STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 629

By: Fisher of the Senate

and

Adair and Askins of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety; creating the Affordable Access to Health Care Act; stating certain findings; stating purpose of act; defining terms; requiring admission of certain evidence; requiring court to make certain determination upon application of party; stating exception to admission of specific evidence; requiring filing of specific affidavit in certain actions; stating contents of affidavit; providing for dismissal without prejudice of certain action under certain circumstances; declaring certain written opinion inadmissible; prohibiting certain inquiries; authorizing court to grant extension of time for filing certain document under certain circumstances; stating time period for extension of time; stating exception; authorizing dismissal without prejudice of certain action under certain circumstances; stating exception; requiring plaintiff to provide certain documents within certain time period upon request of defendant; authorizing dismissal of certain action under certain circumstances; stating exception; limiting amount of non-economic damages in certain actions; stating exception to damage award limits; providing for determination of prejudgment interest in certain action; amending 63 O.S. 2001, Section 1-1918, as amended by Section 1, Chapter 138, O.S.L. 2002 (63 O.S. 2002, Section 1-1918), which relates to nursing home facility rights and responsibilities; modifying certain obligations of defendants under certain circumstances; stating time period for service of certain summons; requiring dismissal without prejudice of certain lawsuit under specific circumstances; amending 12 O.S. 2001, Section 2503, as amended by Section 33, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2002, Section 2503), which relates to physician and psychotherapist-patient privilege; modifying certain privileges; prohibiting certain application of specified provisions; defining terms; requiring filing of certain report within specified time period; providing for contents of certain report; stating certain duties of Insurance Department; requiring public availability of specified report; authorizing establishment of and public access to certain electronic database;

authorizing setting and charging of fee for certain electronic access; requiring submission of specified report and data to certain persons; prohibiting public access to certain confidential information; excepting certain information from the Oklahoma Open Records Act; specifying persons authorized to examine certain information; defining term; authorizing Insurance Commissioner to designate or contract with certain agent for specific purpose; stating qualifications of certain agents; requiring insurers to provide certain data to certain persons; prohibiting approval or effectiveness of certain rate; requiring specified entity to consider certain information for specific purpose; providing process for requesting certain rate change; requiring certain entity to notify specified persons of certain application; deeming certain rates approved within certain time period; stating exceptions; defining terms; prohibiting certain entity from taking certain actions; prohibiting certain application of specific provisions; stating application of act; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1A of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 7 of this act shall be known and may be cited as the "Affordable Access to Health Care Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1B of Title 63, unless there is created a duplication in numbering, reads as follows:

A. FINDINGS: The Oklahoma Legislature finds:

1. EFFECT ON HEALTH CARE ACCESS AND COSTS. That the medical liability system in this state is a mechanism for resolving claims of medical liability and compensating injured patients which affects patient access to health care services; and

2. EFFECT ON STATE SPENDING. That the medical liability litigation system existing in this state has an effect on the amount, distribution, and use of state funds because of:

a. the large number of individuals who receive health care benefits under programs operated or financed by the state through the Oklahoma Health Care Authority, and

b. the large number of Oklahoma health care providers needed to provide services for which the state makes payment through the Oklahoma Health Care Authority.

B. PURPOSE. It is the purpose of the Affordable Access to Health Care Act to implement reasonable, comprehensive, and effective medical liability reforms designed to:

1. Improve the availability of health care services;

2. Lower the cost of medical liability insurance;

3. Ensure that persons with meritorious health care injury claims receive fair and adequate compensation; and

4. Improve the fairness and cost-effectiveness of this state's current medical liability system to resolve disputes over, and provide compensation for, medical liability.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1C of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Affordable Access to Health Care Act, the following words, terms, or phrases shall have the following meanings, unless the context otherwise clearly indicates:

1. "Health care provider" means any person or other entity who is licensed pursuant to the provisions of Title 59 or Title 63 of the Oklahoma Statutes, or pursuant to the laws of another state, to render health care services in the practice of a profession or in the ordinary course of business;

2. "Health care services" means any services provided by a health care provider, or by an individual working for or under the supervision of a health care provider, that relate to the diagnosis,

assessment, prevention, treatment or care of any human illness, disease, injury or condition;

3. “Medical liability action” means any civil action involving, or contingent upon, personal injury or wrongful death brought against a health care provider based on professional negligence;

4. “Non-economic damages” means all subjective, nonmonetary losses including, but not limited to, pain, suffering, inconvenience, mental anguish, emotional distress, loss of enjoyment of life, loss of society and companionship, loss of consortium, injury to reputation and humiliation; provided, however, “non-economic damages” do not include exemplary damages, as defined in Section 9.1 of Title 23 of the Oklahoma Statutes;

5. “Professional negligence” means a negligent act or omission to act by a health care provider in the rendering of health care services, provided that such services are within the scope of services for which the health care provider is licensed, certified, or otherwise authorized to render by the laws of this state, and which are not within any restriction imposed by a hospital or the licensing agency of the health care provider; and

6. “Qualified expert” means a health care provider who has knowledge of standards of care for the diagnosis, assessment, prevention, treatment or care of the illness, disease, injury or condition involved in the medical liability action. In a case involving a claim for negligent credentialing or corporate negligence, a “qualified expert” means a physician or administrator who has or has had responsibility for credentialing or served on a medical staff committee involved in a credentialing process at the licensed health care entity.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1D of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In every medical liability action, the court shall admit evidence of payments of medical bills made to the injured party, unless the court makes the finding described in paragraph B of this section.

B. In any medical liability action, upon application of a party, the court shall make a determination whether amounts claimed by a health care provider to be a payment of medical bills from a collateral source is subject to subrogation or other right of recovery. If the court makes a determination that any such payment is subject to subrogation or other right of recovery, evidence of the payment from the collateral source and subject to subrogation or other right of recovery shall not be admitted.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1E of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. In any medical liability action, except as provided in subsection B of this section, the plaintiff shall attach to the petition an affidavit attesting that:

a. the plaintiff has consulted and reviewed the facts of the claim with a qualified expert,

b. the plaintiff has obtained a written opinion from a qualified expert that clearly identifies the plaintiff and includes the expert's determination that, based upon a review of the available medical records, facts or other relevant material, a reasonable interpretation of the facts supports a finding that the acts or omissions of the health care provider against whom the action is brought constituted professional negligence, and

c. on the basis of the qualified expert's review and consultation, the plaintiff has concluded that the claim is meritorious and based on good cause.

2. If a medical liability action is filed:

a. without an affidavit being attached to the petition, as required in paragraph 1 of this subsection, and

b. no extension of time is subsequently granted by the court, pursuant to subsection B of this section,

the court shall, upon motion of the defendant, dismiss the action without prejudice to its refiling.

3. The written opinion from the qualified expert shall state the acts or omissions of the defendant(s) that the expert then believes constituted professional negligence and shall include reasons explaining why the acts or omissions constituted professional negligence. The written opinion from the qualified expert shall not be admissible at trial for any purpose nor shall any inquiry be permitted with regard to the written opinion for any purpose either in discovery or at trial.

B. 1. The court may, upon application of the plaintiff for good cause shown, grant the plaintiff an extension of time, not exceeding ninety (90) days after the date the petition is filed, except for good cause shown, to file in the action an affidavit attesting that the plaintiff has obtained a written opinion from a qualified expert as described in paragraph 1 of subsection A of this section.

2. If on the expiration of an extension period described in paragraph 1 of this subsection, the plaintiff has failed to file in the action an affidavit as described above, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action without prejudice to its refiling.

C. 1. Upon written request of any defendant in a medical liability action, the plaintiff shall, within ten (10) business days after receipt of such request, provide the defendant with:

a. a copy of the written opinion of a qualified expert mentioned in an affidavit filed pursuant to subsection A or B of this section, and

b. an authorization from the plaintiff in a form that complies with applicable state and federal laws, including the Health Insurance Portability and Accountability Act of 1996, for the release of any and all medical records related to the plaintiff for a period commencing five (5) years prior to the incident that is at issue in the medical liability action.

2. If the plaintiff fails to comply with paragraph 1 of this subsection, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action without prejudice to its refiling.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1F of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section, in any medical liability action in which the health care services at issue were provided for:

1. Pregnancy or labor and delivery, including the immediate post-partum period; or

2. Emergency care in the emergency room of a hospital or as follow-up to the emergency care services provided in the emergency room;

the amount of non-economic damages awarded shall not exceed Three Hundred Thousand Dollars ($300,000.00), regardless of the number of parties against whom the action is brought or the number of actions brought with respect to the personal injury.

B. Where the judge finds by clear and convincing evidence that the defendant committed negligence in one of the types of cases enumerated in subsection A of this section, the court shall

articulate its findings into the record out of the presence of the jury and shall lift the non-economic damage cap.

C. Nothing in this section shall apply to any nursing facility or nursing home licensed pursuant to Section 1-1903 of Title 63 of the Oklahoma Statutes or the owners, operators, officers, agents or employees of such entities.

D. Nothing in this section shall apply to a medical liability action brought for wrongful death.

E. This section of law shall terminate on July 1, 2008.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1G of Title 63, unless there is created a duplication in numbering, reads as follows:

Notwithstanding the provisions of Section 727 of Title 12 of the Oklahoma Statutes or any other provision of the Oklahoma Statutes to the contrary, prejudgment interest in a medical liability action shall be determined using a rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year.

SECTION 8. AMENDATORY 63 O.S. 2001, Section 1-1918, as amended by Section 1, Chapter 138, O.S.L. 2002 (63 O.S. Supp. 2002, Section 1-1918), is amended to read as follows:

Section 1-1918. A. All principles enumerated in this section shall be posted in a conspicuous, easily accessible location in each facility. Each resident and personally appointed representative of the resident, if any, shall be verbally advised and provided a written copy of such principles prior to or upon admission to the facility. The facility shall ensure that its staff is familiar with and observes the rights and responsibilities enumerated in this section. The facility shall make available to each resident, upon reasonable request, a current written statement of such rights and responsibilities.

B. A statement of rights and responsibilities shall include, but not be limited to, the following:

1. Every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed upon and the facility shall encourage and assist in the exercise of these rights;

2. Every resident shall have the right to have private communications, including telephonic communications and visits and consultations with a physician or an attorney, and meetings of family and resident groups or any other person or persons of the resident's choice, and may send and promptly receive, unopened, the resident's personal mail;

3. a. Every resident shall have the right, without fear of reprisal or discrimination, to:

(1) present grievances with respect to treatment or care that is or fails to be furnished on behalf of the resident or others to:

(a) the facility's staff,

(b) the facility’s administrator,

(c) the facility’s attending physician,

(d) the resident’s personal physician, if any,

(e) governmental officials, or

(f) any other person, and

(2) organize or to join with other residents or individuals within or outside of the facility to work for improvements in resident care.

b. The family of a resident shall have the right to meet in the facility with other residents' families.

c. Every resident shall have the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;

4. Every resident shall have the right to manage such resident's own financial affairs, unless the resident delegates the responsibility, in writing, to the facility. The resident shall have at least a quarterly accounting of any personal financial transactions undertaken in the resident's behalf by the facility during any period of time the resident has delegated such responsibilities to the facility;

5. Every resident shall have the right to receive adequate and appropriate medical care consistent with established and recognized medical practice standards within the community. Every resident, unless adjudged to be mentally incapacitated, shall be fully informed by the resident's attending physician of the resident's medical condition and advised in advance of proposed treatment or changes in treatment in terms and language that the resident can understand, unless medically contraindicated, and to participate in the planning of care and treatment or changes in care and treatment. Every resident shall have the right to refuse medication and treatment after being fully informed of and understanding the consequences of such actions unless adjudged to be mentally incapacitated;

6. Every resident shall receive respect and privacy in the medical care program of the resident. Case discussion, consultation, examination and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential, and shall include such documentation or information so as to alert a health care provider or an emergency medical care facility of the existence of a directive to physicians or a living will;

7. Every resident shall have the right to reside and to receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered;

8. a. Every resident shall be informed by the facility, at the time of admission, of the facility's policy regarding the provision of hospice services. The facility's policy shall:

(1) specify whether the facility provides hospice services, either directly or through contractual arrangements with other hospice providers,

(2) specify whether the facility permits hospice services to be provided in the facility by any other hospice services or only by hospice services contracted by the facility,

(3) provide that each resident shall receive a list of hospice services with which the facility contracts, and

(4) provide for complete disclosure to the resident of the facility's relationship with any hospice service that is the result of ownership or an ownership interest of five percent (5%) or more.

b. A facility shall, at the point that a resident requires hospice services, again inform the resident or the personally appointed representative of the resident, if any, verbally and in writing of the resident's right to hospice services pursuant to the facility's policy at the time of the resident's admission;

9. Every resident shall have the right to receive notice before the room or roommate of the resident in the facility is changed and if the resident has a telephone in his or her room, the resident must be informed of any charges to be incurred when moving;

10. Every resident shall have the right to retain and use personal clothing and possessions, unless medically contraindicated,

and shall have the right to security in the storage and use of such clothing and possessions;

11. Every resident shall have the right to receive courteous and respectful care and treatment and a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and a statement of related charges, including any costs for services not covered under Medicare or Medicaid, or not covered by the facility's basic per diem rate;

12. Every resident shall be free from mental and physical abuse and neglect, as such terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes, corporal punishment, involuntary seclusion, and from any physical and chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms, except those restraints authorized in writing by a physician for a specified period of time or as are necessitated by an emergency where the restraint may only be applied by a physician, qualified licensed nurse or other personnel under the supervision of the physician who shall set forth in writing the circumstances requiring the use of restraint. Use of a chemical or physical restraint shall require the consultation of a physician within twenty-four (24) hours of such emergency;

13. Every resident shall receive a statement of the facility's regulations and an explanation of the resident's responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of the other residents;

14. Every resident shall receive a statement that, should they be adjudicated incompetent and have no ability to be restored to legal capacity, the above rights and responsibilities shall be exercised by a court-appointed representative;

15. No resident shall be required to perform services for a facility;

16. Every resident shall have privacy for spousal visits. Every resident may share a room with the resident's spouse, if the spouse is residing in the same facility;

17. When a physician indicates it is appropriate, a facility shall immediately notify the resident's next of kin, or representative of the resident's death or when the resident's death appears to be imminent;

18. Every resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility; and

19. Every resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the State Department of Health with respect to the facility and any plan of correction in effect with respect to the facility.

C. No licensed facility shall deny appropriate care on the basis of the resident's source of payment as defined in the regulations. Appropriate care shall not include duplication of services by a nursing home, hospice, or any combination of care providers.

D. Each facility shall prepare a written plan and provide appropriate staff training to implement each resident's rights as stated in this section.

E. Any person convicted of violating any provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not less than One Hundred Dollars ($100.00), nor more than Three Hundred Dollars ($300.00), or imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

F. In addition to the penalties provided in this section, an action may be brought against an individual by any resident who is injured by any violation of this section, or who shall suffer injury

from any person whose threats would cause a violation of this section if carried through, may maintain an action to prevent, restrain or enjoin a violation or threatened violation. If a violation or threatened violation of this section shall be established in any action, the court shall enjoin and restrain or otherwise prohibit the violation or threatened violation and assess in favor of the plaintiff and against the defendant the cost of the suit~~, and the reasonable attorney fees incurred by the plaintiff~~. If damages are alleged and proved in the action, the plaintiff shall be entitled to recover from the defendant the actual damages sustained by the plaintiff. If it is proved in an action that the defendant's conduct was willful or in reckless disregard of the rights provided by this section, punitive damages may be assessed.

G. Any employee of a state agency that inspects any nursing facility or special facility shall report any flagrant violations of this act or any other statute to the administrative head of the state agency, who shall immediately take whatever steps are necessary to correct the situation including, when appropriate, reporting the violation to the district attorney of the county in which the violation occurred.

H. Upon the death of a resident who has no sources of payment for funeral services, the facility shall immediately notify appropriate county officials who shall be responsible for funeral and burial procedures of the deceased in the same manner as with any indigent resident of the county.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150 of Title 12, unless there is created a duplication in numbering, as reads as follows:

In any medical liability action, a summons shall be served on the defendant, or defendants, within one hundred eighty (180) days of the filing of the lawsuit or the case shall be deemed dismissed without prejudice.

SECTION 10. AMENDATORY 12 O.S. 2001, Section 2503, as amended by Section 33, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2002, Section 2503), is amended to read as follows:

Section 2503. A. As used in this section:

1. A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist;

2. A "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized;

3. A "psychotherapist" is:

a. a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or

b. a person licensed or certified as a psychologist under the laws of any state or nation, or reasonably believed by the patient to be so licensed or certified, while similarly engaged; and

4. A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

B. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient’s physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the patient’s physician or psychotherapist, and persons who are participating in the diagnosis

or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

C. The privilege may be claimed by the patient, the patient's guardian or conservator or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

D. ~~There is no privilege under this section for communications~~ The following shall be exceptions to a claim of privilege:

1. ~~Relevant~~ There is no privilege under this section for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

2. ~~Made~~ Communications made in the course of a court-ordered examination of the physical, mental or emotional condition of a patient, whether a party or a witness, are not privileged under this section when they relate to the particular purpose for which the examination is ordered unless the court orders otherwise; or

3. ~~Relevant~~ The privilege under this Code as to a communication relevant to the physical, mental or emotional condition of the patient in any proceeding in which the patient relies upon that condition as an element of the patient's claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense~~;~~ is qualified to the extent that an adverse party in the proceeding may obtain relevant information regarding the condition by statutory discovery

~~4. If the services of the physician or psychotherapist were sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew, or reasonably should have known, was a~~

~~crime or fraud or physical injury to the patient or another individual;~~

~~5. In which the patient has expressed an intent to engage in conduct likely to result in imminent death or serious bodily injury to the patient or another individual;~~

~~6. Relevant to an issue in a proceeding challenging the competency of the physician or psychotherapist;~~

~~7. Relevant to a breach of duty by the physician or psychotherapist; or~~

~~8. That are subject to a duty to disclose under statutory law~~.

E. Nothing in this subsection shall apply to any nursing facility, nursing home or hospital licensed pursuant to Section 1-1903 of Title 63 of the Oklahoma Statutes or Section 1-702 et seq. of Title 63 of the Oklahoma Statutes or the owners, operators, officers, agents or employees of such entities.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6810 of Title 36, unless there is created a duplication in numbering, reads as follows:

MEDICAL PROFESSIONAL LIABILITY INSURANCE CLOSED CLAIM REPORTS

As used in Sections 12 through 17 of this act, the following words, terms, or phrases shall have the following meanings, unless the context otherwise clearly indicates:

1. "Insurer" means an insurance company or other entity that is or has been authorized to write medical professional liability insurance in this state; and

2. "Medical professional liability insurance" means any insurance that provides professional liability coverage for any health care provider as defined in 1-1708.1C of Title 63 of the Oklahoma Statutes.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6811 of Title 36, unless there is created a duplication in numbering, reads as follows:

Not later than the tenth day after the last day of the calendar quarter in which a claim for recovery under a medical professional liability insurance policy is closed, the insurer shall file with the Department a closed claim report.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6812 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A closed claim report required pursuant to Section 12 of this act shall be filed in a form prescribed by the Insurance Commissioner and shall include:

1. The identity of the medical professional liability insurer;

2. The medical professional liability insurance policy, including:

a. the type or types of insurance,

b. the policy limits,

c. whether the policy was an occurrence or claims-made policy,

d. the classification of the insured, and

e. reserves for the claim;

3. A listing of the type of injury or loss by medical specialty; and

4. a. Details of the claims process, including:

(1) whether a lawsuit was filed,

(2) where a lawsuit, if any, was filed,

(3) whether attorneys were involved,

(4) the stage at which the claim was closed,

(5) any court verdict,

(6) any appeal,

(7) the number of defendants, and

(8) whether the claim was settled outside of court and, if so, at what stage, and

b. the amount paid on the claim, including:

(1) the total amount of a court award,

(2) the amount paid by the medical professional liability insurer,

(3) any amount paid by another insurer, if available to the medical professional liability insurer,

(4) any amount paid by another defendant, if available to the medical professional liability insurer,

(5) any collateral source of payment,

(6) any structured settlement,

(7) the amount of economic and non-economic compensatory damages and the method of allocation,

(8) the amount of prejudgment interest,

(9) the amount paid for defense costs,

(10) the amount paid for punitive damages, and

(11) the amount of allocated loss adjustment expenses.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6813 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Department shall compile the data included in individual closed claim reports filed pursuant to this act into a composite form and shall prepare annually a written report of the composite data. The Department shall make the composite data report available to the public.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6814 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Commissioner shall:

1. Establish an electronic database composed of composite data reports required pursuant to Section 14 of this act;

2. Provide the public with access to that data;

3. Establish a system to provide access to that data by electronic data transmittal processes; and

4. Set and charge a fee for electronic access to the database in an amount reasonable and necessary to cover the costs of access.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6815 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Department shall submit copies of the composite data report required pursuant to Section 14 of this act to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

B. The Department, on request of the Governor, the President Pro Tempore of the Senate, or the Speaker of the House of Representatives, shall provide to the Governor and the Legislature additional composite data reports. Composite data reports prepared under this subsection shall be available to the public.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6816 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Information included in an individual closed claim report submitted by an insurer under Sections 12 and 13 of this act is confidential and shall not be made available by the Department to the public and shall not be subject to the Oklahoma Open Records Act.

B. Information included in an individual closed claim report may be examined only by the Commissioner and Department employees.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6818 of Title 36, unless there is created a duplication in numbering, reads as follows:

STATISTICAL DATA COLLECTION

As used in Sections 19 and 20 of this act, "designated statistical agent" means an organization designated or contracted with by the Commissioner pursuant to Section 19 of this act.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6819 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may designate or contract with a qualified organization to serve as the statistical agent for the Commissioner to analyze the information provided pursuant to Sections 12 and 13 of this act.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6820 of Title 36, unless there is created a duplication in numbering, reads as follows:

To qualify as a statistical agent, an organization must demonstrate at least five (5) years of experience in data collection, data maintenance, data quality control, accounting and other related areas.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6821 of Title 36, unless there is created a duplication in numbering, reads as follows:

An insurer shall provide all premium and loss cost data to the Insurance Commissioner as the Commissioner requires.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6823 of Title 36, unless there is created a duplication in numbering, reads as follows:

MEDICAL PROFESSIONAL LIABILITY RATE SETTING

A. No rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation of this section. Notwithstanding any other provision of law, in considering whether a rate is excessive, inadequate or unfairly discriminatory, no consideration shall be given to the degree of competition and the Insurance Commissioner shall consider

whether the rate mathematically reflects the insurance company's investment income.

B. Notwithstanding any other provision of law, every medical professional liability insurer which desires to change any rate shall file a rate application with the Commissioner. A complete rate application shall include the factors enumerated in Section 902.2 of Title 36 of the Oklahoma Statutes and such other information as the Commissioner may require. The applicant shall have the burden of proving that the requested rate change is justified and meets the requirements of this section.

C. The Commissioner shall notify the policyholders of any application by an insurer for a rate change. The application shall be deemed approved forty-five (45) days after notice unless:

1. A policyholder or the policyholder's representative requests a hearing within forty-five (45) days of the notice and the Commissioner, within fifteen (15) days thereafter, grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision; or

2. The Commissioner on his or her own motion determines to hold a hearing.

In any event, a rate change application shall be deemed approved ninety (90) days after the rate application is received by the Commissioner unless that application has been disapproved by a final order of the Commissioner subsequent to a hearing or extraordinary circumstances exist. For purposes of this paragraph "received" means the date delivered to the Insurance Department.

D. For purposes of subsection C of this section, "extraordinary circumstances" include the following:

1. Rate change application hearings commenced during the ninety-day period provided by subsection C of this section. If a hearing is commenced during the ninety-day period, the rate change application shall be deemed approved upon expiration of the ninety-

day period or thirty (30) days after the close of the record of the hearing, whichever is later, unless disapproved prior to that date.

2. The hearing has been continued. The ninety-day period provided by subsection C of this section shall be tolled during any period of which a hearing is continued. A continuance shall be decided on a case by case basis. If the hearing is commenced or continued during the ninety-day period, the rate change application shall be deemed approved upon the expiration of the ninety-day period or thirty (30) days after the close of the record of the hearing, whichever is later, unless disapproved prior to that date.

E. No medical professional liability insurer shall cancel or refuse to renew coverage of a policyholder on the basis of a policyholder's exercise of any right pursuant to this section.

F. Nothing in this section shall apply to policies insuring any nursing home licensed pursuant to Section 1-1903 of Title 63 of the Oklahoma Statutes.

SECTION 23. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The provisions of this act shall apply only to medical liability actions filed after the effective date of the act.

SECTION 24. This act shall become effective July 1, 2003.

SECTION 25. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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