

Committee on Health Regulation

CS/CS/CS/CS/HB 479— Medical Malpractice

by Judiciary Committee; Health Care Appropriations Subcommittee; Health and Human Services Access Subcommittee; Civil Justice Subcommittee; and Reps. Horner, Campbell, and others (CS/SB 1590 by Banking and Insurance; and Senators Hays and Gaetz)

The bill requires a physician, osteopathic physician, or dentist who provides expert testimony concerning the prevailing professional standard of care of a physician, osteopathic physician, or dentist to be licensed in this state or possess an expert witness certificate issued by the Department of Health. Florida licensed physicians and dentists and practitioners with an expert witness certificate will be subject to disciplinary action for offering false or misleading information as an expert witness.

The Board of Medicine is required to create by rule a standardized informed consent form setting forth the risks of cataract surgery. An executed informed consent form creates a rebuttable presumption that the physician properly disclosed the risks of cataract surgery in a civil action or administrative proceeding. Risks described in the signed informed consent form may not be classified as an “adverse incident” pursuant to s. 395.0197, F.S.

The bill requires an insurance policy or self-insurance policy for medical malpractice coverage to clearly state whether or not the insured has the exclusive right of veto of any admission of liability or offer of judgment. The bill repeals the requirement that a self-insurance policy or insurance policy for medical malpractice must authorize the insurer to make this decision without the permission of the insured medical provider if the action is within the policy limits.

The bill makes inadmissible all evidence related to an insurer’s reimbursement policies or reimbursement determination regarding medical care provided to a plaintiff. The bill also prohibits the introduction of federal standards and regulations into evidence to establish that the medical provider breached the prevailing professional standard of care.

The bill requires a claimant to submit, along with the other required information, an executed authorization form as set forth in the bill, for the release of protected health information that is potentially relevant to the claim of personal injury or wrongful death when he or she notifies each prospective defendant of his or her intent to initiate litigation for medical negligence. If the court finds that the authorization is not completed in good faith by the claimant, the court shall dismiss the claim and assess attorney’s fees and costs.

A volunteer team physician at a sporting event sponsored by an elementary or secondary school, or a licensed practitioner who gratuitously conducts a medical evaluation of a student prior to the student participating on an interscholastic athletic team, is not liable for civil damages for the care, treatment, or evaluation unless it was conducted in a wrongful manner.

If approved by the Governor, these provisions take effect October 1, 2011, and apply to causes of action accruing on or after that date.

Vote: Senate 30-9; House 94-21