

2007 LEGISLATIVE ISSUE FORM

BOG ISSUE: Medical Services Review and Evaluation



PROPOSED STATUTORY LANGUAGE: Draft Statutory Language Complete

-
- 1. Need for Change:** Section 1004.24, F.S. (Board of Governors authorized to secure liability insurance) and section 1012.965, F.S. (Payment of costs of civil action against employees).

The academic programs of Florida's public medical and other health-related colleges are largely based at affiliated institutions that provide essential clinical education, training, and research sites to the university boards of trustees. By law these health care affiliates are afforded protection from liability for the medical care provided by the employees and agents of university boards of trustees. Plaintiff attorneys are beginning to refrain from filing medical negligence actions against the university for health care provided by university employees at an affiliated institution, instead filing solely against that affiliated healthcare institution. The contention is then made that self insurance program staff and attorneys for the affiliates are prohibited by law from interviewing university faculty and staff involved in the care of the claimant which, in turn, hampers the ability of the university and the affiliates in their defense of these claims.

The proposed changes would ensure that protection of the affiliates and cooperation between the university boards of trustees and affiliates continues as they would (1) unequivocally establish the responsibility of a self insurance program to conduct interviews with the employees and agents of a university board of trustees and the employees and agents of a not-for-profit affiliate that had patient care responsibilities for a claimant, and (2) grant the university board of trustees the unconditional right to intervene in any civil action against an affiliated institution when an employee or agent of a university board of trustees delivered care to the patient at the institution.

Further, some claimant attorneys are attempting to avoid the damage limits of the state's waiver of its sovereign immunity by suing faculty practice plan entities based on the incorrect assumption that faculty practice plan entities are not entitled to sovereign immunity. The proposed changes confirm the long-standing status of a faculty practice plan under Board of Governors and university boards of trustees regulations and policies as the state university's agent for the orderly collection and administration of income generated from

faculty practice activities and not as a provider of medical services or the employer or associate of any faculty physician or other health care professional.

2. Current Condition:

BOG Regulation 6C-10.001 provides for the establishment of self insurance programs that provide comprehensive general liability protection. This includes medical malpractice insurance provided for the faculty associated with the University of Florida, the University of South Florida, and Florida State University medical schools and their health care affiliates. Inherent in the operations of self insurance programs is the preservation of assets by the elimination or reduction of patient care injuries and by timely and equitable settlements of meritorious claims and the defense of non-meritorious claims. In order to accomplish this, the university and its affiliates must have access to each others' medical records and their health care providers.

As noted, the actions of plaintiff attorneys challenge the university's access to its own providers and those it protects in its self insurance program. The inability of the self-insurance programs to discuss the health care provided by an employee or agent of one of its protected entities precludes incident investigation, claim defense, and quality improvement as well as compliance with other legal requirements. Plaintiff attorneys contend that such discussions would be in violation of section 456.057(6), Florida Statutes. Such a restriction also limits the affiliate's access to the university providers involved in the care which likewise impairs the ability of the affiliate to respond to the claim. It makes difficult or impossible for the self-insurance programs to resolve claims and fulfill their responsibilities as insurers. The suggested changes would solve these problems. Finally, by suing faculty practice plan entities, plaintiffs attempt to avoid damage limitations imposed by Florida law although the factual basis for such their position is erroneous. The addition of clarifying language to the law would preclude such arguments.

3. Effect of the Change:

Close cooperation in investigating and resolving meritorious claims in their early stages and jointly defending those that are not meritorious has been essential to retaining the confidence of affiliates that liabilities of university employees and agents will not become theirs. That cooperation ensures the proper allocation of liability between the university and the affiliate and avoids their taking adversarial positions. The proposed changes would clarify that agents and employees of participants in self insurance programs are authorized to discuss patient care information with self-insurance council members, staff and attorneys; that university boards of trustees have the right to intervene in any civil action for medical negligence involving employees or agents of the board; and that university faculty practice plans function as a conduit for the orderly

collection and administration of income generated from faculty practice activities and not as employers or associates of university faculty physicians or other health care professionals.

4. Fiscal Impact:

Undetermined.

5. Justification for BOARD OF GOVERNOR'S Priority (if applicable):

The Board of Governors is responsible for ensuring that all components of the state university system are operated in an efficient and effective manner. This includes ensuring the ability of a board of trustees to effectively manage claims that are alleged to have resulted from health care provided by university employees or agents. The changes are necessary to protect affiliates that volunteer to provide essential clinical education, training, and research sites to state university healthcare colleges.

6. Link to BOG Strategic Plan:

This issue is related to Goal D of the Board of Governors' Strategic Plan.