FMA’s malpractice relief bill riding high in House

By Jim Saunders

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With lawmakers getting “lobbied to death” on the issue, a House committee Thursday expanded a bill that would help doctors and hospitals fight medical-malpractice lawsuits.

The House Judiciary Committee voted 15-3 to approve HB 479, after making a controversial change that would give defense attorneys a new tool in gathering information about patients in medical-malpractice cases.

Also, the committee added legal protections for doctors who volunteer to work with high-school athletics teams.

The bill, a top priority of the Florida Medical Association, is now ready to go to the full House, and a similar measure is moving through the Senate. Trial lawyers are trying to torpedo the proposal, arguing that it would hurt malpractice victims.

Bill sponsor Mike Horner, R-Kissimmee, said Florida doctors pay some of the highest medical-malpractice insurance rates in the country, which hurts the state's ability to recruit and keep physicians. As an example, he pointed to Rep. Ari Porth, whose brother practices medicine in Alabama instead of in Florida.

"The medical-malpractice rates in this state are out of control," said Horner, who added that committee members had been "lobbied to death" on the bill.

But Pensacola trial attorney Marcus Michles said comparisons of malpractice-insurance rates in Florida and other states are faulty, because of differences in the coverage amounts that doctors typically buy. Also, opponents said the bill does not guarantee that insurance rates or health-care costs would be reduced.

"Where is the money?" asked Rep. Elaine Schwartz, a Hollywood Democrat who was one of the dissenters. "Where is the savings going to be?"

A key part of the bill would require out-of-state expert witnesses in malpractice cases to go through a certification process and face possible discipline if they provide deceptive or fraudulent testimony.

Supporters say that change would hold expert witnesses more accountable, but trial lawyers say it is an attempt to discourage experts from testifying against doctors accused of malpractice.

Another major part of the bill would shield hospitals from lawsuits if medical errors are caused by doctors who are contractors --- as opposed to doctors who are hospital employees.

The biggest debate Thursday centered on an amendment that would allow defense attorneys to informally interview physicians who treat injured patients after alleged malpractice occurs. Those interviews would be allowed to happen without the patients' attorneys participating, what is known legally as an "ex parte" conversation.

That proposal was in the bill originally, but another House panel removed it last week. In a voice vote, the Judiciary Committee put it back in the bill Thursday.
Allowing ex-parte communications would give defense attorneys another tool to gain information about patients. Rep. Matt Gaetz, R-Fort Walton Beach, said that could save money, as it would help attorneys more quickly decide whether to settle cases.

But Rep. Richard Steinberg, D-Miami Beach, said the change could infringe on the private relationship between patients and their treating physicians.

"I think that we are really crossing the line here," he said.