

## HB 1766 -- Medical Malpractice Insurance

Sponsor: Burnett

This bill changes the laws regarding medical malpractice insurance. The bill:

- (1) Requires that any association established to provide medical malpractice insurance through an assessment plan must specify in its articles and bylaws exactly what kinds of assessments can be made against a member;
- (2) Requires all medical malpractice insurers to provide the Department of Insurance with a rating plan;
- (3) Makes all malpractice insurance policy forms subject to department approval;
- (4) Allows the department to disapprove any medical malpractice rate that relies upon loss experience from other states; involves a surcharge for any pending malpractice claim; or is excessive, inadequate, or discriminatory. A rate can be deemed inadequate if it is unreasonably low and can have the effect of destroying competition;
- (5) Requires medical malpractice insurers to provide at least 60 days' notice before cancelling a policy, issuing a non-renewal of a policy, or raising or lowering premium rates by more than 15% in any 12-month period. The notice of a premium rate change must include actuarial justification for the rate change;
- (6) Requires the department to conduct a public hearing within 30 days of receiving notice from an insurer of a requested rate change and rule on the requested rate change within 20 days of the hearing. The department's decision is subject to administrative review;
- (7) Makes insurers subject to a fine of \$100 for each day they are delinquent in filing any required claims information with the department;
- (8) Creates the Malpractice Education, Data, and Insurance Capacity (MEDIC) Program to replace the Missouri Medical Malpractice Joint Underwriting Association. The program will educate health care providers on ways to avoid malpractice and conduct independent analysis of the data collected by the advisory organization designated by the department. The program will provide backup coverage when market conditions make it difficult for some health care providers to secure medical malpractice insurance;

(9) Requires all parties to a tort action based upon improper health care to engage in mediation;

(10) Delays until January 1, 2007, the inflation-adjusted annual increase in the maximum award for noneconomic damages in medical malpractice cases;

(11) Allows a hearing on the propriety of venue in any medical malpractice claim and allows costs and attorney fees to be awarded to the prevailing party;

(12) Requires that the qualified health care provider who submits an affidavit stating that medical malpractice occurred (as a prerequisite for a malpractice claim) must be actively engaged in the practice of medicine or must have retired from an active practice within the past five years;

(13) Makes any statements conveying sympathy for a person's pain, suffering, or death inadmissible as evidence of liability in a medical malpractice action. Any statement regarding fault, however, remains admissible;

(14) Allows the filing of a miscellaneous case in circuit court for the purpose of securing copies of a person's health care records. The filing will toll the statute of limitation for a medical malpractice claim by that person for up to 120 days;

(15) Creates the Health Care Stabilization Fund Study Commission to study the medical malpractice insurance crisis and make recommendations to the Governor and General Assembly on how to stabilize the medical malpractice insurance market. The department will provide staff for the commission; and

(16) Requires the department director to develop a standardized application form for medical malpractice coverage.

The bill contains an emergency clause for certain sections.