

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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Official Code*

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To establish the District of Columbia Medical Liability Captive Insurance Agency to provide medical malpractice liability coverage for nonprofit community health centers in the District of Columbia, to vest management for the agency in the Chief Risk Officer, to establish an Advisory Council to assist and advise the Chief Risk Officer, to provide for approval by the Commissioner of the Department of Insurance, Securities, and Banking, to require the submission of annual reports, to create requirements for the plan of operation for the agency, to establish the Medical Liability Captive Trust Fund, a nonlapsing fund, to serve as the funding mechanism for the agency; and to repeal the Free Clinic Assistance Program Act of 1986.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “District of Columbia Medical Liability Captive Insurance Agency Establishment Act of 2008”.

Sec. 2. Definitions.

For the purposes of this act, the term:

- (1) “Advisory Council” means the advisory council established by section 6.
- (2) “Agency” means the District of Columbia Medical Liability Captive Insurance Agency.
- (3) “Captive manager” means the person appointed by the Risk Officer pursuant to section 5(b) to run the day-to-day affairs of the Agency.
- (4) “Commissioner” means the Commissioner of the Department of Insurance, Securities, and Banking.
- (5) “Fund” or “Medical Liability Captive Trust Fund” means the Medical Liability Captive Trust Fund established under section 12.
- (6) “Federally qualified health center” shall have the same meaning as provided in section 1861(aa)(4) of the Social Security Act, approved August 14, 1935 (79 Stat. 313; 42 U.S.C. § 1395x(aa)(4)).
- (7) “Gap coverage” means coverage for medical malpractice risks of the District’s Federally Qualified Health Centers not covered through the Federal Tort Claims Act,

approved August 2, 1946 (60 Stat. 847; 15 U.S.C. § 41 *et seq.*).

(8) "Health center" means a health center or service that:

(A) Has obtained all licenses, permits, and certificates of occupancy or need that are required as a precondition to lawful operation in the District;

(B) Is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));

(C) Is certified by the Commissioner to meet the requirements of this act; and

(D) Accepts and provides services to individuals regardless of ability to pay; provided, that a health center may accept payment from:

(i) Health insurance providers for services rendered, if a patient has such insurance coverage and consents in writing to the filing of a claim for benefits to which the patient is eligible; and

(ii) Patients on a sliding fee scale.

(9) "Operational" means that the Council has approved insurance policies for the health centers covered under the Free Clinic Assistance Program Act of 1986, effective September 23, 1986 (D.C. Law 6-155; D.C. Official Code § 1-307.21 *et seq.*).

(10) "Risk Officer" means the Chief Risk Officer, established by Reorganization Plan No. 1 of 2003, effective December 15, 2003.

(11) "Tail coverage" means liability insurance purchased by an insured to extend the insurance coverage beyond the end of the policy period of a liability policy written on a claims-made basis.

(12) "Volunteer service provider" means any person licensed to practice in the District who provides health-care, rehabilitative, social, or related administrative services:

(A) At a health center;

(B) To or with respect to a patient of the health center; and

(C) Without receiving payment from the District government for the performance of those services.

Sec. 3. Establishment of the District of Columbia Medical Liability Captive Insurance Agency.

(a) There is established, as a subordinate agency under the Mayor, the District of Columbia Medical Liability Captive Insurance Agency.

(b) The purpose of the Agency is to provide medical malpractice liability insurance policies for health centers, including coverage for the staff, contractors, and volunteer service providers for the services provided at the health centers. The liability of the Agency for medical malpractice liability insurance policies shall be limited to the funds in the Medical Liability Captive Trust Fund.

Sec. 4. Authority of the Agency.

(a) The Agency shall have the authority to:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this act, including the authority to enter into contracts with similar captives of other states for the joint performance of common administrative functions or with persons or other entities for the performance of organizational, management, or administrative functions;

(2) Take such action as necessary:

(A) To avoid the payment of improper claims against the Agency or the coverage provided by or through the Agency;

(B) To recover any amounts erroneously or improperly paid by the Agency;

(C) To recover any amounts paid by the Agency as a result of mistake of fact or law; or

(D) To recover or collect premiums or other amounts due the Agency;

(3) Establish and modify rates, rate schedules, rate adjustments, expense allowances, claim reserve formulas, and any other actuarial function appropriate to the operation of the Agency; provided, that adjustments to rates and rate schedules shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices;

(4) Issue policies of medical malpractice insurance, including tail coverage, in accordance with the requirements of the plan of operation under section 8;

(5) Appoint appropriate legal, actuarial, audit, and other committees as necessary to provide technical assistance in the operation of the Agency, policy and other contract design, and any other function within the authority of the Agency;

(6) Employ and fix the compensation of employees;

(7) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to health centers;

(8) Provide for reinsurance of risks incurred by the Agency;

(9) Provide for, and employ, cost containment measures and risk management program standards;

(10) Seek and receive grant funding from the United States government, District departments or agencies, and private foundations;

(11) Adopt policies, procedures, rules, and standards as may be necessary or convenient for the operation of the Agency consistent with this act;

(12) Adopt and administer personnel policies and procedures;

(13) Employ its own general counsel and special counsel from time to time, as needed;

(14) Adopt and administer its own procurement and contracting policies and procedures;

(15) Select, retain, and employ professionals, contractors, or agents which are

necessary or convenient to enable or assist the Agency in carrying out the purposes of the Agency; and

(16) Provide gap coverage to the District's Federally Qualified Health Centers for medical malpractice risks.

(b) Upon the request of the Risk Officer, the Mayor and the governing officer or body of each instrumentality of the District, by delegation or agreement, may direct that personnel or other resources of a District agency or instrumentality be made available to the Agency on a full cost-reimbursable basis to carry out the Agency's duties. Personnel detailed to the Agency under this subsection shall not be considered employees of the Agency, but shall remain employees of the agency or instrumentality from which the employees were detailed. With the consent of an executive agency, department, or independent agency of the federal government or the District government, the Agency may use the information, services, staff, and facilities of the department or agency on a full cost-reimbursable basis.

Sec. 5. Management of the Agency.

(a) The Agency shall be administered by the Risk Officer.

(b) The Risk Officer shall employ a captive manager who shall run the day-to-day affairs of the Agency and shall report to the Risk Officer. The Risk Officer shall employ such other professionals as are necessary or appropriate to effectuate the purposes of this act.

(c) The Risk Officer may delegate the authority to perform any function authorized to be performed by the Risk Officer under this act.

(d) The Risk Officer may hire Agency staff.

Sec. 6. Advisory Council to the Agency.

(a) There is established an Advisory Council to the Agency to assist and advise the Risk Officer regarding the Agency.

(b) The Advisory Council shall consist of 7 members appointed by the Risk Officer. One member shall represent the District of Columbia Primary Care Association, 2 members shall represent District of Columbia health centers, and 4 members shall have insurance expertise.

(c) The Risk Officer and the captive manager shall serve as *ex officio* members of the Advisory Council.

(d) The Risk Officer shall serve as chairperson of the Advisory Council.

(e) Except as provided in section (f) of this section, Advisory Council members shall serve terms of 3 years. An Advisory Council member's term shall continue until his or her successor is appointed. The Advisory Council members may be reappointed for additional terms.

(f) The Risk Officer shall determine the terms the initial Advisory Council members shall serve. Three of the Advisory Council members shall serve terms of 2 years, 2 shall serve terms of 4 years, and 2 shall serve terms of 6 years.

(g) Vacancies in the Advisory Council shall be filled by the Risk Officer. Advisory Council members may be removed by the Risk Officer for cause.

(h) Advisory Council members shall not be compensated in their capacity as Advisory Council members, but shall be reimbursed for reasonable expenses incurred in the necessary performance of their duties.

(i) The Advisory Council shall:

- (1) Advise the Risk Officer in the general oversight of the Agency;
- (2) Assess the needs and interests of the health centers; and
- (3) Meet at least on an annual basis, at meetings announced by the Risk Officer.

Sec. 7. Approval of plan of operation by Commissioner; annual report to Commissioner; financial examination.

(a) Prior to the offering and issuance of insurance policies, the Agency shall submit to the Commissioner for approval a plan of operation which meets the requirements of section 8. The Agency shall also submit to the Commissioner for approval any proposed material changes to the plan.

(b) On or before March 2 of each year, the Agency shall submit to the Commissioner, on a form prescribed by the Commissioner by rule, a report of its financial condition, as prepared by a certified public accountant. The Agency shall file a consolidated report on behalf of each of its segregated accounts. The Agency shall use generally accepted accounting principles and include any useful or necessary modifications or adaptations thereof that have been approved or accepted by the Commissioner for the type of insurance and kinds of insurers to be reported upon, as supplemented by additional information required by the Commissioner.

(c)(1) The Commissioner, or his designee, may visit the Agency at such times as he or she considers necessary to thoroughly inspect and examine the affairs of the Agency to ascertain:

- (A) The financial condition of the Agency;
- (B) The ability of the Agency to fulfill its obligations; and
- (C) Whether the Agency has complied with the provisions of this act and the rules adopted pursuant thereto.

(2) The Commissioner may require the Agency to retain qualified independent legal, financial, and examination services from outside the Department of Insurance, Securities, and Banking to conduct the examination and make recommendations to the Commissioner. The cost of the examination shall be paid by the Agency.

Sec. 8. Plan of operation for the Agency.

(a) The captive manager shall submit to the Risk Officer a plan of operation for the Agency that has been approved by the Commissioner and any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the Agency.

(b) The plan of operation shall:

- Risk Officer;
- (1) Become effective upon approval in writing by the Commissioner and the Risk Officer;
 - (2) Establish procedures for the operation of the Agency;
 - (3) Establish procedures for health centers to qualify to purchase medical malpractice insurance from the Agency;
 - (4) Establish procedures for offering gap coverage for the District's Federally Qualified Health Centers;
 - (5) Establish procedures, under the management of the Risk Officer, for the payment of administrative expenses;
 - (6) Establish procedures for adjustment and payment of claims made under the policies issued by the Agency, including procedures for administrative review and resolution of disputes arising over such claims;
 - (7) Establish procedures for tail coverage to health centers purchasing medical malpractice liability coverage through the Agency;
 - (8) Develop standards for the level of subsidies that shall be provided to health centers to offset premiums due to the Agency;
 - (9) Establish rules, conditions, and procedures for facilitating the reinsurance of risks of participating health centers;
 - (10) Establish risk management standards to which the health centers shall adhere and auditing procedures for the compliance of risk management standards by health centers;
 - (11) Establish underwriting guidelines for policyholders; and
 - (12) Provide for other matters as may be necessary and proper for the execution of the Risk Officer's and the captive manager's respective powers, duties, and obligations under this act.

Sec. 9. Annual report to the Mayor and Council.

- (a) The Risk Officer shall submit an annual report to the Mayor and the Council.
- (b) The report shall be filed within 60 days of the Agency filing the annual report with the Commissioner under section 7(b).
- (c) The report shall summarize the activities of the Agency in the preceding calendar year, including the net earned premiums, health center enrollment in the Agency program, the expense of administration, and the paid and incurred losses.

Sec. 10. Liabilities of Risk Officer, captive manager, and Advisory Council.

- (a) The Risk Officer, captive manager, and Advisory Council members shall not be liable for any obligations of the Agency.
- (b) The Risk Officer, captive manager, and Advisory Council members shall not be liable, or shall any cause of action of any nature arise against them, for any act or omission related to the performance of their powers and duties under this act, unless the act or omission

constitutes willful or wanton misconduct.

Sec. 11. Coverage.

The Agency shall offer health centers medical malpractice insurance consistent with coverage offered in the market; provided, that any policy offered by the Agency shall state that the liability of the Agency shall be limited to the funds in the Medical Liability Captive Trust Fund. The coverage to be issued to the health centers shall be established by the Risk Officer with the advice of the Advisory Council and subject to the approval of the Commissioner.

Sec. 12. Establishment of the Medical Liability Captive Trust Fund.

(a) There is established as a nonlapsing fund the Medical Liability Captive Trust Fund, which shall be used for the purposes set forth in subsection (b) of this section. All funds deposited in the Fund, and any interest earned thereon, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b) The Fund shall be used solely to pay for the costs and expenses of the establishment, operation, and administration of the Agency, which costs and expenses shall include:

- (1) The hiring of a captive manager and other professionals to manage and administer the day-to-day operations of the Agency;
- (2) The hiring of staff, including a general counsel;
- (3) The administration of the day-to-day operations of the Agency;
- (4) The payment of claims and losses under policies of insurance to be issued by the Agency;
- (5) Reimbursement for reasonable expenses incurred by Advisory Council members in the necessary performance of their duties; and
- (6) The costs of the management, administration, and operation of the Fund.

(c) There shall be deposited into the Fund:

- (1) All insurance premiums or other revenues which may be received by the Fund;
- (2) All funds received under section 4(a)(10); and
- (3) An amount equal to the unobligated balance of amounts appropriated and allocated by section 2055(18) of the Fiscal Year 2007 Budget Support Act of 2006, effective March 2, 2007 (D.C. Law 16-192; 53 DCR 6899).

(d) The funds in the Fund may be invested in private securities and any other form of investment which is considered appropriate by the Commissioner and the Chief Financial Officer. The Agency shall file each with the Commissioner and the Chief Financial Officer a schedule of the proposed investments of the funds and any material changes thereto.

Sec. 13. Exemption from procurement and merit personnel laws.

The Agency shall not be subject to the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), or the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*).

Sec. 14. Rules.

The Mayor may issue rules to implement the provisions of this act.

Sec. 15. Dissolution of the District of Columbia Free Clinic Captive Insurance Company.

The District of Columbia Free Clinic Captive Insurance Company, an instrumentality established by the District of Columbia Free Clinic Captive Insurance Company Establishment Emergency Act of 2007, effective October 3, 2007 (D.C. Act 17-113; 54 DCR 9977), is dissolved. All of its assets (including cash, accounts receivable, reserve funds, real or personal property, and contract and other rights), positions, personnel, and records, and the unexpended balances of appropriations, allocations, and other funds available or to be made available to it, are transferred to the Agency.

Sec. 16. The Free Clinic Assistance Program Act of 1986, effective September 23, 1986 (D.C. Law 6-155; D.C. Official Code § 1-307.21 *et seq.*), is repealed as of the date when the Agency becomes operational.

Sec. 17. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 18. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia