

SENATE NO. 990

AN ACT RELATIVE TO MEDICAL LIABILITY

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. The general court finds that:

2 (1) the current medical litigation process is inconsistent, inefficient and unfair; creating an
3 adversarial environment that discourages the open communication required to improve patient
4 safety;

5 (2) comprehensive reform is needed to redress the many failings of the current medical liability
6 system in promoting quality care, resolving medical injury cases, and compensating injured
7 patients;

8 (3) it is the public policy of the commonwealth that improving health care quality and enhancing
9 patient safety are goals that are in the interests of both patients and health care providers;

10 (4) the impact of medical litigation on health care quality initiatives creates a compelling need for
11 law, rules, and procedures to improve the process by which medical injury cases are resolved; and

12 (5) administrative compensation programs represent an alternative for reform that can result in
13 predictable justice for patients and physicians alike, as well as a rapid resolution of claims and
14 assessment of damages;

15 SECTION 2. The General Laws are hereby amended by inserting after chapter 211F the following
16 chapter:-

17 Chapter 211G

18 Patient Quality and Compensation Commission

19 SECTION 1. Definitions.

20 The following words and phrases when used in this chapter shall have the following meanings unless
21 the context clearly indicates otherwise:

22 "Patient Quality and Compensation Commission." The commission established under this act that is
23 responsible for the demonstration program.

24 "Affiliated physicians." The physicians that have privileges with participating providers.

25 "Health care services." Any services provided by a health care provider or by any individual working
26 under the supervision of a health care provider that relate to:

27 (1) The diagnosis, prevention or treatment of any human disease or impairment.

28 (2) The assessment of the health of human beings.

29 "Hospital." Any health care facility providing clinically related health services, including, but not
30 limited to, a general or special hospital, including psychiatric hospitals, rehabilitation hospitals,
31 ambulatory surgical facilities, long- term care nursing facilities, cancer treatment centers using
32 radiation therapy on an ambulatory basis and inpatient drug and alcohol treatment facilities, both profit
33 and nonprofit and including those operated by an agency or State or local government. The term shall
34 also include a hospice. The term shall not include an office used primarily for the private or group
35 practice by health care practitioners where no reviewable clinically related health service is offered, a
36 facility providing treatment solely on the basis of prayer or spiritual means in accordance with the
37 tenets of any church or religious denomination or a facility conducted by a religious organization for

38 the purpose of providing health care services exclusively to clergy or other persons in a religious
39 profession who are members of the religious denominations conducting the facility.

40 "Participating providers." The hospitals and their affiliated physicians who participate in the
41 demonstration program.

42 "Physician." An individual licensed under the laws of this Commonwealth to engage in the practice of
43 medicine and surgery in all of its branches.

44 "Program." The demonstration program established under this act.

45 SECTION 2. Patient Quality and Compensation Commission.

46 (a) Membership.--The commission shall consist of the following members:

47 (1) The Chief Justice of Administration and Management or a designee.

48 (2) The Attorney General or a designee, who shall serve as the chairperson of the commission.

49 (3) The Commissioner of the Department of Public Health or a designee.

50 (4) Two individuals with academic and research expertise in medical liability systems,
51 appointed by the Governor.

52 (5) Four individuals, one each appointed by the:

53 (i) Senate President.

54 (ii) Minority Leader of the Senate.

55 (iii) Speaker of the House of Representatives.

56 (iv) Minority Leader of the House of Representatives.

57 SECTION 3.

58 (a) The commission is authorized to award demonstration grants to hospitals and their affiliated
59 physicians for the development, implementation and evaluation of alternatives to current tort litigation

60 for resolving disputes over injuries allegedly caused by hospitals or physicians. The commission shall
61 seek Federal and private funds to carry out the purposes of this act.

62 (b) The commission may award up to three grants, and each grant awarded may not exceed a period of
63 five years.

64 (c) Conditions for demonstration grants.--Any hospital or hospitals and their affiliated physicians may
65 participate in the program by meeting the following criteria:

66 (1) The hospital's primary coverage is self-insured.

67 (2) The hospital and its medical staff agree to disclosure of incidents and serious events, in
68 accordance with current law.

69 (3) The hospital and its medical staff agree to a uniform and comprehensive risk management
70 plan.

71 (4) The hospital and its medical staff agree to a joint defense agreement.

72 (5) The hospital and physicians' insurance carriers, including risk retention groups and similar
73 organizations, agree to participate in the program.

74 SECTION 4.

75 (a) All patients who suffer temporary or permanent injury as a result of negligence by a participating
76 hospital or physician shall be compensated for economic and non-economic damages, through the
77 process described below in Section 4(e).

78 (b) Participating hospitals and physicians and patients shall agree to a uniform schedule of
79 compensation for injuries based on type of injury, severity of the injury, age, life expectancy, past and
80 future medical costs not covered under other programs and lost past and future wages.

81 (c) Eligible claims shall be paid in a uniform manner using a fixed benefits schedule set by
82 participating providers in conjunction with the Commission, and shall include compensation for both
83 economic and non-economic losses.

84 (d) Participating health care providers shall offer early mediation following disclosure of an error to a
85 patient who has been injured.

86 (e) Each eligible claim shall be submitted to an independent panel. Each panel is composed of three
87 individuals selected at random from an approved list by the independent administrator identified in
88 Section 4(f) of this Act. If any of the selected panel members has a relationship with the patient or a
89 health care provider involved in the particular case, he or she shall be disqualified, and another panel
90 member shall be selected at random. The commission shall determine qualifications of eligible
91 panelists; however, no person shall be qualified to serve as a panelist unless he or she has completed
92 an approved training curriculum in medico-legal issues. Each panel will consult one or more qualified
93 medical experts from the approved list to determine if the patient is eligible for compensation. The
94 independent medical experts shall meet the qualification requirements as determined by the Patient
95 Quality and Compensation Commission. If there is disagreement among the medical experts, the
96 panel shall make a final ruling consistent with generally accepted medical standards and practices. All
97 decisions of the independent panel shall be in written form.

98 (f) Administration.--The participating health care providers shall appoint an independent administrator.
99 The independent administrator is responsible for the following:

- 100 (1) Recruitment and maintenance of the qualified medical experts.
- 101 (2) Recruitment and maintenance of the qualified independent panelists.
- 102 (3) Collection of documents needed to determine if a claim is compensable.
- 103 (4) Selection of the independent panel.

104 (5) Determination of compensation based on the opinion of the independent panel and the
105 adopted uniform schedule of compensation.

106 (6) Ensuring proper payments are made to the claimant.

107 (7) Approval of any agreement for binding arbitration between the patient and the participating
108 health care providers.

109 (8) Developing analysis and feedback to the participating providers for improving care
110 processes and reducing the incidence of medical errors.

111 (9) Administration of the arbitration program.

112 (g) Patients shall opt in to the program prior to or at the point of care. At a minimum, the opt-in
113 process shall become an integral part of participating physician and hospitals' existing informed
114 consent policies and procedures. A patient opts in to the program by accepting a written agreement. If
115 the patient agrees to the agreement, he or she agrees to accept the determination of the independent
116 panel. The decision of the independent panel is final, legally binding and enforceable in court.

117 (h) All participating physicians and hospitals must agree to participate for a minimum of three years.
118 The demonstration period should be at least five years.

119 (i) The participants and the Commonwealth will share the costs of operating the administrative system
120 during the demonstration period, with participants bearing one-quarter of the cost and the
121 Commonwealth bearing three-quarters of the cost. If the program continues beyond the demonstration
122 period, all costs are the responsibility of the participating health care providers. Compensation to
123 patients is the responsibility of the participating physicians and hospitals' health care providers.

124 (j) Fees to any attorneys retained by the patient shall be limited to 20% of the total award.

125 SECTION 5. Requirements

126 (a) Each entity desiring a grant may establish a scope of jurisdiction, such as a designated geographic
127 region, a designated area of health care practice or a designated group of health care providers or
128 health care organizations, for the proposed alternative to current tort litigation that is sufficient to
129 evaluate the effects of the alternative.

130 (b) An entity proposing a scope of jurisdiction shall demonstrate how patients would be notified that
131 they are receiving health care services that fall within such scope.

132 SECTION 6. Application

133 (a) Each entity desiring a grant under section 4 shall submit to the commission an application, at such
134 time, in such manner and containing such information as the commission may require.

135 (b) Review panel.--

136 (1) In reviewing applications under subsection (a), the commission shall consult with a review
137 panel composed of relevant experts appointed by the commission.

138 (2) The panel shall be composed as follows:

139 (i) The commission shall solicit nominations from the public for individuals to serve on the
140 review panel.

141 (ii) The commission shall appoint at least 11 but not more than 15 highly qualified and
142 knowledgeable individuals to serve on the review panel and shall ensure that the following entities
143 receive fair representation on the panel:

144 (A) Patient advocates.

145 (B) Health care providers and health care organizations.

146 (C) Attorneys with expertise in representing patients and health care providers.

147 (D) Insurers.

148 (E) State officials.

149 (c) Chairperson.--A person designated by the commission shall be the chairperson of the review
150 panel.

151 (d) Availability of information.--The commission shall make available to the review panel such
152 information, personnel and administrative services and assistance as the review panel may reasonably
153 require to carry out its duties.

154 (e) Information from agencies.--The review panel may request directly from any department or
155 agency of the Commonwealth any information that such panel considers necessary to carry out its
156 duties. To the extent consistent with applicable laws and regulations, the head of such department or
157 agency shall furnish the requested information to the review panel.

158 (f) Report.--Each entity receiving a grant under subsection 3

159 (a) shall submit to the commission a report evaluating the effectiveness of activities funded with
160 grants awarded under subsection (a) at such time and in such manner as the commission may require.

161 (g) Technical assistance.--The Department of Public Health shall provide technical assistance to the
162 entities awarded grants under this act. Technical assistance shall include:

163 (1) The development of a defined payment schedule for non-economic damages, including
164 guidance on the consideration of individual facts and circumstances in determining appropriate
165 payment, the development of classes of payment events and guidance on early disclosure to patients of
166 potentially compensable events.

167 (2) The development of common definitions, formats and data collection infrastructure for
168 participating providers receiving grants under this section to use in reporting to facilitate aggregation
169 and analysis of data Statewide.

170 SECTION 7. Evaluation

171 (a) The commission, in consultation with the review panel established under this act, shall enter into a
172 contract with an appropriate research organization to conduct an overall evaluation of the effectiveness
173 of grants awarded under this act and to annually prepare and submit a report to the chairs of the Joint
174 Committee on Health Care Financing, the Joint Committee on Ways and Means and the Joint
175 Committee on the Judiciary. Such an evaluation shall begin not later than 18 months following the
176 date of implementation of the first program approved under this act.

177 (b) Contents.--The evaluation under subsection (a) shall include:

178 (1) An analysis of the effect of the alternative system on the number, nature and costs of health
179 care liability claims.

180 (2) A comparison of the claim and cost information of each entity receiving a grant.

181 (3) A comparison between entities receiving a grant under this section and entities that did not
182 receive such a grant, matched to ensure similar legal and health care environments and to
183 determine the effects of the grants and subsequent reforms on:

184 (i) The liability environment.

185 (ii) Health care quality.

186 (iii) Patient safety.

187 (iv) Patient and health care provider satisfaction with the reforms.

188 SECTION 8. Confidentiality

189 Disclosure of documents used in the program shall be protected. All participating health care
190 providers shall be provided maximum protections to conduct peer review.