

HOUSE BILL NO. 493

**IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE BY REQUEST

Introduced: 2/14/94

Referred: Health, Education & Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to health care providers and establishing the Medical Insurance**
2 **Corporation; and providing for an effective date."**

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

4 *** Section 1. PURPOSE. The purpose of this Act and companion legislation relating to**
5 **medical malpractice actions is to**

6 (1) **provide financial security to health care providers by limiting their liability**
7 **exposure for medical negligence to the amount of liability insurance required;**

8 (2) **eliminate the need for the practice of defensive medicine;**

9 (3) **provide affordable insurance to all health care providers;**

10 (4) **control or reduce medical negligence insurance costs;**

11 (5) **resolve the hospital insurance problems created by Jackson v. Powers, 743**

12 **P.2d 1376 (Alaska 1987);**

13 (6) **establish an expeditious and cost-effective procedure for the resolution of**
14 **noncatastrophic claims;**

1 (7) provide a source for financial recovery for those injured as a result of
2 medical negligence; and

3 (8) reduce litigation costs.

4 * Sec. 2. AS 08.02 is amended by adding a new section to read:

5 Sec. 08.02.025. **REQUIRED COVERAGE BY MEDICAL INSURANCE**
6 **CORPORATION.** A person licensed as a health care provider shall enroll as a
7 covered person in the liability insurance program established under AS 21.58.
8 Notwithstanding another provision of law, the license of a health care provider is not
9 valid unless the health care provider complies with this section. In this section "health
10 care provider" has the meaning given in AS 21.58.400.

11 * Sec. 3. AS 21 is amended by adding a new chapter to read:

12 **CHAPTER 58. STATE MEDICAL INSURANCE CORPORATION.**

13 Sec. 21.58.010. **CREATION AND PURPOSE.** (a) The Medical Insurance
14 Corporation is established as a public corporation of the state in the Department of
15 Commerce and Economic Development but has a legal existence independent of and
16 separate from the state.

17 (b) The purpose of the corporation is to establish and maintain a program for
18 providing liability insurance coverage for licensed health care providers in the state on
19 a basis calculated to contain or reduce both the costs of the program and the costs of
20 obtaining medical liability insurance in the state.

21 (c) An obligation issued by the corporation does not constitute a debt, liability,
22 or obligation of the state.

23 Sec. 21.58.020. **BOARD OF DIRECTORS.** The corporation is governed by
24 a board of five directors who are residents of the state and shall include

25 (1) two physicians licensed under AS 08.64; one physician must be
26 engaged in group medical practice in a clinic of six or more physicians;

27 (2) an administrator or senior executive officer employed by a hospital
28 licensed under AS 18.20;

29 (3) a professional person employed by an insurer licensed under this
30 title;

31 (4) a person who is not a health care provider, does not have a financial

1 interest in health care, and is not employed in the insurance industry.

2 Sec. 21.58.030. APPOINTMENT AND REMOVAL OF DIRECTORS. The
3 directors of the corporation are appointed by the governor and serve at the pleasure of
4 the governor. A director may be removed only for good cause.

5 Sec. 21.58.040. TERM OF SERVICE. The term of a director is three years.
6 Terms of directors shall be staggered. A director may not be appointed to more than
7 two successive terms. A director appointed to fill a vacancy serves for the unexpired
8 term of the director. A term shall be measured from January 1 of the year in which
9 the term of the vacant position begins, regardless of when the vacancy is filled.

10 Sec. 21.58.050. COMPENSATION AND EXPENSES. A director is entitled
11 to travel and per diem expenses authorized by law for boards and commissions under
12 AS 39.20.180.

13 Sec. 21.58.060. OFFICERS. At the first meeting of each year, the board of
14 the corporation shall elect a chair and a vice-chair from among its members. The
15 corporation shall prescribe their duties by regulation.

16 Sec. 21.58.070. MEETINGS AND QUORUM. The board of the corporation
17 shall meet at least once every three months. Three members of the board constitute
18 a quorum for the transaction of business and the exercise of the powers and duties of
19 the corporation.

20 Sec. 21.58.080. ADMINISTRATIVE PROCEDURE. (a) Actions of the
21 corporation under this chapter are subject to AS 44.62 (Administrative Procedure Act)
22 except as provided in (b) of this section.

23 (b) The corporation shall issue a decision within 30 days after the submission
24 to the corporation of the proposed decision of a hearing officer under AS 44.62.500.
25 The decision of the corporation, except a decision to refer the case to a hearing officer
26 under AS 44.62.500(c), is a final administrative order under AS 44.62.560.

27 Sec. 21.58.090. EMPLOYMENT OF PERSONNEL. The corporation shall
28 employ and determine the salary of an executive director who is responsible for the
29 day-to-day operations of the corporation and who serves at the pleasure of the board.
30 With the approval of the board, the executive director may select and employ
31 additional staff. The executive director and other employees are in the exempt service

1 under AS 39.25.

2 **Sec. 21.58.100, GENERAL POWERS.** The corporation may

3 (1) act as an insurer; when acting as an insurer, the corporation shall
4 comply with the provisions applicable to an insurer under this title;

5 (2) make contracts and execute all instruments necessary or convenient
6 for carrying out its business;

7 (3) acquire, own, hold, dispose of, and encumber personal property and
8 lease real property in the exercise of its powers;

9 (4) enter into agreements or transactions with a federal, state, or
10 municipal agent, or other public institution, or with a private individual, partnership,
11 firm, corporation, association, or other entity necessary to perform the duties of the
12 corporation;

13 (5) perform all other acts necessary and proper to carry out the duties
14 of the corporation;

15 (6) establish risk pools to provide reasonably priced insurance coverage
16 when the corporation determines that liability insurance would otherwise not be
17 available to the health care provider; in making a determination under this paragraph,
18 the corporation shall consider the locale, income, and medical services provided by
19 each health care provider.

20 **Sec. 21.58.110. DUTIES.** The corporation shall

21 (1) adopt regulations to implement this chapter;

22 (2) provide medical liability insurance coverage as required under
23 AS 21.58.130;

24 (3) establish for each fiscal year a standard premium to be paid by or
25 on behalf of each enrollee, taking into consideration the corporation's cost of providing
26 or procuring insurance, the funds available from the state medical liability insurance
27 fund, the specialty, location, and claims experience of the enrollee, and other relevant
28 factors as determined by the corporation that are consistent with AS 21.58.100(6);

29 (4) define acceptable reasons for the denial of claims under the uniform
30 liability policy.

31 **Sec. 21.58.120. MEDICAL LIABILITY INSURANCE FUND.** The state

1 medical liability insurance fund is established as a separate account in the general
2 fund. The fund shall be administered by the corporation and used to provide medical
3 liability insurance required under this chapter. The fund consists of appropriations by
4 the legislature.

5 **Sec. 21.58.130. UNIFORM MEDICAL LIABILITY INSURANCE POLICY.**

6 (a) The corporation shall issue, in the form approved by the director, to all health care
7 providers who pay the premiums for it, a uniform medical liability insurance policy
8 indemnifying the health care provider and employees who are health care providers
9 against loss by reason of liability for professional services rendered in the state on an
10 occurrence basis; the policy must include provisions that

11 (1) offer a maximum limit of liability of \$5,000,000;

12 (2) require the corporation to provide a defense against and indemnify
13 a claim for compensatory or punitive damages in a proceeding subject to AS 09.55.530
14 - 09.55.560;

15 (3) at the option of the health care provider and for an additional
16 premium, agree to provide a defense and indemnity for claims against the health care
17 provider or an employee that arise out of professional services performed by the health
18 care provider or employee for any period before the contract is issued, except that
19 coverage will not be provided for a claim already filed or that the health care provider
20 or employee had or reasonably should have had notice of at the time the retroactive
21 insurance was purchased; and

22 (4) adopt one of the following approaches regarding the risk incurred
23 by a policy issued by the corporation under this section:

24 (A) act as a self-insurer; or

25 (B) negotiate for and procure reinsurance from private casualty
26 insurers or reinsurers for all liability incurred by a policy issued by the
27 corporation;

28 (b) The corporation shall adopt regulations specifying the medical services
29 covered by a uniform liability policy.

30 **Sec. 21.58.140. DEDUCTIBLES AND COPAYMENTS.** Subject to
31 AS 21.58.130, the corporation shall establish the deductible and copayment amounts

1 applicable under a uniform medical liability insurance policy.

2 **Sec. 21.58.150. SOLICITATION OF ELIGIBLE HEALTH CARE**
3 **PROVIDERS. (a)** The corporation shall disseminate appropriate information to health
4 care providers in the state regarding the existence of the state medical liability
5 insurance policy and the means of enrollment.

6 **(b)** The corporation shall devise and implement a means of maintaining public
7 awareness of the provisions of this chapter regarding the state medical liability
8 insurance policy and shall administer this chapter in a manner that facilitates public
9 participation in the state medical liability insurance program.

10 **Sec. 21.58.400. DEFINITIONS. In this chapter,**

11 (1) "corporation" means the Medical Insurance Corporation established
12 in AS 21.58.010;

13 (2) "enrollee" means a person whose application for coverage under the
14 state medical liability insurance policy has been accepted by the corporation, who has
15 completed applicable enrollment procedures, and who is covered by the insurance
16 policy;

17 (3) "health care provider" has the meaning given in AS 09.55.560;

18 (4) "liability insurance" means insurance against legal liability for the
19 death, injury, or disability of a person.

20 * **Sec. 4. AS 36.30.015(e) is amended to read:**

21 (e) The board of directors of the Alaska Railroad Corporation, [AND] the
22 board of directors of the Alaska Aerospace Development Corporation, and the board
23 of directors of the Medical Insurance Corporation shall adopt procedures to govern
24 the procurement of supplies, services, professional services, and construction. The
25 procedures must be substantially equivalent to the procedures prescribed in this chapter
26 and in regulations adopted under this chapter.

27 * **Sec. 5. AS 39.25.110(11) is amended to read:**

28 (11) the officers and employees of the following boards, commissions,
29 and authorities:

30 **(A) Alaska Gas Pipeline Financing Authority;**

31 **(B) Alaska Permanent Fund Corporation;**

- 1 (C) Alaska Industrial Development and Export Authority;
2 (D) Alaska Commercial Fisheries Entry Commission;
3 (E) Alaska Commission on Postsecondary Education;
4 (F) Alaska Aerospace Development Corporation;
5 (G) Medical Insurance Corporation;

6 * Sec. 6. AS 44.62.330(a) is amended by adding a new paragraph to read:

7 (59) Medical Insurance Corporation.

8 * Sec. 7. TRANSITION. (a) The Medical Insurance Corporation established in sec. 3 of
9 this Act shall begin the implementation of AS 21.58 by January 1, 1995, and shall fully
10 implement AS 21.58 before July 1, 1996.

11 (b) The initially appointed members of the board of the Medical Insurance Corporation
12 that are serving staggered terms shall serve terms set by the governor under AS 39.05.055(3).

13 * Sec. 8. (a) This Act takes effect only if an Act providing that in a civil action against
14 a health care provider insured by the Medical Insurance Corporation, damages may not be
15 recovered in an amount that exceeds the amount of the liability insurance of the health care
16 provider, requiring mandatory arbitration in medical malpractice actions when the claimed
17 damages are less than \$200,000, and eliminating the expert advisory panel in a medical
18 malpractice action is passed by the Eighteenth Alaska State Legislature and becomes law.

19 (b) If the condition described in (a) of this section is fulfilled,

20 (1) secs. 3 - 7 of this Act take effect July 1, 1994; and

21 (2) AS 08.02.025, enacted in sec. 2 of this Act, takes effect 30 days after the
22 Medical Insurance Corporation first offers medical liability insurance; the Medical Insurance
23 Corporation shall notify the revisor of statutes of the date that the corporation first offers
24 medical liability insurance.