

Alexander McCracken

From: Jamie Feehan <jfeehan@primmer.com>
Sent: Tuesday, February 7, 2023 5:44 PM
To: Virginia Lyons
Cc: Amerin Aborjaily; Alexander McCracken
Subject: [External] S.37 Med Mal Comments

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Hi, Sen. Lyons,

I submit these brief comments and proposal of amendment to Section 2 of S.37 related to medical malpractice insurance on behalf of the American Property Casualty Insurance Association (APCIA). APCIA is a national trade association of property and casualty insurers and counts among its members several insurers that provide medical malpractice insurance in Vermont.

APCIA understands the intent of Section 2 amending Section 4728 of Title 8 to prevent a medical malpractice insurer to arbitrarily adjust risk classification and premium charged to health care providers because they happen to perform legally protected health care activities in Vermont. APCIA has seen other physician “shield” type laws surface in other states.

APCIA interprets the language beginning in Line 1 on page 6, however, to also prevent a medical malpractice insurer from adjusting premium for reasons typically involved in underwriting, such as consideration of claims loss experience, or instances where the applicable professional standards of care may not be met. If this is not the intent, APCIA proposes the following clarification that will preserve the prohibition on arbitrary actions but permit the usual underwriting review:

(F) Discriminating against a health care provider, as defined by 18 V.S.A. § 9496, or adjusting or otherwise calculating a health care provider’s risk classification or premium charges **solely** on the basis that:

(i) the health care provider provides or assists in the provision of legally protected health care activity in this State that is unlawful in another state;

(ii) another state’s laws create potential or actual liability for that activity; or

(iii) abusive litigation against a provider concerning legally protected health care activity resulted in a judgement against the provider.

Thank you for your time and consideration.

Jamie Feehan

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