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Bill Analysis
Legislative Service Commission

S.B. 112

125th General Assembly
(As Introduced)

Sens. Fingerhut, Hagan, Dann, Fedor, Miller

BILL SUMMARY

- Sets five years as the standard term of a medical malpractice insurance policy and restricts the ability of insurers to cancel a policy during that term.
- Limits annual premium increases on a medical malpractice insurance policy.

CONTENT AND OPERATION

Medical malpractice insurance policies

Minimum term for medical malpractice policies; cancellation

(sec. 3937.51(A) and (B))

The bill requires a medical malpractice insurance policy to be issued for a term of not less than five years or to be issued with a guarantee that the policy is renewable for successive policy periods totaling not less than five years. As used in the bill, "medical malpractice insurance" means liability insurance "insuring against loss, damage, or expense incident to a claim arising out of the death, disease, or injury of any person as the result of negligence or malpractice in rendering professional service by any licensed physician, podiatrist, or hospital." For this purpose, a "hospital" includes any person, corporation, association, board, or authority responsible for the operation of either a hospital licensed or registered in Ohio or a clinic employing a full-time staff of physicians practicing in more than one recognized medical specialty who advise, diagnose, care, and treat clinic patients. Hospitals include those owned or operated by the state, political subdivisions of the state, private entities, and combinations of the state, political subdivisions, and private entities.

The bill prohibits medical malpractice insurers from canceling a medical malpractice insurance policy during the term of the policy or its period of guaranteed renewal, except for one or more of the following reasons: (1) the insured's misrepresentation of any material fact to the insurer in the procurement or renewal of the policy or in the submission of claims under that policy, (2) the suspension or revocation of the physician's or podiatrist's license to practice medicine or the suspension or revocation of the hospital's license, (3) the insured's failure to pay a premium or premium installment when due, (4) the failure of the insured hospital, as determined by the Ohio Department of Health, to meet minimum standards established by the Department or the Public Health Council under Chapter 3701. of the Revised Code, or (5) a court's grant of an injunction against the operation of the insured hospital based on the hospital's failure to meet the minimum standards prescribed by the Public Health Council for the maintenance and operation of a hospital receiving federal aid for construction.

Cap on premium increases; exceptions

(sec. 3937.51(C), (D), and (F))

The bill prohibits an insurer from increasing the premium on a medical malpractice policy on an annualized basis by more than 5% over the prior year. An insurer may not decrease limits of protection, or add exclusions, reductions, or limitations to an insured's policy during the term of a policy or its period of guaranteed renewal.

However, the bill includes exceptions to its 5% per annum cap on premium increases. An insurer may increase the premium on a medical malpractice policy by more than the 5% per annum cap if the insurer can demonstrate to the Department of Insurance that the premium increase is justified by actuarial information relating to the particular insured or insured group such as would justify a reasonably prudent insurer in taking the action. An insurer may also refuse to renew or continue an existing policy on the basis of this same actuarial information. The insurer is required to file the supporting actuarial information for either of these actions with the Department. If the Department finds insufficient justification for the insurer's action based upon its review of the information submitted, the Department may disallow the premium increase or the closure of the policy.

An insurer may exceed the bill's per annum cap on premium increases for reasons other than the demonstration of a specific actuarial risk, but the insurer must apply in writing to the Department of Insurance prior to increasing the premium in excess of the bill's per annum cap. The application must state the insurer's reasons for wishing to exceed the per annum cap. At its discretion, the Department may authorize the requested premium increase.

The Superintendent of Insurance is required to disapprove any filing made by the insurer that fails to comply with any of the bill's provisions. The bill states that medical malpractice insurance filings continue to be subject to the filing requirements of Chapter 3937. of the Revised Code, the Casualty Insurance Law, which include, but not are not limited to, filings of policy forms and premiums.

Waiver may be given by the insured

(sec. 3937.51(E))

The bill allows an insured to agree to waive any of the provisions of the bill that set the minimum term for a medical malpractice insurance policy, prohibit an insurer from canceling a policy during the term of the policy, or cap annual premium increases. However, the bill provides that an insured may *not* be *required* to waive these provisions as a prerequisite to an insurer's issuance or renewal of a medical malpractice insurance policy. The bill also states that its provisions do not prohibit an insurer from making changes to a policy, or from canceling a policy, at the request of the insured.

HISTORY

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

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