

Capitol Report - December 23, 2002

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The high-profile issues for the upcoming Legislative Session are gearing up to be big battles between some of the most powerful interest groups in Florida, namely the insurance industry, the physician community, the hospital industry, the trial lawyers community, and the nursing home industry.

The issues include major reforms in the areas of medical malpractice, workers' comp, and nursing homes, and the common element in each issue is tort reform.

Medical Malpractice -- The battle over med-mal still promises to be the most intense issue for the 2003 Legislature. The Florida Medical Association, representing physicians, has made med-mal reform its top priority for 2003 and seeks a cap on damage awards of \$250,000. The FMA has become a very powerful political lobby in recent years. The Governor and legislative leaders have responded by habitually naming med-mal reform as one of their top priorities for 2003. Governor Bush has also formed an ad hoc gubernatorial task force to tackle the issue and make recommendations for reforms. The group is scheduled to make its final report next month.

The task force unanimously voted last week that there should be a cap placed on damage awards but did not decide on a dollar figure. Bush has also indicated that he supports a cap. The FMA argues that a cap is needed because med-mal insurance premiums have risen so high that physicians can no longer afford coverage. As a result, many physicians are either leaving the state, practicing without insurance, or abandoning certain higher-risk practice areas, according to the FMA. Joining the FMA in seeking reform are Florida's hospital and insurance industries. Opposed to capping damage awards are trial lawyers and victim advocacy groups, which are instead blaming the insurance industry and poor medical care for the recent rise in med-mal premiums.

Workers' Comp -- Tort reform is also involved in workers' comp, another area that the Governor and Legislature have promised to address in 2003. Florida's workers' comp system is in dire need of reform from top to bottom. Florida is reported to have the highest workers' comp premiums in the country while having the lowest statutory benefits for injured workers.

The Governor again has formed a special commission to research the issue and make recommendations for reform, which are due next month. The cast of characters in this fray resembles that of med-mal: physicians, insurers, attorneys, hospitals, and victim advocates, with the addition of a strong business coalition led by Associated Industries of Florida. The tort reform element of workers' comp involves the legal liability of employers who purchase workers' comp insurance for their employees, i.e. what are the parameters for an employer's liability when intentional tort is involved in a workers' comp case.

Florida law is open-ended in this area due to the effects of recent case law, which means the parameters are unclear and employers are left unsure as to when they might be susceptible to workers' comp tort claims. The business coalition is seeking to clarify Florida Statutes to leave no doubt as to where employer liability begins and ends.

Nursing Homes -- Law was enacted in 2001 designed to help stem the tide of a "nursing home crisis" fueled by skyrocketing premiums for liability insurance and the lack of insurers willing to issue policies. Tort reform was a big issue then, and it will be central to the debate once again in 2003. The 2001 law has not resolved the crisis and the 2003 Legislature will have to take up major reforms once again, according to Senate President Jim King, R-Jacksonville. King and House Speaker Johnnie Byrd, R-Plant City, have created a Joint Select Committee on Nursing Homes for that purpose.

The 2001 law provided nursing homes with some level of liability protection while raising the standards for quality of care. That was supposed to convince insurers to write more policies and reduce rates. It hasn't worked, according to the industry, which blames the law's failure largely on the fact that punitive damage awards were capped, but awards for pain and suffering can still be levied without limit. Lawyer groups claim the number of lawsuits has dropped since the 2001 law was enacted, and they say the law needs more time to have the desired effect.

We can't wait any longer, according to King: "With the number of frail residents in need of long-term care expected to grow dramatically, we must do something to help bring this issue to fruition in a more timely manner." What will be done remains to be seen, but the battle will again involve insurers and attorneys, along with the nursing home industry.

1999 Tort Reform -- In 1999, an omnibus tort reform law was enacted that covered almost every aspect of Florida tort law. The law was a victory for potential defendants because of key liability reductions in many areas of tort law. The law was immediately challenged in court on constitutional grounds and in circuit court was ruled to have violated the single-subject requirement. The case was appealed to the district court level, and the case was remanded back to the trial court because the 1st DCA decided the trial court should not have ruled since the plaintiffs had suffered no injury and therefore lacked standing. According to the Clerk of the Florida Supreme Court, the 1st DCA decision has been appealed. The Legislature is extremely unlikely to do anything with the 1999 law until the Supreme Court takes action, but after that, expect the stakeholders to gather their forces

and lobby the Legislature once again.

HMO Civil Remedies -- The Florida Medical Association, the Florida Hospital Association, and the Academy of Florida Trial Lawyers and been seeking to enact more severe civil liabilities for health maintenance organizations for years. The effort has mostly centered on increasing non-economic damage awards against HMOs for deciding not to pay for medical care requested by policy holders. In 2002, bills were also filed that would enact specific HMO liabilities related to disputes over the payment of claims to health care providers. HMO civil liability is a perpetual issue at the Capitol that is likely to never go away. How much of an issue it will be in 2003 remains to be seen because the stakeholders will be heavily involved in the other issues described above.

Important Legislative Dates:

Proposed 2002 - 2003 Interim Committee Meeting Schedule· December 2002: No Meetings· January 2003 – Week of the 6th: Regular Meetings· January 2003 – Week of the 13th: Budget Meetings· January 2003 – Week of the 20th: Regular Meetings· February 2003 – Week of the 3rd: Regular Meetings· February 2003 – Week of the 10th: Budget Meetings· February 2003 – Week of the 17th: Regular Meetings· **Session Dates**· March 4, 2003: Regular Session convenes · March 4, 2003: 12:00 noon, deadline for filing bills for introduction, House and Senate· April 22, 2003: 50th day-last day for regularly scheduled Senate committee meetings · May 2, 2003: 60th day-last day of Regular Session

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