

236 HJ FCC MALPRACTIVE (INCLUDING HB 574)

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

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

18 (3) comply with or be subject to AS 21.06.090; 21.06.120;  
19 21.06.140; 21.06.160; 21.06.250; AS 21.09.130; 21.09.190; 21.09.200;  
20 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18,  
21 21, 24, and 36 of this title;

22 (4) carry out the obligations of the contracts issued under  
23 (1) of this subsection by defending all covered claims made against  
24 insured health care providers and by paying all liabilities which are  
25 finally adjudicated against the insured health care provider or which  
26 may in the opinion of the corporation reasonably be expected to be  
27 finally adjudicated against the health care provider to the extent of  
28 the contract obligation;

29 (5) provide coverage to health care providers for liability

1 in excess of the minimum limits required for licensure as a health care  
2 provider, but limited to \$1,000,000 for individual health care providers  
3 and \$5,000,000 for hospitals, if there is a finding by the director that  
4 this coverage is unavailable at a reasonable cost and that this coverage  
5 can be made available at a reasonable cost through the corporation; if  
6 this paragraph is implemented, then each health care provider obtaining  
7 excess coverage up to these amounts shall obtain it from the corpora-  
8 tion, and the corporation may procure reinsurance for all risks incurred  
9 by contracts issued under this paragraph from the private market.

10 (b) The corporation may

11 (1) in the form approved by the director, issue contracts of  
12 professional liability insurance to chiropractors licensed under AS 08.-  
13 20, dental hygienists licensed under AS 08.32, dentists licensed under  
14 AS 08.36, nurses licensed under AS 08.68, dispensing opticians licensed  
15 under AS 08.71, optometrists licensed under AS 08.72, pharmacists li-  
16 censed under AS 08.80, physical therapists licensed under AS 08.84, and  
17 psychologists and psychological associates licensed under AS 08.86;

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

22 (3) ~~(4)~~ recommend that the director hold public hearings for the  
23 purpose of commencing operation of the joint underwriting association  
24 established under secs. 110 - 190 of this chapter; if the joint under-  
25 writing association begins operation, the corporation may purchase  
26 reinsurance from the association for any of the liability incurred by  
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contracts issued by the corporation;

(4)(5) 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;

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

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

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

(8)(9) provide risk management advice and services to hospitals;

(9)(10) negotiate and become a party to contracts for management services for the corporation;

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

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

Sec. 21.88.070. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. The information shall be on forms prescribed by the director, and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. At least annually the corporation shall report to the director

1 the number and amount of claims filed, reserved, paid, settled and  
2 adjudicated during the year, the premiums paid to and the expenses  
3 incurred by the corporation during the year. This report shall be  
4 available to the public. The director may require that supplemental  
5 reports include the names of insured health care providers and the  
6 claimants; however, no reports which become publicly available may  
7 include the names of health care providers or claimants or information  
8 that will permit by inference the identity of specific health care  
9 providers or claimants. All statistics shall be made available to the  
10 appropriate licensing board or agency.

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

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

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

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

29 (4) rates shall not be inadequate; rates are inadequate if,

1 based on available actuarial data, the premiums to be paid by the  
2 health care providers are or may reasonably be expected to be insuf-  
3 ficient to pay for losses incurred by the corporation, including claims  
4 paid, reserves for claims reported and unpaid, reserves for claims  
5 incurred during the policy period and not reported provided that re-  
6 serves for claims incurred during the policy period and reasonably  
7 expected to be reported after three years after the incident may be  
8 included on a different basis due to the additional financial flexibil-  
9 ity provided by the corporation, and reasonable expenses for the opera-  
10 tion of the corporation;

11 (5) rates may not be unfairly discriminatory;

12 (6) rates shall be adjusted annually;

13 (7) rates for any policy year shall be calculated to include  
14 the adjustment for actual experience of the corporation;

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

18 (9) income from the investment of reserves shall be con-  
19 sidered;

20 (10) individual risk underwriting factors shall be considered;

21 (11) disciplines and classifications within the license cate-  
22 gories of health care providers shall be considered.

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

25 Sec. 21.88.090. REQUIRED INSURANCE; CANCELLATION. The corporation  
26 shall provide insurance to all health care providers otherwise eligible  
27 for licensure under AS 08.64 and AS 18.20. The corporation may provide  
28 for installment payment of premiums in which event each installment is  
29 due by the date specified. The corporation may cancel any of its

1 policies in the event of nonpayment of any premium or installment on a  
2 premium, or other charge, by mailing or delivering to the insured at  
3 the address shown on the policy and to the agency of the state issuing  
4 the insured's license written notice stating when, not less than 10 days  
5 after notice is received by the insured, the cancellation is effective.

6 ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

7 Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Pro-  
8 viders Joint Underwriting Association is created consisting of all  
9 licensed

- 10 (1) health care service corporations as defined in AS 21.-  
11 87.330;
- 12 (2) disability insurers as defined in AS 21.12.050;
- 13 (3) property insurers as defined in AS 21.12.060; and
- 14 (4) casualty insurers as defined in AS 21.12.070.

15 (b) Every insurer described in (a) of this section shall be a  
16 member of the association and shall remain a member as a condition of  
17 its authority to continue to transact that kind of business in this  
18 state, except that any disability insurer may elect to pay any tax or  
19 assessments due without otherwise participating as a member.

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

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

5 Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM, <sup>Compensation</sup> The asso-  
6 ciation shall be governed by a board of directors appointed by the  
7 governor of the state and consisting of two representatives of domestic  
8 casualty and property insurers, one representative of admitted dis-  
9 ability insurers, one representative of health care service corpora-  
10 tions, one representative of foreign casualty and property insurers, and  
11 two persons from the public. <sup>(b)</sup> Members of the board of directors serve  
12 three-year terms. <sup>(c) Board members receive compensation from</sup>

13 <sup>the association of \$100 per day when at the board meets and</sup>  
14 <sup>incidental expenses</sup> Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30  
15 days after the association's creation the board of directors shall  
16 prepare and submit to the director for his approval a plan of operation  
17 which provides for the fair, reasonable and equitable administration of  
18 the affairs of the association and the discharge of the purposes for  
19 which it is created. The plan and any amendments of it become effective  
20 upon the director's approval. If the board of directors has failed to  
21 submit a plan of operation, or if at any subsequent time the board of  
22 directors fails to submit suitable amendments to the plan, the director  
23 shall, after notice and hearing, adopt and promulgate a plan of opera-  
24 tion or amendments which are necessary or advisable to effectuate the  
25 provisions of this chapter. Adoption of the plan is not subject to the  
26 Administrative Procedure Act (AS 44.62).

26 (b) The plan of operation shall

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

29 (2) establish procedures for handling assets and discharging

1 liabilities of the association;

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

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

7 (5) establish the procedures for awarding contracts to indem-  
8 nify or defend or to provide other services and to compensate the indem-  
9 nitors or vendors;

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

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

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

17 (1) provide reinsurance to the corporation covering contracts  
18 issued by the corporation for that portion of the liability incurred by  
19 the corporation it chooses to reinsure through the association, indem-  
20 nifying health care providers and their employees who are health care  
21 providers against loss by reason of liability for professional services  
22 and agreeing to tender on behalf of the health care providers and their  
23 employees who are health care providers a defense in an action brought  
24 under AS 09.55.530 - 09.55.560;

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

29 (3) comply with or be subject to AS 21.06.090; 21.06.120;

1 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250;  
2 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and  
3 36 of this title;

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

11 (b) The association may

12 (1) employ or retain persons, individual or corporate, to  
13 discharge its obligations and pay reasonable compensation for those  
14 services;

4           (2)-(5) borrow or advance funds necessary to effectuate the  
5 purposes of this association;

6           (3)-(6) negotiate and become a party to those contracts which  
7 are necessary to carry out the purposes of the association;

8           (4)-(7) sue or be sued in the name of the association;

9           (5)-(8) cede or assume reinsurance;

10          (6)-(9) perform all other acts necessary and proper to effectuate  
11 the association.

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

19           Sec. 21.88.170. ASSESSMENT. If sufficient funds are not available  
20 for the sound financial operation of the association, all members shall  
21 contribute to the financial requirements of the association by paying to  
22 the association an assessment to be determined by the board of <sup>directors</sup> ~~governors~~  
23 of the association, these assessments to be prorated among all members  
24 in proportion to their direct written premiums or revenues in this state  
25 in the insurance lines the writing of which require membership in the  
26 association, in the two years ending on the preceding December 31, after  
27 deducting the applicable cancellations, returned premium, the unabsorbed  
28 portion of any deposit premium, all policy dividends, unabsorbed pre-  
29 miums refunded to policyholders, refunds, savings, savings coupons and

1 other similar returns paid or credited to policyholders with respect to  
2 their policies. Any assessment under this section is a tax obligation  
3 in addition to taxes required under AS 21.09.210 and notwithstanding the  
4 provisions of AS 21.09.210(e).

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

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

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

6 Sec. 21.88.190. REPORTS. At least annually the association shall  
7 report to the director concerning its affairs. The report shall be in  
8 the form prescribed by the director.

#### 9 ARTICLE 4. LOAN FUND.

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

3 (b) Loans may be made from the fund to the corporation and to the  
4 association upon certification by the director that a loan is necessary  
5 for the corporation or association to spread costs out over time because  
6 of fluctuations in loss experience. If a loan is made to the corpora-  
7 tion or the association from the fund, the borrower shall issue a note  
8 to the fund pledging the premiums collected in the future as security  
9 for the loan.

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

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

AS 08.20 is amended by adding a new section to read:

Sec. 08.20.115. MALPRACTICE INSURANCE. If medical malpractice insurance for chiropractors becomes unavailable on the voluntary market, and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of chiropractic services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Health Care Providers Indemnity Corporation established under AS 21.88.

AS 08.20.120 is amended by adding a new paragraph to read:

(8) complies with the provisions of sec. 115 of this chapter.

EXAMPLE

AS 08.20 is amended by adding a new section to read:

Sec. 08.20.115. MALPRACTICE INSURANCE. If medical malpractice insurance for chiropractors becomes unavailable on the voluntary market, and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of chiropractic services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Health Care Providers Indemnity Corporation established under AS 21.88.

AS 08.20.120 is amended by adding a new paragraph to read:

(8) complies with the provisions of sec. 115 of this chapter.

Allow 60 day closing off period

Sec. 09.55.530 is reported & re-amended forward;

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ARTICLE 6. MALPRACTICE ACTIONS.

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2 Sec. 09.55.530. DECLARATION OF PURPOSE. The legislature finds  
3 that the health of the people is threatened by curtailment of health  
4 care services due to the difficulty in obtaining adequate malpractice  
5 insurance at a reasonable cost. It is the purpose of secs. 530 - 560 of  
6 this chapter to protect the health and safety of the people of this  
7 state by establishing procedural aids for handling malpractice claims  
8 which will help ensure the ready availability of adequate insurance at a  
9 reasonable cost and which will be fair to all parties concerned.

18. *Voluntary* Sec. 09.55.53P. VOLUNTARY ARBITRATION. (a) A patient and any  
19 health care provider may execute an agreement to submit to arbitration  
20 any dispute, controversy, or issue arising out of care of treatment by  
21 the health care provider during the period that the agreement is in  
22 force or that has already arisen between the parties.

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

1 fairly informs the patient and properly protects his interests.

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

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(d) 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 board. If the parties cannot agree on the third person, the court will

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provide a list of three or more persons who might serve as chairman of the arbitration board, which shall be furnished by the attorney general. Plaintiff or plaintiffs together and defendant and defendants together may each strike one or more names from the list, so after each side has done so, at least one name remains on the list, providing a basis for the final selection by the court.

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

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(f) Each member of the board shall receive reasonable compensation to be paid by the court based on the extent and duration of services rendered. The court shall also pay the costs of experts required by the board, *to a maximum of \$50/day for each of 3 experts for each party,*

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

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

(i) *It shall be a condition of the arbitration agreement that the results are binding on both parties*

10 \* Sec. 15. AS 09.55 is amended by adding a new section to read:

11 Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for  
12 damages due to personal injury or death based upon the provision of  
13 professional services by a health care provider, the court shall estab-  
14 lish a three-person expert advisory panel in accordance with this  
15 section. When the action is filed the court shall, by order, determine  
16 the professions or specialties to be represented on the expert advisory  
17 panel and shall advise each party of the professions or specialties to  
18 be represented, giving the parties the opportunity to object or make  
19 suggestions. The court may in its discretion conduct other preliminary  
20 proceedings relative to the composition of the panel as it considers  
21 appropriate.

22 (b) The expert advisory panel may compel the attendance of wit-  
23 nesses, interview the parties and physically examine the injured person  
24 if alive, consult with the specialists or learned works they consider  
25 appropriate, and compel the production of and examine all relevant  
26 hospital, medical, or other records or materials relating to the health  
27 care treatment. The panel may meet in camera, but shall maintain a  
28 record of any testimony or oral statements of witnesses, and shall keep  
29 copies of all written statements and opinions it receives. Not more

1 than 30 days after selection of the panel, it shall make a written  
2 report to the parties and to the court, substantially answering the  
3 following questions in addition to any other question which the court  
puts to the panel:

- (1) What was the medical complaint or condition for which the person sought or was brought to medical care?
- (2) What would have been the likely course of the complaint or condition without the medical care?
- (3) Was the care appropriate?
- (4) Did an injury arise from the medical care?
- (5) What was the injury?
- (6) Is the injury stable; or will it improve or become worse?
- (7) What specifically caused the injury?
- (8) Was the injury caused by negligence?
- (9) *Is the outcome different than would otherwise have been expected?*

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

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

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

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13 (f) Members of a panel are entitled to travel expenses and per  
19 diem in accordance with state law pertaining to members of boards and  
20 commissions for all time spent in preparing its report and matters  
21 incidental to it. If a panel member is called upon as a witness at  
22 trial or upon deposition, he is entitled to payment of an expert witness  
23 fee. All expenses incurred by the panel shall be paid by the <sup>court</sup> state.  
24 However, in any case in which the court determines that a party has made  
25 a patently frivolous claim or a patently frivolous denial of liability,  
26 it shall order that all costs of the expert advisory panel be borne by  
27 the party making that claim or denial.

28 (g) Parties to the case and their counsel may not initiate com-  
29 munication out of court with members of the panel on the subject matter

1 of its inquiry and report or cause or solicit others to do so, except  
2 through ordinary discovery proceedings.

A M E N D M E N T

TO: Senate CS for CS for House Bill No. 57<sup>th</sup> am S

Page 4, after line 29: Insert the following:

Sec. 08.64.221. PERIODIC REEXAMINATION. In order to maintain a license under this chapter, a licensee shall be reexamined every five years by the board to test the licensee's fitness to continue practicing medicine or osteopathy in the state.

A M E N D M E N T

TO: Senate CS for CS for House Bill No. 574 am S

Page 4, after line 29: Insert the following:

Sec. 08.64.221. PERIODIC REEXAMINATION. In order to maintain a license under this chapter, a licensee shall be reexamined every five years by the board to test the licensee's fitness to continue practicing medicine or osteopathy in the state.

SUGGESTED CHANGES IN SCS CS:HB 574AM  
in addition to changes already suggested for CS HB574

- p.1 1. 23-24 Would a retired practitioner be eligible to be a lay person on a board?
- p.1 1. 27 New board member terms should all start at same time, like July 1.
- p.4 1. 1-5 Delete "residing in as many separate judicial districts as possible".  
1. 3-5 Retain election by ASMA.
- p.10 1. 20-21 Change "A physician or hospital" to "a health care provider".
- p.11 1. 7 Change "panelists" to "arbitrators".  
1. 12 Change "panelists" to "arbitrators".  
1. 13 Change "panelists" to "person".  
1. 19 ~~19~~ Change "panel" to "board".
- p.12 1. 25 After "opinions" add "and the opinion of the expert advisory panel".
1. ~~17-14~~ Add subsection (j) to read:  
"If an expert advisory panel was not used by the arbitration board, such a panel, with the powers of the expert advisory panel under Sec. 537 of this chapter, shall be appointed by the court prior to a trial de novo unless the court decides that an expert advisory panel is not necessary for a decision in the case."
- p.12 1. ~~27~~ <sup>29</sup> Change "director of insurance" to "attorney general".  
p.13 1. 28 1 Change "the patient" to "both parties".  
Change "his" to "their".
- p.13 1. ~~13-16~~ Expert advisory panel language of house bill p.10 line 10 to page 13 line 2 with suggested additions should be inserted into senate bill as senate bill does not describe the constitution or duties adequately.
- p.25 1. 15 ~~20~~ Strike ", attorneys,".
- p.27-26 1. 28 4 Add after "1974" "for any period".
- p.39 1. ~~24-25~~ <sup>29</sup> Wording incorrect since floor amendments about expert advisory panels.  
p.40 1. 1

SUGGESTED CHANGES TO CSHB 574

- p.2 1. 2-6  
and similar sections  
for other boards
- Change to read:  
"That by reason of demonstrated deficiency of competence, experience, or education, or because of physical or mental illness, the authority to practice should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice, require further formal education approved by the board, or may suspend or revoke the license."
- p.10 1. 19
- After "suggestions." insert a new sentence to read:  
"Ordinarily the panel will consist of physicians, but any person expert in the matter of the claim may be appointed to the panel."
- p.11 1. 15-13
- Strike present wording and substitute:  
 (1) What was the disorder for which the person sought medical care?  
 (2) What would have been the outcome without medical care?  
 (3) Was the treatment selected appropriate for the case?  
 (4) Did an injury arise from the medical care?  
 (5) What is the injury?  
 (6) How extensive and how disabling is the injury?  
 (7) Is the injury stable; or will it improve or become worse?  
 (8) What specifically caused the injury?  
 (9) Was the injury the result of negligent medical care?  
 (10) Is the outcome different than would otherwise have been expected?"
- p.11 1. 17-18
- After "state" delete remainder of sentence.
- p.14 1. 1  
1. 2
- Change "increase" to "adjusted"  
Change "increase" to "changes"
- p.16 1. 23
- Add waiver for insured hospitals until 1-1-77.
- p.19 1. 15
- Add new section to read:  
"18.23.035 guidelines not admissible in evidence. A guideline established by a review organization is not admissible in evidence in a proceeding brought by or against a health care provider by a person to whom the provider has rendered professional services."
- p.23 1. 25
- Delete "of \$100 per day."
- p.30 1. 29
- After "arising" add "from acts, errors, or omissions".

Alaska State Medical Association

574

SUGGESTED RE-WORDING FOR 08.20.175 etc. p.1-10

In addition to action under Sec. 170 of this chapter, upon a finding that by reason of deficiency of competence, experience, or education, and/or by reason of <sup>or</sup> ~~physician~~ or mental illness, the authority to practice should be limited or conditioned or the practitioner disciplined, the Board may reprimand, censure, place on probation, restrict practice, require further formal education approved by the Board, or may suspend or revoke the license.

*Alaska State Medical Association*

SUGGESTED RE-WORDING OF QUESTIONS FOR EXPERT ADVISORY PANEL p.11

MB

- (1) What was the medical complaint or condition for which the person sought or was brought to medical care?
- (2) What would have been the likely course of the complaint or condition without the medical care?
- (3) Was the care appropriate?
- (4) Did an injury arise from the medical care?
- (5) What was the injury?
- (6) Is the injury stable; or will it improve or become worse?
- (7) What specifically caused the injury?
- (8) Was the injury caused by negligence?

*Collitta & Roddy*

---

Suggested Amendment for Senate Bill SCSCSHB 574 am S

Page 19 Section 18.20.045 - to replace Subsection (b)

Suggested Amendment for Section 18.20.045 - House Bill CSHB 574 am page 16

Addition to House Bill: Amendment would be added as subsection (a)

---

The Director of Insurance or his designee shall waive the requirement in (a) of this section for a hospital if the hospital furnishes satisfactory evidence of having other liability insurance providing coverage in amounts equal to or which exceed those specified in (a) of this section, and at a premium rate which does not exceed the premium rate offered by the Health Care Providers Indemnity Corporation for an equal amount of liability coverage. A waiver granted under this subsection may extend beyond the normal expiration date of the hospital's insurance policy or until such time as the policy's premium rate exceeds that which would be offered by the Health Care Providers Indemnity Corporation for an equal amount of coverage.

*This should be added to PS. 18, 20.01.*

- (c) The Director of Insurance may waive the requirement in (a) of this section or permit a deductible provision in the policy for a hospital, if the hospital:
- i) can demonstrate to the satisfaction of the Director of Insurance that without indemnity from any other source, the hospital has the financial resources to discharge the maximum potential exposure to the hospital by reason of the deductible provision.
  - ii) agree to permit the Health Care Providers Indemnity Corporation to provide defense of any claim brought against the hospital if any health care provider insured by the corporation is also involved in the claim and to reimburse the corporation for a prorata portion of the costs of defense.
  - iii) provides the Health Care Providers Indemnity Corporation with notice of any claim brought against it.

Mr. RICHARD BLOCK

ALASKA  
STATE LEGISLATURE

March 12, 1976

MEMORANDUM

Jerry,

Enclosed are a few radical amendments. I don't know if you'll approve of the ~~pro~~ amendment re donation of time of physicians. This approach was the way they began in California - but it's been watered down quite a bit since then. Let me know what changes you want. Love

A M E N D M E N T

TO: SENATE CS FOR CS FOR HOUSE BILL NO. 574 am S

Page 5, between lines 10 and 11: insert the following new section and renumber the remaining sections accordingly:

\* Sec. 14. AS 08.04.311 is amended to read:

Sec. 08.64.311. BIENNIAL LICENSE RENEWAL. Licenses shall be renewed biennially upon a showing of proof by the licensee that he or she has dedicated 10 days each year of his or her time without compensation to the treatment and care of persons eligible for medical assistance under AS 47.07.

A M E N D M E N T

TO: SENATE CS FOR CS FOR HOUSE BILL NO. 574 am S

Page 5, between lines 10 and 11: insert the following new section and renumber the remaining sections accordingly:

\* Sec. 14. AS 08.04.311 is amended to read:

Sec. 08.64.311. BIENNIAL LICENSE RENEWAL. Licenses shall be renewed biennially upon a showing of proof by the licensee that he or she has dedicated 10 days each year of his or her time without compensation to the treatment and care of persons eligible for medical assistance under AS 47.07.

A M E N D M E N T

TO: Senate CS for CS for House Bill No. 574 am S

Page 3, lines 27 through page 4, line 5: Delete all material and insert:

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

Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD. The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of seven persons with no direct financial interest in the health care industry [FIVE LICENSED PHYSICIANS], residing in as many separate Alaska judicial districts as possible. [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH VACANCY, SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIATION.]

Page 4, lines 6 through 12: Delete all material and renumber the remaining sections accordingly.

A M E N D M E N T

TO: Senate CS for CS for House Bill No. 574 am S

Page 3, lines 27 through page 4, line 5: Delete all material and insert:

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

Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD. The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of seven persons with no direct financial interest in the health care industry [FIVE LICENSED PHYSICIANS], residing in as many separate Alaska judicial districts as possible. [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH VACANCY, SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIATION.]

Page 4, lines 6 through 12: Delete all material and renumber the remaining sections accordingly.

OK

Page 15, line 3 ...care may revoke the agreement within ~~five~~ seven calendar days after execution....

OK

line 5 ...after its execution. The period for revocation shall be tolled during any period that the person receiving health care is physically disabled from executing such a revocation. An arbitration agreement entered into by the parents or legal guardian of a minor person receiving health care shall be binding upon such minor person.

OK

Possible Standard for court

Page 16, line 27 ...unless [the court decides] all parties shall agree that an expert advisory opinion is not...

Page 18, line 16 ...opinion, except that the non-appearance of a member of the panel for cross-examination shall not for that reason render the report inadmissible.

line 20 ...However, the court may [relax this prohibition upon a showing of good cause by any party] permit, prior-

to receipt of the report, such discovery as the court may, after good cause showing, find must be undertaken to preserve evidence which would otherwise be unobtainable.

O.K. Page 21, line 5 ...The court [shall] may take into account...

O.K. Page 24, line 24 ...by regulation [and submit to the legislative Administrative Regulation Review Committee standards for] risk management programs...  
change subject to A.P.A.

No, Page 30, line 17 ...two [professionals from] executives of insurance...

\* [Page 33, line 14 insert in place of (3) the following language:  
(3) negotiate for and procure reinsurance from a casualty insurer or reinsurer for all of its liability

incurred by contracts issued under (1) of this sub-  
section; ~~the corporation may not incur or retain under~~  
~~those contracts liability with respect to claims reported~~  
~~within 3 years after date of occurrence which is not~~  
~~reinsured as provided in this paragraph;~~ if, after the  
exercise of due diligence, no reinsurance for all <sup>L</sup> or a  
portion <sup>L</sup> of the risk can be procured at reasonable rates  
from casualty insurers or reinsurers, the corporation  
through the board of governors, shall so certify to  
the Director of Insurance and reinsurance shall then  
be provided <sup>to the extent not provided by private carriers</sup> by the Health Care Joint Underwriting Associa-  
<sup>A</sup> <sup>UIC</sup> tion as provided in Sec. 110 et. seq of this chapter for  
that portion not reinsured by a private carrier.

The original (3) shall then be numbered as (4)

The original (4) shall then be numbered as (5)

The original (5) shall then be numbered as (6)

The original (6) shall then be numbered as (7)

\* [ Page 34, line 17 (2) all language shall be deleted and its place  
the following language shall be inserted:

(2) cede reinsurance for all or any portion of the  
risk underwritten by the Corporation or reinsure any  
risk which the Corporation is authorized or required  
to insure by the issuance of a policy.

\* [ Page 37, line 19 insert the following:

(14) Provision for expectation of underwriting profit  
to any reinsurer except the Association shall be included

in the rate at reasonable levels except that no increase-  
ment for expectancy of underwriting profit shall be  
included in the rate making for a private insurer of  
the primary layer of reinsurance with respect to claims  
reported within three years after date of occurrence  
during any period that the claims reported after  
three years after date of occurrence are not reinsured  
with minimum reinsurance with a private insurer or re-  
insurer. If, while there shall be less than minimum  
reinsurance in force, premiums for claims reported within  
three years after date of occurrence exceed claims and  
reserves with respect to claims reported within three years  
after date of occurrence and operating expenses, such  
excess shall be added to the portion of premiums collected  
to discharge claims and reserves reported after  
three years after date of occurrence.

Minimum reinsurance for the purpose of this section  
means reinsurance of all risk with respect to claims  
reported after three years after date of occurrence.

out [ with the exception that MICA may, if not otherwise  
reinsurable retain up to the first \$50,000 of each and  
every loss and an aggregate loss of not more than  
\$500,000 per year. ]

Page 38, line 24 ...appointed by the [governor of the state] Director  
*No.* and consisting of two.....

Page 40, line 8 delete (1) and replace it with the following language:

(1) provide reinsurance to the corporation covering contracts issued by the ~~by the~~ corporation indemnifying health care providers and their employees who are health care providers against loss by reason of liability for professional services and agreeing to tender on behalf of the health care providers and their employees who are health care providers a defense in an action brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability required to be indemnified as provided in AS 08.64.215 and AS 18.20.045, and the coverage shall be the same as that which the Health Care Providers Indemnity Corporation is required to provide under sec. 50 of this chapter *to the extent reinsurance is not provided by private ~~reinsurance~~ casualty insurers or reinsurers.* ~~with respect only to claims reported within three years after date of occurrence.~~

Page 41, line 1 ...premium shall be refunded to the [association]  
corporation

OK, Page 42, line 29 ...to the corporation [and to the ...

Page 43, line 1 ...association] upon certification by the director that a loan is necessary for the following purposes.

insert the following language:

*Subordinated  
note  
pay out of profits*

i. a loan or loans not to exceed outstanding at any one time an aggregate of \$3,000,000 to be used to provide surplus in respect of policyholders. These obligations shall be subordinated to all other obligations of the corporation and be repayable in annual installments of no less than ~~twenty five~~ <sup>at</sup> percent the excess, if any, to which the premiums from insureds exceed claims, <sup>r</sup> Reserves, expenses, ~~repayment of loans provided for in subsection (b), hereof,~~ and assessments made by the Association if any.

*Interest rate at existing ~~prime~~ bank rates*  
Interest shall be paid on the outstanding balance at a rate equal to the from time to time yield from the investment of such funds less a reasonable charge for investment expense.

*out*

ii. A loan or loans not to exceed, when taken together with loans provided for in i) hereof, <sup>an aggregate of \$6,000,000</sup> outstanding at any one time, because of fluctuations in loss experience. These obligations shall have parity with all other obligations of the corporation except that they shall be subordinated to obligations to policyholders or claimants for indemnity of loss and shall be repaid within five years at an annual interest rate <sup>of six</sup> per cent.

*out*

*The loans pursuant to this subsection (i) shall not be authorized for any period that the MCA is fully reinsured.*

Page 43, line 1-7 Delete (b) and (c) ~~for the amended language.~~

Page 43 line 12 ...all the notes offered until the [current]  
principal ...

line 13 ...Department of Revenue at any one time equals  
\$6,000,000. [\$5,000,000]

Page 45, line 22 add the following language:

OK.

<sup>33 - 38</sup>  
Sections ~~34 - 39~~ of this Act shall be applicable to all  
actions, including those arising out of incidents  
occurring prior to the effective date of this act, in  
[cases where not filed] which trial has not commenced prior to the effective  
date hereof. *immediate effective date for this section*

Page 45 Sec. 49 Severability. In the event any portion of this Act  
shall be held unconstitutional all other portions shall  
remain in full force and effect except that if any por-  
tion of Article 3, chapter 88 of Title 21.  
A.S. 21.88.110 through 21.88.190 shall be held un-  
constitutional then the whole article shall be null  
and void except that the Joint Underwriting Association  
shall continue to discharge and assess to pay for claims  
incurred prior to declaration of unconstitutionality until  
all such claims have been paid. and except further that  
if it is held unconstitutional to require that Health  
Care Providers procure liability insurance from the  
Medical Indemnity Corporation of Alaska, then all of

sections 41, 42, 43 and 44 of this act shall be null and void except that the Medical Indemnity Corporation of Alaska and Joint Underwriting Association shall continue to discharge and assess to pay claims incurred prior to declaration of unconstitutionality until all such claims have been paid.

EXAMPLE

Sec. 08.20.115. MALPRACTICE INSURANCE. If medical malpractice insurance for chiropractors becomes unavailable on the voluntary market, and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of chiropractic services to the public, the director of insurance may require all persons licensed under this chapter and carrying malpractice insurance to purchase their insurance from the Health Care Providers Indemnity Corporation established under AS 21.88.

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

3 |           Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (a)  
4 | In addition to action under sec. 170 of this chapter, upon a finding  
5 | that by reason of ~~demonstrated problems~~ of competence, experience, edu-  
6 | cation or health the authority to practice chiropractic should be  
7 | limited or conditioned or the practitioner disciplined, the board may  
8 | reprimand, censure, place on probation, restrict practice by specialty,  
9 | procedure or facility, or require continuing education or retraining.

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

12 | \* Sec. 6. AS 08.32 is amended by adding a new section to read:

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

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

17 | Sec. 2. AS 08.20 is amended by adding new sections to read:

18 |           Sec. 08.20.115. INSURANCE REQUIRED. (a) To be eligible for an  
19 | active license under this chapter, a person must maintain insurance  
20 | against liability to patients for chiropractic malpractice in limits of  
21 | not less than \$200,000 per occurrence and \$600,000 aggregate liability  
22 | per year. This requirement is satisfied if a person's employer main-  
23 | tains insurance for him in the required amounts.

24 |           (b) The director of insurance may require all persons licensed  
25 | under this chapter to obtain the insurance required under (a) of this  
26 | section from the Health Care Providers Indemnity Corporation if, after  
27 | public hearing, he finds that unavailability of malpractice insurance on  
28 | the voluntary market for chiropractors is impairing the delivery of  
29 | chiropractic services to the public.

30 |           Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (a) *page 1*  
1 | In addition to action under sec. 170 of this chapter, upon a finding  
2 | that by reason of demonstrated lack of competence, experience, or educa-  
3 | tion the authority to practice chiropractic should be limited or condi-  
4 | tioned or the practitioner disciplined, the board may reprimand, censure,  
5 | place on probation, restrict practice by specialty, procedure, or  
6 | facility, or require continuing education or retraining.

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

9 | \* Sec. 3. AS 08.32 is amended by adding new sections to read:

10 |           Sec. 08.32.015. INSURANCE REQUIRED. (a) To be eligible for an  
11 | active license under this chapter, a person must maintain insurance  
12 | against liability to patients for malpractice in limits of not less than  
13 | \$100,000 per occurrence and \$300,000 aggregate liability per year. This  
14 | requirement is satisfied if the person's employer maintains insurance  
15 | for him in the required amounts.

16 |           (b) The director of insurance may require all persons licensed  
17 | under this chapter to obtain the insurance required under (a) of this  
18 | section from the Health Care Providers Indemnity Corporation if, after  
19 | public hearing, he finds that unavailability of malpractice insurance on  
20 | the voluntary market for dental hygienists is impairing the delivery of  
21 | dental hygienists' services to the public.

22 |           Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition  
23 | to action under sec. 160 of this chapter, upon a finding that by reason  
24 | of demonstrated lack of competence, experience, or education the author-  
25 | ity to practice dental hygiene should be limited or conditioned or the  
26 | practitioner disciplined, the board may reprimand, censure, place on  
27 | probation, restrict practice by specialty, procedure, or facility, or  
28 | require continuing education or retraining.

29 |           (b) The Administrative Procedure Act (AS 44.62) applies to any  
30 | action taken by the board under this section. *page 2*

1 Sec. 7. AS 08.36.010 is amended to read:

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

10 Sec. 8. AS 08.36.020 is amended to read:

11 Sec. 08.36.020. APPOINTMENT AND TERM OF SERVICE OF MEMBERS.  
12 Members of the board are appointed by the governor, subject to con-  
13 firmation by the legislature in joint session [ASSEMBLED]. Each board  
14 member serves for a term of five years, and until his successor is  
15 appointed and qualified except that the terms of the public members on  
16 the board shall be staggered so that they do not expire at the same  
17 time. The term begins on February 1. An appointment to a vacancy is  
18 for the unexpired term. [APPOINTMENTS SHALL BE MADE FROM A LIST OF  
19 NAMES RECOMMENDED BY THE ALASKA DENTAL SOCIETY. THE LIST SHALL BE  
20 SUPPLIED AT LEAST 30 DAYS BEFORE THE BEGINNING OF A TERM AND NOT MORE  
21 THAN 60 DAYS AFTER THE OCCURRENCE OF A VACANCY. THE LIST SHALL CONTAIN  
22 AT LEAST TWO RECOMMENDED NAMES FOR EACH APPOINTMENT. THE GOVERNOR  
23 SHALL MAKE THE APPOINTMENT WITHIN 30 DAYS AFTER RECEIVING THE LIST.]

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

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

2 Sec. 4. AS 08.36 is amended by adding new sections to read:

3 Sec. 08.36.115. INSURANCE REQUIRED. (a) To be eligible for an  
4 active license under this chapter, a person must maintain insurance  
5 against liability to patients for dental malpractice in limits of not  
6 less than \$200,000 per occurrence and \$600,000 aggregate liability per  
7 year. This requirement is satisfied if a person's employer maintains  
8 insurance for him in the required amounts.

9 (b) The director of insurance may require all persons licensed  
10 under this chapter to obtain the insurance required under (a) of this  
11 section from the Health Care Providers Indemnity Corporation if, after  
12 public hearing, he finds that unavailability of malpractice insurance on  
13 the voluntary market for dentists is impairing the delivery of dentist  
14 services to the public.

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 lack of competence, experience, or education the author-  
18 ity to practice dentistry should be limited or conditioned or the  
19 practitioner disciplined, the board may censure, place on probation,  
20 restrict practice by specialty, procedure, or facility, or require

21 *continuing education or retraining.*

~~REQUIRE...~~

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

Sec. 10. AS 08.64.010 is amended to read:

Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD.

The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of five licensed physicians, residing in as many separate Alaska judicial districts as possible, and two persons with no direct financial interest in the health care industry. [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH VACANCY, SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIATION.]

-3-

SCSCSHB 574 am 3

Sec. 11. AS 08.64.020 is amended to read:

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

Sec. 12. AS 08.64.090 is amended to read:

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

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

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

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

SCSCSHB 574 am 3

-4-

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

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

~~SCSCSHB 574 am 3~~

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

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

3

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

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

11 • Sec. 14. AS 08.68.010 is amended to read:

12           Sec. 08.68.010. CREATION AND MEMBERSHIP OF BOARD OF NURSING.

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

19 • Sec. 15. AS 08.68.020 is repealed and re-enacted to read:

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

25 • Sec. 16. AS 08.68.060 is amended to read:

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

12 shall promote a high degree of competence in the practice of medicine by  
13 requiring every physician licensed in the state to fulfill continuing  
14 education requirements.

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

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

23           Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
24 In addition to action under sec. 330 of this chapter, upon a finding  
25 that by reason of demonstrated lack of competence, experience, or  
26 education the authority to practice under this chapter should be limited  
27 or conditioned or the practitioner disciplined, the board may reprimand,  
28 censure, place on probation, restrict practice by specialty, procedure,  
29 or facility, or require continuing education or retraining. P4

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

... years of which were within the five years preceding appointment.

3 ■ Sec. 17. AS 08.68 is amended by adding a new section to read:

4       Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition  
5 to action under sec. 270 of this chapter, upon a finding that by reason  
6 of demonstrated problems of competence, experience, education, or health  
7 the authority to practice nursing should be limited or conditioned or  
8 the practitioner disciplined, the board may reprimand, censure, place  
9 on probation, restrict practice by specialty, procedure, or facility,  
10 or require continuing education or retraining.

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

13 ■ Sec. 18. AS 08.71.020 is amended to read:

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

■ Sec. 6. AS 08.68 is amended by adding new sections to read:

4       Sec. 08.68.165. INSURANCE REQUIRED. (a) To be eligible for an  
5 active license as a nurse under this chapter, a person must maintain  
6 insurance against liability to patients for malpractice in limits of not  
7 less than \$100,000 per occurrence and \$300,000 aggregate liability per  
8 year. This requirement is satisfied if a person's employer maintains  
9 insurance for him in the required amounts.

10       (b) The director of insurance may require all persons licensed  
11 under this chapter to obtain the insurance required under (a) of this  
12 section from the Health Care Providers Indemnity Corporation if, after  
13 public hearing, he finds that unavailability of malpractice insurance on  
14 the voluntary market for nurses is impairing the delivery of nurse  
15 services to the public.

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

23       (b) The Administrative Procedure Act (AS 44.62) applies to any  
24 action taken by the board under this section.  
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1 Sec. 19. AS 08.71.030 is amended to read:

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

6 Sec. 20. AS 08.71 is amended by adding a new section to read:

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

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

17 Sec. 21. AS 08.72.020 is amended to read:

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

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

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

30 Sec. 7. AS 08.71 is amended by adding new sections to read:

31 Sec. 08.71.085. INSURANCE REQUIRED. (a) To be eligible for an  
32 active license under this chapter, a person must maintain insurance  
33 against liability to patients for malpractice in limits of not less than  
34 \$100,000 per occurrence and \$300,000 aggregate liability per year. This  
35 requirement is satisfied if a person's employer maintains insurance for  
36 him in the required amounts.

37 (b) The director of insurance may require that all persons li-  
38 censed under this chapter obtain the insurance required under (a) of  
39 this section if, after public hearing, he finds that unavailability of  
40 malpractice insurance on the voluntary market for dispensing opticians  
41 is impairing delivery of the services of dispensing opticians to the  
42 public.

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

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

52 Sec. 8. AS 08.72 is amended by adding new sections to read:

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

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

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

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

12 \* Sec. 24. AS 08.80.010 is amended to read:

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

14 There is created the Board of Pharmacy, composed of seven [FIVE] members,  
15 five [EACH] of whom shall be pharmacists [A PHARMACIST] licensed in the  
16 state who has been actively engaged in the practice of pharmacy in the  
17 state for a period of three years immediately preceding his appointment.  
18 Two shall be persons with no direct financial interest in the health  
19 care industry. Whenever possible, the board shall include at least one  
20 member from each judicial district.

21 \* Sec. 25. AS 08.80.020 is amended to read:

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

29 \* Sec. 26. AS 80.80 is amended by adding a new section to read:

30 active license under this chapter, a person must maintain insurance  
31 against liability to patients for malpractice in limits of not less than  
32 \$100,000 per occurrence and \$300,000 aggregate liability per year. This  
33 requirement is satisfied if a person's employer maintains insurance for  
34 him in the required amounts.

35 (b) The director of insurance may require all persons licensed  
36 under this chapter to obtain insurance required under (a) of this  
37 section from the Health Care Providers Indemnity Corporation if, after  
38 public hearing, he finds that unavailability of malpractice insurance on  
39 the voluntary market for optometrists is impairing delivery of optome-  
40 trist services to the public. P6

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

42 In addition to action under secs. 240 and 250 of this chapter, upon a  
43 finding that by reason of demonstrated lack of competence, experience,  
44 or education the authority to practice optometry under this chapter  
45 should be limited or conditioned or the practitioner disciplined, the  
46 board may reprimand, censure, place on probation, restrict practice by  
47 specialty, procedure, or facility, or require continuing education or  
48 retraining.

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



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

26 ■ Sec. 29. AS 08.86.020 is amended to read:

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

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3 ■ Sec. 30. AS 08.86 is amended by adding a new section to read:

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

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

28 ■ Sec. 11. AS 08.86.120 is amended to read:

29 Sec. 08.86.120. ENTITLEMENT TO LICENSURE. A person who passes the  
30 examination given by the board and possesses the insurance required by  
31 sec. 125 of this chapter is entitled to be licensed as a psychologist.

32 ■ Sec. 12. AS 08.86.160 is amended to read:

33 Sec. 08.86.160. ASSOCIATES; ENTITLEMENT TO LICENSURE. A person  
34 who passes the examination given by the board and who possesses insur-  
35 ance in accordance with sec. 125 of this chapter is entitled to be  
36 licensed as a psychological associate.

37 ■ Sec. 13. AS 08.86 is amended by adding new sections to read:

38 Sec. 08.86.125. INSURANCE REQUIRED. (a) To be eligible for  
39 active licensure as a psychologist under this chapter, a person must  
40 maintain insurance against liability to patients for malpractice in  
41 limits of not less than \$100,000 per occurrence and \$300,000 aggregate  
42 liability per year. This requirement is satisfied if a person's em-  
43 ployer maintains insurance for him in the required amounts.

44 (b) The director of insurance may require all persons licensed  
45 under this chapter to obtain insurance required under (a) of this  
46 section from the Health Care Providers Indemnity Corporation if, after  
47 public hearing, he finds that unavailability of malpractice insurance on  
48 the voluntary market for psychologists is impairing the delivery of  
49 psychologist services to the public.

50 Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
51 Upon a finding that by reason of demonstrated lack of competence,  
52 experience, or education the authority to practice psychology or as a  
53 psychological associate under this chapter should be limited or condi-  
54 tioned or the practitioner disciplined, the board may reprimand, censure,  
55 place on probation, restrict practice by time, specialty, procedure, or  
56 facility, or require continuing education or retraining.

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

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ARTICLE 6. MALPRACTICE ACTIONS.

7 Sec. 09.55.530. DECLARATION OF PURPOSE. The legislature finds  
1 that the health of the people is threatened by curtailment of health  
2 care services due to the difficulty in obtaining adequate malpractice  
3 insurance at a reasonable cost. It is the purpose of secs. 530 - 560 of  
4 this chapter to protect the health and safety of the people of this  
5 state by establishing procedural aids for handling malpractice claims  
6 which will help ensure the ready availability of adequate insurance at a  
7 reasonable cost and which will be fair to all parties concerned.

8 \* Sec. 15. AS 09.55 is amended by adding a new section to read:  
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13 \* Sec. 31. AS 09.55 is amended by adding new sections to read:

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

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

25 (c) The arbitration board shall consist of three arbitrators:  
26 one arbitrator designated by the plaintiff or plaintiffs, one arbitrator  
27 designated by the defendant or defendants, and a third arbitrator  
28 designated by mutual agreement who shall serve as chairman of the  
29 board. If the parties cannot agree on the third person, the court will

1 provide a list of three or more persons who might serve as chairman of  
2 the arbitration board, which shall be furnished by the attorney general.  
3 Plaintiff or plaintiffs together and defendant and defendants together  
4 may each strike one or more names from the list, so after each side has  
5 done so, at least one name remains on the list, providing a basis for  
6 the final selection by the court.

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

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

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

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

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

29 (i) If the decision of the arbitration board is not accepted by

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

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

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

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

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

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

23 (b) An agreement to arbitrate executed before care or treatment  
24 is provided between a patient and health care provider shall clearly  
25 provide in bold print on the face of the agreement that execution of  
26 the agreement by the patient is not a prerequisite to receiving care or  
27 treatment. If this subsection is not complied with by the health care  
28 provider, the agreement to arbitrate is void. The form to be used  
29 shall be approved in advance by the director of insurance to assure it  
30 fairly informs the patient and properly protects his interests.

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

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

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

45 Sec. 09.55.537. ALTERNATIVE TO ARBITRATION. (a) If arbitration  
46 under sec. 535 of this chapter is waived by all the parties, and as  
47 an alternative to arbitration, the court shall appoint an expert  
48 advisory panel to advise the fact finder on the medical facts of the  
49 case unless the court decides that an expert advisory opinion is not  
50 necessary for a decision in the case. The court shall, by order,  
51 determine professions or specialties to be represented on the expert  
52 advisory panel and shall advise each party of the professions or  
53 specialties to be represented, giving the parties the opportunity to  
54 object or make suggestions.

11 Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for  
12 damages due to personal injury or death based upon the provision of  
13 professional services by a health care provider, the court shall estab-  
14 lish a three-person expert advisory panel in accordance with this  
15 section. When the action is filed the court shall, by order, determine  
16 the professions or specialties to be represented on the expert advisory  
17 panel and shall advise each party of the professions or specialties to  
18 be represented, giving the parties the opportunity to object or make  
19 suggestions. The court may in its discretion conduct other preliminary  
20 proceedings relative to the composition of the panel as it considers  
21 appropriate.  
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(b) The expert advisory panel may compel the attendance of witnesses, physically or orally examine the parties, consult with specialists or learned works they consider appropriate, and compel the production of, and examine all relevant hospital, medical, or other records relating to health care treatment. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall maintain copies of any written statements or opinions that it receives.

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

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(b) The expert advisory panel may compel the attendance of witnesses, interview the parties and physically examine the injured person if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care treatment. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall keep copies of all written statements and opinions it receives. Not more than 30 days after selection of the panel, it shall make a written report to the parties and to the court, substantially answering the following questions in addition to any other question which the court puts to the panel:

- (1) Was the claimant adversely affected by any act or omission in the rendering of the medical services?
- (2) What was the adverse effect?
- (3) How did the medical services alter the natural course of the preexisting disorder for which the services were originally rendered?
- (4) How did the medical condition existing after performance of the medical services differ from the medical condition which might otherwise have been 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.

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(d) The report of the panel and any dissenting or concurring opinion are admissible in evidence to the same extent, and have the same force and effect, 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 member of the panel may be called by any party and may be cross-examined as to the contents of the report or of his dissenting or concurring opinion.

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

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

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

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

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

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

15 ■ Sec. 32. AS 09.55.540 is amended to read:

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

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

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

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

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

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

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

3 ■ Sec. 16. AS 09.55.540 is amended to read:

4 Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action  
5 based on the negligence or wilful misconduct of a health care provider  
6 [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-  
7 36], the plaintiff has [SHALL HAVE] the burden of proving by a prepon-  
8 derance of the evidence

9 (1) the degree of knowledge or skill possessed or the degree  
10 of care ordinarily exercised under the circumstances, at the time of the  
11 act complained of, by health care providers in the field or specialty in  
12 which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING  
13 THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT  
14 PRACTICES];

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

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

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

22 ■ Sec. 17. AS 09.55 is amended by adding a new section to read:  
23

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

20      Sec. 09.55.548. AWARDS, COLLATERAL SOURCE. (a) Damages shall be  
21 awarded in accordance with principles of the common law. The fact  
22 finder in a malpractice action shall render an award as to damages by  
23 category of loss. The court may enter a judgment that future damages  
24 be paid in whole or in part by periodic payments rather than by a lump-  
25 sum payment; the judgment shall include, if necessary, other provisions  
26 to assure that funds will be available as periodic payments become due.  
27 In this subsection, future damages includes damages for future medical  
28 treatment, care or custody, loss of future earnings, or loss of bodily  
29 function of the claimant.

1      (b) Except when the collateral source is a federal program which  
2 by law must seek subrogation and except death benefits paid under life  
3 insurance, a claimant may only recover damages from the defendant which  
4 exceed amounts received by the claimant as compensation for his injur-  
5 ies from collateral sources, whether private, group or governmental,  
6 and whether contributory or noncontributory. Evidence of collateral  
7 sources, other than a federal program which must by law seek subrogation  
8 and the death benefit paid under life insurance, is admissible after  
9 the fact finder has rendered an award, but the court shall also take  
10 into account the value of claimant's rights to coverage exhausted or  
11 depleted by payment of these collateral benefits. It may do so by add-  
12 ing back a reasonable estimate of their probable value, or by earmark-  
13 ing and holding for possible periodic payment under (a) of this section  
14 that amount of the award that would otherwise have been deducted, to  
15 see if the impairment of claimant's rights actually takes place in the  
16 future.

17      • Sec. 34. AS 09.55.550 is amended to read:

18      Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL]  
19 malpractice actions the jury shall be instructed that the plaintiff has  
20 the burden of proving [, BY A PREPONDERANCE OF THE EVIDENCE,] the  
21 health care provider's negligence or wilful misconduct in accordance  
22 with the standard of proof specified in sec. 540 of this chapter [OF  
23 THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that  
24 injury alone does not raise a presumption of the health care provider's  
25 [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

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

17  
24      Sec. 09.55.546. AWARDS, COLLATERAL SOURCES. (a) In a malpractice  
25 action damages shall be awarded according to the principles of the com-  
26 mon law. The fact finder in rendering its award for damages shall  
27 specify the amount awarded for each category of loss, computing loss of  
28 future earnings on a monthly basis. The court may enter a judgment that  
29 future damages be paid in whole or in part by periodic payments rather  
1 than by a lump sum payment; however, any part of the award which is paid  
2 on periodic basis shall be increased annually in the same proportion as  
3 annual increases in the consumer price index for the community in which  
4 the claimant resides.

5      (c) Except when the collateral source is a federal program which  
6 by law must seek subrogation, an award to which a claimant is entitled  
7 may only cover damages which exceed any amounts received by the claimant  
8 as compensation for his injuries from collateral sources, whether pri-  
9 vate, group or governmental, and whether contributory or noncontribu-  
10 tory, except the death benefit paid under life insurance. Evidence of  
11 damages compensation by a collateral source, other than a federal pro-  
12 gram which must seek subrogation and the death benefit paid under life  
13 insurance, shall be credited against the award after the fact finder has  
14 rendered its award. Notwithstanding other provisions of state law and  
15 except as provided in this subsection, a collateral source does not have  
16 a right of subrogation.

16      • Sec. 18. AS 09.55.550 is amended to read:

17      Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL]  
18 malpractice actions the jury shall be instructed that the plaintiff has  
19 the burden of proving, by a preponderance of the evidence, the health  
20 care provider's negligence or wilful misconduct in accordance with  
21 sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall  
22 be further instructed that injury alone does not raise a presumption of  
23 the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or  
24 misconduct.

25      • Sec. 19. AS 09.55 is amended by adding new sections to read:

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

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

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

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

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

(4) the health care provider, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent to which the alternatives or risks were disclosed to the patient because he reasonably believed that the manner and extent of such a disclosure would reasonably be expected to adversely and substantially affect the patient's condition.

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

(1) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

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

18

15

Sec. 30. AS 09.65.090 is repealed and re-enacted to read:

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

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

11 • Sec. 37. AS 18.20 is amended by adding a new section to read:

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

19 (b) The director of insurance or his designee shall waive the  
20 requirement in (a) of this section for a hospital if the hospital fur-  
21 nishes satisfactory evidence of having other insurance providing  
22 coverage in amounts not less than those specified in (a) of this sec-  
23 tion. No waiver granted under this subsection may extend beyond the  
24 normal expiration date of the hospital's insurance policy or January 1,  
25 1977, whichever occurs first.

13  
6 Sec. 20. AS 09.65.090 is repealed and re-enacted to read:

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

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

16 • Sec. 21. AS 18.20 is amended by adding new sections to read:

17 Sec. 18.20.045. INSURANCE REQUIRED. Every hospital, as a con-  
18 dition of licensure, shall submit to the department and maintain evi-  
19 dence of insurance against liability to inpatients and outpatients for  
20 malpractice issued by the Health Care Providers Indemnity Corporation,  
21 in amounts of not less than \$200,000 per occurrence, and an aggregate  
22 liability per year of \$1,000,000 minimum, and an additional \$20,000 for  
23 each bed over 50 for which the hospital is licensed.

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

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

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

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

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

26 • Sec. 38. AS 18 is amended by adding a new chapter to read:

27 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

28 P19  
29 Sec. 18.23.010. LIMITATION OF LIABILITY FOR PERSONS PROVIDING  
1 INFORMATION TO REVIEW ORGANIZATION. (a) No person providing informa-  
2 tion to a review organization is subject to action for damages or other  
3 relief by reason of having furnished that information, unless the  
4 information is false and the person providing the information knew or  
5 had reason to know the information was false.

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

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

25 P20  
26 Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION.

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

1 Except as provided in (b) of this section, no person described in sec.  
2 20 of this chapter may disclose what transpired at a meeting of a  
3 review organization except to the extent necessary to carry out the  
4 purposes of a review organization, and the proceedings and records of a  
5 review organization are not subject to discovery or introduction into

13 • Sec. 22. AS 18 is amended by adding a new chapter to read:

14 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

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

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

24 Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW  
25 ORGANIZATIONS. No person who is a member or employee of, or who acts in  
26 an advisory capacity to, or who furnishes counsel or services to, a  
27 review organization is liable for damages or other relief in an action  
28 brought by a person whose activities have been or are being scrutinized  
29 or reviewed by a review organization, by reason of his performance of a  
1 duty, function or activity of the review organization, unless the per-  
2 formance of the duty, function or activity was motivated by malice  
3 toward the affected person. No person is liable for damages or other  
4 relief in an action by reason of his performance of a duty, function, or  
5 activity as a member of a review organization or by reason of a recom-  
6 mendation or action of the review organization when the person acts in  
7 the reasonable belief that his action or recommendation is warranted by  
8 facts known to him or to the review organization after reasonable  
9 efforts to ascertain the facts upon which the review organization's  
10 action or recommendation is made.

11 P17  
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, may not be disclosed to anyone  
16 except to the extent necessary to carry out one or more of the purposes  
17 of the review organization, and is not subject to subpoena or discovery.  
18 Except as provided in (b) of this section, no person described in sec.  
19 20 of this chapter may disclose what transpired at a meeting of a review  
20 organization except to the extent necessary to carry out one or more of  
21 the purposes of a review organization, and the proceedings and records  
of a review organization are not subject to discovery or introduction  
into evidence in a civil action against a health care provider arising

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

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

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

Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION.

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

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

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

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

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

Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION.

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

17 adduced before a review organization that are otherwise inaccessible  
18 under this section may be obtained by a health care provider who claims  
19 that denial is unreasonable, or may be obtained under subpoena or  
20 discovery proceedings brought by a plaintiff who claims that information  
21 provided to a review organization was false and claims that the person  
22 providing the information knew or had reason to know the information was  
23 false.

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

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

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

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

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

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

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

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

adduced before a review organization that are otherwise inaccessible  
under this section may be obtained by a health care provider who claims  
that denial is unreasonable or may be obtained under subpoena or dis-  
covery proceedings brought by a plaintiff who claims that information  
provided to a review organization was false and claims that the person  
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false.

(c) Nothing in this chapter prevents a person whose conduct or  
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services furnished by a sanatorium, rest home, nursing home, boarding  
home or other institution for the hospitalization or care of human  
beings;

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

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

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

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

15 (B) reducing morbidity or mortality;

16 (C) obtaining and disseminating statistics and infor-  
17 mation relative to the treatment and prevention of diseases,  
18 illness and injuries;

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

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

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

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

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

29 (i) a health insurance carrier or health mainte-  
1 nance organization and one or more of its insured or enrol-  
2 lees;

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

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

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

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

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

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

2 (B) reducing morbidity or mortality;

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 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;

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

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

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

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

23  
federal or a state or local government, or an agency of the federal or a state or local government;

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

Sec. 23. 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 assuring all health care providers continuous, affordable and adequate insurance against liability for medical negligence by concentrating all such insurance in one entity and to distribute equitably the 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 director as provided in (b) of this section.

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

(1) two members of the Alaska State Medical Association appointed from a list of no less than five persons recommended by the governing board of that association; one of the members appointed shall be engaged in group practice in a clinic of six or more physicians licensed in the state;

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

(3) two professionals in the insurance field;

(4) two persons who are neither health care providers nor affiliated with the insurance industry.

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

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

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

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

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

(g) Each member of the board of governors shall be allowed compensation for services and reimbursement for reasonable expenses incurred in attending meetings of the board and transacting corporation business, as set out in the plan of operation.

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

(b) The plan of operation shall

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

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

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

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

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

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

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

(8) contain additional provisions necessary or proper for

defined in (b) of this section as the terminating governor, who shall serve for the unexpired term.

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

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

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

(b) The plan of operation shall

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

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

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

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

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

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

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

corporation shall

(1) in the form approved by the director, issue to all health care providers who pay the premiums for it a contract or contracts indemnifying the health care provider and his employees who are health care providers against loss by reason of liability for professional services on an occurrence basis and agreeing to tender on behalf of the health care provider and his employees who are health care providers a defense in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage requirements to be maintained under AS 08.64.215 and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; at the option of the health care provider and for an additional premium the contract may cover claims against the health care provider that arise out of professional services performed by the health care provider after December 31, 1974 except that coverage will not be provided for a claim already filed or of which the health care provider had or reasonably should have had notice at the time the retroactive insurance was purchased;

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

(3) negotiate for and procure reinsurance from a casualty insurers or reinsurers for all of its liability incurred by contracts issued under (1) of this subsection; the corporation may not incur or retain under those contracts liability which is not reinsured as provided in this paragraph; if, after the exercise of due diligence, no reinsurance for all or a portion of the risk can be procured at reasonable rates from casualty insurers or reinsurers, the corporation through the board of governors, shall so certify to the director reinsurance shall then be provided by the Health Care Joint Underwriting Association as provided in sec. 110 et seq. of this chapter for that portion not reinsured by a private carrier;

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

corporation shall

(1) issue to all health care providers who pay the premiums for it a contract on an occurrence basis indemnifying the health care provider and his employees who are health care providers against loss by reason of liability and agreeing to tender on behalf of the health care provider and his employees who are health care providers a defense of the health care provider in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage required to be maintained as stated in AS 08.64.215 and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; the contract shall cover claims against health care providers

(A) that arise out of professional services performed by the health care provider during the period for which the premium is paid; and

(B) at the option of the health care provider and for an additional premium, that arise out of services performed by the health care provider after December 31, 1974 for any period in which the health care provider had no malpractice insurance, except that coverage will not be provided for a claim already filed or of which the health care provider has or reasonably should have had notice at the time retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued under (1) of this subsection which shall be determined by the board of governors in accordance with sec. 70 of this chapter and subject to the approval of the director;

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

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

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

(b) The corporation may

(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

purpose 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;

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

(5) provide coverage to health care providers for liability under AS 09.55.530 - 09.55.560 in excess of the minimum limits required for licensure as a health care provider, but limited to \$1,000,000 for individual health care providers and \$5,000,000 for hospitals, if there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation; if this paragraph is implemented, each health care provider obtaining excess coverage up to these amounts shall obtain it from the corporation, and the corporation may procure reinsurance for all the risks incurred by contracts issued under this paragraph from the private market.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and shall pay, by way of salary, wage, fee, or commission, reasonable compensation for those services; employees of the corporation are not considered state employees;

(2) provide coverage to health care providers for other hazards including malpractice liability insurance for other licensed health care providers employed by the physician or hospital;

(3) borrow funds from the revolving loan fund established under sec. 110 of this chapter when necessary for the corporation to maintain adequate reserves; loans from the fund shall be repaid from prospective premium increases within four years after the loan is made at an annual interest rate of seven per cent;

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

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

(6) negotiate and become a party to contracts for management services for the corporation;

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

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

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

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

(1) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported, provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after

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

Sec. 21.88.060. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. All such information shall be on forms prescribed by the director and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. No less often than annually the corporation shall report to the director, which report shall be kept available to the public, the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to, and the expenses incurred by the corporation during the year. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become publicly available may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All information shall be made available to the appropriate licensing boards or agencies.

Sec. 21.88.070. RATES. Rates and rating plans used by the corporation for the policies issued shall be determined for each category of health care provider in accordance with all of the following:

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

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

(3) a minimum rate may be set for each category of health care provider or discipline or classification within the license category;

(4) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported but reasonably expected to be reported within three years after the date of the incident, and reasonable expenses for the operation of

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

3 Sec. 21.88.080. RATES. (a) The rates and rating plans used by  
4 the 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 may not be excessive; rates are excessive if, after  
8 a period of time and with respect to an amount of gross premium which  
9 are actuarially credible, the premiums exceed losses incurred by the  
10 corporation, including losses paid, reserves for claims reported and  
11 unpaid, reserves for claims incurred during the policy period and not  
12 reported, provided that reserves for claims incurred during the policy  
13 period and reasonably expected to be reported after three years after  
14 the incident may be included on a different basis due to the additional  
15 financial flexibility provided by the corporation, and reasonable ex-  
16 penses for the operation of the corporation;

15 director and shall be sufficient to enable a proper determination of  
16 losses for rate making and to identify causes and sources of loss for  
17 loss control. No less often than annually the corporation shall report  
18 to the director, which report shall be kept available to the public, the  
19 number and amount of claims filed, reserved, paid, settled and adjudi-  
20 cated during the year, the premiums paid to, and the expenses incurred  
21 by the corporation during the year. The director may require that  
22 supplemental reports include the names of insured health care providers  
23 and the claimants; however, no reports which become publicly available  
24 may include the names of health care providers or claimants or informa-  
25 tion that will permit by inference the identity of specific health care  
26 providers or claimants. All information shall be made available to the  
27 appropriate licensing boards or agencies.

28 Sec. 21.88.070. RATES. Rates and rating plans used by the corpora-  
29 tion for the policies issued shall be determined for each category of  
health care provider in accordance with all of the following:

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 but reasonably expected to be reported within three years after  
14 the date of the incident, and reasonable expenses for the operation of  
15 the corporation;

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

28 (3) rates may not be unfairly discriminatory;

29 (4) rates shall be adjusted annually;

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

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

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

8 (8) individual risk underwriting factors shall be considered.

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

11 Sec. 21.88.090. REQUIRED INSURANCE; CANCELLATION. The corporation  
12 shall provide insurance to all health care providers otherwise eligible  
13 for licensure under AS 08.64 and AS 18.20. The corporation may provide  
14 for installment payment of premiums in which event each installment is  
15 due by the date specified. The corporation may cancel any of its  
16 policies in the event of nonpayment of any premium or installment on a  
17 premium, or other charge, by mailing or delivering to the insured at  
18 the address shown on the policy and to the agency of the state issuing  
19 the insured's license written notice stating when, not less than 10 days  
20 after notice is received by the insured, the cancellation is effective.

21 ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

22 Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Pro-  
23 viders Joint Underwriting Association is created consisting of all  
24 licensed

25 (1) health care service corporations as defined in AS 21.-  
26 87.330;

27 (2) disability insurers as defined in AS 21.12.050;

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

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

17 (5) rates may not be inadequate; rates are inadequate if,  
18 based on available actuarial data, the premiums to be paid by the health  
19 care providers are or may reasonably be expected to be insufficient to  
20 pay for losses incurred by the corporation, including claims paid,  
21 reserves for claims reported and unpaid, reserves for claims incurred  
22 during the policy year and not reported but reasonably expected to be  
23 reported within three years after the date of the incident, and reason-  
24 able expenses for the operation of the corporation;

25 (6) rates shall be adjusted at least as often as annually;

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

29 (8) in considering losses to be incurred, changes in the law  
1 and national, regional and local trends in medical negligence awards may  
2 be considered;

3 (9) income from investment of reserves shall be considered;

4 (10) disciplines and classifications within the license cate-  
5 gories of health care providers shall be considered;

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

7 (12) amounts sufficient to repay loan obligations shall be  
8 considered.

9 Sec. 21.88.080. REQUIRED INSURANCE; CANCELLATION. The corporation  
10 shall provide insurance to all health care providers otherwise eligible  
11 for licensure under AS 08.64 and AS 18.20. The corporation may provide  
12 for installment payment of premiums in which event each installment is  
13 due by the date specified. The corporation may cancel any of its  
14 policies in the event of nonpayment of any premium or installment on a  
15 premium or other charge by mailing or delivering to the insured at the  
16 address shown on the policy and to the agency of the state issuing the  
17 insured's license written notice stating when, not less than 10 days  
18 after notice is received by the insured, the cancellation is effective.

19 ARTICLE 3. LOAN FUND.

20 Sec. 21.88.110. FUND ESTABLISHED. (a) There is in the Department  
21 of Commerce and Economic Development a medical malpractice liability  
22 revolving loan fund to be administered by the director of insurance.

23 (b) Loans shall be made from the fund to the corporation upon  
24 certification by the director that a loan is necessary for the corpora-  
25 tion to maintain adequate reserves or for initial costs of operation.  
26 If a loan is made to the corporation from the fund, the corporation  
27 shall issue a note to the fund pledging the premiums collected in the  
28 future as security for the loan.

(8) individual risk underwriting factors shall be considered;

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

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

ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Providers Joint Underwriting Association is created consisting of all licensed

- (1) health care service corporations as defined in AS 21.87.330;
- (2) disability insurers as defined in AS 21.12.050;
- (3) property insurers as defined in AS 21.12.060; and
- (4) casualty insurers as defined in AS 21.12.070.

gories of health care providers shall be considered;

(11) individual risk underwriting factors shall be considered;

(12) amounts sufficient to repay loan obligations shall be considered.

Sec. 21.88.080. REQUIRED INSURANCE; CANCELLATION. The corporation shall provide insurance to all health care providers otherwise eligible for licensure under AS 08.64 and AS 18.20. The corporation may provide for installment payment of premiums in which event each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium or other charge by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice stating when, not less than 10 days after notice is received by the insured, the cancellation is effective.

ARTICLE 3. LOAN FUND.

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(b) Loans shall be made from the fund to the corporation upon certification by the director that a loan is necessary for the corporation to maintain adequate reserves or for initial costs of operation. If a loan is made to the corporation from the fund, the corporation shall issue a note to the fund pledging the premiums collected in the future as security for the loan.

(c) Loans from the fund shall be repaid by the corporation within

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

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

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

20 Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM. The asso-  
21 ciation shall be governed by a board of directors appointed by the  
22 governor of the state and consisting of two representatives of domestic  
23 casualty and property insurers, one representative of admitted dis-  
24 ability insurers, one representative of health care service corpora-  
25 tions, one representative of foreign casualty and property insurers, and  
26 two persons from the public. Members of the board of directors serve  
27 three-year terms.

28 Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30  
29 days after the association's creation the board of directors shall

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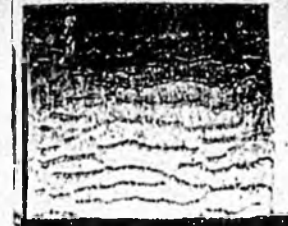
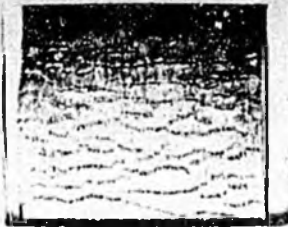
1 prepare and submit to the director for his approval a plan of operation  
2 which provides for the fair, reasonable and equitable administration of  
3 the affairs of the association and the discharge of the purposes for  
4 which it is created. The plan and any amendments of it become effective  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

1 four years at an annual interest rate of seven per cent.

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

29

30



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

6 (c) The association shall commence operation upon a finding by  
7 the director, after public hearing, that after the exercise of due  
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25 tions, one representative of foreign casualty and property insurers, and  
26 two persons from the public. Members of the board of directors serve

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