

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representatives Ambler and Homan offered the following:

Amendment (with title amendment)

Remove line(s) 1010-1098, and insert:

Section 25. Subsections (3) and (4) and paragraph (a) of subsection (10) of section 766.106, Florida Statutes, are amended, and subsections (13) and (14) are added to said section, to read:

766.106 Notice before filing action for medical malpractice; presuit screening period; offers for admission of liability and for arbitration; informal discovery; review.--

(3)(a) No suit may be filed for a period of 180 ~~90~~ days after notice is mailed to any prospective defendant. During the 180-day ~~90-day~~ period, the prospective defendant's insurer or self-insurer shall conduct a review to determine the liability of the defendant. Each insurer or self-insurer shall have a procedure for the prompt investigation, review, and evaluation

Amendment No. (for drafter's use only)

28 of claims during the 180-day ~~90-day~~ period. This procedure shall
29 include one or more of the following:

- 30 1. Internal review by a duly qualified claims adjuster;
- 31 2. Creation of a panel comprised of an attorney
32 knowledgeable in the prosecution or defense of medical
33 malpractice actions, a health care provider trained in the same
34 or similar medical specialty as the prospective defendant, and a
35 duly qualified claims adjuster;
- 36 3. A contractual agreement with a state or local
37 professional society of health care providers, which maintains a
38 medical review committee;
- 39 4. Any other similar procedure which fairly and promptly
40 evaluates the pending claim.

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42 Each insurer or self-insurer shall investigate the claim in good
43 faith, and both the claimant and prospective defendant shall
44 cooperate with the insurer in good faith. If the insurer
45 requires, a claimant shall appear before a pretrial screening
46 panel or before a medical review committee and shall submit to a
47 physical examination, if required. Unreasonable failure of any
48 party to comply with this section justifies dismissal of claims
49 or defenses. There shall be no civil liability for participation
50 in a pretrial screening procedure if done without intentional
51 fraud.

52 (b) At or before the end of the 180 ~~90~~ days, the insurer
53 or self-insurer shall provide the claimant with a response:

- 54 1. Rejecting the claim;
- 55 2. Making a settlement offer; or

Amendment No. (for drafter's use only)

56 3. Making an offer of admission of liability and for
57 arbitration on the issue of damages. This offer may be made
58 contingent upon a limit of general damages.

59 (c) The response shall be delivered to the claimant if not
60 represented by counsel or to the claimant's attorney, by
61 certified mail, return receipt requested. Failure of the
62 prospective defendant or insurer or self-insurer to reply to the
63 notice within 180 ~~90~~ days after receipt shall be deemed a final
64 rejection of the claim for purposes of this section.

65 (d) Within 30 days after ~~of~~ receipt of a response by a
66 prospective defendant, insurer, or self-insurer to a claimant
67 represented by an attorney, the attorney shall advise the
68 claimant in writing of the response, including:

69 1. The exact nature of the response under paragraph (b).

70 2. The exact terms of any settlement offer, or admission
71 of liability and offer of arbitration on damages.

72 3. The legal and financial consequences of acceptance or
73 rejection of any settlement offer, or admission of liability,
74 including the provisions of this section.

75 4. An evaluation of the time and likelihood of ultimate
76 success at trial on the merits of the claimant's action.

77 5. An estimation of the costs and attorney's fees of
78 proceeding through trial.

79 (4) The notice of intent to initiate litigation shall be
80 served within the time limits set forth in s. 95.11. However,
81 during the 180-day ~~90-day~~ period, the statute of limitations is
82 tolled as to all potential defendants. Upon stipulation by the
83 parties, the 180-day ~~90-day~~ period may be extended and the
84 statute of limitations is tolled during any such extension. Upon

090397

Amendment No. (for drafter's use only)

85 receiving notice of termination of negotiations in an extended
86 period, the claimant shall have 60 days or the remainder of the
87 period of the statute of limitations, whichever is greater,
88 within which to file suit.

89 (10) If a prospective defendant makes an offer to admit
90 liability and for arbitration on the issue of damages, the
91 claimant has 50 days from the date of receipt of the offer to
92 accept or reject it. The claimant shall respond in writing to
93 the insurer or self-insurer by certified mail, return receipt
94 requested. If the claimant rejects the offer, he or she may then
95 file suit. Acceptance of the offer of admission of liability and
96 for arbitration waives recourse to any other remedy by the
97 parties, and the claimant's written acceptance of the offer
98 shall so state.

99 (a) If rejected, the offer to admit liability and for
100 arbitration on damages is not admissible in any subsequent
101 litigation. Upon rejection of the offer to admit liability and
102 for arbitration, the claimant has 60 days from receipt of the
103 rejection of the offer to admit liability and for arbitration,
104 60 days from the date of the declaration of impasse during
105 presuit mediation conducted pursuant to s. 766.1065, or the
106 remainder of the period of the statute of limitations, whichever
107 period is greater, in which to file suit.

108 (13) In matters relating to professional liability
109 insurance coverage for medical negligence, an insurer shall not
110 be held in bad faith for failure to timely pay its policy limits
111 if it tenders its policy limits and meets all other conditions
112 of settlement prior to the conclusion of the presuit screening
113 period provided for in this section.

090397

Amendment No. (for drafter's use only)

114 (14) Failure to cooperate on the part of any party during
115 the presuit investigation may be grounds to strike any claim
116 made, or defense raised, by such party in suit.

117 Section 26. Section 766.1065, Florida Statutes, is created
118 to read:

119 766.1065 Mandatory staging of presuit investigation and
120 mandatory mediation.--

121 (1) Within 30 days after service of the presuit notice of
122 intent to initiate medical malpractice litigation, each party
123 shall voluntarily produce to all other parties, without being
124 requested, any and all medical, hospital, health care, and
125 employment records concerning the claimant in the disclosing
126 party's possession, custody, or control, and the disclosing
127 party shall affirmatively certify in writing that the records
128 produced include all records in that party's possession,
129 custody, or control or that the disclosing party has no medical,
130 hospital, health care, or employment records concerning the
131 claimant.

132 (a) Subpoenas may be issued according to the Florida Rules
133 of Civil Procedure as though suit had been filed for the limited
134 purpose of obtaining copies of medical, hospital, health care,
135 and employment records of the claimant. The party shall indicate
136 on the subpoena that it is being issued in accordance with the
137 presuit procedures of this section and shall not be required to
138 include a case number.

139 (b) Nothing in this section shall limit the ability of any
140 party to use any other available form of presuit discovery
141 available under this chapter or the Florida Rules of Civil
142 Procedure.

090397

Amendment No. (for drafter's use only)

143 (2) Within 60 days after service of the presuit notice of
144 intent to initiate medical malpractice litigation, all parties
145 must be made available for a sworn deposition. Such deposition
146 may not be used in a civil suit for medical negligence.

147 (3) Within 120 days after service of the presuit notice of
148 intent to initiate medical malpractice litigation, each party's
149 corroborating expert, who will otherwise be tendered as the
150 expert complying with the affidavit provisions set forth in s.
151 766.203, must be made available for a sworn deposition.

152 (a) The expenses associated with the expert's time and
153 travel in preparing for and attending such deposition shall be
154 the responsibility of the party retaining such expert.

155 (b) An expert shall be deemed available for deposition if
156 suitable accommodations can be made for appearance of said
157 expert via real-time video technology.

158 (4) Within 180 days after service of the presuit notice of
159 intent to initiate medical malpractice litigation, all parties
160 shall attend in-person mandatory mediation in accordance with s.
161 44.102 if binding arbitration under s. 766.106 or s. 766.207 has
162 not been agreed to by the parties. The Florida Rules of Civil
163 Procedure shall apply to mediation held pursuant to this
164 section.

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167 ===== T I T L E A M E N D M E N T =====

168 Remove line(s) 70-72, and insert:
169 revising provisions relating to a claimant's period to
170 file suit after rejection of a prospective defendant's
171 offer to admit liability and for arbitration on the issue

Amendment No. (for drafter's use only)

172 of damages; specifying consequences of failure to
173 cooperate on the part of any party during the presuit
174 investigation; creating s. 766.1065, F.S.; requiring
175 parties to provide certain information to parties without
176 request; authorizing the issuance of subpoenas without
177 case numbers; requiring that parties and certain experts
178 be made available for deposition; providing for mandatory
179 presuit mediation; creating s. 766.1067, F.S.; providing
180 for