

1 A bill to be entitled
 2 An act relating to medical malpractice; amending s.
 3 395.0191, F.S.; requiring certain licensed health care
 4 facilities to require licensed doctors of medicine and
 5 doctors of osteopathic medicine on staff or with staff
 6 privileges at the facility to comply with financial
 7 responsibility requirements; requiring a facility to be
 8 responsible for meeting those requirements with respect to
 9 a claim against such a professional who fails to comply
 10 with the financial responsibility provisions; providing
 11 for indemnification; creating s. 627.41485, F.S.;
 12 prohibiting the issuance of medical malpractice liability
 13 insurance policies that only cover legal defense costs of
 14 medical negligence or medical malpractice claims; allowing
 15 such coverage when the insured has met financial
 16 responsibility requirements by insurance, an escrow
 17 account, or a letter of credit; specifying procedures and
 18 exceptions; providing effective dates.

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 20 Be It Enacted by the Legislature of the State of Florida:

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 22 Section 1. Subsection (11) is added to section 395.0191,
 23 Florida Statutes, to read:

24 395.0191 Staff membership and clinical privileges.--

25 (11) Each licensed facility shall be responsible for
 26 ensuring that each physician licensed under chapter 458 or
 27 osteopathic physician licensed under chapter 459 who is on the
 28 facility staff or who has been granted clinical privileges at

29 the facility complies with the financial responsibility
 30 requirements applicable to such physician at all times while he
 31 or she is a member of the staff or has clinical privileges in
 32 effect at the facility. In the event of a claim against such a
 33 physician arising out of the rendering of, or the failure to
 34 render, professional care or services at the facility, if the
 35 physician is not in compliance with the financial responsibility
 36 requirements with respect to the claim, the facility shall be
 37 responsible for meeting the financial responsibility
 38 requirements applicable to the physician under his or her
 39 licensing statute. A physician to whom this subsection applies
 40 shall indemnify a licensed facility for any judgments,
 41 settlement costs, or other liabilities incurred by the licensed
 42 facility pursuant to this subsection.

43 Section 2. Effective upon becoming a law and applicable to
 44 contracts entered into, issued, or renewed on or after that
 45 date, section 627.41485, Florida Statutes, is created to read:

46 627.41485 Medical malpractice legal defense coverage;
 47 prohibited issue.--

48 (1) It shall be contrary to public policy in this state
 49 for any insurer to issue legal defense coverage for the purpose
 50 of providing legal defense services in conjunction with a claim
 51 for medical negligence or medical malpractice under any theory
 52 of law to a physician licensed under chapter 458 or osteopathic
 53 physician licensed under chapter 459, unless, at the time such
 54 coverage is issued, such physician has complied with the
 55 financial responsibility requirements in accordance with one of

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56 the following methods in the per claim amount applicable to him
57 or her:

58 (a) Establishing and maintaining an escrow account in
59 accordance with s. 458.320(1)(a) or (2)(a) or s. 459.0085(1)(a)
60 or (2)(a);

61 (b) Maintaining professional liability coverage in
62 accordance with s. 458.320(1)(b) or (2)(b) or s. 459.0085(1)(b)
63 or (2)(b); or

64 (c) Obtaining and maintaining an unexpired, irrevocable
65 letter of credit in accordance with s. 458.320(1)(c) or (2)(c)
66 or s. 459.0085(1)(c) or (2)(c);

67
68 unless such physician or osteopathic physician is otherwise
69 exempt from the financial responsibility requirements as stated
70 in s. 458.320(5)(a), (b), (c), or (e) or s. 459.0085(5)(a), (b),
71 (c), or (e).

72 (2) The required financial responsibility must be in
73 effect at the time any legal defense coverage is issued by the
74 insurer or invoked by the physician or osteopathic physician and
75 must remain in effect throughout the period of legal
76 representation provided under such legal defense coverage.

77 (3) In the event a physician or osteopathic physician
78 fails to maintain financial responsibility as required by this
79 section for purposes of purchasing legal defense coverage, such
80 coverage shall be null and void and such insurer shall not be
81 liable for providing legal defense services.

82 (4) Any insurer issuing legal defense coverage in
83 accordance with this section shall require a physician or

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84 osteopathic physician to show proof that he or she has financial
85 responsibility in accordance with subsection (1) prior to any
86 coverage being issued to such physician or osteopathic
87 physician. Such physician or osteopathic physician shall also
88 notify the insurer of any change in the status of his or her
89 financial responsibility.

90 (5) Any insurer who has issued legal defense coverage in
91 accordance with this section shall require a physician or
92 osteopathic physician to show proof that he or she has financial
93 responsibility before providing legal defense services.

94 (6) It is a violation of this code for any insurer to
95 issue or provide legal defense coverage to any physician or
96 osteopathic physician licensed in this state in contravention of
97 this section.

98 (7) This section shall not be construed to prohibit the
99 issuance of professional liability coverage for medical
100 malpractice or medical negligence that includes legal defense
101 coverage in conjunction with indemnity.

102 (8) This section shall not be construed to prohibit the
103 issuance of legal defense coverage to any physician or
104 osteopathic physician for purposes of the defense of any
105 disciplinary, administrative, contractual, or criminal action
106 brought by any federal or state regulatory board or agency, or
107 public or private entity, including, but not limited to, any
108 health care provider, health plan, or health insurer.

109 Section 3. Except as otherwise expressly provided in this
110 act, this act shall take effect July 1, 2008.