

ISSUE BRIEF

SENATE POLICY DEVELOPMENT AND RESEARCH OFFICE

PREPARED IN CONJUNCTION WITH THE SENATE REPUBLICAN POLICY COMMITTEE

Medical Care Availability and Reduction of Error Fund (Mcare)

Background

The Medical Care Availability and Reduction of Error Fund (Mcare) was established under [Act 13 of 2002](#) to provide a medical liability insurance subsidy for physicians and other health care providers. In order to be licensed by the state, the law requires physicians to carry a minimum of \$1 million of medical malpractice coverage per incident and \$3 million per annual policy year aggregate. The first \$500,000 is typically purchased through the private insurance market and the remaining \$500,000 is provided by the Mcare Fund. Hospitals must also maintain medical malpractice coverage, \$1 million for each incident and \$4 million per annual aggregate.

The abatement program is funded chiefly from a 25-cents-per-pack tax increase on cigarettes and a surcharge on automobile moving violations. These monies are placed in the Health Care Provider Retention Account (HCPRA). This account is used to make up for shortages in the Mcare Fund due to abatement of Mcare surcharges that would otherwise have been made by Pennsylvania physicians and other providers. A decline in malpractice lawsuits has allowed a surplus of approximately \$414 million to accrue in the HCPRA.

2007-08 Legislative Activity

In 2007, [Senate Bill 1137](#) (D. White) was introduced to extend the Mcare abatement to 2008. In October of 2007, the Senate approved the one year extension and amended the bill to provide that the surplus in the HCPRA be allocated as follows: 50 percent to reduce the unfunded liability; 25 percent for the reduction of hospital-acquired infections; and 25 percent for funding electronic medical records. In December, Governor Rendell proposed using 50 percent of the Mcare surplus, a 10-cent increase in the cigarette tax and the imposition of a tax on smokeless tobacco and cigars as a funding mechanism for Cover All Pennsylvanians (CAP), his health care reform proposal. The Governor threatened that if the legislature did not approve CAP, he would prevent the Mcare abatement from being extended to 2008. Senate Bill 1137 passed the Senate (44-2) on October 30, 2007.

In March of 2008, the House of Representatives amended [Senate Bill 1137](#) to extend the abatement and gradually increase the abatement level until providers were purchasing their entire coverage limit in the private market in 2018. The House amendments to Senate Bill 1137 also provided for the Pennsylvania Access to Basic Care (PA ABC), which was a scaled-down version of Governor Rendell's CAP proposal. The proposal was to be funded in part with surplus monies in the HCPRA. In May, the Governor's Budget Office sent a [letter](#) to the majority and minority chairmen of the House and Senate Appropriations Committees addressing the costs of the programs established in Senate Bill 1137.

In December of 2007, the Senate also amended [House Bill 489](#) (Schroder) to extend Pennsylvania's Mcare abatement program and the Health Care Provider Retention Program for one year. This legislation passed and was referred to the House Rules Committee. Senate Republicans urged the House to take action on this bill after Senate Bill 1137 was amended to include PA ABC, believing the Mcare abatement extension should be considered on its own merits. The House amended the bill removing the language dealing with Mcare and the legislation remained in the House at the close of the 2007-08 legislative session. [Senate Bill 1372](#) (Fontana) would have also extended the Health Care Provider Retention Program originally established under the Mcare Act for two years. Senate Bill 1372 passed the Senate (50-0) on June 28, 2008 and was referred to the House Insurance Committee. [House Bill 2648](#) (Eachus) was amended with similar provisions and passed by the Senate but was not act on by the House.

In June 2008, the Senate Republican Caucus unveiled its own proposal for providing health care for the uninsured by, among other components, expanding clinics to be served by volunteer physicians. The Governor met with Senate leadership in September to present yet another set of alternatives for consideration. That compromise covered only 242,000 people. At the request of the Senate Republicans, the compromise eliminated any new cigarette taxes to fund the uninsured program and removed some of the insurance benefits.

Ongoing negotiations via [correspondence](#) and meetings took place between the administration and the Senate regarding the issues of Mcare and PA ABC but when the 2007-08 legislative session ended no compromise had been reached. The Mcare abatements had ended and the PA Health Care Cost Containment Council (PHC4), held hostage in Senate Bill 1137, failed to be renewed; however, the Governor has extended his Executive Order allowing the PHC4 to continue operating through June 30, 2009.

Senate Republicans felt that the fiscal climate and a projected \$2 billion budget deficit by the end of the 2008-09 Fiscal Year prevented legislative action on PA ABC, a plan estimated to cost \$3 billion over a five year period. Enacting PA ABC would require \$250 million annually in new taxes due to the uncertainty of funding sources such as the Community Health Reinvestment Agreement (Blues' surpluses) which will expire in 2010 and the availability of federal matching funds.

Medical Societies and the Hospital and Healthsystem Association of Pennsylvania

The Pennsylvania Medical Society, the Pennsylvania Orthopedic Society and the Hospital and Healthsystem Association of Pennsylvania believe the necessary components to resolve the Mcare issue include:

- Phase-out of Mcare coverage in manageable increments.
- Continuation of the abatement program through the phase-out period.
- Protected funds dedicated to fully retire the unfunded liability.

In December of 2008, the Hospital and Healthsystem Association of Pennsylvania and the Pennsylvania Medical Society brought suit against the state in Commonwealth Court alleging that the state law creating the Healthcare Provider Retention Fund and the Pennsylvania Constitution were violated because dedicated cigarette tax funds were not transferred to the Mcare Fund to pay for Mcare abatements. They are asking the court to order the administration to fully fund Mcare. It is estimated that the state owes doctors and other health care providers anywhere from \$446 million to \$616 million in reimbursements for bills paid into the fund.

These healthcare groups argue they felt it necessary to file suit because the state's projected budget deficit for 2009 will make this account a target to pay for non-health care projects. A spokesperson for the Governor has suggested that although state law dedicated the cigarette tax revenue to health care spending, it does not require the money to be spent exclusively on the malpractice insurance subsidy.

The Pennsylvania Medical Society has placed [Mcare](#) at the top of its legislative priorities. It believes that access to medical care is jeopardized not only by a lack of the Mcare abatement extension, but other trends including increased demand for health services, a declining physician workforce, and physician reimbursement issues.

The Hospital and Healthsystem Association of Pennsylvania also sees Mcare as a key priority for the hospital community in Pennsylvania. Highlights from an in depth 2007 [report](#) on Medical Liability, released in January 2008, include:

- The unfunded outstanding liability for the Mcare fund, as of December 31, 2006, was approximately \$2.12 billion.
- PA was the first state to create an Mcare abatement program in 2003 and from 2003 to 2007, the total cost of abatement was \$946 million.
- The Mcare Act (Act 13 of 2002) provides for the continued phase-out of the Mcare fund based on availability of "additional basic insurance coverage capacity" in the medical malpractice marketplace. In 2007, the PA Insurance Department found that there was not sufficient capacity and will make another determination in 2009.

- The two largest private medical malpractice carriers, PMSLIC and MedPro, filed for January 2008 rate decreases for an average of 11 percent and an average of 6 percent, respectively.
- Mcare Fund payouts have steadily decreased since 2003 resulting in decreased Mcare assessment rates for health care providers. The payout for 2003 was \$379 million which declined to \$173 million in 2008.

<i>Year</i>	<i>Mcare Payout</i>	<i>% Change from 2003</i>
2003	\$379 Million	
2004	\$320 Million	-16%
2005	\$233 Million	-39%
2006	\$210 Million	-45%
2007	\$191 Million	-50%
2008	\$173 Million	-54%