

HCS HB 394 -- MEDICAL MALPRACTICE INSURANCE

SPONSOR: Yates (Byrd)

COMMITTEE ACTION: Voted "do pass" by the Committee on Insurance Policy by a vote of 16 to 0.

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

(1) Subjects insurers writing professional malpractice insurance to the provisions of Section 379.321, RSMo, relating to rating plans filed with the Director of the Department of Insurance; however, insurers writing medical malpractice insurance will also be subject to the provisions of Sections 383.400 - 383.412;

(2) Subjects malpractice insurers to Sections 383.100 - 383.112 relating to reports from medical malpractice insurers; Section 379.321 relating to commercial casualty rate filing requirements; Sections 374.202 - 374.207 relating to the examination powers of the department director; and Sections 383.400 - 383.412 relating to notification, data reporting, and rating requirements;

(3) Requires, beginning December 31, 2005, and annually thereafter, the director to report to the General Assembly the actual rates charged for malpractice insurance and a comparison to the rates of the previous year;

(4) Defines the term "insurer" to include every entity operating under Chapter 383 including self-insured health care providers;

(5) Subjects insurers that fail to report claims information as required by Sections 383.100 - 383.125 to the penalties applicable to insurance companies under Section 374.215. Guarantee associations paying claims on behalf of an insolvent insurer will be subject to the same reporting requirements as an insolvent insurer;

(6) Requires the additional first-year association charge of policyholders to be in the form of cash or a cash equivalent and not in the form of a promissory note;

(7) Establishes a procedure by which medical malpractice insurers, excluding surplus lines insurers operating under Chapter 384 or any entity self-insuring its exposure to medical malpractice liability, are allowed to make premium rate changes otherwise presumed unreasonable under Section 383.405, including prior notice to the director; a hearing, including evidence presentation by the insurer and opponents, which may be a public hearing at the director's discretion; an appeals process for the insurer if the director determines the rate change to be unjustified; and an insurer charging rates greater than 20% lower than the market rate will not be subject to the hearing

requirement if the insurer files a certificate of actuarial soundness with the director;

(8) Creates penalties for violations and authorizes license suspension upon the written order of the director after notice to the insurer and a hearing;

(9) Prohibits insurance companies and other entities providing malpractice insurance to health care providers in Missouri from:

(a) Increasing premium charges by more than 10% without 60 days' prior notice to the insured; however, notice is not required if the premium change is due to the request of the insured;

(b) Refusing to renew policies without 60 days' prior notice, unless the refusal to renew is based upon nonpayment of insurance premiums, license termination or suspension, termination of the insurer's reinsurance program, or a material change in the nature of the insured's health care practice;

(c) Ceasing to issue insurance policies without 180 days' prior notice to the department; and

(d) Requiring any insurer that fails to provide the required notice, at the option of the insured, to continue the coverage;

(10) Requires the department to establish, by May 30, 2006, risk-reporting categories for medical malpractice insurance premiums and regulations for their reporting;

(11) Requires insurance companies and other entities providing malpractice insurance in Missouri to report to the department, by June 1, 2006, and annually thereafter, the premium rates charged by category;

(12) Requires the department, by December 31, 2008, and annually thereafter, to establish and publish a market rate reflecting the median of the actual rates charged for each risk-reporting category for the preceding year;

(13) Provides that, after January 1, 2009, insurance premium rates charged by insurance companies and other entities providing malpractice insurance in Missouri which are no greater than 20% higher or lower than the published market rate will be presumed reasonable, and rates greater than 20% higher or lower will be presumed unreasonable;

(14) Defines for purposes of Sections 383.407 - 383.412 the terms "base rate" and "schedule rating or individual risk-rating credits or debits";

(15) Requires the department to establish reporting standards

for insurers to report base rates for health care provider classifications in categories determined to be actuarially appropriate. The department will create a database, available to the public, comparing base rates charged by insurers. The database may distinguish between rates for different types of coverage;

(16) Requires the department to establish reporting standards for insurers or an advisory organization designated by the department to report annually on medical malpractice insurance premiums, losses, exposures, and other information the department requires for the purpose of compiling a rate-making database. The information collected will be used in assisting medical malpractice insurers in developing future rates and will be considered confidential. Any information that identifies a particular insurer will be removed;

(17) Prohibits insurers writing medical malpractice insurance in Missouri from applying schedule rating or individual risk-rating credits or debits to an individual policy or unit or of exposure, in the aggregate, in excess of the following percentages: (a) After July 1, 2006, 50%; (b) After July 1, 2007, 40%; (c) After July 1, 2008, 30%; and (d) After July 1, 2009, 20%. The aggregate debits and credits under the plan will be equal;

(18) Requires, beginning January 1, 2007, any stock company organized as provided by Section 287.902 for the purpose of issuing medical malpractice insurance in Missouri to meet the requirements of Chapter 379 regarding the organization of insurance companies and the laws governing the organization of private corporations. The department director may waive capital and surplus requirements for 10 years after incorporation, and the company will not be subject to the membership requirements of the Missouri Property and Casualty Insurance Guarantee Association until after three years. However, in no event will the stock company become a member until its tenth anniversary. No company, corporation, or association authorized to issue medical malpractice insurance prior to August 28, 2005, may incorporate under the provisions of this section;

(19) Requires the department to promulgate rules defining the term "claim" as it relates to medical malpractice;

(20) Requires the department to study and report to the General Assembly by January 15, 2007, on the feasibility and economic impact of offering medical malpractice policies written to apply to injuries which result from acts or omissions occurring during the policy period. Insurers are not mandated to write medical malpractice insurance on an occurrence basis; and

(21) Requires, beginning January 1, 2006, any long-term care facility licensed under Chapter 198 to provide at least annually to the Department of Health and Senior Services satisfactory

evidence of a medical malpractice insurance policy of at least \$500,000.

FISCAL NOTE: Estimated Cost on General Revenue Fund of \$38,271 in FY 2006, \$37,430 in FY 2007, and \$38,388 in FY 2008. Estimated Cost on Other State Funds of \$22,460 in FY 2006, \$110,000 in FY 2007, and \$85,000 in FY 2008.

PROPOSERS: Supporters say that the bill will help lower the price of medical malpractice insurance and keep physicians from worrying about losing their personal assets in case of a huge claim. Insurers will have to notify their insureds 60 days prior to cancellation, non-renewal, or for changes in premiums greater than 10%. The Department of Insurance will be able to track rates and see any trends forming. The department will be able to make sure insurers are actuarially sound and still taking care of their insureds.

Testifying for the bill were Representative Byrd; Missouri Hospital Association; Missouri Association of Osteopathic Physicians and Surgeons; Missouri State Medical Association; and Missouri Academy of Family Physicians.

OPPOSERS: Those who oppose the bill say that the rating provision may create problems for insurers. Tort reform that is going through the General Assembly will help the markets and no additional action is needed. Competition may be hesitant to come into the state if there is more regulations, and open competition will take care of itself. The 20% range on insurance rates may cause insurers to actually raise their rates higher than they actually need.

Testifying against the bill were Missouri Insurance Coalition; and Professional Assurance.

OTHERS: Others testifying on the bill say that they like the principle behind the bill but would like to see it happen faster. Nursing homes have not been able to get insurance and would like to be included.

Others testifying on the bill were Healthcare Services Corporation; and Republican Attorneys for Civil Justice.

Marc Webb, Legislative Analyst