

HB 1428 -- Medical Malpractice Liability Insurance

Sponsor: Harris (23)

This bill makes numerous changes to the laws regarding medical malpractice liability. In its main provisions, the bill:

(1) Provides a tax credit up to \$15,000 for tax years beginning on or after January 1, 2005, for 15% of the increase in amounts paid for medical malpractice insurance premiums from one policy year to the next immediate policy year;

(2) Exempts medical malpractice insurance from the operation of Sections 379.017 and 379.316 - 379.361, RSMo;

(3) Provides that insurers and self-insured health care providers failing to timely report claim information pursuant to Sections 383.100 - 383.125 will be subject to Section 374.215 penalties;

(4) Requires the Department of Insurance to establish a method of providing medical malpractice insurance to health care providers if it finds that type of insurance is not reasonably available in the voluntary market. The department may establish a competitive bidding process or any other reasonable method to solicit bids from insurers;

(5) Establishes standards and procedures for setting and calculating rates pertaining to classes of medical malpractice insurance;

(6) Requires the ratio between the base rate of highest- and lowest-rated specialties for medical malpractice policies written in Missouri to be no more than 6-to-1;

(7) Requires medical malpractice insurers, before using rates or charging premiums in Missouri, to file and receive approval from the department for a schedule of credits and debits used to determine premiums;

(8) Requires certain information to be filed with the department by March 1 of each year, including: closed claims; judgments, payment, and severity of injury in connection with judgments; rate changes during the previous five-year period; premiums and losses by medical specialty; premiums and losses by experience of insured; and investment performance of the insurer;

(9) Requires the department by July 1, 2005, to develop and establish an interactive Internet web site enabling health care providers to obtain medical malpractice insurance quotes. Insurers' rate changes must be integrated into the web site within 10 days. The site must provide contact information for each of the insurers participating. By December 1, 2005, the

director of the department must submit a report to the General Assembly on the development, implementation, and effectiveness of the web site;

(10) Requires insurers to notify health care providers in writing of renewal premium increases at least 90 days prior to the date of renewal;

(11) Establishes the Missouri Physicians Mutual Insurance Company, a public corporation which will provide medical malpractice insurance for its members. A nine-member board of directors, appointed by the Governor, will oversee the company; and an administrator, hired by the board, will manage the company. Employees of the company will be immune from personal liability for acts performed, or obligations entered into, when done in good faith. The board will have control over the company's premium rates. Any insurance producer licensed to sell professional negligence insurance in the state may sell policies for the company. The administrator will formulate and implement a program to reduce the amount of medical malpractice by providing training seminars to physicians and their staffs. The board may deny insurance to physicians who refuse to attend the training seminars. The company will bear the cost of the training. The company may be capitalized by a loan of up to \$10 million from the state's Physicians Mutual Insurance Company Loan Fund, which is created in the bill. Revenue bonds may also be issued in an amount not to exceed a principal amount of \$50 million;

(12) Requires parties in tort actions based on improper health care to make a good faith effort to engage in mediation with a trained mediator and to submit a report of the results to the court;

(13) Deletes the "per occurrence" language in reference to caps on noneconomic damages in order to overrule a Missouri Supreme Court decision;

(14) Establishes a procedure for health care provider defendants to contest venue, stays most discovery during the pendency of the venue contest, and awards costs, expenses, and reasonable attorney fees to the prevailing party;

(15) Requires that health care providers executing the expert affidavit to have education, training, and experience in a like area as the defendant health care provider or a logical extension of the field and to be actively engaged in the practice of medicine or retired within five years of the date of the affidavit. The affidavit is subject to an in-camera review by the court upon motion of a party;

(16) Prohibits statements, writings, or benevolent gestures expressing sympathy from being admissible as evidence of an

admission of liability in a civil action. Statements of fault will be admissible; and

(17) Authorizes the filing of a "miscellaneous" case for the purpose of securing copies of health care records, details what the petition should and should not contain, and provides that filing a miscellaneous case tolls the statute of limitations for medical malpractice for 120 days.

The bill contains an emergency clause.