OLR RESEARCH REPORT

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2004 VETO PACKAGE

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The governor vetoed one act passed in the 2004 session, "An Act Concerning Medical Malpractice Reform" (PA 04-155).

A vetoed act will not become law unless it is reconsidered and passed again by a two-thirds vote of each house of the General Assembly (24 votes are necessary in the Senate and 101 in the House). The General Assembly has scheduled a veto session on June 28, 2004.

This report contains a brief summary of the act, the final vote tallies, and excerpts from the governor's veto message.

AN ACT CONCERNING MEDICAL MALPRACTICE REFORM

PA 04-155-HB5669
Judiciary Committee
Appropriations Committee
Public Health Committee
Finance, Revenue and Bonding Committee

This act makes numerous changes to the laws dealing with civil litigation; insurance regulation and oversight; and the regulation, oversight, and disciplining of doctors. It also gives certain physicians a tax credit for a portion of their medical malpractice insurance premiums.

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Civil Litigation Reform

The act:

1. establishes a mandatory mediation program for medical malpractice lawsuits filed after the act becomes law, which must be used unless the parties have agreed to use an alternative dispute resolution program (§1);

2. requires, as a condition of filing a medical malpractice lawsuit or an apportionment complaint in such a lawsuit, that a signed opinion of a similar health care provider be prepared to show the existence of a good faith belief that there has been negligence and a copy be attached to the lawsuit complaint (§2); and

3. requires the court, in any medical malpractice case in which the jury awards more than $1,000,000 in noneconomic damages, to review the evidence to determine if the amount of noneconomic damages is excessive as a matter of law (§18), among other things.

Insurance Regulation and Oversight

The act:

1. requires prior rate approval by the Insurance Department for medical malpractice insurance rate changes for physicians and surgeons, hospitals, advanced practice registered nurses, or physician assistants and, in such process, requires the insurers to either offer a discount for those who use an electronic records system or demonstrate that its use does not reduce the risk (§13);

2. requires that consideration be given to relevant factors that may reduce rates when establishing malpractice rates for physicians and surgeons, hospitals, advanced practice registered nurses, or physician assistants, including (a) amendments the act makes to the offer of judgment law, (b) other provisions of the act, and (c) any reduction in risk from using electronic health record systems to establish and maintain patient records and verify patient treatment (§14);

3. beginning June 1, 2005, (a) requires entities that insure people or entities against medical malpractice lawsuits to provide the insurance commissioner with a closed claim report on each malpractice claim that the insurer closes; (b) the report to include details about the insured and insurer, the injury or loss, the

claims process, and the amount paid but exclude any individually identifiable information defined in federal regulation as confidential; and (c) requires that if necessary to comply with federal privacy laws, the insured must arrange with the insurer to release the required information (§16); and

4. requires the commissioner to compile and analyze the data and annually submit a report on this to the Insurance and Real Estate Committee and the public (§16).

Regulation, Oversight, and Discipline of Medical Providers

The act:

1. requires the plaintiff or his attorney to mail a copy of a medical malpractice complaint to the Department of Public Health (DPH) and the Insurance Department when he files a lawsuit against a licensed physician and certain other licensed health care providers, and requires DPH to determine if there is a basis for further investigations or disciplinary action (§3);

2. requires anyone who pays a medical malpractice award or settlement to provide copies of the award or settlement and complaint and answer, if any, to the Insurance Department instead of just DPH (§3);

3. requires those paying medical malpractice awards or settlements for licensed physicians and certain other health care providers to provide additional information to DPH, including a breakdown by economic and noneconomic damages (§4); and

4. requires that DPH's annual report to the governor and Public Health Committee include additional information such as the number of complaints filed against doctors, and the number of notices of malpractice lawsuits filed that were not investigated and the reasons why (§6), among other things.

Tax Credit

The act gives any state resident who is a physician and who is subject to the state income tax for any taxable year the right to a credit in determining the amount of income tax liability for a portion of the amount of medical malpractice insurance premiums first becoming due and actually paid during the taxable year. The credit is applicable to tax

years beginning January 1, 2004. The act funds the credit for the fiscal year ending June 30, 2005 by transferring from the $ 2,000,000 being transferred to the General Fund from the Biomedical Research Trust Fund (§§19 &20).

EFFECTIVE DATE: The act takes effect upon passage, except the provision dealing with the duty of captive insurers to provide certain information to the insurance commissioner takes effect July 1, 2004; the provision providing tax credits takes effect July 1, 2004 and applies taxable years beginning January 1, 2004; and the provision requiring the data on closed cases takes effect January 1, 2005.

Senate Vote: 22-14 (May 3)

House Vote: 117-27 (April 26)

EXCERPT FROM THE GOVERNOR'S VETO MESSAGE

" . . . In my opinion, House Bill 5669 fails to provide meaningful tort reform and does little to address the dramatic medical malpractice insurance rates hikes that have created a growing health-care access crisis in Connecticut.

"While well intentioned, the central failure of House Bill 5669 is that it does not place caps on non-economic damages in jury awards. Caps in medical malpractice lawsuits are needed to both stabilize medical malpractice insurance premiums and to assure a viable insurance market in Connecticut. . . .

"Although the lack of a cap on non-economic damages is the most significant shortcoming with regard to this bill, it is not this legislation's sole shortcoming. In section two of the bill, any defendant attempting to hold another party accountable through the filing of an apportionment complaint would be obliged to obtain a written and signed opinion from an appropriate health care provider that evidence appears to exist that would implicate the intended apportionment defendant. The legislature, however, failed to extend the necessary time frame in which to file an apportionment complaint. Consequently, a defendant wishing to file an apportionment complaint would be limited to 120 days to investigate the allegations of medical negligence and employ an expert witness to assess liability. In contrast, a plaintiff has two years to prepare a medical malpractice action and obtain the services of any necessary experts.

"This bill, if adopted, could have the unintended consequence of actually contributing to increased malpractice premiums by making it more expensive for insurers to do business in Connecticut or even driving insurers out of the malpractice market. In section 13 of the bill, the legislature mandates that insurers submit their rate plans and schedules to the Department of Insurance for rate review and approval before rates become effective. Insurers could be subjected to public hearings relating to proposed rate increases.

"In addition, section 16 of the bill requires professional liability insurers to provide a closed claim report to the Department of Insurance, which discloses details surrounding the claim against a health care professional. Pursuant to federal law, professional liability insurers already disclose such closed claim reports to the National Practitioner Data Bank. This merely duplicates efforts and, it would seem the appropriate state repository of such information, if there were one, would be the Department of Public Heath, as the licensor of health care professionals, rather than the Department of Insurance. . . .

"Yet another problem associated with this bill is the tax credit for medical malpractice insurance premiums as set forth in section 19. This is a misplaced notion as the issue is not, and never has been, about tax relief for physicians. Rather, the issue involves the availability and cost of malpractice insurance so as to ensure patient access to quality health care.

"Under section 19, physicians who pay medical malpractice premiums amounting to more than 25 percent of their taxable income shall be afforded a tax credit of up to 15 percent of their annual premium. According to the state's Office of Fiscal Analysis, this could translate to an annual revenue loss to the General Fund of $2.5 to $5 million, as well as increased costs of approximately $250,000 associated with programming and tax form changes within the Department of Revenue Services, beginning with Fiscal Year 2005.

"The fiscal ramifications of implementing the tax credit were not accounted for in the budget recently adopted by the General Assembly. In addition, a provision that makes our tax laws more complicated and sets a precedent of affording credits to special classes of taxpayers makes little sense, nor does it do anything meaningful to address the issue at hand."

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