

Regular Session, 2010

HOUSE BILL NO. 1419

BY REPRESENTATIVE LEGER

MALPRACTICE/MEDICAL: Provides with respect to the Patient's Compensation Fund

1 AN ACT

2 To amend and reenact R.S. 40:1299.44(A)(2) and (6) and (D)(1), relative to the Patient's
3 Compensation Fund; to provide for the establishment of surcharge rates and rating
4 requirements; to provide for rating approval by the commissioner of insurance; to
5 provide for examination of the fund by the commissioner of insurance; to provide for
6 examination procedures; to provide for required reserves of the fund; to provide for
7 the membership of the Patient's Compensation Fund Oversight Board; to provide for
8 the quorum necessary to conduct business; to provide for voting privilege of the ex
9 officio chairman; to provide for compensation and expenses of board members; and
10 to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 40:1299.44(A)(2) and (6) and (D)(1) are hereby amended and
13 reenacted to read as follows:

14 §1299.44. Patient's Compensation Fund

15 A.

16 * * *

17 (2)(a) In order to provide monies for the fund, an annual surcharge shall be
18 levied on all health care providers in Louisiana qualified under the provisions of this
19 Part.

1 (b) The surcharge shall be determined by the commissioner of insurance
2 based upon actuarial principles and in accordance with an application for rates or rate
3 changes, or both, filed by the Patient's Compensation Fund Oversight Board,
4 established and authorized pursuant to Subsection D of this Section.

5 (c) The board shall submit an application for rate changes filed by the board
6 shall be submitted rates to the commissioner of insurance at least annually on the
7 basis of on or before September first of each year. The application for rates shall be
8 based upon an annual actuarial study of the patient's compensation fund.

9 (d) The board shall be prohibited from using or implementing any surcharges
10 that have not been approved by the commissioner of insurance.

11 (e) The surcharges approved by the commissioner of insurance shall become
12 effective as to all new or renewal business beginning January first of the following
13 year.

14 (f) The fund shall be administered in a manner as to provide for financial
15 solvency in order to protect claimants and health care providers from losses resulting
16 from insolvency.

17 (g) The commissioner of insurance shall make an examination of the fund
18 at least once every five years unless the commissioner of insurance, in his discretion,
19 determines that the financial condition or operations of the fund warrant more
20 frequent examinations. All examinations shall be conducted in accordance with the
21 provisions of R.S. 22:1981 et seq.

22 ~~(d)~~(h) The surcharge shall be collected on the same basis as premiums by
23 each insurer, the risk manager, and surplus line agent.

24 ~~(e)~~(i) The board shall collect the surcharge from health care providers
25 qualified as self-insureds.

26 ~~(f)~~(j) The surcharge for self-insureds shall be the amount determined by the
27 board in accordance with regulations promulgated under the Administrative
28 Procedure Act and in accordance with the rate set by the commissioner of insurance
29 to be the amount of surcharge which the health care provider would reasonably be

1 required to pay were his qualification based upon filing a policy of malpractice
2 liability insurance.

3 * * *

4 (6)(a) ~~At~~ On or before January 1, 2016, and at all times thereafter, the fund
5 ~~shall be maintained~~ maintain assets in excess of liabilities so as to provide a surplus
6 ~~of thirty percent of the annual surcharge premiums, reserves established for~~
7 ~~individual claims, reserves established for incurred but not reported claims, and~~
8 ~~expenses.~~

9 (b) ~~No reduction in the surcharge shall be made unless such surplus is~~
10 ~~available in the fund.~~

11 * * *

12 D.(1)(a) The Patient's Compensation Fund Oversight Board is hereby created
13 and established in the office of the governor. The board shall be comprised of ~~nine~~
14 seven members, all of whom shall be residents of the state of Louisiana. One
15 member shall be appointed by the commissioner of insurance, who shall serve as the
16 ex officio chairman of the board. Two members shall be appointed by the speaker
17 of the House of Representatives. Two members shall be appointed by the president
18 of the Senate. Two members shall be appointed by the governor. Members shall
19 serve terms concurrent with that of the official making the appointment. All
20 appointments shall be subject to Senate confirmation.

21 (b) ~~Nine members of the board shall be a representative of and for one or~~
22 ~~more classes of health care providers enrolled in the fund, and the board's~~
23 ~~membership shall be apportioned according to the distribution of aggregate~~
24 ~~surcharges paid to the fund among the several classes of health care providers~~
25 ~~enrolled with the fund, as follows: The quorum necessary for the transaction of~~
26 business is hereby established as four members of the board in attendance. The ex
27 officio chairman's presence at a meeting of the board may be counted toward
28 establishing a quorum of the board. The ex officio chairman shall only have voting
29 privileges if there is a tie vote between the members of the board.

1 ~~(i) Four members of the board shall be representatives of the class of health~~
2 ~~care providers contributing the greatest percentage of the fund's aggregate~~
3 ~~surcharges.~~

4 ~~(ii) Two members of the board shall be representatives of the class of health~~
5 ~~care providers contributing the second greatest percentage of the fund's aggregate~~
6 ~~surcharges.~~

7 ~~(iii) One member of the board shall be a representative of the class of health~~
8 ~~care providers contributing the third greatest percentage of the fund's aggregate~~
9 ~~surcharges.~~

10 ~~(iv) One member of the board shall be appointed to represent all other~~
11 ~~classes of health care providers enrolled with the fund.~~

12 ~~(c) The ninth member of the board shall be appointed from nominees~~
13 ~~provided by the principal professional organization of insurance executives, and this~~
14 ~~member must be an executive of a property and casualty insurance company that is~~
15 ~~licensed in this state which does not sell medical professional liability insurance.~~

16 ~~(d) Appointments of members representing a single class of health care~~
17 ~~providers shall be made from nominations solicited from the respective principal~~
18 ~~professional organizations of such health care providers in the state. The member~~
19 ~~of the board representing all other classes of health care providers shall be nominated~~
20 ~~by concurrence of the respective principal professional organizations of such health~~
21 ~~care providers in the state. In the absence of such concurrence each such~~
22 ~~professional organization shall name a representative to an ad hoc committee which~~
23 ~~shall, from among its number, nominate a representative to the board.~~

24 ~~(e) For the purpose of apportioning representation on the board, the~~
25 ~~percentage surcharge contribution of each distinct class of health care providers~~
26 ~~listed by R.S. 40:1299.41 to the aggregate surcharges paid to the fund shall be~~
27 ~~calculated for each fiscal year of the fund, and apportionment with respect to an~~
28 ~~initial or subsequent appointment to the board shall be based on such percentage~~
29 ~~contributions for the fund fiscal year preceding any such appointment.~~

1 ~~(f) Two of the initial members of the board appointed pursuant to Item~~
2 ~~(1)(b)(i) of this Subsection, one of the initial members appointed pursuant to Item~~
3 ~~(1)(b)(ii), and the member appointed pursuant to Item (1)(b)(iii) shall serve for terms~~
4 ~~of three years. One of the members of the initial board appointed pursuant to Item~~
5 ~~(1)(b)(i) of this Subsection and one of the initial members appointed pursuant to Item~~
6 ~~(1)(b)(ii) shall serve for terms of two years. The remaining members of the initial~~
7 ~~board shall serve for terms of one year. Thereafter, each member of the board shall~~
8 ~~serve for a term of three years, with any vacancy occurring in any such position~~
9 ~~being filled for the unexpired term of such position in the manner of the original~~
10 ~~appointment, in accordance with the apportionment of representation provided for~~
11 ~~by this Subsection.~~

12 ~~(g)~~(c) The board shall annually elect a ~~chairman~~ and secretary from among
13 its members and shall meet not less frequently than quarterly during the calendar
14 year on the call of the ex officio chairman at such times and places as he may
15 designate.

16 ~~(h)~~(d) The members of the board shall receive seventy-five dollars per day
17 while engaged in board business and for attendance at all meetings of the board.
18 Reasonable expenses incurred by board members in their travel to and attendance at
19 meetings of the board shall be reimbursed by the fund in accordance with applicable
20 laws and administrative regulations. The members of the board shall not be
21 reimbursed for any expenses incurred for board meetings outside of the state.

* * *

22 Section 2. The terms of the members of the Patient's Compensation Fund Oversight
23 Board serving on the effective date of this Act shall terminate on the effective date of this
24 Act. On or after the effective date of this Act, membership of the board shall be determined
25 by the provisions of R.S. 40:1299.44(1) as amended by this Act.

26 Section 3. The Louisiana State Law Institute is hereby directed to redesignate R.S.
27 40:1299.44(A)(2)(b) as R.S. 40:1299.44(A)(2)(c) and to redesignate R.S.
28 40:1299.44(A)(2)(c) as R.S. 40:1299.44(A)(2)(b).
29

1 Section 4. This Act shall become effective upon signature by the governor or, if not
 2 signed by the governor, upon expiration of the time for bills to become law without signature
 3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 5 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Leger

HB No. 1419

Abstract: Provides for changes to the membership of the Patient's Compensation Fund Oversight Board and provides for changes relative to the Patient's Compensation Fund.

Present law provides that a surcharge shall be levied on all participating health care providers to provide for the monies necessary to operate the Patient's Compensation Fund (PCF).

Proposed law retains present law.

Present law provides that the PCF board shall submit at least annually an application for rate changes based upon an annual actuarial study.

Proposed law retains present law but requires the application for rates to be submitted annually on or before Sept. 1 of each year.

Present law provides that the surcharge shall be determined by the commissioner of insurance based upon the rate application and actuarial principles.

Proposed law retains present law.

Proposed law provides that the PCF board is prohibited from using or implementing any surcharges that have not been approved by the commissioner of insurance.

Proposed law provides that the surcharges approved by the commissioner of insurance shall become effective as to all new or renewal business beginning on Jan. 1 of the following year.

Proposed law provides that PCF shall be administered in a manner to provide for financial solvency in order to protect claimants and health care providers from losses resulting from insolvency.

Proposed law provides that the commissioner of insurance shall make an examination of PCF at least once every five years.

Present law provides that the surcharge shall be collected on the same basis as premiums by each insurer, the risk manager, and surplus line agent.

Proposed law retains present law.

Present law provides that the PCF board shall collect the surcharge from health care providers qualified as self-insureds in an amount determined to be the amount of surcharge the health care provider would reasonably be required to pay if he was insured under a policy of malpractice liability insurance.

Proposed law retains present law.

Present law provides that PCF shall be maintained so as to provide a surplus of thirty percent of the annual surcharge premiums, reserves established for individual claims, reserves established for incurred but not reported claims, and expenses and that no reduction in the surcharge shall be made unless such surplus is available.

Proposed law deletes present law and provides that on or before January 1, 2016, the PCF shall maintain assets in excess of liabilities.

Present law provides for the PCF board consisting of nine members appointed by the governor subject to Senate confirmation and provides that the board shall be representative of health care providers enrolled in the fund and apportioned as follows:

- (1) Four members representing the class of health care providers contributing the greatest percentage of the fund's aggregate surcharges.
- (2) Two members representing the class of health care providers contributing the second greatest percentage of the fund's aggregate surcharges.
- (3) One member representing the class of health care providers contributing the third greatest percentage of the fund's aggregate surcharges.
- (4) One member appointed to represent all other classes of health care providers enrolled with the fund.
- (5) One member appointed from nominees provided by the principal professional organization of insurance executives and who is an insurance executive of a property and casualty insurance company which does not sell medical professional liability insurance.

Proposed law abolishes the current PCF board and provides for a new seven member board whose members are residents of Louisiana and subject to Senate confirmation and appointed as follows:

- (1) One member appointed by the commissioner of insurance, who shall serve as ex officio chairman of the board.
- (2) Two members appointed by the speaker of the House of Representatives.
- (3) Two members appointed by the president of the Senate.
- (4) Two members appointed by the governor.

Proposed law provides that four members constitute a quorum and the ex officio chairman may be counted for the purpose of establishing a quorum, but the ex officio chairman may vote only in the case of a tie vote between the other members.

Present law provides for the membership of the Patient's Compensation Fund Oversight Board and requires the board to elect a chairman and secretary and meet not less than quarterly or on the call of the chairman.

Proposed law retains present law except it provides that the chairman is appointed by the commissioner of insurance as the ex officio chairman. Further provides for changes with regard to the appointing authority for membership of the board.

Present law provides that the members of the board will receive \$75 per day while engaged in board business and reasonable expenses incurred, but members will not be reimbursed for any expenses incurred for meetings outside of the state.

Proposed law retains present law.

Effective upon signature governor or lapse of time for gubernatorial action.

(Amends R.S. 40:1299.44(A)(2) and (6) and (D)(1))