

A S S O C I A T E D I N D U S T R I E S O F F L O R I D A

LEGISLATIVE WEEKLY UPDATE



P.O. Box 784 • Tallahassee, FL 32302 • Phone: (850) 224-7173 • Fax: (850) 224-6532 • Internet: <http://aif.com> • fbnnet.com

FROM THE WEEK OF AUGUST 11-15, 2003

NEXT STOP: THE COURTROOM

About one year ago, Governor Jeb Bush appointed a task force to investigate the root causes of skyrocketing premiums paid by health-care professionals for their malpractice insurance, and to forestall a looming crisis that could have threatened Floridians' access to health care. Following months of meetings, research, and intensive deliberation, in January the task force recommended 60 changes to current law, which were supported by 13 volumes of reports, presentations, letters, and testimony.

Please go to <http://www.fbnnet.com/2003-Articles/MedMalExecutiveSumm.htm> to view the executive summary from the report of the Governor's Select Task Force On Healthcare Professional Liability Insurance

Despite the task force results — and a medical liability crisis that loomed larger with every passing week — the regular session ended on May 2 with an uncertain forecast on the future of medical-liability reform. Indeed, it took three special sessions devoted exclusively to the subject before lawmakers could negotiate a comprehensive package of reforms.

The product of all this effort, CS/SB 2, was finally enacted with bipartisan support on Wednesday, August 13 by a vote of 32 to 4 in the Senate and 87 to 26 in the House. It was signed into law on Thursday afternoon by Governor Bush.

Please go to <http://fbnnet.com/2003-Articles/MedMalReformPackage.htm> to view the Senate's explanation of the proposed bill.

Please go to <http://fbnnet.com/2003-Articles/MedMalprvisions.htm> to view the House of Representative's explanation of the proposed bill.

One of the most important — and the most controversial — sections of CS/SB 2D establishes a cap on non-economic damages.

Please go to <http://www.fbnnet.com/2003-Articles/MedLibilitycap.htm> for a detailed explanation of the new cap.

The bill's bad-faith provisions, which are not as strong as those originally proposed by the governor, are better than current law. SB 2D does not eliminate third-party bad-faith actions, but it does create safe harbors for insurers, which should help alleviate the threat that is driving the high rate of settlements in Florida.

Lawmakers ultimately rejected a proposal to roll back rates by some arbitrarily determined percentage. Instead, they opted for a rate freeze from July 1, 2003, to January 1, 2004. The Office of Insurance Regulation will develop a so-called "presumed factor," based on an actuarial analysis that will reflect the savings embodied in the legislation. Carriers will then have 60 days to make a new rate filing reflecting what will most probably be a decrease in rates after the presumed factor is applied. Carriers may seek a deviation (i.e. a rate increase or a decrease less than that applied by the presumed factor) but they will have to prove to the Office of Insurance Regulation that the deviation is actuarially justifiable. The new rates will be retroactive to September 15, 2003, and policyholders will receive premium refunds if the effective date of the policy falls on or after that date.

The legislation also provides measures for improving patient safety, including the funding of a study to identify methods for reducing preventable errors that lead to bad outcomes and medical-negligence claims. Other studies will allow the collection of better data on the medical-liability system that will lay the predicate for more aggressive reforms that may be necessary in the future.

The public policy debate over medical malpractice reform now moves over to the court system, where the legislation is sure to face a major challenge. The plaintiff bar faces two options for attacking the constitutionality of the caps on non-economic damages. Almost immediately after the bill becomes law, trial lawyers or other opponents of tort reform could file a lawsuit claiming that the cornerstone provision providing for damage caps is unconstitutional on its face, or they could wait for a case that will portray the caps as particularly brutal, (i.e. where the injury is particularly severe and the economic damages, which are not capped, are negligible).

Amid a full menu of contentious public policy issues they had to confront this year, medical-liability reform posed the most difficult challenge to Florida lawmakers. Reform would never have been possible without the open, active, and continued support of Governor Jeb Bush and House Speaker Johnnie Byrd (R-Plant City). Senate President Jim King (R-Jacksonville) and Senate Majority Leader Dennis Jones (R-Seminole) also deserve credit for helping to forge a compromise in the public interest.

Most of all, however, special recognition is warranted for the primary negotiators, Senators Rod Smith (D-Gainesville) and Tom Lee (R-Brandon), and their House counterparts, Representatives Dudley Goodlette (R-Naples) and Allan Bense (R-Panama City). A finer quartet of hard-working lawmakers would be hard, if not impossible, to find.

When evaluating the merits of medical-liability legislation, it is important to maintain a long view. In certain respects the bill is not as good as the ideal proposed by Governor Bush, its best effects will not be felt for a while. Nevertheless, it is safe to say that the liability environment for practicing physicians had now been changed for the better. And, perhaps, Florida has finally turned the corner on the medical liability crisis.

SPEAKER BYRD CREATES SELECT COMMITTEE TO STUDY AFFORDABLE HEALTH CARE

On Thursday, August 14, Speaker Byrd appointed Representative Frank Farkas (R-St. Petersburg) chairman of the newly created House Select Committee on Affordable Health Care for Floridians.

As the name suggests, the select committee will investigate barriers that Florida employers and their employees face in finding affordable health-insurance coverage. The select committee will hold public hearings in Miami, Orlando, Jacksonville, and Tampa to help it understand the problem and recommend public policy solutions.

This committee has been given a clear mandate to investigate ways to promote a successful free market in health insurance, which will provide a welcome counterpoint to those who seek a some form of universal coverage that typically rely on compulsory employer participation and financing.

The following representatives were also appointed to the select committee.

Representative Kim Berfield (R-Clearwater)
Representative Don Brown (R-DeFuniak Springs)
Representative Donna Clarke (R-Sarasota)
Representative Rene Garcia (R-Hialeah)
Representative Dudley Goodlette (R-Naples)
Representative Ed Homan (R-Tampa)
Representative Marcelo Llorente (R-Miami)
Representative Dave Murzin (R-Pensacola)
Representative Pat Patterson (R-DeLand)
Representative Eleanor Sobel (D-Hollywood)
Representative Baxter Troutman (R-Winter Haven)

Please go to <http://www.fbnnet.com/2003-Articles/SCaffordablehealth.htm> to view the House of Representative's press release.

- For more information on all of the important legislative information concerning the business community, go to our "members only" Florida Business Network web site at <http://fbnnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.