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1 for that failure the claimant would not have consented to the proposed
2 treatment or procedure.

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

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

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

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

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

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

19 (1) "health care provider" means a chiropractor licensed
20 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
21 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
22 optician licensed under AS 08.71; an optometrist licensed under AS 08.-
23 72; a pharmacist licensed under AS 08.80; a physical therapist licensed
24 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a
25 psychologist and a psychological associate licensed under AS 08.86; and
26 a hospital as defined in AS 18.20.130, including a governmentally owned
27 or operated hospital;

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

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

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 AS 09.65.090 is repealed and re-enacted to read:

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

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

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

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

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

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

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

5 (2) agrees to permit the Medical Indemnity Corporation of
6 Alaska to provide the defense to any claim brought against the hospital
7 if any health care provider insured by the corporation is also involved
8 in the claim and to reimburse the corporation for a pro rata portion of
9 the costs of defense; and

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

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

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

17 (2) develop and implement measures to minimize the risk of
18 injury to patients; in developing these measures each hospital shall
19 take into account recommendations of the medical staff, the Medical
20 Indemnity Corporation of Alaska, private underwriters, industry stan-
21 dards, experience of other hospitals, and recommendations of licensing
22 boards of other health care providers; and

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

24 (b) The department shall adopt by regulation ~~and submit to the~~
25 ~~legislative Administrative Regulation Review Committee standards for~~
26 risk management programs in hospitals in the state which may vary
27 according to the size of the hospital, the type of care offered by the
28 hospital, and other factors found relevant by the department.

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

2 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

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

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

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

28 Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION.
29

1 (a) Except as provided in (b) of this section, all data and information
2 acquired by a review organization, in the exercise of its duties and
3 functions, shall be held in confidence and may not be disclosed to
4 anyone except to the extent necessary to carry out the purposes of the
5 review organization, and is not subject to subpoena or discovery.
6 Except as provided in (b) of this section, no person described in sec.
7 20 of this chapter may disclose what transpired at a meeting of a
8 review organization except to the extent necessary to carry out the
9 purposes of a review organization, and the proceedings and records of a
10 review organization are not subject to discovery or introduction into
11 evidence in a civil action against a health care provider arising out
12 of the matter which is the subject of consideration by the review
13 organization. Information, documents, or records otherwise available
14 from original sources are not immune from discovery or use in a civil
15 action merely because they were presented during proceedings of a
16 review organization, nor may a person who testified before a review
17 organization or who is a member of it be prevented from testifying as
18 to matters within his knowledge, but a witness may not be asked about
19 his testimony before a review organization or opinions formed by him as
20 a result of its hearings, except as provided in (b) of this section.

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

29 (c) Nothing in this chapter prevents a person whose conduct or

1 competence has been reviewed under this chapter from obtaining, for the
2 purpose of appellate review of the action of the review organization,
3 any testimony, documents, proceedings, records and other evidence
4 adduced before the review organization.

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

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

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

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

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

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

26 (3) "health care provider" means a chiropractor licensed
27 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
28 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
29 optician licensed under AS 08.71; an optometrist licensed under AS 08.-

1 72; a pharmacist licensed under AS 08.80; a physical therapist licensed
2 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a
3 psychologist and a psychological associate licensed under AS 08.86; and
4 a hospital as defined in AS 18.20.130, including a governmentally owned
5 or operated hospital;

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

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

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

20 (B) reducing morbidity or mortality;

21 (C) obtaining and disseminating statistics and infor-
22 mation relative to the treatment and prevention of diseases,
23 illness and injuries;

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

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

28 (F) reviewing the quality or cost of health care ser-
29 vices provided to enrollees of health maintenance organizations;

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

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

5 (i) a health insurance carrier or health mainte-
6 nance organization and one or more of its insured or enrol-
7 lees;

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

13 (iii) a health care provider and his patients con-
14 cerning diagnosis, treatment or care, or a charge or fee;

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

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

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

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

25 CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

26 ARTICLE 1. PURPOSE.

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

1 ARTICLE 2. MEDICAL INDEMNITY CORPORATION OF ALASKA.

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

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

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

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

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

19 (4) two persons who are not health care providers or finan-
20 cially interested in the field of health care or representatives of the
21 insurance industry.

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

29 (c) Upon a governor's early resignation, death or inability to

1 serve, the governor of the state shall appoint a successor from the same
2 class defined in ^a(b) of this section as the terminating governor, who
3 shall serve for the unexpired term.

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

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

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

24 (b) The plan of operation shall

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

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

*Powers & Duties
specify capability
of reinsurance*

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of state can
charge tail*

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

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

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

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

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

13 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
14 corporation shall

15 (1) in the form approved by the director, issue to all
16 physicians and hospitals who pay the premiums for it a contract or
17 contracts indemnifying the physicians and hospitals and their employees
18 who are physicians against loss by reason of liability for professional
19 services on an occurrence basis and agreeing to tender on behalf of th
20 physicians and hospitals and their employees who are physicians a
21 defense in a proceeding brought under AS 09.55.530 - 09.55.560; the
22 limit of liability shall be no less than the minimum liability coverage
23 requirements to be maintained under AS 08.64.215 and AS 18.20.045; the
24 contract shall cover the defense against but need not indemnify a claim
25 for punitive damages; at the option of the physician or hospital and for
26 an additional premium the contract may cover claims against the physi-
27 cian or hospital that arise out of professional services performed by the
28 physician or hospital after December 31, 1974 except that coverage will
29 not be provided for a claim already filed or of which the physician or

1 hospital had or reasonably should have had notice at the time the
2 retroactive insurance was purchased;

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

15 (3) 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 (4) 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 (5) 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 (6) provide coverage to physicians and hospitals for liability
3 in excess of the minimum limits required for licensure as a physician or
4 hospital, but limited to \$1,000,000 for physicians and \$5,000,000 for
5 hospitals, if there is a finding by the director that this coverage is
6 unavailable at a reasonable cost and that this coverage can be made
7 available at a reasonable cost through the corporation; if this para-
8 graph is implemented, then each physician or hospital obtaining excess
9 coverage up to these amounts shall obtain it from the corporation, and
10 the corporation may procure reinsurance for all risks incurred by
11 contracts issued under this paragraph from the private market.

12 (b) The corporation 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 corporation are not considered state em-
16 ployees;

17 (2) recommend that the director hold public hearings for the
18 purpose of commencing operation of the joint underwriting association
19 established under secs. 110 - 180 of this chapter; if the joint under-
20 writing association begins operation, the corporation may purchase
21 reinsurance from the association for any of the liability incurred by
22 contracts issued by the corporation;

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 *outies of* (9) perform all other acts necessary and proper to ^{*CARRY out the*} ~~effectuate~~
6 *A* 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, refunds,
13 savings, savings coupons and other similar returns paid or credited to
14 policyholders with respect to their policies. The tax shall be paid to
15 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;

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 care
12 provider or discipline or classification within the license category;

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

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

1 expected to be reported after three years after the incident may be
2 included on a different basis due to the additional financial flexibil-
3 ity provided by the corporation, and reasonable expenses for the opera-
4 tion of the corporation;

5 (6) rates may not be unfairly discriminatory;

6 (7) rates shall be adjusted annually;

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

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

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

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

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

18 (13) amounts sufficient for repayment of loan obligations
19 shall be considered.

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

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

29 ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

1 Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Pro-
2 viders Joint Underwriting Association is created as an association
3 having a legal existence independent of and separate from the state and
4 consisting of all licensed (1) health care service corporations as
5 defined in AS 21.87.330; (2) disability insurers as defined in AS 21.12.-
6 050; (3) property insurers as defined in AS 21.12.060; and (4) casualty
7 insurers as defined in AS 21.12.070. Obligations issued by the associa-
8 tion do not constitute a debt, liability or obligation of the state or a
9 pledge of full faith and credit of the state.

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

13 (c) The association shall commence operation if the director
14 finds, after public hearing, that a market for reinsurance is needed by
15 the corporation. After the association has commenced operation, if the
16 director determines, after public hearing, that a market for reinsurance
17 is no longer needed by the corporation, the association shall cease its
18 underwriting operations.

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

22 Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM; COMPENSA-
23 TION. (a) The association shall be governed by a board of directors
24 appointed by the governor of the state and consisting of two representa-
25 tives of domestic casualty and property insurers, one representative of
26 admitted disability insurers, one representative of health care service
27 corporations, one representative of foreign casualty and property
28 insurers, and two persons from the public.

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

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

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

17 (b) The plan of operation shall

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

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

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

24 (4) establish procedures for records to be kept of all
25 financial transactions of the association, its agents, and the board of
26 directors;

27 (5) establish the procedures for awarding contracts to indem-
28 nify or defend or to provide other services and to compensate the indem-
29 nitors or vendors;

1 (6) establish the procedures for issuing contracts of insur-
2 ance as provided in sec. 150 of this chapter and for the determination
3 of rates;

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

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

8 (1) provide reinsurance to the corporation covering contracts
9 issued by the corporation for that portion of the liability incurred by
10 the corporation it chooses to reinsure through the association, indem-
11 nifying physicians and hospitals, their employees who are physicians,
12 and other persons insured by the corporation against loss by reason of
13 liability for professional services and agreeing to tender on behalf of
14 the insureds a defense in an action brought under AS 09.55.530 - 09.55.-
15 560;

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

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

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

1 to the extent of the contract obligation.

2 (b) The association may

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

7 (2) borrow or advance funds necessary to carry out the
8 purposes of ^{the} this association;

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

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

12 (5) cede or assume reinsurance;

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

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

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

28 (c) If after establishing required reserves and repaying all assess-
29 ments to members there is an excess amount in reserve, the excess

1 premium shall be refunded to the ^{corp.} ~~association for reimbursement to the~~
 2 ~~insureds.~~

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, subject to the approval of the director; assessments
 8 shall be prorated among all members in proportion to their direct
 9 written premiums or revenues in the state in the insurance lines the
 10 writing of which require membership in the association, in the two years
 11 ending on the preceding December 31, after deducting the applicable
 12 cancellations, returned premium, the unabsorbed portion of any deposit
 13 premium, all policy dividends, unabsorbed premiums refunded to policy-
 14 holders, refunds, savings, savings coupons and other similar returns
 15 paid or credited to policyholders with respect to their policies. If
 16 any member is prohibited by the law of its state of domicile from paying
 17 an assessment to the association, then in lieu of the assessment the
 18 member shall pay a tax to the director in a like amount as an obligation
 19 in addition to taxes required under AS 21.09.210 and notwithstanding the
 20 provisions of AS 21.09.210(e). ^{An amount equal to taxes received under this section.} ~~Taxes received under this section shall~~
 21 then be appropriated to the association.

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

25 ARTICLE 4. LOAN FUND.

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

29 (b) Loans may be made from the fund to the corporation and to the

1 ~~association~~ upon certification by the director that a loan is necessary
2 for the corporation or association to spread costs out over time because
3 of fluctuations in loss experience. If a loan is made to the corpora-
4 tion or the association from the fund, the borrower shall issue a note
5 to the fund as evidence of the loan.

6 (c) Loans from the fund shall be repaid within five years at an
7 annual interest rate of six per cent.

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

14 ARTICLE 5. GENERAL PROVISIONS.

15 Sec. 21.88.900. DEFINITIONS. In this chapter

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

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

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

22 (4) "health care provider" means a person or institution
23 insured under this chapter;

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

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

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

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

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

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

1 AS 08.71;

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

3 (12) "physical therapist" means a person licensed under
4 AS 08.80;

5 (13) "pharmacist" means a person licensed under AS 08.84;

6 (14) "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 09.55.536, enacted in sec. 33 of this Act, has the effect
 17 of changing the Alaska Supreme Court's Rules of Civil Procedure by requiring
 18 the submission of medical malpractice actions against health care providers
 19 to expert advisory panels before discovery unless the court decides an expert
 20 advisory opinion is not necessary in the case.

21 * Sec. 47. AS 08.64.365 and AS 08.68.040 are repealed.

22 * Sec. 48. This Act takes effect 30 days after enactment.
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IN THE HOUSE

BY THE FREE CONFERENCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

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

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

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

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

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

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

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

1 filled for the unexpired term.

2 The House bill required ~~chiropractors~~
3 ~~to carry malpractice insurance~~
4 to carry malpractice insurance
5 of at least \$200,000 (\$600,000) if it's
6 not available they are opted on to the
7 corporation (and if there's impairment of services)

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

12 Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (a)

13 In addition to action under sec. 170 of this chapter, upon a finding
14 that by reason of demonstrated problems of competence, experience, edu-
15 cation or health the authority to practice chiropractic 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.

22 The House bill requires dental hygienists
23 to carry malpractice insurance
24 of at least \$100,000/300,000, if it's not
25 available ^(and impairment of services) they are opted on to the corporation
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1 * Sec. 6. AS 08.32 is amended by adding a new section to read:

2 Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
3 to action under sec. 160 of this chapter, upon a finding that by reason
4 of demonstrated problems of competence, experience, education or health
5 the authority to practice dental hygiene should be limited or condi-
6 tioned or the practitioner disciplined, the board may reprimand,
7 censure, place on probation, restrict practice by specialty, procedure,
8 or facility, or require continuing education or retraining.

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

11 * Sec. 7. AS 08.36.010 is amended to read:

12 Sec. 08.36.010. CREATION AND MEMBERSHIP OF BOARD. There is
13 created the Board of Dental Examiners, referred to in this chapter as
14 the board, consisting of seven [FIVE] members. Five members [EACH
15 MEMBER] shall be [A CITIZEN OF THE UNITED STATES AND A] qualified
16 resident dentists who have [HAS] been engaged in the practice of den-
17 tistry in the state for five years immediately preceding [HIS] appoint-
18 ment, and two members shall be persons with no direct financial interest
19 in the health care industry.

20 * Sec. 8. AS 08.36.020 is amended to read:

21 Sec. 08.36.020. APPOINTMENT AND TERM OF SERVICE OF MEMBERS.
22 Members of the board are appointed by the governor, subject to con-
23 firmation by the legislature in joint session [ASSEMBLED]. Each board
24 member serves for a term of five years, and until his successor is
25 appointed and qualified except that the terms of the public members on
26 the board shall be staggered so that they do not expire at the same
27 time. The term begins on February 1. An appointment to a vacancy is
28 for the unexpired term. [APPOINTMENTS SHALL BE MADE FROM A LIST OF
29 NAMES RECOMMENDED BY THE ALASKA DENTAL SOCIETY. THE LIST SHALL BE

1 SUPPLIED AT LEAST 30 DAYS BEFORE THE BEGINNING OF A TERM AND NOT MORE
2 THAN 60 DAYS AFTER THE OCCURRENCE OF A VACANCY. THE LIST SHALL CONTAIN
3 AT LEAST TWO RECOMMENDED NAMES FOR EACH APPOINTMENT. THE GOVERNOR
4 SHALL MAKE THE APPOINTMENT WITHIN 30 DAYS AFTER RECEIVING THE LIST.]

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6 *The House bill requires dentists to carry*
7 *malpractice insurance of at least*
8 *\$200,000 / \$600,000, if it's not available, they*
9 *are opted into the corporation.*

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14 * Sec. 9. AS 08.36 is amended by adding a new section to read:

15 Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
16 to action under sec. 320 of this chapter, upon a finding that by reason
17 of demonstrated problems of competence, experience, education, or
18 health, the authority to practice dentistry should be limited or condi-
19 tioned or the practitioner disciplined, the board may censure, place on
20 probation, restrict practice by specialty, procedure, or facility, or
21 require continuing education or retraining.

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

24 * Sec. 10. AS 08.64.010 is amended to read:

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

1 [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH VACANCY,
2 SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIATION.]

3 * Sec. 11. AS 08.64.020 is amended to read:

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

10 * Sec. 12. AS 08.64.090 is amended to read:

11 Sec. 08.64.090. QUORUM. Four [THREE] members of the board consti-
12 tute a quorum for the transaction of all business properly before the
13 board.

14 * Sec. 13. AS 08.64 is amended by adding new sections to read:

15 Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an
16 active license under this chapter, a person shall maintain insurance
17 issued by the Health Care Providers Indemnity Corporation against
18 liability to patients for medical malpractice in limits of not less than
19 \$200,000 per occurrence and \$600,000 aggregate liability per year. This
20 requirement is satisfied if a person's employer maintains insurance for him
21 him from the Health Care Providers Indemnity Corporation in the required
22 amounts.

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

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

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

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

13 Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
14 In addition to action under sec. 330 of this chapter, upon a finding
15 that by reason of demonstrated problems of competence, experience, edu-
16 cation, or health the authority to practice under this chapter should
17 be limited or conditioned or the practitioner disciplined, the board
18 may reprimand, censure, place on probation, restrict practice by
19 specialty, procedure, or facility, or require continuing education or
20 retraining.

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

23 * Sec. 14. AS 08.68.010 is amended to read:

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

1 in the health care industry.

2 * Sec. 15. AS 08.68.020 is repealed and re-enacted to read:

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

8 * Sec. 16. AS 08.68.060 is amended to read:

9 Sec. 08.68.060. QUALIFICATIONS OF BOARD MEMBERS. The five members
10 [EACH MEMBER] of the board who are nurses shall be [A CITIZEN OF THE
11 UNITED STATES, A RESIDENT OF THE STATE, AND A] licensed professional
12 nurses [NURSE] in the state, and [. MEMBERS] shall have been actively
13 engaged in nursing for not less than four years before appointment, two
14 years of which were within the five years preceding appointment.

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16 *The House Bill requires nurses to carry*
17 *insurance of \$1,000,000 / \$300,000; if this not*
18 *available, they are required to the govern-*
19 *ment*

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24 * Sec. 17. AS 08.68 is amended by adding a new section to read:

25 Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
26 to action under sec. 270 of this chapter, upon a finding that by reason
27 of demonstrated problems of competence, experience, education, or health
28 the authority to practice nursing should be limited or conditioned or
29 the practitioner disciplined, the board may reprimand, censure, place

1 on probation, restrict practice by specialty, procedure, or facility,
2 or require continuing education or retraining.

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

5 * Sec. 18. AS 08.71.020 is amended to read:

6 Sec. 08.71.020. MEMBERSHIP OF BOARD; SOURCE OF APPOINTMENTS; TERM
7 OF OFFICE. The board consists of seven [FIVE] persons appointed by the
8 governor. Members serve staggered terms of three years. The terms of
9 the public members of the board shall be set so that they do not expire
10 at the same time. [THE GOVERNOR SHALL APPOINT BOARD MEMBERS FROM A
11 LIST OF QUALIFIED OPTICIANS PREPARED BY THE ASSOCIATION OF OPTICIANS IN
12 THE STATE AND SUBMITTED AT LEAST 30 DAYS BEFORE JULY 1, 1973, AT LEAST
13 30 DAYS BEFORE THE EXPIRATION OF A TERM AND NOT MORE THAN 60 DAYS AFTER
14 A VACANCY OCCURS IN AN UNEXPIRED TERM. THE LIST SHALL CONTAIN NOT LESS
15 THAN TWO RECOMMENDED CANDIDATES FOR EACH APPOINTMENT. THE GOVERNOR
16 SHALL MAKE APPOINTMENTS WITHIN 30 DAYS AFTER RECEIVING THE LIST. THE
17 TERM OF OFFICE OF EACH MEMBER IS THREE YEARS. HOWEVER, OF THE FIRST
18 MEMBERS OF THE BOARD, ONE SHALL BE APPOINTED FOR A ONE-YEAR TERM, TWO
19 FOR TWO-YEAR TERMS, AND TWO FOR THREE-YEAR TERMS.] Vacancies on the
20 board shall be filled for the unexpired term [IN THE SAME MANNER AS
21 ORIGINAL APPOINTMENT].

22 * Sec. 19. AS 08.71.030 is amended to read:

23 Sec. 08.71.030. QUALIFICATIONS OF BOARD MEMBERS. Five [A] board
24 members [MEMBER] shall be [A] licensed, practicing dispensing opticians
25 [OPTICIAN] residing in the state. Two shall be persons with no direct
26 financial interest in the health care industry.
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1 The House bill requires depositing of funds
2 to carry malpractice insurance of services
3 \$100,000 / \$300,000, if it's unavailable they are
4 opted into the corporation.
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11 * Sec. 20. AS 08.71 is amended by adding a new section to read:

12 Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)

13 In addition to action under sec. 170 of this chapter, upon a finding
14 that by reason of demonstrated problems of competence, experience,
15 education, or health the authority to practice as a dispensing optician
16 under this chapter should be limited or conditioned or the practitioner
17 disciplined, the board may reprimand, censure, place on probation,
18 restrict practice by procedure, or facility, or require continuing
19 education or retraining.

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

22 * Sec. 21. AS 08.72.020 is amended to read:

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

1 * Sec. 22. AS 08.72.040 is repealed and re-enacted to read:

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

6 *The House bill requires optometrists to carry*
7 *medical malpractice insurance of \$1,000,000 per occurrence*
8 *(\$100,000/\$300,000, if it is not available), if they*
9 *are opted into the corporation.*

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16 * Sec. 23. AS 08.72 is amended by adding a new section to read:

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

18 In addition to action under secs. 240 and 250 of this chapter, upon a
19 finding that by reason of demonstrated problems of competence, experi-
20 ence, education, or health the authority to practice optometry under
21 this chapter should be limited or conditioned or the practitioner
22 disciplined, the board may reprimand, censure, place on probation,
23 restrict practice by specialty, procedure, or facility, or require
24 continuing education or retraining.

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

27 * Sec. 24. AS 08.80.010 is amended to read:

28 Sec. 08.80.010. CREATION AND MEMBERSHIP OF BOARD OF PHARMACY.

29 There is created the Board of Pharmacy, composed of seven [FIVE] members,

1 five [EACH] of whom shall be pharmacists [A PHARMACIST] licensed in the
2 state who has been actively engaged in the practice of pharmacy in the
3 state for a period of three years immediately preceding his appointment.
4 Two shall be persons with no direct financial interest in the health
5 care industry. Whenever possible, the board shall include at least one
6 member from each judicial district.

7 * Sec. 25. AS 08.80.020 is amended to read:

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

15 *The House bill requires pharmacists to*
16 *carry malpractice insurance of*
17 *\$100,000 / \$300,000, if it's not available*
18 *they are opted into the corporation*
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29 * Sec. 26. AS 80.80 is amended by adding a new section to read:

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

2 In addition to action under sec. 260 of this chapter, upon a finding
3 that by reason of demonstrated problems of competence, experience,
4 education, or health the authority to practice pharmacy under this
5 chapter should be limited or conditioned or the practitioner disci-
6 plined, the board may reprimand, censure, place on probation, restrict
7 practice by specialty, procedure, or facility, or require continuing
8 education or retraining.

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

11 *The House bill requires physical therapists
12 to carry malpractice insurance of
13 \$100,000/\$300,000, if it's not available
14 they are opted into the corporation.*

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20 * Sec. 27. AS 08.84 is amended by adding a new section to read:

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

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

1 * Sec. 28. AS 08.86.010 is amended to read:

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

6 * Sec. 29. AS 08.86.020 is amended to read:

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

12 *The House bill requires psychologists and*
13 *psychological associates to carry*
14 *malpractice insurance of \$100,000/\$300,000;*
15 *if its not available, they are opted in to*
16 *the corporation.*

17
18
19
20 * Sec. 30. AS 08.86 is amended by adding a new section to read:

21 Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
22 Upon a finding that by reason of demonstrated problems of competence,
23 experience, education, or health the authority to practice psychology
24 or as a psychological associate under this chapter should be limited
25 or conditioned or the practitioner disciplined, the board may reprimand,
26 censure, place on probation, restrict practice by time, specialty, pro-
27 cedure, or facility, or require continuing education or retraining.

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

to an expert advisory panel,
to be appointed by the court.

Panel expenses are paid by the
State.

The Senate bill provided for either
arbitration or submission to an
expert advisory panel as
follows:

* Sec. 31. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.535. MANDATORY ARBITRATION. (a) It is the purpose of
these arbitration provisions to establish a system that will provide
incentives to settle malpractice disputes without prolonged litigation
and that will provide a method by which parties to a medical malpractice
claim can obtain a prompt determination of its merits, and the amount
of damages, if any, that should be allowed.

(b) Upon the filing of any malpractice claim against a physician
or hospital, the claim shall be submitted to an arbitration board; how-
ever, submission to an arbitration board may not be required if all
parties object to arbitration or if the parties have agreed to follow
the procedures prescribed in sec. 536 or sec. 537 of this chapter.

(c) The arbitration board shall consist of three arbitrators:
one arbitrator designated by the plaintiff or plaintiffs, one arbitrator
designated by the defendant or defendants, and a third arbitrator
designated by mutual agreement who shall serve as chairman of the

1 board. If the parties cannot agree on the third person, the court will
2 provide a list of three or more persons who might serve as chairman of
3 the arbitration board, which shall be furnished by the attorney general.
4 Plaintiff or plaintiffs together and defendant and defendants together
5 may each strike one or more names from the list, so after each side has
6 done so, at least one name remains on the list, providing a basis for
7 the final selection by the court.

8 (d) The attorney general shall prepare a list of panelists con-
9 sisting of lawyers or other persons qualified to serve as chairmen of
10 arbitration boards. They shall be selected on basis of their technical
11 expertise, judicial temperament, and capability of impartially acting
12 on malpractice claims. The attorney general shall submit a list of at
13 least three names of panelists whenever requested to do so by the court
14 along with detailed biographical information on each panelist.

15 (e) Each member of the board shall receive reasonable compensation
16 to be paid by the court based on the extent and duration of services
17 rendered. The court shall also pay the costs of experts required by
18 the board.

19 (f) The board may appoint an expert advisory panel, with the
20 powers of the expert advisory panel under sec. 537 of this chapter, to
21 advise the board on the medical facts of the case.

22 (g) The court shall specify the shortest practical deadline for
23 completion of the work of the arbitration panel, taking into account
24 all the circumstance and the nature of the case.

25 (h) The provisions of the Uniform Arbitration Act, AS 09.43.010 -
26 09.43.180, apply to arbitrations under this section insofar as they
27 are applicable and do not conflict with the provisions of this section;
28 arbitrations under this section shall be conducted in accordance with
29 any rules of court which may be adopted.

1 (i) If the decision of the arbitration board is not accepted by
2 all parties and the parties have not agreed to binding arbitration, any
3 party may appeal the decision of the board to the superior court for a
4 trial de novo. The decision of the arbitration board, including its
5 conclusions as to the merits of the claim and appropriate damages, to-
6 gether with any dissenting opinions, shall be admissible in evidence at
7 trial upon the offer of any party, if the court conducts a review of
8 the arbitration decision and any other relevant information submitted
9 by the parties and concludes that:

10 (1) the findings of fact by the arbitration board were not
11 clearly erroneous;

12 (2) the decision is in accordance with applicable law;

13 (3) the procedures required for conducting the hearing and
14 rendering the decision were followed fairly and properly without pre-
15 judice to any party;

16 (4) any party who has not offered the arbitration decision
17 in evidence may subpoena any member of the arbitration board for pur-
18 poses of cross-examination.

19 Sec. 09.55.536. VOLUNTARY ARBITRATION. (a) A patient and any
20 health care provider may execute an agreement to submit to arbitration
21 any dispute, controversy, or issue arising out of care or treatment by
22 the health care provider during the period that the agreement is in
23 force or that has already arisen between the parties.

24 (b) An agreement to arbitrate executed before care or treatment
25 is provided between a patient and health care provider shall clearly
26 provide in bold print on the face of the agreement that execution of
27 the agreement by the patient is not a prerequisite to receiving care or
28 treatment. If this subsection is not complied with by the health care
29 provider, the agreement to arbitrate is void. The form to be used

1 shall be approved in advance by the director of insurance to assure it
2 fairly informs the patient and properly protects his interests.

3 (c) Each admission to a hospital shall be treated as separate and
4 distinct for the purposes of an agreement to arbitrate, but a person
5 receiving outpatient care from a hospital or clinic or a member of a
6 health maintenance organization may execute an agreement with the
7 hospital which provides for continuation of the agreement for a contin-
8 uing program of treatment or during continued membership.

9 (d) Arbitration shall take place under the same procedures pre-
10 scribed for mandatory arbitration under sec. 536 of this chapter unless
11 the parties agree otherwise in accordance with general guidelines pro-
12 mulgated as regulations by the director of insurance to assure fairness
13 to the parties.

14 (e) Reasonable compensation based on the extent and duration of
15 services rendered shall be paid to members of the arbitration board by
16 the court as well as the costs of experts required by the board.

17 Sec. 09.55.537. ALTERNATIVE TO ARBITRATION. (a) If arbitration
18 under sec. 535 of this chapter is waived by all the parties, and as
19 an alternative to arbitration, the court shall appoint an expert
20 advisory panel to advise the fact finder on the medical facts of the
21 case unless the court decides that an expert advisory opinion is not
22 necessary for a decision in the case. The court shall, by order,
23 determine professions or specialties to be represented on the expert
24 advisory panel and shall advise each party of the professions or
25 specialties to be represented, giving the parties the opportunity to
26 object or make suggestions.

27 (b) The expert advisory panel may compel the attendance of wit-
28 nesses, physically or orally examine the parties, consult with special-
29 ists or learned works they consider appropriate, and compel the produc-

1 tion of, and examine all relevant hospital, medical, or other records
2 relating to health care treatment. The panel may meet in camera, but
3 shall maintain a record of any testimony or oral statements of wit-
4 nesses, and shall maintain copies of any written statements or opinions
5 that it receives.

6 (c) Not less than 30 days after selection of the panel, it shall
7 make a written report to the parties and the court answering any ques-
8 tions put to it by the court on medical questions. The report shall
9 include copies of all written statements, opinions, or records relied
10 on by the panel, and either a transcription or other record of any oral
11 statements or opinions; the report shall specify any medical or scien-
12 tific authority relied upon and shall include the results of any
13 physical or mental examination performed on the plaintiff. Each member
14 shall sign the report and his signature constitutes his adoption of all
15 statements and opinions contained in it; however, a member may, instead
16 of signing the report, submit a concurring or dissenting report which
17 complies with the requirements of this subsection. A member may not
18 attest to any portion of the report as to which he is not qualified to
19 give expert testimony.

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

1 the report or of his dissenting or concurring opinion.

2 (e) Members of a panel are entitled to travel expenses and per
3 diem in accordance with state law pertaining to members of boards and
4 commissions for all time spent in preparing its report and matters
5 incidental to it, which shall be paid by the court. If a panel member
6 is called upon as a witness at trial or upon deposition, he is entitled
7 to payment of an expert witness fee. In any case in which the court
8 determines that a party has made a patently frivolous claim or a
9 patently frivolous denial of liability, it shall order that all costs
10 of the expert advisory panel be borne by the party making that claim
11 or denial.

12 (f) Parties to the case, and counsel, may not communicate out of
13 court with members of the panel on the subject matter of its inquiry
14 and report, or cause or solicit others to do so, except through ordinary
15 discovery proceedings.

16 * Sec. 32. AS 09.55.540 is amended to read:

17 Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action
18 based on the negligence or wilful misconduct of a health care provider
19 [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-
20 36], the plaintiff has [SHALL HAVE] the burden of proving by a prepon-
21 derance of the evidence

22 (1) the degree of knowledge or skill possessed or the degree
23 of care ordinarily exercised under the circumstances, at the time of
24 the act complained of, by health care providers in the field or spe-
25 cialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS
26 PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH
27 THE DEFENDANT PRACTICES];

28 (2) that the defendant either lacked this degree of know-
29 ledge or skill or failed to exercise this degree of care; and

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

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

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

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

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

21 *Regarding awards and collateral sources*
22 *The provisions in the House and Senate*
23 *bills differ in drafting and*
24 *mechanics*

1 Sec. 09.55.548. AWARDS, COLLATERAL SOURCE. (a) Damages shall be
2 awarded in accordance with principles of the ^{common law} ~~com~~, except that the fact
3 finder in a malpractice action shall render an award as to damages by
4 category of loss, stating all damages by category of loss in dollars per
5 month and for a certain number of months or if the fact finder finds a
6 permanent disablement, for the life of the plaintiff. The court may
7 enter a judgment that future damages be paid in whole or in part by
8 periodic payments rather than by a lump-sum payment; the judgment shall
9 include, if necessary, other provisions to assure that funds will be
10 available as periodic payments become due. In this subsection, future
11 damages includes damages for future medical treatment, care or custody,
12 loss of future earnings, or loss of bodily function of the claimant.

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

28 * Sec. 34. AS 09.55.550 is amended to read:

29 Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL]

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

8
9 *The House bill provides that no*
10 *cause of action may arise against*
11 *a health care provider for breach*
12 *of a ~~type~~ oral contract to provide*
13 *a specific care or result.*

14
15
16
17 * Sec. 35. AS 09.55 is amended by adding new sections to read:

18 Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is
19 liable for failure to obtain the informed consent of a patient if the
20 claimant establishes by a preponderance of the evidence that the pro-
21 vider has failed to inform the patient of the common risks and reason-
22 able alternatives to the proposed treatment or procedure, and that but
23 for that failure the claimant would not have consented to the proposed
24 treatment or procedure.

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

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

29 (2) the patient stated to the health care provider that he

1 would undergo the treatment or procedure regardless of the risk involved
2 or that he did not want to be informed of the matters to which he would
3 be entitled to be informed;

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

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

11 Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter
12 "health care provider" means a chiropractor licensed under AS 08.20; a
13 dental hygienist licensed under AS 08.32; a dentist licensed under
14 AS 08.36; a nurse licensed under AS 08.68; a dispensing optician li-
15 censed under AS 08.71; an optometrist licensed under AS 08.72; a pharma-
16 cist licensed under AS 08.80; a physical therapist licensed under AS
17 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist
18 and a psychological associate licensed under AS 08.86; and a hospital as
19 defined in AS 18.20.130, including a governmentally owned or operated
20 hospital.

21 * Sec. 36. AS 09.65.090 is repealed and re-enacted to read:

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

29 (b) This section does not preclude liability for civil damages as

1 a result of gross negligence or reckless or intentional misconduct.

2
3 *The FCC held off on deciding whether*
4 *to include hospitals in the*
5 *corporation, ~~with~~*
6
7
8
9

10 * Sec. 37. AS 18.20 is amended by adding ~~a~~ new section¹ to read:

11 Sec. 18.20.045. INSURANCE REQUIRED. (a) Every hospital, as a
12 condition of licensure, shall maintain and submit to the department
13 evidence of insurance against liability to inpatients and outpatients
14 for malpractice issued by the Health Care Providers Indemnity Corpora-
15 tion, in amounts of not less than \$200,000 per occurrence, and an
16 aggregate liability per year of \$1,000,000 minimum, and an additional
17 \$20,000 for each bed over 50.

18 (b) The director of insurance or his designee shall waive the
19 requirement in (a) of this section for a hospital if the hospital fur-
20 nishes satisfactory evidence of having other insurance providing coverage
21 in amounts not less than those specified in (a) of this section. No
22 waiver granted under this subsection may extend beyond the normal expira-
23 tion date of the hospital's insurance policy or January 1, 1977, whichever
24 occurs first.

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

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

1 (2) develop and implement measures to minimize the risk of
2 injury to patients from adverse incidents; in developing these measures
3 each hospital shall take into account recommendations of its medical
4 staff, the Health Care Providers Indemnity Corporation and private under-
5 writers, industry standards, experience of other hospitals, and recom-
6 mendations of licensing boards of other health care providers; and

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

8 (b) The department shall adopt by regulation and submit to the
9 legislative administrative regulation review committee prior to imple-
10 mentation standards for risk management programs in hospitals in the
11 state which may vary according to the size of the hospital, the type of
12 care offered by the hospital, and other factors found relevant by the
13 department.

14 * Sec. 38. AS 18 is amended by adding a new chapter to read:

15 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

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

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

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

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

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

13 (a) Except as provided in (b) of this section, all data and information
14 acquired by a review organization, in the exercise of its duties and
15 functions, shall be held in confidence and may not be disclosed to
16 anyone except to the extent necessary to carry out one or more of the
17 purposes of the review organization, and is not subject to subpoena or
18 discovery. Except as provided in (b) of this section, no person described
19 in sec. 20 of this chapter may disclose what transpired at a meeting of
20 a review organization except to the extent necessary to carry out one or
21 more of the purposes of a review organization, and the proceedings and
22 records of a review organization are not subject to discovery or intro-
23 duction into evidence in a civil action against a health care provider
24 arising out of the matter which is the subject of consideration by the
25 review organization. Information, documents, or records otherwise
26 available from original sources are not immune from discovery or use in
27 a civil action merely because they were presented during proceedings of
28 a review organization, nor may a person who testified before a review
29 organization or who is a member of it be prevented from testifying as to

1 matters within his knowledge, but a witness may not be asked about his
2 testimony before a review organization or opinions formed by him as a
3 result of its hearings, except as provided in (b) of this section.

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

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

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

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

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

29 Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context

1 otherwise requires,

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

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

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

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

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

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

3 (B) reducing morbidity or mortality;

4 (C) obtaining and disseminating statistics and infor-
5 mation relative to the treatment and prevention of diseases,
6 illness and injuries;

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

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

11 (F) reviewing the quality or cost of health care ser-
12 vices provided to enrollees of health maintenance organizations;

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

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

17 (i) a health insurance carrier or health mainte-
18 nance organization and one or more of its insured or enrol-
19 lees;

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

25 (iii) a health care provider and his patients con-
26 cerning diagnosis, treatment or care, or a charge or fee;

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

1 enrollee; or

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

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

7
8 *The insurance structures in the*
9 *House and Senate bills*
10 *vary substantially, as the*
11 *Senate version is issued*
12 *before the committee, as*
13 *is included here*
14

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21 * Sec. 39. AS 21 is amended by adding a new chapter to read:

22 CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

23 ARTICLE 1. PURPOSE.

24 Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this
25 chapter to provide a means of furnishing health care providers with
26 adequate insurance against liability for medical negligence by concen-
27 trating all such insurance in one entity which can negotiate more
28 successfully for insurance from casualty insurers and to distribute
29 equitably the true cost of the insurance among the health care providers

1 insured.

2 ARTICLE 2. INDEMNITY CORPORATION.

3 Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska
4 Health Care Providers Indemnity Corporation which is a public corpora-
5 tion having a legal existence independent of and separate from the
6 state. Obligations issued by the corporation do not constitute a debt,
7 liability or obligation of the state or a pledge of full faith and
8 credit of the state.

9 Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The cor-
10 poration shall exercise its powers through a board of governors which
11 shall be appointed by the governor of the state and confirmed by the
12 legislature as provided in (b) of this section.

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

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

18 (2) one person employed by a hospital or on the board of
19 directors of a hospital;

20 (3) two professionals in the insurance field;

21 (4) two persons who are not health care providers or finan-
22 cially interested in the field of health care, attorneys, or represen-
23 tatives of the insurance industry.

24 (c) The term of office of each governor is three years, except
25 that the governor of the state shall designate two initially appointed
26 governors to serve for one year and two initially appointed governors
27 to serve for two years.

28 (d) Upon the expiration of the term of a governor, the governor
29 of the state shall appoint a successor who shall be from the same class

1 described in (b) of this section as the governor whose term has expired.

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

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

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

13 Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within
14 30 days after the effective date of this chapter, the board of
15 governors shall prepare and submit to the director for approval a
16 plan of operation which provides for the fair, reasonable and equit-
17 able administration of the affairs of the corporation and the dis-
18 charge of the purposes for which it is created. The plan and any
19 amendments of it become effective upon the director's approval. If
20 the board of governors fails to submit a plan of operation, or if
21 at a subsequent time the board of governors fails to submit suitable
22 amendments to the plan, the director shall, after notice and hearing,
23 adopt and promulgate a plan of operation or amendments which are
24 necessary or advisable to effectuate the provisions of this chapter.
25 Adoption of the plan is not subject to the Administrative Procedure
26 Act (AS 44.62).

27 (b) The plan of operation shall

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

1 be performed;

2 (2) establish procedures for handling assets and discharg-
3 ing liabilities of the corporation;

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

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

9 (5) establish the procedures for awarding contracts to in-
10 demnify or defend or to provide other services and to compensate the
11 indemnitors or vendors;

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

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

17 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
18 corporation shall

19 (1) in the form approved by the director, issue to all
20 health care providers who pay the premiums for it a contract or con-
21 tracts indemnifying the health care provider and his employees who are
22 health care providers against loss by reason of liability for profes-
23 sional services on an occurrence basis and agreeing to tender on behalf
24 of the health care provider and his employees who are health care
25 providers a defense in a proceeding brought under AS 09.55.530 - 09.55.-
26 560; the limit of liability shall be no less than the minimum liability
27 coverage requirements to be maintained under AS 08.64.215 and AS 18.-
28 20.045; the contract shall cover the defense against but need not
29 indemnify a claim for punitive damages; at the option of the health

1 care provider and for an additional premium the contract may cover
2 claims against the health care provider that arise out of professional
3 services performed by the health care provider after December 31, 1974
4 except that coverage will not be provided for a claim already filed or
5 of which the health care provider had or reasonably should have had
6 notice at the time the retroactive insurance was purchased;

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

11
12 *The House bill does not require*
13 *the corporation to obtain re-*
14 *insurance for the policies*
15 *it writes*
16
17
18
19

20 (3) negotiate for and procure reinsurance from a casualty
21 insurers or reinsurers for all of its liability incurred by contracts
22 issued under (1) of this subsection; the corporation may not incur or
23 retain under those contracts liability which is not reinsured as pro-
24 vided in this paragraph; if, after the exercise of due diligence, no
25 reinsurance for all or a portion of the risk can be procured at rea-
26 sonable rates from casualty insurers or reinsurers, the corporation
27 through the board of governors, shall so certify to the director re-
28 insurance shall then be provided by the Health Care Joint Underwriting
29 Association as provided in sec. 110 et seq. of this chapter for that

1 portion not reinsured by a private carrier;

2 (4) comply with or be subject to AS 21.06.090; 21.06.120;
3 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.190; 21.09.200;
4 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18,
5 21, 24, and 36 of this title;

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

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

22 (b) The corporation may

23
24 *The House bill, by requiring insurance*
25 *other than physicians and hospitals,*
26 *to buy insurance from the*
27 *corporation if insurance is not*
28 *available on the private market*
29 *and an impairment of delivery of*
services results, before there

from the Senate approach because
the corporation must assure those
providers about whom such a finding
has been made

(1) in the form approved by the director, issue contracts of professional liability insurance to chiropractors licensed under AS 08.-20, dental hygienists licensed under AS 08.32, dentists licensed under AS 08.36, nurses licensed under AS 08.68, dispensing opticians licensed under AS 08.71, optometrists licensed under AS 08.72, pharmacists licensed under AS 08.80, physical therapists licensed under AS 08.84, and psychologists and psychological associates licensed under AS 08.86;

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

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

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

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

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

(7) provide risk management advice and services to hospitals;

(8) perform all other acts necessary and proper to effectuate the corporation.

The House bill does not include
a premium tax on the corporation.

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

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

26 Sec. 21.88.080. RATES. (a) The rates and rating plans used by
27 the corporation for the policies issued shall be determined by license
28 category of health care providers in accordance with all of the fol-
29 lowing:

1 (1) rates for physicians shall be set as a function of the
2 physician's medical revenue;

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

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

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

18 (5) rates shall not be inadequate; rates are inadequate if,
19 based on available actuarial data, the premiums to be paid by the
20 health care providers are or may reasonably be expected to be insuf-
21 ficient to pay for losses incurred by the corporation, including claims
22 paid, reserves for claims reported and unpaid, reserves for claims
23 incurred during the policy period and not reported provided that re-
24 serves for claims incurred during the policy period and reasonably
25 expected to be reported after three years after the incident may be
26 included on a different basis due to the additional financial flexibil-
27 ity provided by the corporation, and reasonable expenses for the opera-
28 tion of the corporation;

29 (6) rates may not be unfairly discriminatory;

1 (7) rates shall be adjusted annually;

2 (8) rates for any policy year shall be calculated to include
3 the adjustment for actual experience of the corporation;

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

7 (10) income from the investment of reserves shall be con-
8 sidered;

9 (11) individual risk underwriting factors shall be considered.
10

11 *The House bill requires that disciplines*
12 *and classifications within license*
13 *categories be considered in rate*
14 *making, and that repayment of*
15 *loan obligations be considered*
16 *in rate making*
17

18
19 (b) The standards in (a) of this section shall be applied to the
20 policy terms the corporation decides to write.

21 Sec. 21.88.090. REQUIRED INSURANCE; CANCELLATION. The corporation
22 shall provide insurance to all health care providers otherwise eligible
23 for licensure under AS 08.64 and AS 18.20. The corporation may provide
24 for installment payment of premiums in which event each installment is
25 due by the date specified. The corporation may cancel any of its
26 policies in the event of nonpayment of any premium or installment on a
27 premium, or other charge, by mailing or delivering to the insured at
28 the address shown on the policy and to the agency of the state issuing
29 the insured's license written notice stating when, not less than 10 days

1 after notice is received by the insured, the cancellation is effective.

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3 *The House bill contains no JUA*
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11 ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

12 Sec. 21.88.11C. ASSOCIATION CREATED. (a) The Health Care Pro-
13 viders Joint Underwriting Association is created consisting of all
14 licensed

15 (1) health care service corporations as defined in AS 21.-
16 87.330;

17 (2) disability insurers as defined in AS 21.12.05C;

18 (3) property insurers as defined in AS 21.12.060; and

19 (4) casualty insurers as defined in AS 21.12.070.

20 (b) Every insurer described in (a) of this section shall be a
21 member of the association and shall remain a member as a condition of
22 its authority to continue to transact that kind of business in this
23 state; except that any disability insurer may elect to pay any tax or
24 assessments due without otherwise participating as a member.

25 (c) The association shall commence operation upon a finding by
26 the director, after public hearing, that after the exercise of due
27 diligence no reinsurance could be procured at reasonable rates by the
28 corporation from a casualty insurer or reinsurer. After the association
29 has commenced operation, if the director determines, after public

1 hearing, that health care malpractice insurance is available through
2 insurers licensed in this state with respect to which he has previously
3 made the former finding, the association shall cease its underwriting
4 operations. At any time, after notice and hearing, the director may,
5 upon a finding that it is no longer needed, terminate the operation of
6 the association.

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

10 Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM. The asso-
11 ciation shall be governed by a board of directors appointed by the
12 governor of the state and consisting of two representatives of domestic
13 casualty and property insurers, one representative of admitted dis-
14 ability insurers, one representative of health care service corpora-
15 tions, one representative of foreign casualty and property insurers, and
16 two persons from the public. Members of the board of directors serve
17 three-year terms.

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

1 Administrative Procedure Act (AS 44.62).

2 (b) The plan of operation shall

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

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

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

9 (4) establish procedures for records to be kept of all
10 financial transactions of the association, its agents, and the board
11 of directors;

12 (5) establish the amount and method of reimbursing members of
13 the board of directors;

14 (6) establish the procedures for awarding contracts to indem-
15 nify or defend or to provide other services and to compensate the indem-
16 nitors or vendors;

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

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

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

24 (1) provide reinsurance to the corporation covering contracts
25 issued by the corporation indemnifying health care providers and their
26 employees who are health care providers against loss by reason of
27 liability for professional services and agreeing to tender on behalf
28 of the health care providers and their employees who are health care
29 providers a defense in an action brought under AS 09.55.530 - 09.55.560;

1 the limit of liability shall be no less than the minimum liability
2 required to be indemnified as provided in AS 08.64.215 and AS 18.20.045,
3 and the coverage shall be the same as that which the Health Care Pro-
4 viders Indemnity Corporation is required to provide under sec. 50 of
5 this chapter;

6 (2) charge a premium for the protection provided by the
7 contracts issued under sec. 50 of this chapter which shall be deter-
8 mined by the board of directors in accordance with sec. 80 of this
9 chapter and subject to the approval of the director;

10 (3) comply with or be subject to AS 21.06.090; 21.06.120;
11 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250;
12 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and
13 36 of this title;

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

21 (b) The association may

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

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

29 (3) provide reinsurance to the corporation for coverage to

1 health care providers for liability under AS 09.55.530 - 09.55.560 in
2 excess of the minimum limits required for licensure as a health care
3 provider where there is a finding by the director that this coverage is
4 unavailable at a reasonable cost and that this coverage can be made
5 available at a reasonable cost through the corporation;

6 (4) provide reinsurance to the corporation for coverage for
7 liability under AS 09.55.530 - 09.55.560 to chiropractors licensed
8 under AS 08.20, dental hygienists licensed under AS 08.32, dentists
9 licensed under AS 08.36, nurses licensed under AS 08.68, dispensing
10 opticians licensed under AS 08.71, optometrists licensed under AS 08.72,
11 pharmacists licensed under AS 08.80, physical therapists licensed under
12 AS 08.84, and psychologists and psychological associates licensed under
13 AS 08.86;

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

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

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

19 (8) cede or assume reinsurance;

20 (9) perform all other acts necessary and proper to effectu-
21 ate the association.

22 Sec. 21.88.160. RATES AND RATING PLANS. The rates and rating
23 plans shall be determined as provided in sec. 80 of this chapter,
24 except that allowance may not be made for profit to an indemnifying
25 carrier or for income from investment of member-contributed funds; and
26 provided that reserves for claims incurred during the policy period and
27 reasonably expected to be reported after three years after the incident
28 may be included on a different basis due to the additional financial
29 flexibility provided by the association.

1 Sec. 21.88.170. ASSESSMENT. If sufficient funds are not avail-
2 able for the sound financial operation of the association, all members
3 shall contribute to the financial requirements of the association by
4 paying to the association an assessment to be determined by the board
5 of governors of the association, these assessments to be prorated among
6 all members in proportion to their direct written premiums or revenues
7 in this state in the insurance lines the writing of which require
8 membership in the association, in the two years ending on the preceding
9 December 31, after deducting the applicable cancellations, returned
10 premium, the unabsorbed portion of any deposit premium, all policy
11 dividends, unabsorbed premiums refunded to policyholders, refunds,
12 savings, savings coupons and other similar returns paid or credited to
13 policyholders with respect to their policies. Any assessment under
14 this section is a tax obligation in addition to taxes required under
15 AS 21.09.210 and notwithstanding the provisions of AS 21.09.210(e).

16 Sec. 21.88.180. RATE ADJUSTMENT. (a) If in any year an assess-
17 ment is made under sec. 170 of this chapter, rates for the next period
18 shall be increased from the rate determined under sec. 160 of this
19 chapter by an amount sufficient to reimburse all members the amounts
20 assessed.

21 (b) No assessment may be reimbursed to members without prior
22 approval of the director and no interest accrues in favor of members on
23 amounts assessed.

24 (c) If, after establishing required reserves, there is an excess
25 amount in reserve, the excess premium shall be refunded to the insured
26 health care providers.

27 Sec. 21.88.190. REPORTS. At least annually the association shall
28 report to the director concerning its affairs. The report shall be in
29 the form prescribed by the director.

1
2
3 The House bill's loan fund
4 differs from the loan fund in the Senate
5 bill in that loans under the House version
6 are made to the corporation to maintain
7 reserves, the interest rate is higher and
8 the term is shorter
9
10

11 ARTICLE 4. LOAN FUND.

12 Sec. 21.88.210. FUND ESTABLISHED. (a) There is in the Depart-
13 ment of Commerce and Economic Development a medical malpractice liabil-
14 ity revolving loan fund to be administered by the director of insurance.

15 (b) Loans shall be made from the fund to the Joint Underwriting
16 Association upon certification by the director that a loan is necessary
17 for the corporation to spread costs out over time because of fluctua-
18 tions in loss experience. If a loan is made to the corporation from
19 the fund, the Joint Underwriting Association shall issue a note to the
20 fund pledging the premiums collected in the future as security for
21 the loan.

22 (c) Loans from the fund shall be repaid by the Joint Underwriting
23 Association within five years at an annual interest rate of six per
24 cent.

25 (d) The director may sell at par value to the Department of
26 Revenue the notes, security instruments and pledge agreements held by
27 the Department of Commerce and Economic Development as security for
28 loans made under this section. The Department of Revenue shall pur-
29 chase all the notes offered until the current principal amount of the

1 notes purchased and held by the Department of Revenue equals \$5,000,000.

2 ARTICLE 5. GENERAL PROVISIONS.

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

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

6 (2) "corporation" means the Health Care Providers Indemnity
7 Corporation;

8 (3) "health care provider" means a physician licensed under
9 AS 08.64 and a hospital licensed under AS 18.20.

10 * Sec. 40. AS 21.18.090 is amended by adding a new paragraph to read:

11 (5) reserves for the Joint Underwriting Association are to
12 include claims reported and unpaid; reserves for claims incurred but
13 not reported, but those which may reasonably be expected to be re-
14 ported beyond three years after the date of occurrence may be included
15 on a different basis due to the additional financial flexibility of
16 the association.

17 * Sec. 41. AS 08.02 is amended by adding a new section to read:

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

26 * Sec. 42. AS 09.55.535, and AS 09.55.537, enacted in sec. 31 of this
27 Act, have the effect of changing the Alaska Supreme Court's Rules of Civil
28 Procedure by requiring the submission of medical malpractice claims against
29 hospitals and physicians to either nonbinding arbitration or to expert

1 advisory panels, unless all parties to the action agree otherwise.

2 * Sec. 43. AS 08.64.365 and AS 08.68.040 are repealed.

3 * Sec. 44. This Act takes effect 30 days after enactment.

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

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

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

(c) The agreement shall provide that the person receiving health care may revoke the agreement within 60 days after execution by notifying the health care provider in writing. A health care provider may not revoke the agreement after its execution.

(d) Each admission to a hospital shall be treated as separate and distinct for the purposes of an agreement to arbitrate, but a person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital which provides for continuation of the agreement for a continuous program of treatment or during continued membership.

(e) Upon the filing of a malpractice claim which is subject to an agreement to arbitrate, the claim shall be submitted to an arbitration panel. The arbitration panel shall consist of three arbitrators: one arbitrator designated by the plaintiff or plaintiffs, one arbitrator

1 designated by the defendant or defendants, and a third arbitrator
2 designated by mutual agreement who shall serve as chairperson of the
3 board. If the parties cannot agree on the third person, the court will
4 provide a list of three or more persons who might serve as chairperson
5 of the arbitration panel, which shall be furnished by the attorney
6 general. Plaintiff or plaintiffs together and defendant or defendants
7 together may each strike one or more names from the list, so after each
8 side has done so at least one name remains on the list, providing a
9 basis for the final selection by the court.

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

17 (g) Each member of the panel shall receive reasonable compensation
18 to be paid by the court based on the extent and duration of services
19 rendered. The court shall also pay the costs of experts called by the
20 panel.

21 (h) The ~~court~~ ^{arbitration panel} may appoint an expert advisory panel, with the
22 powers of the expert advisory panel under sec. 536 of this chapter, to
23 advise the ~~court~~ ^{arbitration panel} on the medical facts of the case.

24 (i) The court shall specify the shortest practical deadline for
25 completion of the work of the arbitration panel, taking into account
26 all the circumstance and the nature of the case.

27 (j) The provisions of the Uniform Arbitration Act, AS 09.43.010 -
28 09.43.185, apply to arbitrations under this section insofar as they are
29 applicable and do not conflict with the provisions of this section;

1 arbitrations under this section shall be conducted in accordance with
2 any rules of court which may be adopted.

3 Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for
4 damages due to personal injury or death based upon the provision of
5 professional services by a health care provider, the court shall estab-
6 lish a three-person expert advisory panel in accordance with this
7 section unless the court decides that an expert advisory opinion is not
8 necessary for a decision in the case. When the action is filed the
9 court shall, by order, determine the professions or specialties to be
10 represented on the expert advisory panel and shall advise each party of
11 the professions or specialties to be represented, giving the parties
12 the opportunity to object or make suggestions.

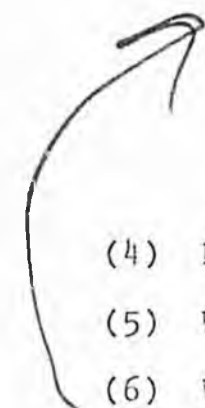
13 (b) The expert advisory panel may compel the attendance of wit-
14 nesses, interview the parties, physically examine the injured person
15 if alive, consult with the specialists or learned works they consider
16 appropriate, and compel the production of and examine all relevant
17 hospital, medical,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

21 (c) Not more than 30 days after selection of the panel, it shall
22 make a written report to the parties and to the court, substantially
23 answering the following questions in addition to any other question
24 which the court puts to the panel:

25 (1) What was the medical complaint or condition for which
26 the person sought or was brought to medical care?

27 (2) What would have been the likely course of the complaint
28 or condition without medical care?

29 (3) Was the care appropriate?



- (4) Did an injury arise from the medical care?
- (5) What was the injury?
- (6) What specifically caused the injury?
- (7) Was the injury caused by negligence?
- (8) Is the injury stable or will it improve or become worse?
- (9) *Is the outcome different than would be expected?*

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

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

1 member of the panel may be called by any party and may be cross-examined
2 as to the contents of the report or of his dissenting or concurring
3 opinion.

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

10 (f) Members of a panel are entitled to travel expenses and per
11 diem in accordance with state law pertaining to members of boards and
12 commissions for all time spent in preparing its report and matters in-
13 cidental to it. If a panel member is called upon as a witness at trial
14 or upon deposition, he is entitled to payment of an expert witness fee.
15 All expenses incurred by the panel shall be paid by the court. However,
16 in any case in which the court determines that a party has made a
17 patently frivolous claim or a patently frivolous denial of liability,
18 it shall order that all costs of the expert advisory panel be borne by
19 the party making that claim or denial.

20 (g) Parties to the case and their counsel may not initiate com-
21 munication out of court with members of the panel on the subject matter
22 of its inquiry and report or cause or solicit others to do so, except
23 through ordinary discovery proceedings.
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proposed
4/13

4/12/76

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* Sec. 39. AS 21 is amended by adding a new chapter to read:

CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

ARTICLE 1. PURPOSE.

Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide a means of furnishing health care providers with adequate insurance against liability for medical negligence, ~~by concentrating all such insurance in one entity which can negotiate more successfully for insurance from casualty insurers and to distribute equitably the true cost of the insurance among the health care providers insured.~~

ARTICLE 2. INDEMNITY CORPORATION.

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

Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors which shall be appointed by the governor of the state and confirmed by the legislature as provided in (b) of this section.

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

- (1) two physicians licensed in the state; one of the physicians shall be engaged in group practice in a clinic of six or more physicians;
- (2) one person employed by a hospital or on the board of directors of a hospital;
- (3) two professionals in the insurance field;

1 (4) two persons who are not health care providers or finan-
2 cially interested in the field of health care, attorneys, or represen-
3 tatives of the insurance industry.

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

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

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

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

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

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 administration
26 of the affairs of the corporation and the discharge of the purposes for
27 which it is created. The plan and any amendments of it become effective
28 upon the director's approval. If the board of governors fails to submit
29 a plan of operation, or if at a subsequent time the board of governors

1 fails to submit suitable amendments to the plan, the director shall,
2 after notice and hearing, adopt and promulgate a plan of operation or
3 amendments which are necessary or advisable to effectuate the provisions
4 of this chapter. Adoption of the plan is not subject to the Adminis-
5 trative 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 discharging
11 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 procedures for awarding contracts to carry
18 out the provisions of this chapter;

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

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

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

26 (1) in the form approved by the director, issue to all health
27 care providers who pay the premiums for it a contract or contracts
28 indemnifying the health care provider and his employees who are health
29 care providers against loss by reason of liability for professional