

AN ACT

relating to underwriting of and ratemaking for professional liability insurance for physicians and health care providers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 3. RATE STANDARDS. Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written in this state, unless the department [~~State Board of Insurance~~] shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) The department [~~State Board of Insurance~~] shall consider the impact of risk management courses taken by physicians and health care providers in this state in approving rates under this article.

1 (c) For the establishment of rates, risks may be  
2 grouped by classifications, by rating schedules, or by any other  
3 reasonable methods. Classification rates may be modified to  
4 produce rates for individual risks in accordance with rating plans  
5 which establish standards for measuring variations in hazards or  
6 expense provisions, or both. Those standards may measure any  
7 difference among risks that can be demonstrated to have a probable  
8 effect upon losses or expenses.

9 (d) Rates shall be reasonable and shall not be  
10 excessive or inadequate, as defined in this subsection, nor shall  
11 they be unfairly discriminatory. No rate shall be held to be  
12 excessive unless the rate is unreasonably high for the insurance  
13 coverage provided [~~and a reasonable degree of competition does not~~  
14 ~~exist in the area with respect to the classification to which the~~  
15 ~~rate is applicable~~]. No rate shall be held to be inadequate unless  
16 the rate is unreasonably low for the insurance coverage provided  
17 and is insufficient to sustain projected losses and expenses; or  
18 unless the rate is unreasonably low for the insurance coverage  
19 provided and the use of the rate has or, if continued, will have the  
20 effect of destroying competition or creating a monopoly.

21 SECTION 2. Article 5.15-1, Insurance Code, is amended by  
22 adding Sections 12 and 13 to read as follows:

23 Sec. 12. PROHIBITION OF USE OF CERTAIN INFORMATION FOR  
24 PHYSICIAN OR HEALTH CARE PROVIDER. (a) For the purpose of writing  
25 professional liability insurance for physicians and health care  
26 providers, an insurer may not consider whether, or the extent to  
27 which, a physician or health care provider provides services in

1 this state to individuals who are recipients of Medicaid or covered  
2 by the state child health plan program established by Chapter 62,  
3 Health and Safety Code, including any consideration resulting in:

4 (1) denial of coverage;

5 (2) refusal to renew coverage;

6 (3) cancellation of coverage;

7 (4) limitation of the amount, extent, or kind of  
8 coverage available; or

9 (5) a determination of the rate or premium to be paid.

10 (b) The commissioner may adopt rules as necessary to  
11 implement this section.

12 Sec. 13. USE IN UNDERWRITING OF CERTAIN INFORMATION RELATED  
13 TO LAWSUITS; REFUND. (a) Notwithstanding any other provision of  
14 this code, an insurer may not consider for the purpose of setting  
15 premiums or reducing a claims-free discount for a particular  
16 insured physician's professional liability insurance a lawsuit  
17 filed against the physician if:

18 (1) before trial, the lawsuit was dismissed by the  
19 claimant or nonsuited; and

20 (2) no payment was made to the claimant under a  
21 settlement agreement.

22 (b) An insurer that, in setting premiums or reducing a  
23 claims-free discount for a physician's professional liability  
24 insurance, considers a lawsuit filed against the physician shall  
25 refund to the physician any increase in premiums paid by the  
26 physician that is attributable to that lawsuit or reinstate the  
27 claims-free discount if the lawsuit is dismissed by the claimant or

1 nonsuited without payment to the claimant under a settlement  
2 agreement. The insurer shall issue the refund or reinstate the  
3 discount on or before the 30th day after the date the insurer  
4 receives written evidence that the lawsuit was dismissed or  
5 nonsuited without payment to the claimant under a settlement  
6 agreement.

7 (c) This section does not prohibit an insurer from  
8 considering and using aggregate historical loss and expense  
9 experience applicable generally to a classification of physicians'  
10 professional liability insurance to set rates for that  
11 classification to the extent authorized by Article 5.13-2 of this  
12 code. Notwithstanding Section 4(c), Article 5.13-2, of this code,  
13 an insurer may not assign a physician to a particular  
14 classification based on a factor described by Subsection (a) of  
15 this section.

16 SECTION 3. The change in law made by this Act applies only  
17 to policies of professional liability insurance for physicians and  
18 health care providers delivered, issued for delivery, or renewed on  
19 or after January 1, 2006. A policy delivered, issued for delivery,  
20 or renewed before January 1, 2006, is governed by the law in effect  
21 immediately before the effective date of this Act, and that law is  
22 continued in effect for that purpose.

23 SECTION 4. This Act takes effect September 1, 2005.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2678 was passed by the House on May 9, 2005, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 2678 on May 24, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2678 on May 28, 2005, by a non-record vote.

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Chief Clerk of the House

H.B. No. 2678

I certify that H.B. No. 2678 was passed by the Senate, with amendments, on May 23, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2678 on May 28, 2005, by a viva-voce vote.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor