 in
8 excess of the minimum limits required for licensure as a health care
9 provider where there is a finding by the director that this coverage is
10 unavailable at a reasonable cost and that this coverage can be made
11 available at a reasonable cost through the corporation;

12 (4) provide reinsurance to the corporation for coverage for
13 liability under AS 09.55.530 - 09.55.550 to hospitals licensed under
14 AS 18.20, chiropractors licensed under AS 08.20, dental hygienists
15 licensed under AS 08.32, dentists licensed under AS 08.36, nurses
16 licensed under AS 08.68, dispensing opticians licensed under AS 08.71,
17 optometrists licensed under AS 08.72, pharmacists licensed under AS 08.-
18 80, physical therapists licensed under AS 08.84, and psychologists and
19 psychological associates licensed under AS 08.86;

20 (5) borrow or advance funds necessary to effectuate the
21 purposes of this association;

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

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

25 (8) cede or assume reinsurance;

26 (9) perform all other acts necessary and proper to effectuate
27 the association.

28 Sec. 21.88.160. RATES AND RATING PLANS. The rates and rating
29 plans shall be determined as provided in sec. 80 of this chapter,

1 except that allowance may not be made for profit to an indemnifying
2 carrier or for income from investment of member-contributed funds.

3 Sec. 21.88.170. ASSESSMENT. If sufficient funds are not available
4 for the sound financial operation of the association, all members shall
5 contribute to the financial requirements of the association by paying to
6 the association an assessment to be determined by the board of directors
7 of the association; these assessments shall be prorated among all
8 members in proportion to their direct written premiums or revenues in
9 this state in the insurance lines the writing of which require member-
10 ship in the association, in the two years ending on the preceding
11 December 31, after deducting the applicable cancellations, returned
12 premium, the unabsorbed portion of any deposit premium, all policy
13 dividends, unabsorbed premiums refunded to policyholders, refunds,
14 savings, savings coupons and other similar returns paid or credited to
15 policyholders with respect to their policies. Any assessment under this
16 section is a tax obligation in addition to taxes required under AS 21.-
17 09.210 and notwithstanding the provisions of AS 21.09.210(e). Insurers
18 issuing policies of one year or less in duration may consider the
19 assessment as a cost of business and add it to the premiums on new and
20 renewal policies issued after the date of assessment in the lines upon
21 which the assessment is based and without further rate approval. In-
22 surers issuing policies of more than one year in duration may consider
23 the assessment an additional charge to be collected in equal install-
24 ments in the calendar year following the date of assessment at the same
25 time all other installments are made on policies in the lines upon which
26 the assessment is based.

27 Sec. 21.88.180. REPORTS. The association shall annually submit a
28 report of its operations to the director. The report shall be in the
29 form prescribed by the director and contain information required by the

1 director.

2 ARTICLE 4. LATE CLAIMS FUND.

3 Sec. 21.88.210. CREATION OF FUND. There is created a health care
4 providers late claims fund.

5 Sec. 21.88.220. PURPOSE OF FUND. The purpose of the fund is to
6 provide a source for paying awards for claims filed three or more years
7 after performance of the services which are the basis of the claims.

8 Sec. 21.88.230. ADMINISTRATION OF FUND. (a) The director is the
9 administrator of the fund.

10 (b) The director shall

11 (1) defend all claims made against the fund;

12 (2) annually assess all health care providers as provided in
13 sec. 240 of this chapter;

14 (3) pay all liabilities which are finally adjudicated against
15 the health care providers covered or which may in the opinion of the
16 director reasonably be expected to be finally adjudicated against the
17 health care providers covered;

18 (4) pay the assets of the fund to the Department of Revenue
19 for investment in accordance with AS 37.10.

20 (c) The director may

21 (1) negotiate for and procure reinsurance for all or any
22 portion of the fund's liability;

23 (2) employ or retain persons, individual or corporate, to
24 discharge its obligations and pay reasonable compensation for those
25 services;

26 (3) borrow or advance money necessary to effectuate the
27 purposes of the fund;

28 (4) sue or be sued in the name of the fund; however, this
29 provision does not authorize direct action against the fund as defendant

1 in a malpractice action;

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

4 (6) perform all other acts necessary and proper to effectuate
5 the purposes of the fund.

6 Sec. 21.88.240. ASSESSMENT FOR FUND. After public hearing held
7 under the provisions of ch. 6 of this title, the director shall annually
8 determine an assessment against all health care providers. The amount
9 of the assessment shall be adequate to cover all losses reasonably
10 expected to be paid by the fund during the period for which the assess-
11 ment is charged, to repay at least 20 per cent of all outstanding loans
12 to the fund by the state revolving loan fund, and reasonable expenses
13 for the operation of the fund. This assessment shall be determined by
14 March 1 of each year for the following fiscal year. For each of the
15 first three years of the operation of the fund, the director shall, in
16 addition, assess an amount adequate to establish a reasonable surplus in
17 the fund.

18 Sec. 21.88.260. PAYMENT OF FUND ASSESSMENT. All health care
19 providers shall pay to the fund the full amount of the assessment,
20 except that the director may provide for installment payment of the
21 assessment in which event each installment is due by the date specified.
22 If any assessment or installment is not timely paid, the director shall
23 notify the corporation and cause cancellation of the insurance by the
24 corporation.

25 Sec. 21.88.280. FUND STATISTICS. The fund shall collect, maintain
26 and report information concerning claims against health care providers.
27 All of this information shall be on forms prescribed by the director and
28 shall be sufficient to enable a proper determination of losses for
29 making assessments and to identify causes and sources of loss for loss

1 control. At least annually the director shall report to the legisla-
2 ture, which report shall be kept available to the public, the number and
3 amount of claims filed, reserves paid, settled and adjudicated during
4 the year, the assessments paid to the fund, and the expenses incurred by
5 the fund during the year. The director may require that supplemental
6 reports include the names of insured health care providers and claim-
7 ants; however, no reports which become publicly available may include
8 the names of health care providers or claimants or information that will
9 permit by inference the identity of specific health care providers or
10 claimants. All statistics shall be made available to the health care
11 licensing boards.

12 Sec. 21.88.290. MEDICAL MALPRACTICE REVOLVING LOAN FUND. (a)
13 There is in the Department of Commerce and Economic Development the
14 medical malpractice revolving loan fund to be administered by the
15 director of insurance.

16 (b) Loans from the medical malpractice revolving loan fund may be
17 made to the late claims fund, and shall be repaid within four years at
18 an annual interest rate of seven per cent.

19 ARTICLE 5. GENERAL PROVISIONS.

20 Sec. 21.88.900. DEFINITIONS. As used in this chapter,

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

23 (2) "corporation" means the Health Care Providers Indemnity
24 Corporation;

25 (3) "fund" means the health care providers late claims fund;

26 (4) "health care provider" means a physician licensed under
27 AS 08.64.

28 * Sec. 14. This Act takes effect 30 days after enactment.
29