

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2064
 SPONSOR: Senator Geller
 SUBJECT: Health Care Providers
 DATE: February 23, 2002 REVISED: 02/26/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/1 amendment</u>
2.	<u> </u>	<u> </u>	<u>AHS</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The bill limits the information on medical liability actions that the Department of Health must include in the practitioner profile for medical physicians, osteopathic physicians, or podiatric physicians to information relating to medical liability actions within the previous 7 years which resulted in a verdict in favor of the plaintiff and medical liability actions which have been reported by the physician under s. 456.049, F.S., or reported by a self-insurer, insurer or joint underwriting association under s. 627.912, F.S., for any paid claim that exceeds \$50,000.

For the discipline of an allopathic or osteopathic physician by his or her regulatory board, the definition of “repeated malpractice,” for purposes of a violation of gross or repeated malpractice, is revised to mean three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of \$50,000, rather than \$25,000, for a physician’s negligent conduct. For reports that have been reported by the physician under s. 456.049, F.S., or reported by an insurer under s. 627.912, F.S., the requirement for the Department of Health to investigate such reports of medical liability actions is limited to those in which a physician has had three or more claims in a 5-year period with payments in excess of \$50,000 rather than \$25,000, for physician negligence.

The bill limits the filing of closed claim reports involving Florida-licensed medical physicians, osteopathic physicians, podiatric physicians, or dentists to those claims in which the final judgment or settlement was in an amount of more than \$50,000.

This bill substantially amends sections 456.041, 458.331, 459.015, and 627.912, Florida Statutes.

II. Present Situation:

Practitioner Profiles

Section 456.039, F.S., requires each licensed physician, osteopathic physician, chiropractic physician, and podiatric physician to submit specified information which, beginning July 1, 1999, has been compiled into practitioner profiles to be made available to the public. The information must include: graduate medical education; hospitals at which the physician has privileges; the address at which the physician will primarily conduct his or her practice; specialty certification; year the physician began practice; faculty appointments; a description of any criminal offense committed; a description of any final disciplinary action taken within the most recent 10 years; and professional liability closed claims reported to the Department of Insurance within the most recent 10 years exceeding \$5,000.¹ In addition the physician may submit: professional awards and publications; languages, other than English, used by the physician to communicate with patients; and an indication of whether the physician participates in the Medicaid program. Each person who applies for initial licensure as a medical physician, osteopathic physician, chiropractic physician, or podiatric physician must, at the time of application, and each medical physician, osteopathic physician, chiropractic physician, or podiatric physician must, in conjunction with the renewal of the license, submit the information required for practitioner profiles.

Section 456.0391, F.S., requires advanced registered nurse practitioners to comply with the practitioner profiling requirements and submit specified information for compilation into a practitioner profile. The Department of Health began compiling profiles for advanced registered nurse practitioners on July 1, 2001.

Medical Malpractice

Sections 458.331(1)(t) and 459.015(1)(k), F.S., provide grounds for which an allopathic physician or osteopathic physician may be subject to discipline for gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. "Repeated malpractice" includes three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of \$25,000 each to the claimant in a judgment or settlement and which involve incidents of negligent conduct by a physician.

Section 627.912, F.S., requires self-insurers and insurers or joint underwriting associations providing professional liability insurance to practitioners of medicine, osteopathic medicine, podiatric medicine, or dentistry, or a hospital, health maintenance organization, ambulatory surgical center, or a member of the Florida Bar to report in duplicate to the Department of Insurance any claim or action for damages for personal injuries claimed to be caused by error, omission, or negligence that resulted in a final judgment or settlement. Such reports must be filed

¹ Section 456.041, F.S., requires the Department of Health to include on the practitioner profile of medical physicians, osteopathic physicians, or podiatric physicians information relating to liability actions which has been reported by the physician under 456.049, F.S., or reported by a self-insurer and insurer or joint underwriting association under s. 627.912, F.S., within the previous 10 years for any paid claim that exceeds \$5,000.

with the Department of Insurance and, if the insured party is a licensed health care practitioner, with the Department of Health no later than 30 days from the date of the final judgment or settlement.

Pursuant to ss. 458.331(6) and 459.015(6), F.S., the Department of Health must review each report and each report filed by a physician for professional liability claims that were not covered by professional liability insurance to determine whether the report potentially involved conduct by a licensee that is subject to disciplinary action, in which case the law covering disciplinary complaints under s. 456.073, shall apply. If it is reported that a physician has had three or more claims with indemnities exceeding \$25,000 each within the previous 5-year period, the Department of Health must investigate the occurrences upon which the claims were based and determine if action by the department against the physician is warranted.

III. Effect of Proposed Changes:

Section 1. Amends s. 456.041, F.S., relating to practitioner profiles, to limit the information on medical liability actions that the Department of Health must include in the profile for medical physicians, osteopathic physicians, or podiatric physicians to information relating to medical liability actions within the previous 7 years which resulted in a verdict in favor of the plaintiff and medical liability actions which have been reported by the physician under s. 456.049, F.S., or reported by an insurer under s. 627.912, F.S., for any paid claim that exceeds \$50,000.

Section 2. Amends s. 458.331, F.S., relating to grounds for which a medical physician or physician assistant may be subject to discipline, to revise the definition of “repeated malpractice,” for purposes of a violation of gross or repeated malpractice, to mean three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of \$50,000, rather than \$25,000, for a physician’s negligent conduct. For reports that have been reported under s. 456.049, F.S., by the physician or reported by an insurer under s. 627.912, F.S., the requirement for the Department of Health to investigate such reports of medical liability actions is limited to those in which a physician has had three or more claims in a 5-year period with payments in excess of \$50,000 rather than \$25,000, for physician negligence.

Section 3. Amends s. 459.015, F.S., relating to grounds for which an osteopathic physician or physician assistant may be subject to discipline, to revise the definition of “repeated malpractice,” for purposes of a violation of gross or repeated malpractice, to mean three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of \$50,000, rather than \$25,000, for a physician’s negligent conduct. For reports that have been reported under s. 456.049, F.S., by the physician or reported by an insurer under s. 627.912, F.S., the requirement for the Department of Health to investigate such reports of medical liability actions is limited to those in which a physician has had three or more claims in a 5-year period with payments in excess of \$50,000 rather than \$25,000, for physician negligence.

Section 4. Amends s. 627.912, F.S., relating to closed liability claims paid for specified professional negligence, to limit the filing of closed claim reports involving Florida-licensed medical physicians, osteopathic physicians, podiatric physicians, or dentists to those claims in which the final judgment or settlement was in an amount of more than \$50,000.

Section 5. Provides that the bill takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allopathic and osteopathic physicians may save costs associated with defending disciplinary actions relating to gross or repeated malpractice to the extent the bill revises the class of such actions to those in which a physician has had three or more negligence claims in a 5-year period with payments in excess of \$50,000 rather than \$25,000.

C. Government Sector Impact:

The Department of Health reports that the bill will have no fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Health, Aging and Long-Term Care:

Corrects title by clarifying that the disciplinary action is applicable to allopathic physicians licensed under ch. 458, F.S., and osteopathic physicians licensed under chapter 459, F.S.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
