

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1111

Financial Responsibility of Advanced Registered Nurse Practitioners

SPONSOR(S): Proctor

TIED BILLS:

IDEN./SIM. BILLS: SB 2212

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	_____	Halperin	Mitchell
2) Judiciary Committee	_____	_____	_____
3) Health Care Appropriations Committee	_____	_____	_____
4) Health & Families Council	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1111 creates s. 464.028, F.S., to provide an exemption for licensed Advanced Registered Nurse Practitioners (ARNPs) from the requirement to either carry medical malpractice insurance or self-insure through a line of credit, under certain circumstances. The terms "exemption" and "uninsured" refer to those ARNPs who neither carry malpractice insurance nor self-insure through a line of credit.

According to the DOH, ARNPs have experienced increased liability exposure in the past two years, and costs of liability have doubled or tripled during this same time frame.¹ As a consequence, licensees report increased difficulty in obtaining liability insurance at affordable rates, if at all. These difficulties have caused some ARNPs to discontinue their practice; and are especially problematic for ARNPs in rural and underserved areas of Florida who are not covered by a facility umbrella liability policy.

The bill requires that uninsured licensees post notice in the waiting room or provide a written statement to potential patients disclosing the lack of malpractice insurance. The bill further requires that ARNPs pay malpractice claims of certain amounts under specified conditions: up to \$100,000 if he or she does not maintain hospital staff privileges or \$250,000 if the licensee maintains hospital staff privileges. The bill specifies the time frame and process for probable cause judgments and licensee appeals; and requires the Department of Health (DOH) to oversee disciplinary actions.

According to the Department of Health, the bill has an indeterminate fiscal impact.

The effective date of the bill is July 1, 2006.

¹ Department of Health analysis on HB 1111, March 14, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill removes a current requirement for ARNPs to carry liability protection through either malpractice insurance or a line of credit, and permits them to self-insure. At the same time, the bill increases the responsibilities of the DOH to regulate malpractice claims against ARNPs.

Safeguard individual liberty – The bill removes the requirement for ARNPs to self-insure, which may decrease the likelihood of judgment payout in malpractice suits.

B. EFFECT OF PROPOSED CHANGES:

Advanced Registered Nurse Practitioners are currently required to carry liability protection through either medical malpractice insurance or through a line of credit. HB 1111 creates s. 464.028, F.S., to provide an exemption from these requirements under certain circumstances. For ARNPs who choose to practice without coverage, the bill requires that he or she post notice in the waiting room or provide a written statement to potential patients disclosing the lack of malpractice insurance.

The bill sets minimum financial responsibility requirements of \$100,000 for ARNPs without hospital staff privileges or \$250,000 for ARNPs with hospital staff privileges. This payment would be due within 60 days after a malpractice judgment becomes final.

The bill requires the Department of Health to notify a licensee of possible disciplinary actions upon notification of an unsatisfied judgment; and requires the department to issue an emergency order suspending the license and certification of any licensee who fails to pay a claim or file an appeal within 30 days of notice. The bill provides that the probable cause panel must determine at its next meeting whether to take disciplinary action against the licensee. Penalties may include probation of the license, payments to the judgment creditor on a schedule determined by the board, or suspension of the license and certification for up to 5 years.

The department must provide an agreed upon schedule for payment or proof of appeal; and requires that the department reinstate the licensee's license and certification after proof of payment or a payment schedule is received.

The effective date of the bill is July 1, 2006.

PRESENT SITUATION

According to the DOH, ARNPs have experienced increased liability exposure in the past two years, and costs of liability have doubled or tripled during this same time frame.² Many insurance underwriters are looking to decrease their risk by not writing new policies for ARNPs in Florida, by canceling coverage, limiting the amount of coverage, or by raising premiums.³ As a consequence, licensees report increased difficulty in obtaining liability insurance at affordable rates, if at all. These difficulties have caused some ARNPs to discontinue their practice; and are especially problematic for ARNPs in rural and underserved areas of Florida who are not covered by a facility umbrella liability policy.

² Department of Health analysis on HB 1111, March 14, 2006.

³ *Florida Nurse Practitioner Network*. "Professional Liability Insurance for Nurse Practitioners in Florida: Two Issues: Policies and Bad Information in Print." December 2005. www.fnpn.org/~main/id43.html

Current ARNP Financial Responsibility and Licensing Requirements

Section 456.048, F.S., requires ARNPs to carry malpractice insurance coverage or liability protection through a line of credit as a requisite for licensure and licensure renewal. The Board of Nursing is required by rule to determine the amount and manner of insurance sufficient to cover claims arising out of the rendering or failure to render professional care. All licensees must submit such proof as a condition of license renewal. ARNPs may meet this requirement by purchasing malpractice insurance, by getting a letter of credit, or by demonstrating exemption based on certain circumstances.

ARNP's must be covered in one of the following capacities⁴:

1. Carry professional liability coverage of at least \$100,000 per claim with a minimum annual aggregate of at least \$300,000. Policies may be written from an authorized insurer, a surplus lines insurer, a joint underwriting association, a self-insurance plan, or a risk retention group,⁵ or
2. Attain an unexpired irrevocable letter of credit⁶ in the amount of at least \$100,000 per claim with a minimum aggregate availability of at least \$300,000 and which is payable to the ARNP as beneficiary.

Exemptions from Financial Responsibility

Exemptions from financial responsibility are provided in s. 456.048(2), F.S. An ARNP must meet one of the following criteria to be exempt from the malpractice requirements:

1. Practice exclusively as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions, or as a volunteer⁷;
2. Have a license or certification that has become inactive.
3. Hold a limited license and practice under the scope of such limited license⁸;
4. Practice only in conjunction with his or her teaching duties at an accredited school or in its main teaching hospitals;
5. Does not practice in the state of Florida; or
6. Can demonstrate that he or she has no malpractice exposure in the state.

Consequences of Self-Insurance or "Going Bare"

Currently in Florida, all health care professionals⁹ except for physicians are required to maintain financial responsibility and do not have the option to carry a license without malpractice insurance. Experiences of physicians in "going bare" may suggest implications for ARNPs receiving this option. According to the Board of Medicine, approximately seven percent of Florida's physicians chose to go without insurance in 2004. Certain regions of the state have higher levels; for example, it was estimated that in Broward and Miami-Dade Counties between one-third and one-half of physicians were without liability insurance in 2005.¹⁰

The Department of Health reports that in the past eight years there have been five cases involving judgments against physicians without insurance. In each of these cases, the Board of Medicine

⁴ Department of Health analysis on HB 1111, March 14, 2006.

⁵ "Authorized insurer" is defined in s. 624.09, F.S.; "surplus lines insurer" is defined in s. 626.914(2), F.S.; "joint underwriting association" is defined in s. 627.351(4), F.S., "self insurance plan" is defined in s. 627.357, F.S.; and "risk retention group" is defined in s. 627.942, F.S.

⁶ As defined by Chapter 675, F.S.

⁷ Employee defined in s. 768.28(9)(b), F.S. and volunteer is defined in s. 110.501(1), F.S.

⁸ Limited licenses are defined in s. 456.015, F.S.

⁹ Acupuncturists, chiropractors, podiatrists, midwives, dentists, and advanced registered nurse practitioners, under Florida statute, do not have the option to fulfill their financial responsibility through self-insurance.

¹⁰ "Doctors HUG or go bare" by John Dorschner, *Miami Herald*, July 18, 2005.

required suspension of the licensee until proof of payment, or until a payment plan for the judgment was provided. There have been a few cases of self-insured physicians who, when faced with a judgment against them, went bankrupt instead of paying the injured patient.¹¹ Courts have not consistently found hospitals liable for physicians who refuse to pay a judgment against them, but courts have noted the growing controversy.¹²

Different Criterion for Physicians Exemptions

The exemptions from financial responsibility for physicians to “go bare” are more extensive than those provided for ARNPs in HB 1111. In addition to the exemptions described for ARNPs above, physicians must also meet all of the following criteria in order to “go bare”:

- Physicians hold an active license to practice in this state or another state or some combination thereof for more than 15 years;
- Physicians are retired or maintain part-time practice of no more than 1000 patient contact hours per year;
- Physicians have had no more than two claims resulting in an indemnity exceeding \$10,000 within the previous five-year period;
- Physicians have not been convicted of or pled guilty to any criminal violation specified in Chapter 458 or 459, F.S.; and
- Physicians have not been subject, within the past ten years of practice, to license revocation or suspension, probation for a period of three years or longer, or a fine of \$500 or more for a violation of Chapter 458 or 459, F.S., or the medical practice act of another jurisdiction.

C. SECTION DIRECTORY:

Section 1. Creates s. 464.028, F.S: provides for exempting licensed ARNPs from medical malpractice insurance requirements under specified circumstances; requires licensees to pay medical malpractice judgment amounts when rendered; Increases Board of Nursing disciplinary procedures.

Section 2. Provides enacting date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Health this bill would increase the number of emergency suspension orders and disciplinary actions against ARNPs. Because the actual increased number is indeterminate, the department cannot estimate the increase in enforcement costs against ARNPs who do not comply with the requirements of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹¹ Daily Business Review, *Hospitals off hook for doctor’s malpractice*, March 9, 2005.

¹² See *Baker v. Tenet Healthsystem Hospital Inc.*, 780 So.2d 170, 2001; *Robert v. A. Paschall*, 767 So.2d, 2000; and *Mercy Hospital v. Baumgardner*, 870 So. 2d 130, 2004.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of Health, there will be a minimal fiscal impact for rule promulgation which can be covered with existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None required.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Impact on the Department of Health

The DOH reports that that this bill will require the department to create forms and have those forms officially adopted. The creation and approval of these forms could take as long as 90 days after the enactment of the law. Therefore, the department requests the effective date be changed to October 1, 2006.

Stakeholder Opinions

Proponents of the bill express concerns over the availability and affordability of malpractice insurance for ARNPs, and have noted the different standards for ARNPs and physicians to carry insurance coverage. Proponents argue that problems of availability and the cost of insurance are driving much needed health professionals out of the state.

Opponents of the bill express concerns that physicians who "go-bare" are hurting health care consumers, and that the same problems would occur if ARNPs were allowed to do so. They argue that when there are judgments against a "bare" practitioner and the practitioner does not pay, the injured patients and families receive no compensation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES