Regular Session, 2010 SENATE BILL NO. 514 BY SENATOR MURRAY

1	AN ACT
2	To amend and reenact R.S. 40:1299.44(A)(2), (5), and (6) and (D)(1)(c) and (2)(b)(iii),
3	relative to the Patient's Compensation Fund and the Patient's Compensation Fund
4	Oversight Board; to provide with respect to exemption of the board and fund from
5	rate regulation by the commissioner of insurance; to provide relative to the annual
6	surcharge, including the manner of its determination; to provide relative to retention
7	of monies in the fund; to provide with respect to composition of the board and to
8	otherwise provide with respect to its authority; and to provide for related matters.
9	Be it enacted by the Legislature of Louisiana:
10	Section 1. R.S. 40:1299.44(A)(2), (5), and (6) and (D)(1)(c) and (2)(b)(iii) are
11	hereby amended and reenacted to read as follows:
12	§1299.44. Patient's Compensation Fund
13	А.
14	* * *
15	(2)(a) In order to $\underline{To}$ provide monies for the fund, an annual surcharge shall
16	be levied on all health care providers in Louisiana qualified under the provisions of
17	this Part.
18	(b) The board shall cause to be prepared an annual actuarial study of
19	the fund by a qualified competent actuary.
20	(b) (c) The board and the fund shall be exempt from rate regulation by
21	the commissioner of insurance. The surcharge rates shall be determined by the
22	commissioner of insurance board in a public meeting held pursuant to the
23	provisions of R.S. 42:4.1 through 12 based upon actuarial principles and in
24	accordance with an application for rates or rate changes, or both, filed by the
25	Patient's Compensation Fund Oversight Board, established and authorized pursuant

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### **ENROLLED**

1	to Subsection D of this Section. reports, experience, and prudent judgment of the
2	board. The board shall give written or electronic notice of the meeting at least
3	fifteen days in advance and provide an opportunity for public comment at the
4	meeting before determining rates.
5	(c) (d) The application for rate changes filed by the board shall be submitted
6	to the commissioner of insurance at least annually on the basis of an annual actuarial
7	study of the patient's compensation fund. surcharge rates shall not be excessive,
8	inadequate, or unfairly discriminatory. In determining whether surcharge rates
9	are excessive, inadequate, or unfairly discriminatory, consideration may be
10	given to the following items:
11	(i) Basic rate factors. Due consideration shall be given to past and
12	prospective loss and expense experience, catastrophe hazards and contingencies,
13	events, or trends. Fines and penalties against a health care provider, whether
14	levied by a court or regulatory body, shall not be used by the board or
15	considered in any manner in the loss or expense experience.
16	(ii) Classification. Risks may be grouped by classification for the
17	establishment of rates. Classification rates may be modified for individual risks
18	in accordance with an experience-rating plan or schedule which apportions a
19	greater percentage of required surcharge increases to those health care
20	providers who generate greater than expected losses.
21	(iii) Expenses. The expense provisions shall reflect the operating
22	methods of the board and the fund, the past expense experience, and anticipated
23	<u>future expenses.</u>
24	(iv) Contingencies. The rates may contain a provision for contingencies.
25	(v) Other relevant factors. Any other factors available at the time of
26	determining the rates.
27	(d) (e) The surcharge shall be collected on the same basis as premiums by
28	each insurer, the risk manager, and surplus line agent.
29	(e) (f) The board shall collect the surcharge from health care providers
30	qualified as self-insureds.

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1	(f) (g) The surcharge for self-insureds shall be the same amount determined
2	by the board in accordance with regulations promulgated under the Administrative
3	Procedure Act and in accordance with the rate set by the commissioner of insurance
4	to be the amount of surcharge which the health care provider would reasonably be
5	required to pay were his qualification based upon filing a policy of malpractice
6	liability insurance.
7	* * *
8	(5)(a) All expenses of collecting, protecting, and administering the fund shall
9	be paid from the fund.
10	(b) The functions of collecting, administering, and protecting the fund,
11	including all matters relating to determining surcharge rates, establishing reserves,
12	the evaluating and settlement of claims, and relating to the defense of the fund, shall
13	be carried out by the board.
14	(c) The board shall prepare quarterly statements of the financial
15	condition of the fund and publish the statements on the website of the board.
16	(c) (d) The function of selecting the list of attorney names from which the
17	selection of the attorney chairman of the medical review panels is to be made shall
18	be the responsibility of the office of the clerk of the Louisiana Supreme Court.
19	(d) (e) These expenses of the board and office of the clerk of the Louisiana
20	Supreme Court shall be paid from the fund by the state treasurer in accordance with
21	the law.
22	(e) The fund shall be a budget unit of this state.
23	(f) The legislature shall appropriate from the fund sufficient monies for the
24	carrying out by the board and office of the clerk of the Louisiana Supreme Court of
25	the duties, functions, and responsibilities imposed upon them in this Section and
26	shall also appropriate all remaining monies in the fund for use by the board to pay
	approved claims based upon final judgments, court-approved settlements, final
27	
27 28	arbitration awards, and judgments awarding medical care and related benefits
	arbitration awards, and judgments awarding medical care and related benefits rendered pursuant to R.S. 40:1299.43 and vouchers drawn by the board pursuant to

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### **ENROLLED**

1	under the provisions of R.S. 40:1299.43 in accordance with Paragraph (7) of this
2	Subsection and in accordance with Subsection B of this Section.
3	(g) (f) Any purchases from the fund of furniture, fixtures, equipment, or
4	other property shall be specifically designated, by such the method of identification
5	as is reasonable and practical for each item, as the property of the fund.
6	(6)(a) At all times the fund shall be maintained so as to provide a surplus
7	assets of at least thirty percent of the annual surcharge premiums, reserves
8	established for individual claims, reserves established for incurred but not reported
9	claims, and expenses. fund's outstanding liabilities, calculated using the most
10	recent actuarial study and report for the fund.
11	(b) No reduction in the surcharge shall be made unless such surplus assets
12	are is available in the fund.
13	* * *
14	D.(1)
15	* * *
16	(c) The ninth member of the board shall be appointed from nominees
17	provided by the principal professional organization of insurance executives,
18	insurance agents organizations and this member must shall be an executive of a
19	familiar with property and casualty insurance company that is and licensed in this
20	state which does not sell medical professional liability insurance. as a producer.
21	* * *
22	(2)
23	* * *
24	(b) In addition to such other powers and authority elsewhere expressly or
25	impliedly conferred on the board by this Part, the board shall have the authority, to
26	the extent not inconsistent with the provisions of this Part, to:
27	* * *
28	(iii) Collect, accumulate, and maintain claims experience data from enrolled
29	health care providers and insurance companies providing professional liability
30	insurance coverage to health care providers in this state, in such form as may be $\underline{the}$

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 1
 form necessary or appropriate to permit the fund board to develop determine

 2
 appropriate surcharge rates for the fund.

3 \* \* \*

# PRESIDENT OF THE SENATE

# SPEAKER OF THE HOUSE OF REPRESENTATIVES

# GOVERNOR OF THE STATE OF LOUISIANA

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