

By Senator Peaden

2-03360-08

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1 A bill to be entitled

2 An act relating to medical malpractice insurance; creating  
3 s. 627.41485, F.S.; prohibiting an insurer from issuing  
4 legal defense coverage for the purpose of providing legal  
5 defense services in conjunction with a claim for medical  
6 negligence or medical malpractice unless certain  
7 conditions exist; providing a penalty for the issuance of  
8 such insurance in contravention of such conditions;  
9 requiring that financial responsibility be in effect at  
10 the time any legal defense coverage is issued by the  
11 insurer or invoked by a physician or osteopathic  
12 physician; requiring that such financial responsibility  
13 remain in effect throughout the period of legal  
14 representation provided under such legal defense coverage;  
15 providing that legal defense coverage is null and void if  
16 a physician fails to maintain the required financial  
17 responsibility; requiring that an insurer issuing certain  
18 types of legal defense coverage require a physician to  
19 show proof that he or she maintains a specified type of  
20 financial responsibility; requiring that a physician  
21 notify an insurer of any change in the status of his or  
22 her financial responsibility; authorizing the issuance of  
23 professional liability coverage for medical malpractice or  
24 medical negligence, including legal defense coverage, in  
25 conjunction with indemnity; authorizing the issuance of  
26 legal defense coverage under certain circumstances;  
27 providing an effective date.

28  
29 Be It Enacted by the Legislature of the State of Florida:

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30  
31 Section 1. Section 627.41485, Florida Statutes, is created  
32 to read:

33 627.41485 Medical malpractice insurance legal defense  
34 coverage.--

35 (1) An insurer may not issue legal defense coverage for the  
36 purpose of providing legal defense services in conjunction with a  
37 claim for medical negligence or medical malpractice unless such  
38 coverage is issued to a physician licensed under chapter 458 or  
39 an osteopathic physician licensed under chapter 459 who has in  
40 effect at the time such coverage is issued financial  
41 responsibility in accordance with one of the following methods in  
42 the per-claim amount applicable to such physician or osteopathic  
43 physician:

44 (a) Establishing and maintaining an escrow account in  
45 accordance with s. 458.320(1)(a) or (2)(a) or s. 459.0085(1)(a)  
46 or (2)(a);

47 (b) Maintaining professional liability coverage in  
48 accordance with s. 458.320(1)(b) or (2)(b) or s. 459.0085(1)(b)  
49 or (2)(b); or

50 (c) Obtaining and maintaining an unexpired, irrevocable  
51 letter of credit in accordance with s. 458.320(1)(c) or (2)(c) or  
52 s. 459.0085(1)(c) or (2)(c).

53 (2) The required financial responsibility must be in effect  
54 at the time any legal defense coverage is issued by the insurer  
55 or invoked by the physician or osteopathic physician and must  
56 remain in effect throughout the period of legal representation  
57 provided under such legal defense coverage.

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58       (3) If a physician or osteopathic physician fails to  
59 maintain financial responsibility as required by this section for  
60 purposes of purchasing legal defense coverage, such coverage is  
61 null and void and such insurer is not liable for providing legal  
62 defense services.

63       (4) Any insurer issuing legal defense coverage or services  
64 in accordance with this section shall require a physician or  
65 osteopathic physician to show proof that he or she maintains  
66 financial responsibility in accordance with subsection (1) before  
67 issuing any coverage or services to such physician or osteopathic  
68 physician. Such physician or osteopathic physician must  
69 immediately notify the insurer of any change in the status of his  
70 or her financial responsibility.

71       (5) Any insurer issuing or providing legal defense coverage  
72 to any physician or osteopathic physician licensed in this state  
73 in contravention of this section commits a violation of the  
74 insurance code and is subject to the appropriate penalties.

75       (6) This section does not prohibit the issuance of  
76 professional liability coverage for medical malpractice or  
77 medical negligence, including legal defense coverage, in  
78 conjunction with indemnity.

79       (7) This section does not prohibit the issuance of legal  
80 defense coverage to any physician or osteopathic physician for  
81 purposes of the defense of any disciplinary, administrative,  
82 contractual, or criminal action brought by any federal or state  
83 regulatory board or agency, or any public or private entity,  
84 including, but not limited to, any health care provider, health  
85 plan, or health insurer.

86       Section 2. This act shall take effect upon becoming a law.