

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 511 Professional Liability Claims  
**SPONSOR(S):** O'Toole  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Civil Justice & Courts Policy Committee	9 Y, 0 N, As CS	DeZego	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee	19 Y, 0 N	Reilly	Cooper
3)	Criminal & Civil Justice Policy Council			
4)	Policy Council			
5)				

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**SUMMARY ANALYSIS**

Section 627.912, F.S., requires certain self-insurers, commercial self-insurance funds, insurance companies, risk retention groups, and joint underwriting associations that provide professional liability insurance to file reports with the Office of Insurance Regulation (Office) regarding claims or actions for damages for personal injuries caused by alleged error, omission or negligence of health care providers and lawyers. Reports must currently be filed when a claim resulted in a final judgment in any amount, a settlement in any amount, or a final disposition of a medical malpractice claim resulting in no indemnity payment on the behalf of the insured.

This bill clarifies existing law to define a claim for the purpose of reporting to the Office. This bill provides that the duty to report a claim arises at the first occurring of the following:

- The entry of a judgment against a health care provider or member of The Florida Bar as long as all appeals or the time for filing all appeals has expired;
- An agreement is executed between a health care provider, a member of The Florida Bar, or an entity that is required to report on behalf of any health care provider or member of The Florida Bar and a claimant to settle damages which includes payment of at least \$1;
- The final payment of any indemnity money by an entity required to report on behalf of a health care provider or a member of The Florida Bar;
- The final disposition of a medical malpractice claim where no indemnity payment was made on behalf of the insured but there were loss adjustment expenses in excess of \$5,000.

In addition, this bill provides that a "No Claim Submission Report" must be filed with the Office by April 1st of each year when no claim or action for damages was closed within a calendar year. All claims which have been closed and subsequently reopened will be treated as new claims for purposes of reporting.

The bill does not appear to impact state or local government revenues or expenditures, and provides an effective date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### *Medical Malpractice*

Medical malpractice insurance covers doctors and other health care providers for liability claims arising from their treatment of patients. A claim for medical malpractice arises out of the rendering of, or the failure to render medical care services.<sup>1</sup> An action for medical malpractice is a tort or breach of contract claim for damages due to death, injury or monetary loss to any person arising out of any medical, dental, or surgical diagnosis, treatment, or care by any provider of health care.<sup>2</sup>

An action for medical malpractice must be commenced within two years from the time the incident occurred or within two years from the time the incident is discovered, or should have been discovered with the exercise of due diligence. In no event may the action for medical malpractice be commenced more than four years from the occurrence, unless an action is brought on behalf of a minor on or before the child's eighth birthday.<sup>3</sup>

###### *Legal Malpractice*

Professional liability insurance for attorneys covers an attorney if a professional act, error, or omission results in a loss or damage to a client. An attorney must possess the skill and knowledge possessed by other members of the profession, and must execute the business entrusted to his or her professional management with a reasonable degree of care, skill, and dispatch. If he or she fails to possess such care, skill, and dispatch, then he or she is responsible to a client for any resulting loss.<sup>4</sup>

A claim for professional malpractice against a member of The Florida Bar must be filed within a two year statute of limitations, which begins to run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence.<sup>5</sup>

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<sup>1</sup> Section 766.106(1)(a), F.S.

<sup>2</sup> Section 95.11(4)(b), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *Weekley v. Knight*, 116 Fla. 721, 156 So. 625 (1934); *Stake v. Harlan*, 529 So.2d 1183 (Fla. 2nd DCA 1988).

<sup>5</sup> Section 95.11(4)(a), F.S.

## *Legislative Reform*

Prior to 2003, some experts claimed Florida was facing a "crisis" in the cost and availability of medical malpractice insurance. Premiums were increasing dramatically and the Florida Medical Malpractice Joint Underwriting Association (FMMJUA)<sup>6</sup> had increased from insuring 16 policies in 2001 to 1,029 policies as of November 30, 2003.<sup>7</sup> In 2003, CS/SB 2-D was signed into law. This medical malpractice legislation comprehensively dealt with litigation reforms, patient safety issues, and insurance reforms.<sup>8</sup> Among its provisions, CS/SB 2-D revised the closed claim reporting requirements of s. 627.912, F.S.

### **Effect of Bill**

#### *Current Law*

Section 627.912, F.S.,<sup>9</sup> requires insurers and self-insurance entities to file reports to the Office of Insurance Regulation (Office) regarding claims or actions for damages for personal injuries caused by alleged error, omission or negligence by insured doctors, other health care providers,<sup>10</sup> and lawyers. Reports must be filed when the claim resulted in the following:

- A final judgment in any amount;
- A settlement in any amount; or
- A final disposition of a medical malpractice claim resulting in no indemnity payment on the behalf of the insured.

Reports must be filed with the Office no later than 30 days after the occurrence of a claim or action for damages for personal injuries. The reports are posted on the Office's website,<sup>11</sup> and the Office prepares an annual report summarizing closed claim reports of medical malpractice in Florida.

#### *Proposed Changes*

This bill clarifies existing law to provide that a claim means the receipt of a notice of intent to initiate litigation, a summons and complaint, or a written demand from either a person or his or her legal representative stating an intent to pursue an action for damages. This bill provides that only written claims are required to be reported to the Office.

This bill provides that a duty to report a written claim arises at the first occurrence of the following:

- A judgment is entered against any health care provider or member of The Florida Bar for which all appeals have been exhausted or the time period to file such appeals has expired;
- An agreement is executed between a health care provider, a member of The Florida Bar, or any entity required to report for any health care provider or member of The Florida Bar and a claimant to settle damages arising from the provision of professional services, which agreement includes the payment of at least one dollar. However, if applicable statutes require any such agreement to be approved by the court, then the duty arises when the agreement is approved;

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<sup>6</sup> The FMMJUA provides professional liability insurance coverage in Florida for health care providers that cannot find coverage in the open market.

<sup>7</sup> Interim Project Report 2004-163, "Implementation of Medical Malpractice Insurance Reforms," by the Florida Senate Committee on Banking and Insurance. Last accessed March 17, 2009.

<sup>8</sup> *Id.*

<sup>9</sup> Florida's professional liability reporting statute does not cover all licensed professionals or institutions. See the Office of Insurance Regulation's "Professional Liability Closed Claims Disclaimer and Notice," available at <http://www.floir.com/Liability/>. Last accessed March 18, 2009.

<sup>10</sup> Other health care providers include dentists, hospitals, health maintenance organizations (HMOs), abortion clinics, ambulatory surgical centers, and crisis stabilization units.

<sup>11</sup> See <http://www.floir.com/Liability/>. Last accessed March 18, 2009.

- The final payment of any indemnity money by an entity required to report for any health care provider or member of The Florida Bar for damages arising from professional services rendered;
- The final disposition of a medical malpractice claim for which no indemnity payment was made on behalf of the insured, but where there were loss adjustment expenses<sup>12</sup> paid in excess of \$5,000.

Reports filed under this bill must be filed no later than 30 days after the first occurrence of an event listed above.

Finally, this bill provides that when no claim or action for damages has been closed in a calendar year, then a "No Claim Submission Report" must be filed with the Office by April 1st. If the reporting entity later discovers that a no claim submission report was filed in error, the reporting entity must promptly notify the Office of the error and take steps to remedy the error as directed by the Office. Furthermore, if a claim is opened, closed, and subsequently reopened, then it will be treated as a new claim for the purposes of reporting to the Office.

#### B. SECTION DIRECTORY:

Section 1 amends s. 627.912(1), F.S., relating to professional liability claims.

Section 2 provides an effective date of July 1, 2009.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

None.

<sup>12</sup> Loss adjustment expenses include legal fees, court costs, expert witnesses and investigation costs.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill 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 raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2009, the Civil Justice & Courts Policy Committee adopted a strike-all amendment to this bill. The amendment made the following changes to the bill as filed:

- Removed the definition of a "closed claim;"
- Clarified that claims against members of The Florida Bar must still be reported;
- Provided that when a claim is opened, closed, and subsequently reopened it is treated as a new claim;
- Clarified that the final payment of indemnity money for damages triggers a duty to report; and
- Increased the amount of loss adjustment expenses, which triggers a duty to report a final disposition of a medical malpractice claim, from \$2500 to \$5000.

The bill was then reported favorably. This analysis is drafted to the bill as amended.