



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB3166

Introduced 2/24/2011, by Rep. Michael G. Connelly

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Health Courts Act. Establishes the Illinois Health Courts Commission with 10 members appointed by the Governor, by and with the consent of the Senate, of which: 3 are representatives of hospitals; 3 are representatives of physicians; and 4 are citizen representatives, with one designated as chairman by the Governor. Provides for the staffing and the operation of the Commission. Establishes arbitrator qualifications, appointments and training procedures. Provides that arbitrators are subject to the Personnel Code. Provides that the Commission shall adopt rules to create an alternative dispute resolution method that provides: after the occurrence of an adverse health care event, the health care professional or health care provider involved must notify the patient or the patient's family, within 30 days after the discovery of the adverse event, that the patient has a right to seek compensation; following this, the patient may submit a claim; the health care professional or provider must notify the health court commission of the claim and provide a compensability determination to the patient within 60 days; if the event is compensable, the health care professional or provider must make an offer based upon a schedule of damages created by the Commission by rule; a patient may appeal that compensation decision to the Commission; the patient may appeal a decision to not compensate the patient for the claim, which is reviewed by an arbitrator, de novo, at a hearing at which the health care professional or provider and the patient may present evidence, including expert testimony; and the arbitrator's decision may be appealed to the appellate court. Provides that the Commission shall issue an annual report. Includes other provisions.

LRB097 05331 AJ0 46202 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning health courts.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Health  
5 Courts Act.

6 Section 5. Illinois Health Courts Commission. There is  
7 created the Illinois Health Courts Commission consisting of 10  
8 members to be appointed by the Governor, by and with the  
9 consent of the Senate, 3 of whom shall be representatives of  
10 hospitals, 3 of whom shall be representatives of physicians,  
11 and 4 of whom shall be representative citizens not identified  
12 with either hospitals or physicians.

13 One of the representative citizen members shall be  
14 designated by the Governor as chairman. The chairman shall be  
15 the chief administrative and executive officer of the  
16 Commission; he or she shall have general supervisory authority  
17 over all personnel of the Commission, including arbitrators and  
18 commissioners, and the final authority in all administrative  
19 matters relating to the commissioners, including but not  
20 limited to the assignment and distribution of cases and the  
21 assignment of commissioners to the panels, except in the  
22 promulgation of procedural rules and orders and in the  
23 determination of cases under the Act.

1           Notwithstanding the general supervisory authority of the  
2 chairman, each commissioner, except those assigned to the  
3 temporary panel, shall have the authority to hire and supervise  
4 2 staff attorneys. The staff attorneys shall report directly to  
5 the individual commissioner.

6           A formal training program for newly-appointed  
7 commissioners shall be implemented. The training program shall  
8 include the following:

9           (1) substantive and procedural aspects of the office of  
10 commissioner;

11           (2) current issues in professional liability law and  
12 practice;

13           (3) medical lectures by specialists in areas including  
14 but not limited to orthopedics, ophthalmology, psychiatry,  
15 and rehabilitation counseling;

16           (4) orientation to each operational unit of the  
17 Illinois Health Courts Commission;

18           (5) observation of experienced arbitrators and  
19 commissioners conducting hearings, combined with the  
20 opportunity to discuss evidence presented and rulings  
21 made;

22           (6) the use of hypothetical cases requiring the  
23 newly-appointed commissioner to issue judgments as a means  
24 to evaluate knowledge and writing ability; and

25           (7) a writing skills course.

26           A formal and ongoing professional development program

1 including, but not limited to, the training program areas  
2 described in items (1) through (7) in this Section shall be  
3 implemented to keep the commissioners informed of recent  
4 developments and issues and to assist them in maintaining and  
5 enhancing their professional competence.

6 In case of a vacancy in the office of a commissioner during  
7 a recess of the Senate, the Governor shall make a temporary  
8 appointment until the next meeting of the Senate, when he or  
9 she shall nominate some person to fill the office. Any person  
10 so nominated who is confirmed by the Senate shall hold office  
11 during the remainder of the term and until his or her successor  
12 is appointed and qualified.

13 Notwithstanding any other provision of this Act, in the  
14 event that the chairman makes a finding that a member is or  
15 will be unable to fulfill the responsibilities of his or her  
16 office, the chairman shall advise the Governor and the member  
17 in writing and shall designate a certified arbitrator to serve  
18 as acting commissioner. The certified arbitrator shall act as a  
19 commissioner until the member resumes the duties of his or her  
20 office or, if a vacancy occurs in the office of the  
21 commissioner, until a new member is appointed by the Governor,  
22 by and with the consent of the Senate; but in no event shall a  
23 certified arbitrator serve in the capacity of commissioner for  
24 more than 6 months from the date of appointment by the  
25 chairman. A finding by the chairman that a member is or will be  
26 unable to fulfill the responsibilities of his or her office

1 shall be based upon notice to the chairman by a member that he  
2 or she will be unable to fulfill the responsibilities of his or  
3 her office or facts and circumstances made known to the  
4 chairman which lead the chairman to reasonably find that a  
5 member is unable to fulfill the responsibilities of his or her  
6 office. A certified arbitrator designated to act as a  
7 commissioner shall be considered a representative of citizens.  
8 A certified arbitrator who serves as an acting commissioner  
9 shall have all the rights and powers of a commissioner,  
10 including salary.

11 The Commission may have an executive director; if so, the  
12 executive director shall be appointed by the Governor with the  
13 advice and consent of the Senate. The duties of the executive  
14 director include but are not limited to the general  
15 administration of the Commission. The salary of the executive  
16 director shall be fixed by the Commission.

17 Section 10. Commission employees. The Commission shall  
18 appoint a secretary, an assistant secretary, and arbitrators  
19 and shall employ such assistants and clerical help as may be  
20 necessary.

21 The arbitrator candidates must meet one of the following  
22 qualifications: (1) licensed to practice law in the State of  
23 Illinois; (2) served as an arbitrator at the Illinois Workers'  
24 Compensation Commission for at least 3 years; or (3) has at  
25 least 4 years of professional labor relations experience.

1 Each arbitrator appointed shall be required to demonstrate  
2 in writing his or her knowledge of and expertise in the law and  
3 judicial processes relevant to this Act.

4 A formal training program for newly-hired arbitrators  
5 shall be implemented. The training program shall include the  
6 following:

7 (1) substantive and procedural aspects of the  
8 arbitrator position;

9 (2) current issues in professional liability law and  
10 practice;

11 (3) medical lectures by specialists in areas such as  
12 orthopedics, ophthalmology, psychiatry, and rehabilitation  
13 counseling;

14 (4) orientation to each operational unit of the  
15 Illinois Health Courts Commission;

16 (5) observation of experienced arbitrators conducting  
17 hearings of cases, combined with the opportunity to discuss  
18 evidence presented and rulings made;

19 (6) the use of hypothetical cases requiring the trainee  
20 to issue judgments as a means to evaluating knowledge and  
21 writing ability; and

22 (7) a writing skills course.

23 A formal and ongoing professional development program  
24 including, but not limited to, the program areas described in  
25 items (1) through (7) in this Section shall be implemented to  
26 keep arbitrators informed of recent developments and issues and

1 to assist them in maintaining and enhancing their professional  
2 competence.

3 Each arbitrator appointed after the effective date of this  
4 Act shall be appointed for a term of 6 years. Each arbitrator  
5 shall be appointed for a subsequent term unless the chairman  
6 makes a recommendation to the Commission, no later than 60 days  
7 prior to the expiration of the term, not to reappoint the  
8 arbitrator. Notice of the recommendation shall also be given to  
9 the arbitrator no later than 60 days prior to the expiration of  
10 the term. Upon the recommendation by the chairman, the  
11 arbitrator shall be appointed for a subsequent term unless 8 of  
12 10 members of the Commission, including the chairman, vote not  
13 to reappoint the arbitrator.

14 All arbitrators shall be subject to the provisions of the  
15 Personnel Code, and the performance of all arbitrators shall be  
16 reviewed by the chairman on an annual basis. The chairman shall  
17 allow input from the commissioners in all such reviews.

18 The Commission shall provide itself with a seal for the  
19 authentication of its orders, awards and proceedings upon which  
20 shall be inscribed the name of the Commission and the words  
21 "Illinois-Seal".

22 The secretary or assistant secretary, under the direction  
23 of the Commission, shall have charge and custody of the seal of  
24 the Commission and also have charge and custody of all records,  
25 files, orders, proceedings, decisions, awards, and other  
26 documents on file with the Commission. The secretary or

1 assistant secretary shall furnish certified copies, under the  
2 seal of the Commission, of any such records, files, orders,  
3 proceedings, decisions, awards, or other documents on file with  
4 the commission as may be required. Certified copies so  
5 furnished by the secretary or assistant secretary shall be  
6 received in evidence before the commission or any arbitrator  
7 thereof, and in all courts, provided that the original of such  
8 certified copy is otherwise competent and admissible in  
9 evidence. The secretary or assistant secretary shall perform  
10 such other duties as may be prescribed from time to time by the  
11 Commission.

12 Section 15. Health court dispute resolution. The Health  
13 Courts Commission shall adopt rules to create an alternative  
14 dispute resolution method that does the following:

15 (1) After the occurrence of an adverse event covered by  
16 this Act, the health care professional or health care provider  
17 must notify the patient and his or her family within 30 days  
18 after the discovery of the adverse event that he or she has a  
19 right to seek compensation.

20 (2) The patient must submit to the health care professional  
21 or health care provider, on forms prepared by the Commission  
22 and including all pertinent medical records, a claim describing  
23 the patient's account of the events. Although patients may  
24 involve legal counsel, it is not required.

25 (3) Once the health care professional or health care

1 provider receives the claim, he or she must notify the Illinois  
2 Health Courts Commission that a claim has been made. The  
3 notification must include a copy of the initial claim.

4 (4) A health care professional or health care provider must  
5 make an initial compensability determination and respond to the  
6 patient within 60 days after the receipt of the claim. If the  
7 event is compensable, the health care professional or health  
8 care provider must make an offer. The standard for review shall  
9 be determined by rule. The patient must receive a written  
10 report from the health care professional or health care  
11 provider explaining his or her determination that the claim is  
12 compensable, is not compensable, or is of unknown  
13 compensability. After the health care professional or health  
14 care provider reaches his or her decision, the patient may  
15 review the documents consulted by the health care professional  
16 or health care provider. The written report must also be  
17 submitted to the Commission.

18 (5) If the health care professional or health care provider  
19 determines that a claim is compensable, a schedule of damages  
20 must guide the compensation figure.

21 (6) A patient may appeal the health care professional's or  
22 health care provider's compensation decision to the Commission  
23 within 30 days. If the Commission disagrees with the initial  
24 determination it may amend the patient's award.

25 (7) The patient may also appeal the initial decision to not  
26 compensate the claim to the Commission and request review by an

1 arbitrator within 30 days. A claim shall be reviewed de novo  
2 using the same materials considered under the initial review. A  
3 hearing shall be held and the health care professional or  
4 provider and the patient may appear and present evidence. While  
5 a patient or a health care professional or provider may retain  
6 counsel, it is not necessary. Experts may give testimony.

7 (8) If a health care professional or health care provider  
8 cannot determine the compensability of the claim, an arbitrator  
9 for the Commission shall evaluate the claim. A patient need not  
10 file an appeal.

11 (9) If the arbitrator determines that the event is  
12 compensable, he or she must utilize the same schedule of  
13 damages as the health care professional or health care provider  
14 and also issue a written explanation for his or her  
15 determination.

16 (10) A patient may appeal the arbitrator's decision to the  
17 appellate court, which shall apply a deferential standard of  
18 review. The patient shall have access to all documents utilized  
19 by the arbitrator in rendering his or her decision.

20 (11) The arbitrator's written decision shall be stored in a  
21 searchable database. The database shall also include the  
22 general claim information from which identifying factors have  
23 been redacted.

24 (12) Illinois Health Courts Commission administrators must  
25 periodically contact a patient to determine whether the  
26 patient's compensation should be adjusted due to unanticipated

1 reasons. A patient may also apply directly to the Commission  
2 for an adjustment.

3 Section 20. Rules. The Commission shall adopt rules in  
4 accordance with the Illinois Administrative Procedure Act  
5 including but not limited to dispute resolution time frames,  
6 official compensation, and the schedule of damages.

7 Section 25. Annual report. The Commission shall report in  
8 writing to the Governor on the 30th day of June, annually, the  
9 details and results of its administration of this Act, and may  
10 prepare and issue such special bulletins and reports from time  
11 to time as may seem advisable.