

STORAGE NAME: h1643.hcr

DATE: April 5, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE STANDARDS & REGULATORY REFORM
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1643

RELATING TO: Physicians & Osteopathic Physicians\Financial Responsibility

SPONSOR(S): Representatives Villalobos, Stafford, & Edwards

STATUTE(S) AFFECTED: Amends s. 455.245, 458.320, and 459.0085, F.S.

COMPANION BILL(S): SB 1986(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) HEALTH CARE STANDARDS & REGULATORY REFORM

(2)

(3)

(4)

(5)

I. SUMMARY:

This bill amends the financial responsibility requirements in s. 458.320, and 459.0085, F.S., for medical and osteopathic physicians as follows:

- 1) requires all licensees to carry tail insurance for each year they practiced, up to a maximum of four years.
- 2) Deletes the provision which permits licensees to go bare provided they agree to pay any malpractice awards up to \$100,000, or \$250,000 with hospital privileges, within 60 days after such judgment became final. The net effect is to require all licensed physicians who formerly went bare to meet the financial requirements of the state, or lose their license to practice in Florida.

Requires the Department of Health to issue an emergency order suspending the license of any licensee who the department has probable cause to believe is in violation of the revised financial responsibility provisions of 458.320, or 459.0085, F.S.

Any judgements or settlements pending at the time of suspension, must be paid in accordance with the provision of the existing law, unless mutually agreed to in writing by the parties. This new paragraph does not abrogate a judgment debtor's obligation to satisfy the entire amount of any judgment.

Any licensee who was not practicing in this state, must notify the Department of Health and fulfill all financial responsibility requirements prior to resuming the practice of medicine in Florida.

The act takes effect on January 1, 1998, and applies to claims accruing on or after that date. The proposed changes should give consumers additional protection from physicians who went bare, lose a medical malpractice case and declare bankruptcy.

The bill will have an indeterminate fiscal impact on the state, none on local government or the private sector in general.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Under present law, s. 458.320 for medical physicians, and 459.0085, FS., for osteopathic physicians, there are three basic ways these physicians may meet the existing requirements for financial responsibility for actions which result in claims from the practice of their respective professions.

They are required to select one of the following methods to demonstrate financial responsibility:

- 1) Establish and maintain an escrow account consisting of cash or other approved assets in accordance with s. 625.52(b), F.S.
- 2) Obtain and maintain professional liability coverage in an amount not less than \$100,000 per claim, with a minimum annual aggregate of not less than \$300,000.
- 3) obtain and maintain an unexpired irrevocable letter of credit in an amount not less than \$1000,000 per claim, with a minimum aggregate of not less than \$300,000.

Physicians with hospital staff privileges are also require to establish addition financial responsibility which is inclusive of the coverage listed above. They are required to select one of the following methods to demonstrate financial responsibility:

- 1) Establish and maintain an escrow account consisting of cash or other approved assets in accordance with s. 625.52(b), F.S.
- 2) Obtain and maintain professional liability coverage in an amount not less than \$250,000 per claim, with a minimum annual aggregate of not less than \$750,000.
- 3) Obtain and maintain an unexpired irrevocable letter of credit in an amount not less than \$250,000 per claim, with an aggregate of not less than \$750,000.

Unless physicians demonstrate that they are in compliance with the requirements of s. 458.320 or 459.0085, FS., the department (Department of Health, effective 7/1/97), must suspend their licenses pursuant to s. 120.569 and 120.57, F.S., and notify all health care facilities licensed under ch. 395 for medical physicians, and for osteopathic physicians, also facilities licensed under part IV of ch. 394, or part I of ch. 641, F.S., of such action. Any such suspensions remain in effect until the physicians demonstrate compliance with the applicable requirements

Physicians who qualify and go bare (do not demonstrate financial responsibility) are required to either post a sign in their reception areas or provide a written statement to their patients that they have decided not to carry malpractice insurance. However, they agree to meet all of the following criteria:

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- 1) Upon entry of an adverse judgment arising from a medical malpractice award, the licensee pays the entire amount or \$100,000, whichever is less.
- 2) If the licensee has hospital staff privileges, the licensee agrees to pay the entire amount or \$250,000, whichever is less.
- 3) The licensee submits the necessary information as required by the department.

Failure to meet the above requirements may result in the appropriate board taking disciplinary action against such physician which includes suspending their license for a period of up to 5 years.

Physicians who practice exclusively as an officer, employee or agent of the federal government, the state, or its agencies or subdivisions, are not required to demonstrate financial responsibility. Others who are exempt are : any person whose license is inactive and who is not practicing in this state; any person practicing under a limited license; any licensed person who practices only in conjunction with their teaching duties at an accredited medical school or its main teaching hospitals; any person holding an active license who is not practicing in Florida; and any retired or semi-retired person holding an active license who meet certain criteria.

B. EFFECT OF PROPOSED CHANGES:

Amends the financial responsibility requirements in s. 458.320, and 459.0085, F.S., for medical and osteopathic physicians as follows:

- 1) requires all licensees to carry tail insurance for each year they practiced, up to a maximum of four years.
- 2) Deletes the provision which permits licensees to go bare provided they agree to pay any malpractice awards up to \$100,000, or \$250,000 with hospital privileges, within 60 days after such judgment became final. The net effect is to require all licensed physicians who formerly went bare to meet the financial requirements of the state, or lose their license to practice in Florida.

Requires the Department of Health to issue an emergency order suspending the license of any licensee who the department has probable cause to believe is in violation of the revised financial responsibility provisions of 458.320, or 459.0085, F.S.

Any judgements or settlements pending at the time of suspension, must be paid in accordance with the provision of the existing law, unless mutually agreed to in writing by the parties. This new paragraph does not abrogate a judgment debtor's obligation to satisfy the entire amount of any judgment.

Any licensee who was not practicing in this state, must notify the department and fulfill all financial responsibility requirements prior to resuming the practice of medicine in Florida.

The act takes effect on January 1, 1998, and applies to claims accruing on or after that date.

The proposed changes should give consumers additional protection from physicians who went bare, lose a medical malpractice case and declare bankruptcy.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The Boards of Medicine and Osteopathic Medicine will need to promulgate rules to implement this bill.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not Applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not Applicable.

(3) how is the new agency accountable to the people governed?

Not Applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

Not Applicable.

- b. Does the bill require or authorize an increase in any fees?

Not Applicable.

- c. Does the bill reduce total taxes, both rates and revenues?

Not Applicable.

- d. Does the bill reduce total fees, both rates and revenues?

Not Applicable.

- e. Does the bill authorize any fee or tax increase by any local government?

Not Applicable.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Not Applicable.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not Applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

This bill will decrease the number of options available to medical and osteopathic physicians. They no longer will be allowed to practice without meeting the financial responsibility requirements of the state. However, the proposed changes should give consumers additional protection from physicians who went bare, lose a medical malpractice case and declare bankruptcy.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Only as noted in a. above.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not Applicable.

(2) Who makes the decisions?

Not Applicable.

(3) Are private alternatives permitted?

Not Applicable.

(4) Are families required to participate in a program?

Not Applicable.

(5) Are families penalized for not participating in a program?

Not Applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

Not Applicable.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not Applicable.

(2) service providers?

Not Applicable.

(3) government employees/agencies?

Not Applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 458.320, F.S. relating to financial responsibility for medical physicians to: 1) require all licensees to carry tail insurance for each year they practiced, up to a maximum of four years; 2) delete the provision which permits licensees to go bare provided they agree to pay any malpractice awards up to \$100,000, or \$250,000 with hospital privileges, within 60 days after such judgment became final. The net effect is to require all licensed physicians who formerly went bare to meet the financial requirements of the state, or lose their license to practice in Florida.

Any judgements or settlements pending at the time of suspension, must be paid in accordance with the provision of the existing law, unless mutually agreed to in writing by the parties. This new paragraph does not abrogate a judgment debtor's obligation to satisfy the entire amount of any judgment.

Any licensee who was not practicing in this state, must notify the department and fulfill all financial responsibility requirements prior to resuming the practice of medicine in Florida.

Section 2. Amends s. 459.0085, F.S., relating to financial responsibility for osteopathic physicians to: 1) require all licensees to carry tail insurance for each year they practiced, up to a maximum of four years; 2) delete the provision which permits licensees to go bare provided they agree to pay any malpractice awards up to \$100,000, or \$250,000 with hospital privileges, within 60 days after such judgment became final. The net effect is to require all licensed physicians who formerly went bare to meet the financial requirements of the state, or lose their license to practice in Florida.

Any judgements or settlements pending at the time of suspension, must be paid in accordance with the provision of the existing law, unless mutually agreed to in writing by the parties. This new paragraph does not abrogate a judgment debtor's obligation to satisfy the entire amount of any judgment.

Any licensee who was not practicing in this state, must notify the department and fulfill all financial responsibility requirements prior to resuming the practice of osteopathic medicine in Florida.

Section 3. Amends s. 455.245, F.S., relating to suspension of licenses to require the Department of Health to issue an emergency order suspending the license of any physician licensed under chs. 458 or 459, F.S., who the department has probable cause to believe is in violation of the financial responsibility provisions of s. 458.320 or 459.0085, F.S.

Section 4. Provides an effective date of January 1, 1998, and shall only apply to claims accruing on or after this date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

There will be no direct public sector costs. However, there will be a fiscal impact on selected physicians. The fiscal impact of four years of tail insurance according to the department could be substantial. Also, the expense of meeting the financial responsibility requirements will be an additional cost to those physicians who had chosen to go bare in the past.

2. Direct Private Sector Benefits:

There will be no direct public sector benefits. However, the proposed changes should give consumers additional protection from physicians who went bare, lose a medical malpractice case and declare bankruptcy.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

According to the Department of Health, there will be a fiscal impact on the department, but it is indeterminate at this time.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

It has been suggested that the bill would be more acceptable to medical and osteopathic physicians if the tail coverage was reduced from four to two years.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM:

Prepared by:

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