HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 983 Medical Malpractice Insurance Contracts
SPONSOR(S): Kreegel
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee	11 Y, 0 N	Thomas	Hogge
2) Insurance Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Under present law, an insured medical provider may not veto a decision by his or her insurance company regarding whether or not to settle a claim for medical malpractice made against the provider. The bill repeals this language and allows medical malpractice insurance policies to contain a provision that gives the insured the ability to control the decision of whether to settle a medical malpractice claim made against the insured.

This bill does not appear to have a fiscal impact on state or local government.

The bill takes affect on July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: The bill increases the options of individuals and private organizations regarding the conduct of their own affairs.

B. EFFECT OF PROPOSED CHANGES:

Under present law, an insured medical provider may not veto a decision by his or her insurance company concerning whether or not to settle a claim for medical malpractice made against the provider. Section 627.4147, F.S., provides that every insurance policy for medical malpractice coverage, except for policies covering dentists,[1] must include:

> a clause authorizing the insurer or self-insurer to determine, to make, and to conclude, without the permission of the insured, any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment, if the offer is within the policy limits. It is against public policy for any insurance or self-insurance policy to contain a clause giving the insured the exclusive right to veto any offer for admission of liability and for arbitration made pursuant to s. 766.106, settlement offer, or offer of judgment, when such offer is within the policy limits. However, any offer of admission of liability, settlement offer, or offer of judgment made by an insurer or self-insurer shall be made in good faith and in the best interests of the insured. [2]

The bill repeals this language and allows medical malpractice insurance policies to contain a provision that gives the insured the ability to control the decision of whether or not to settle a medical malpractice claim made against the insured.

The bill takes affect on July 1, 2005.

Mandatory Clauses in Medical Malpractice Insurance Contracts

Pursuant to s. 627.4147 F.S, all medical malpractice insurance policies, including self-insurance policies and those of the Florida Medical Malpractice Joint Underwriting Association, must include clauses to:

- require the insured to cooperate fully in the review process if a notice of intent to file a claim for medical malpractice is made against the insured;
- authorize the insurer or self-insurer to determine, to make, and to conclude, without the permission of the insured, any offer of admission of liability and for arbitration, settlement offer, or offer of judgment, if the offer is within the policy limits and if made in good faith and in the best interests of the insured;[3]
- direct the insurer or self-insurer to notify the insured no less than 90 days prior to the effective date of cancellation of the policy and, in the event of a determination by the insurer or self-insurer not to renew the policy, to notify the insured no less than 90 days prior to the end of the policy or contract period; if cancellation or non-renewal is due to nonpayment or loss of license, 10 days' notice is required; and

[1] Section 627.4147(1)(b)2.a., F.S.
[2] Section 627.4147(1)(b)1., F.S.
[3] This provision does not apply to dentists.

- require the insurer or self-insurer to notify the insured no less than 60 days prior to the effective date of a rate increase.

The bill deletes the authorization of the insurer to make an offer of liability or settlement within the policy limits without the permission of the physician. It also deletes current law that states that it is against public policy for any insurance policy to contain a clause giving the insured the exclusive right to veto any offer of admission of liability or settlement when such offer is within policy limits.

C. SECTION DIRECTORY:

Section 1. Amends s. 627.4147, F.S., relating to medical malpractice insurance contracts.

Section 2. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides the possibility that doctors will have greater control over the settlement of medical negligence claims made against them. It is unknown how this will affect insurance rates.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this joint resolution does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable under this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.