

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1035 Insurance
SPONSOR(S): Insurance & Banking Subcommittee; Boyd
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1344

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 0 N, As CS	Reilly	Cooper
2) Regulatory Affairs Committee	16 Y, 0 N	Reilly	Hamon

SUMMARY ANALYSIS

The Florida Medical Malpractice Joint Underwriting Association (FMMJUA) is an insurance risk apportionment plan that provides professional liability insurance coverage in Florida for health care providers that cannot find coverage in the private market. Five of the nine members of the FMMJUA's board of governors represent insurers and are selected by the Chief Financial Officer (CFO). Three of the five insurer members are selected by the CFO based on recommendations from three insurance trade associations. The American Insurance Association, the Alliance of American Insurers, and the National Association of Independent Insurers each recommend board members to the CFO, who chooses one board member from the recommendations of each trade association. In 2004, the Alliance of American Insurers and the National Association of Independent Insurers merged to form the Property Casualty Insurers Association of America (PCI).

The bill removes authority for the Alliance of American Insurers and the National Association of Independent Insurers to recommend FMMJUA board members, and authorizes their successor organization, the PCI, to make recommendations to the CFO, who will choose one insurer representative to the board from these recommendations. Additionally, the Florida Insurance Council is authorized to recommend board members to the CFO, who will select one insurer representative to the FMMJUA board from these recommendations.

The Florida Birth-Related Neurological Injury Compensation Association (NICA) manages the Florida Birth-Related Neurological Injury Compensation Plan (the Plan). The Plan provides a wide range of benefits to children who have sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury during labor, delivery, or resuscitation in the immediate post-delivery period. NICA operates under the direction of a five-member board of directors appointed by the CFO. The board is comprised of one representative of each of the following groups: citizens; participating physicians; hospitals; casualty insurers; and physicians other than participating physicians. The CFO can choose board members, except for the representative of citizens, from a list of names submitted by various trade associations, but is not bound by these nominations.

The Florida Obstetric and Gynecological Society and the Florida Hospital Association, respectively, submit recommendations for the representative of participating physicians and the representative of hospitals on the NICA board. The bill removes authority for the Florida Obstetric and Gynecological Society to make recommendations for the NICA board, and provides authority to the American Congress of Obstetricians and Gynecologists (ACOG), District XII. ACOG, District XII became effective January 1, 2013, and represents the entire state of Florida.

The American Insurance Association, the Alliance of American Insurers, and the National Association of Independent Insurers each submit one name to the CFO for the casualty insurer representative on the NICA board. The bill maintains the authority of the American Insurance Association and authorizes the PCI, the successor organization of the Alliance of American Insurers and the National Association of Independent Insurers, to recommend a casualty insurer representative to the NICA board. It also authorizes the Florida Insurance Council to recommend a casualty insurer representative to the NICA board.

The bill has no fiscal impact on state or local government and takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Medical Malpractice Joint Underwriting Association

The Florida Medical Malpractice Joint Underwriting Association (FMMJUA) is an insurance risk apportionment plan that provides professional liability insurance coverage in Florida for health care providers that cannot find coverage in the private market. Individual physicians, surgeons, osteopaths, podiatrists, chiropractors, dentists, nurses, other types of health care providers, physician partnerships or corporations, hospitals, and certain medical facilities can be covered by professional liability insurance provided by the FMMJUA.¹

The FMMJUA operates under the direction of a nine-member board of governors. Five of the nine board members represent insurers and are selected by the Chief Financial Officer (CFO). The CFO selects three of the five board members representing insurers from recommendations from three insurance trade associations. The American Insurance Association, the Alliance of American Insurers, and the National Association of Independent Insurers each recommend board members to the CFO, who chooses one board member from the recommendations from each of the three trade associations.

In 2004, the Alliance of American Insurers and the National Association of Independent Insurers merged to form the Property Casualty Insurers Association of America (PCI).² Thus, the bill removes authority for these trade associations to recommend board members, and provides authority for their successor organization, the PCI, to make recommendations for the FMMJUA board. It also provides authority for the Florida Insurance Council to make recommendations for board membership. The CFO will choose one board member from the recommendations made by the PCI and one board member from recommendations made by the Florida Insurance Council.

Florida Birth-Related Neurological Injury Compensation Association

The Florida Birth-Related Neurological Injury Compensation Association (NICA) manages the Florida Birth-Related Neurological Injury Compensation Plan (Plan). The Plan provides a wide range of benefits to a child who has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury during labor, delivery, or resuscitation in the immediate post-delivery period.³ Acceptance into the Plan is determined by an administrative law judge after a petition is filed with the Department of Administrative Hearings.⁴ Once a child is accepted into the Plan by order from the judge, the child is covered by the Plan and provided benefits and care under the Plan for a lifetime.

NICA's mission⁵ is to:

1. Encourage physicians to practice obstetrics and make obstetrical services available to patients.
2. Stabilize and help make malpractice insurance available to all physicians.
3. Provide needed care to injured children.

NICA operates under the direction of a five-member board of directors appointed by the CFO. One board member represents citizens, one represents participating physicians, one represents hospitals, one represents casualty insurers, and one represents physicians other than participating physicians. The CFO can choose board members from a list of names submitted by various trade associations for all board members except the one representing citizens, but is not bound by the nominations from the associations.⁶

The Florida Obstetric and Gynecological Society and the Florida Hospital Association, respectively, submit recommendations for the representative of participating physicians and the representative of

¹ Section 627.351(4)(h)1., F.S.

² <http://www.insurancejournal.com/magazines/features/2004/01/12/35629.htm> (Last accessed: March 16, 2014).

³ Section 766.302(2), F.S.

⁴ Section 766.304, F.S.

⁵ <http://www.nica.com/what-is-nica.html> (Last accessed: March 16, 2014).

⁶ Section 766.315(2)(a), F.S.

hospitals on the NICA board. The bill removes authority for the Florida Obstetric and Gynecological Society to make recommendations for a NICA board member to represent participating physicians and provides authority to the American Congress of Obstetricians and Gynecologists (ACOG), District XII. District XII Florida became effective January 1, 2013, and represents the entire state of Florida.⁷

The American Insurance Association, the Alliance of American Insurers, and the National Association of Independent Insurers each submit one name to the CFO for the casualty insurer representative on the NICA board.⁸ The bill maintains the authority of the American Insurance Association to recommend a NICA board member to the CFO. It also provides authority to the Florida Insurance Council and the PCI (the successor organization to the Alliance of American Insurers and the National Association of Independent Insurers) to each recommend a board member.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 2. Amends s. 766.315, F.S., relating to Florida Birth-Related Neurological Injury Compensation Association; board of directors.

Section 3. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

⁷ See the ACOG, District XII Florida website: http://www.acog.org/About_ACOG/ACOG_Districts/District_XII (Last accessed: March 16, 2014). Any member of ACOG, District XII holding the designation of Fellow, Junior Fellow, or Life Fellow automatically qualifies as an active member of the Florida Obstetric and Gynecological Society.

⁸ Other trade associations submit names to the CFO for the NICA board. (s. 766.315(2), F.S.).

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2014, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute. The proposed committee substitute amended the bill to accurately reflect the trade associations that are authorized to recommend board members for the Florida Medical Malpractice Joint Underwriting Association and the Florida Birth-Related Neurological Injury Compensation Association.

The staff analysis is drafted to reflect the committee substitute.