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Bill Analysis
Legislative Service Commission

S.B. 111

125th General Assembly
(As Introduced)

Sens. Fingerhut, Schuring, Hagan, Dann, Fedor, Herington, Miller

BILL SUMMARY

- Recreates and provides for the operation of the Joint Underwriting Association, which previously had operated in Ohio until being dissolved in 1997, an association empowered to issue and underwrite medical malpractice insurance for physicians and hospitals.

CONTENT AND OPERATION

The dissolution and reactivation of the Joint Underwriting Association

(Section 1)

The Joint Underwriting Association was created by Am. Sub. H.B. 682 of the 111th General Assembly. The Association made medical malpractice insurance coverage available to Ohio's physicians and hospitals by issuing and underwriting malpractice insurance policies. The Association was intended to be self-supporting, being required to set insurance premiums on an actuarially sound basis that would pay for the liabilities incurred from patient claims.

Member insurers were assessed fees to cover the administrative costs of the Association. All insurers writing prepaid hospital service contracts and liability insurance policies were required to be contributing members of the Association as a condition of transacting that business in Ohio. Sections 3929.71 to 3929.85 of the Revised Code regulated the Joint Underwriting Association, including its policies, funding, and governance.

The Superintendent of Insurance dissolved the Joint Underwriting Association in 1997 pursuant to the authority granted to the Superintendent under section 3929.721 of the Revised Code, a section enacted by Am. Sub. H.B. 152 of the 120th General Assembly. However, with the exception of section 3927.74 of the Revised Code, which had provided for the operation of the Association's stabilization reserve fund, the sections of the Joint Underwriting Association Law,

sections 3929.71 to 3929.85 of the Revised Code, were not repealed in connection with the Association's dissolution and remained in the Revised Code.

The bill recreates the Joint Underwriting Association, activating the sections of the Joint Underwriting Association Law remaining in the Revised Code. Additionally, the bill creates a new stabilization reserve fund, amends section 3929.73 of the Revised Code in connection with agents' commissions, and repeals section 3929.721 of the Revised Code, the section that provides the Superintendent with the authority to dissolve the Joint Underwriting Association. The bill requires the Superintendent to appoint a Board of Governors for the recreated Joint Underwriting Association, pursuant to section 3929.77 of the Revised Code.

Stabilization reserve fund created for the Joint Underwriting Association

(sec. 3929.74)

The bill creates a new stabilization reserve fund for the reactivated Joint Underwriting Association. Any deficit arising out of the Joint Underwriting Association's operations, and any deficit arising from other expenditures approved by the fund's directors and reasonably consistent with the purposes of the Association, are to be reimbursed from this fund. Charges on insurers and policyholders provide money for the fund.

The bill provides for the stabilization reserve fund to be administered by 13 directors. One of these directors is the Superintendent of Insurance, or the deputy or an assistant superintendent. The other 12 directors are appointees of the Superintendent. The bill requires the Superintendent to appoint five doctors of medicine and surgery, two doctors of osteopathic medicine and surgery, one doctor of podiatric medicine and surgery, and four representatives of hospitals, as fund directors. All physicians must be licensed to practice under Chapter 4731. of the Revised Code. The directors of the stabilization reserve fund must act by majority vote, with seven directors constituting a quorum for the transaction of any business or the exercise of any power of the fund. The directors serve without salary but are reimbursed for actual and necessary expenses incurred in the performance of their official duties. The directors have no personal liability with respect to the administration of the fund.

The Joint Underwriting Association's policyholders provide one source of money for the stabilization reserve fund. Each of the Association's policyholders is required to pay an annual stabilization reserve fund charge to the Association. All stabilization reserve fund charges collected by the Association must be transferred promptly to the stabilization reserve fund. The bill requires the stabilization reserve fund charge to be separately stated in the policy or premium

notice. The Association is required to cancel the policy of any policyholder that fails to pay the stabilization reserve fund charge.

Insurers provide another source of money for the stabilization reserve fund. As a condition of conducting insurance business in Ohio, every insurer authorized to write medical malpractice insurance, except the Joint Underwriting Association, must collect a premium increment annually from each policyholder of primary medical malpractice insurance. The premium increment must be remitted to the stabilization reserve fund.

The bill requires the fund's directors to set the amount of the stabilization reserve fund charges and premium increments.

All money received by the new stabilization reserve fund must be held by a corporate trustee selected by the fund's directors. The bill allows the corporate trustee to invest the money held in trust, subject to the approval of the fund's directors. All resulting investment income must be credited to the fund. The expenses incurred in administering the fund are charged against the fund. The fund must cover all deficits arising out of the Joint Underwriting Association's operations, and any deficit arising from other expenditures approved by the directors and reasonably consistent with the purposes of the Association. The directors are responsible for making the payments to the Association upon receipt of certification from the Association of any amounts due.

Once each year, if incurred losses and expenses exceed the premiums collected by the Joint Underwriting Association and the charges collected by the stabilization reserve fund, the Superintendent may impose a surcharge on all insurers authorized to write medical malpractice insurance, as a condition of the insurers' authority to transact insurance business in Ohio. The bill requires the surcharge to be imposed on the insurers' medical-malpractice-insurance policyholders in an amount set by the fund's directors. The surcharge is in addition to the malpractice premium and is to be separately stated in any policy or premium notice. The surcharge is not applicable to excess insurance. Surcharges are to be remitted to the stabilization reserve fund.

The bill provides that if at the end of any fiscal year the amount held by the stabilization reserve fund exceeds the optimal amount determined by the fund's directors, the directors may instruct the Superintendent to return the excess fund moneys to the physicians and hospitals that contributed to the fund. The Superintendent is required to determine the total amount contributed to the fund by each physician and hospital during the entire period of the fund's existence, and then to remit to each eligible physician and hospital an amount that bears the same ratio to the total amount of excess fund moneys as the total amount contributed to

the fund by each physician and hospital bears to the total amount contributed to the fund by all physicians and hospitals.

Agent and broker commissions on Association insurance policies

(sec. 3929.73)

Under provisions of the Joint Underwriting Association Law that remained in the Revised Code after the 1997 dissolution of the Association, all licensed physicians practicing in Ohio and hospitals situated and operating in Ohio are entitled to apply to the Joint Underwriting Association for medical malpractice insurance, on and after the effective date of the new plan of operation for the Joint Underwriting Association promulgated under section 3929.72 of the Revised Code. These provisions permit an authorized broker or agent to submit an application on behalf of a physician or hospital but do not regulate the commissions that may be charged by brokers and agents. The bill limits the commission that brokers and agents may charge for certain policies issued by or on behalf of the Joint Underwriting Association. Commissions charged for policies issued to physicians practicing individually may not exceed 5% of the premium for the policy.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	07-31-03	p. 941

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