

## **INITIATIVE FINANCIAL INFORMATION STATEMENT**

### **Public Protection from Repeated Medical Malpractice**

#### **SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT**

The Department of Health (DOH) currently licenses medical practitioners and has discretion to revoke these licenses when physicians are found to have committed “gross or repeated malpractice. Current law allows medical doctors who have committed repeated malpractice to be licensed to practice medicine in Florida. This proposed constitutional amendment prohibits medical doctors who have been found to have committed three or more incidents of medical malpractice from being licensed to practice medicine in Florida. This “three strikes” initiative supplements current law and requires the Department to take action to remove licenses based on final findings by the courts, administrative agencies and binding arbitration. The discretion of the Department not to act in these types of cases is removed by this proposed amendment.

Based on the information provided through public workshops, arguments before the Florida Supreme Court, and information collected through staff research, the Financial Impact Estimating Conference principals expect that the proposed amendment will have the following financial effects:

- Medicaid fee-for-service costs may increase because there will potentially be fewer physicians, particularly specialists, available in the marketplace. This fiscal impact is indeterminate.
- Costs to determine confirmed malpractice incidents will increase. There will be increased costs associated with business activities required to review and research records to determine confirmed malpractice incidents. DOH estimates recurring costs for initial applicants of \$311,523 for allopathic physicians and nonrecurring costs for existing licensees of \$292,830 for a total cost of \$604,353. These costs will be funded through increases to licensure fees because the cost of professional regulation is fee supported.
- Requests for Administrative Hearings may increase. The Division of Administrative Hearings (DOAH) anticipates an increase in the number of requests for administrative hearings from doctors who fear blemishes on their records. Additionally, there may also be a greater number of challenges to preliminary decisions of the Board of Medicine rather than settlements. Total fiscal impact can likely be absorbed by the Division.
- Binding arbitration cases may increase. DOAH estimates an increase in the number of claimants agreeing to proceed through the binding arbitration process rather than in circuit court. Total fiscal impact can likely be absorbed by the Division.
- Costs for maintaining databases of binding arbitration cases may increase. The DOH estimates that there are few cases decided by binding arbitration and the costs for researching and analyzing data will be negligible. Total fiscal impact is insignificant according to the DOH.

#### **FINANCIAL IMPACT STATEMENT – *revised July 21***

The direct financial impact on state or local governments resulting from the proposed initiative would be minimal. There will likely be additional costs to the state of less than \$1 million per year, but these costs will be offset by licensure fees.

## I. SUBSTANTIVE ANALYSIS

### A. Proposed Amendment

Ballot Title:

Public Protection from Repeated Medical Malpractice

Ballot Summary:

Current law allows medical doctors who have committed repeated malpractice to be licensed to practice medicine in Florida. This proposed constitutional amendment prohibits medical doctors who have been found to have committed three or more incidents of medical malpractice from being licensed to practice medicine in Florida.

#### 1) Statement and Purpose:

Under current law, a medical doctor who has repeatedly committed medical malpractice in Florida or while practicing in other states or countries may obtain or continue to hold a professional license to practice medicine in Florida. The purpose of this amendment is to prohibit such a doctor from obtaining or holding a license to practice medicine in Florida.

#### 2) Amendment of Florida Constitution:

Art. X, Fla. Const., is amended by inserting the following new section at the end thereof, to read:  
"Section 20. Prohibition of Medical License After Repeated Medical Malpractice."

a) No person who has been found to have committed three or more incidents of medical malpractice shall be licensed or continue to be licensed by the State of Florida to provide health care services as a medical doctor.

b) For purposes of this section, the following terms have the following meanings:

i) The phrase "medical malpractice" means both the failure to practice medicine in Florida with that level of care, skill, and treatment recognized in general law related to health care providers' licensure, and any similar wrongful act, neglect, or default in other states or countries which, if committed in Florida, would have been considered medical malpractice.

ii) The phrase "found to have committed" means that the malpractice has been found in a final judgment of a court or law, final administrative agency decision, or decision of binding arbitration."

#### 3) Effective Date and Severability:

This amendment shall be effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

## B. Effect of Proposed Amendment

Currently, a medical doctor who has repeatedly committed medical malpractice in Florida or while practicing in other states or countries may obtain or continue to hold a professional license to practice medicine in Florida. This proposed constitutional amendment prohibits medical doctors who have been found to have committed three or more incidents of medical malpractice from being licensed to practice medicine in Florida.

### **Background**

Floridians for Patient Protection (FPP) is the sponsor of this proposed constitutional amendment. FPP is an organization of medical malpractice and negligence victims and their families with significant representation by the Academy of Florida Trial Lawyers. As of April 2004, FPP raised almost \$12 million in support of their amendment campaign which includes this and two other proposed amendments.

FPP argues that the current healthcare practitioner disciplinary system does not require revocations of or denials of applications for medical licenses for those who have committed repeated malpractice. In their brief filed before the Florida Supreme Court in support of this proposed amendment, FPP wrote that:

“The expressed purpose of this proposed amendment is to tighten and constitutionalize the enforcement of these protections against doctors who commit gross or repeated malpractice, either in Florida, or in other states or countries. The purpose of this amendment is to prohibit such a doctor [who has repeatedly committed medical malpractice in Florida or while practicing in other states or countries] from obtaining or holding a license to practice medicine in Florida.”

The Department of Health currently licenses medical practitioners and has discretion to revoke these licenses when physicians are found to have committed “gross or repeated malpractice”. Gross or repeated malpractice is defined as “three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of \$50,000 each to the claimant in a judgment or settlement and which incidents involved negligent conduct by the physician.” (s. 458.331(1)(t), Florida Statutes). The Department also collects information about these incidents in order to exercise its supervisory authority. According to FPP, the Department has only minimally exercised its authority to revoke the licenses of physicians who commit repeated malpractice.

The proposed public protection amendment does not reduce or alter the Department’s responsibilities under current law; it simply requires that the Department revoke or deny licensing to physicians who have been found to have committed repeated medical malpractice. FPP believes this amendment will force the Department to take the “3 in 5” mandate seriously.

The amendment provides definitions for “medical malpractice” and “found to have committed”, which clearly exclude settlements.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

Section 100.371, Florida Statutes, requires that the Financial Impact Estimating Conference “...complete an analysis and financial impact statement to be placed on the ballot of the estimated

increase or decrease in any revenue or costs to state or local governments resulting from the proposed initiative.”

As part of determining the fiscal impact of this proposed amendment, the Financial Impact Estimating Conference principals held a public workshop on June 4, 2004. The principals heard testimony on the fiscal effects of this amendment from representatives of Floridians for Patient Protection (FPP) and the Florida Medical Association (FMA). Additionally, a questionnaire was mailed on June 8, 2004 requesting input from various state agencies, local governmental entities, and other organizations regarding fiscal impacts and the development of cost estimates. Representatives of these entities were invited to the June 17, 2004 meeting of the Financial Impact Estimating Conference to answer questions or provide additional information on potential costs.

#### A. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS:

The fiscal impact summary for this proposed amendment is based on independent research; oral and written statements from the proponents, opponents, and state departments and agencies; and discussions among the Estimating Conference principals and their professional staff. Based on this information, the Financial Impact Estimating Conference principals assume that the proposed amendment will have the following financial effects on state and local government:

**Medicaid Fee-for-Service Costs may Increase.** According to the Agency for Health Care Administration (AHCA), the amendment could result in fewer physicians, particularly specialists, available in the marketplace. Specialty physicians who are at higher risk of malpractice allegations may reduce services to Medicaid clients or may change the scope of their practices to only cover lower risk services or patients. The only way to entice specialists into the Medicaid program would be to pay them at significantly higher rates. If fewer physicians are able to practice, this amendment could also have a negative impact on HMOs and other health plans' ability to find physicians for their networks. It could have the effect of transferring Medicaid HMO consumers back to fee-for-service in regions where significant shortages occur, resulting in an immediate increase in costs. This fiscal impact is indeterminate.

**Costs to Determine Confirmed Malpractice Incidents will Increase.** According to the Department of Health (DOH), there will be increased costs associated with business activities required to review and research records for physicians to determine confirmed malpractice incidents. DOH estimates recurring costs for initial applicants of \$311,523 for allopathic physicians. Nonrecurring costs for existing licensees are estimated at \$292,830 for allopathic physicians. These costs will be funded through adjustments to licensure fees as the cost of professional regulation is fee supported. Currently, Florida does not have any physicians who have 3 or more court verdicts or a combination of discipline and court verdicts; there are, however, 8 allopathic physicians who have 3 or more incidents that may require action, if applied retroactively.

**Requests for Administrative Hearings may Increase.** According to the Division of Administrative Hearings (DOAH), there may be an increase in the number of requests for administrative hearings from doctors who fear blemishes on their records. There may also be a greater number of challenges to preliminary decisions of the Board of Medicine rather than settlements. Unless the number of cases is significant, DOAH does not believe any additional appropriation or additional administrative law judges would be necessary.

**Binding Arbitration Cases may Increase.** According to DOAH, there may be an increase in the number of claimants agreeing to proceed through the binding arbitration process rather than face circuit court. In binding arbitration cases, claimants do not have to prove liability, only damages, and the physician would have an arbitration award entered against him, but no judgment by a court or an

administrative agency or arbitrator specifically determining the doctor to have committed malpractice. Therefore the medical incident may not be included in the “three strikes”. Unless the number of cases is significant, DOAH does not believe any additional appropriation or additional Administrative Law Judges would be necessary.

**There may be Increased Costs for Maintaining Databases of Binding Arbitration Cases.**

According to the Department of Health (DOH), there are few cases decided by binding arbitration and the costs for researching and analyzing data will be negligible.

**B. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS:**

**1. Revenues:**

- Revenues related to the determination of confirmed malpractice incidents by DOH will be from licensure fees sufficient to meet the estimated at \$604,353.
- Revenues related to increased requests for DOAH activities are minimal.
- Revenues related to increased binding arbitration cases are minimal.
- Revenues related to the increased costs to maintain databases of binding arbitration cases are minimal.

**2. Expenditures:**

- Expenditures related to determination of confirmed malpractice incidents by DOH are estimated at \$604,353.
- Expenditures related to increased requests for DOAH activities are minimal.
- Expenditures related to increased binding arbitration cases are minimal.
- Expenditures related to the increased costs to maintain databases of binding arbitration cases are minimal.