

ASSOCIATED INDUSTRIES OF FLORIDA  
**LEGISLATIVE  
INTERIM BRIEF**



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**DAILY INTERIM LEGISLATIVE BRIEF FOR FEBRUARY 19, 2003**  
**SOURCE: ASSOCIATED INDUSTRIES OF FLORIDA**

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**NURSING HOMES**

On an eight-to-four vote, the Joint Select Committee on Nursing Homes sent its package of recommendations to the House and Senate leadership. The proposals are intended to improve nursing-home quality and to revive the insurance market by imposing further limits on damages in lawsuits against the facilities. No side is declaring victory, however.

The recommendations would replicate in the nursing-home liability statute the medical-malpractice arbitration provision with its \$250,000 cap on pain and suffering damages. The arbitration provision and the cap would only apply to medical incidents, however, not custodial claims. In addition, the cap would not apply when there is intentional misconduct or gross negligence.

The proposed reforms will probably not help reduce the costs of liability insurance. The contingent cap under consideration has been in effect in medical malpractice for 15 years and has not been effective in holding down medical-liability insurance costs. We predict that a contingent cap on non-economic damages for nursing homes will also be an ineffectual response to a major problem. It may, however, be the only solution that is politically feasible for nursing homes this year. At least it would be a step — albeit a small one — in the right direction

**Vulnerability to large jury awards is why insurers have not returned to the Florida market. Therefore, AIF supports caps on non-economic damages for nursing-home liability cases to improve the accessibility to and availability of high-quality health care.**

**MEDICAL LIABILITY**

Medical malpractice was on the agenda today, beginning with a press conference sponsored by the Coalition to Heal Healthcare in Florida, a broad-based alliance of more than 100 of the state's top medical and business groups. Associated Industries of Florida (AIF) participated in the press conference, urging to tackle the issue during the session.

Art Simon, AIF's senior vice president for governmental affairs, spoke to reporters at the event about the importance of the \$250,000 cap on non-economic damages and how it will bring almost immediate relief to doctors and hospitals. Passage of reforms will be sufficient to attract some insurers back into the Florida market almost immediately. As such, the reforms will increase competition in the market, which will help drive down rates even further.

An evening meeting of the House Select Committee on Medical Liability Insurance confirmed reports that the committee will not be preparing legislation to address the medical-liability insurance crisis. It will not even be voting on a set of recommendations. Instead the committee members will simply release a report on available options and alternatives, including several that were not recommended by the governor's task force. Next week the committee staff is scheduled to provide the members with a menu of possible provisions that could be included in the final report.

The lack of consensus on this issue was revealed during a discussion on making it easier for regulatory boards to take action against health-care providers. Currently the Board of Medicine must meet a standard of clear and convincing evidence before it can mete out punishment. The board had recommended that the burden be lowered to a preponderance of evidence, the standard that applies in civil suits. The higher standard applicable today means that the board may not be able to take any action against a doctor with several malpractice judgments because board must apply a stricter burden of evidence than was applied at trial.

Some members expressed grave reservations about lowering the standard of proof for disciplinary action, despite the concurrence of the Board of Medicine, the governor's task force, and the Florida Medical Association about the desirability for making the change.

It's just another sign that this will be a bumpy ride.

**This medical-malpractice insurance crisis is affecting the cost, quality, and availability of health care for all Floridians. Fixing the crisis is one of the most important health-care cost containment measures available today, a matter of great importance to state's employers who provide health-care insurance for most working Floridians and their families. Instituting a \$250,000 cap on non-economic damages must be the cornerstone of any reform effort.**

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