



FROM JUNE 16, 2003

### **MARCHING TO THE BEAT OF DIFFERENT DRUMMERS**

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Statistics were bustin' out all over, one — and sometimes more — for every side of every issue involved in the big complicated mess that we call the health-care liability crisis. The day was a celebration of the complex and rigorously scripted dance that is part of forging a legislative compromise.

As expected, the opening of the special session on medical malpractice reform offered few public displays of affection and no demonstrations of agreement. The day began with a press conference staged by proponents of reform in the plaza between the Old and New capitols.

Representing a united business community at the event, Art Simon, AIF's senior vice president for governmental affairs, recalled his days as a legislator in the mid 1980s, during Florida's last medical malpractice crisis. Simon noted that today's crisis is deeper in severity, depth, and geographical reach.

Please go to <http://www.aif.com/taxmedia.htm> to view footage of this press conference.

The press conference was well-attended by journalists who quickly found themselves sandwiched between the representatives of the pro-reform party and the agents of the anti-reform party, in the form of regular people shepherded by a spokeswoman for the Academy of Florida Trial Lawyers, which no doubt supplied the matching t-shirts and carefully lettered signs urging lawmakers to "Protect Patients, Not Big Insurers."

The Big Show then moved from the steamy outdoors to the climate-controlled environs of a Senate committee room where about half of the upper chamber gathered to hear testimony and grill witnesses. The afternoon's presentations were remarkable not for any new information they supplied, but rather for the demarcation they provoked among the warring camps. Presenters were confronted with tough, relentless, and, at times, willfully obtuse questioning.

Supporters of reform came in for the hardest time from those senators who will never, under any circumstance, ever support litigation reforms. The opponents of reform represented a vocal majority of Senators who asked questions at the workshop. In a sense their side is easier to argue because it overly simplifies an intricate dilemma, namely how to provide both an immediate and a long-term release of the pressure on medical-malpractice premiums.

Much of the debate between the speakers at the seven-hour long marathon Senate workshop centered on whether a \$250,000 cap on non-economic damages would drive rates downward. The short answer is yes and no. A cap will not exert downward pressure on premiums immediately, because it applies prospectively. In about three years, however, the full benefit of the cap may reduce premiums by 15 to 20 percent rate reduction. Nonetheless, it must be remembered that the cap does not touch *economic* damages. As such, there is no assurance that the cap on *non-economic* damages alone will permanently drive down liability insurance rates.

The second most contentious item of debate was bad-faith insurance reform, which some senators believe would leave doctors unprotected when their insurance carriers fail to act in their clients' best interests. Opponents of bad-faith reform have yet to accept that the reform provisions in the governor's bill will give doctors an outlet against misbehaving insurance carriers, while allowing those carriers to pursue aggressively claims they would otherwise settle simply to avoid the slight chance of an excessive damage award. Insurance carriers testified today that the governor's bad-faith reform provisions will produce an immediate 20-percent rate decrease for premiums effective October 1.

In a few short years the combined effect of these two reforms – the cap on non-economic damages and affirmative statutory benchmarks for insurance good faith – can reduce medical liability premiums by least one-third, and probably more, compared to expected premium levels without the major reforms.

A final point of conflict involved Florida's rate regulation structure, which came under criticism from a California consumer advocate who testified that stronger insurance regulation, not litigation reform, would lower rates. Later testimony indicated that Florida's insurance regulation scheme measures up well against California. Florida has both rate regulation and an excess profits law. As such, several witnesses — an insurance expert, actuary, and state regulator testified that the benefits of Florida's new reforms will certainly result in more favorable rates – and a more stable insurance market for health care providers.

Tomorrow morning the real work begins as both the House and Senate meet in committee to debate their respective bills. We expect some movement toward consensus by the two chambers. However, when the day is done significant differences will surely remain.

Tomorrow evening AIF will post a report that covers the House and Senate bills, and an in-depth analysis of the most contentious provisions.

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