

Committee on Banking and Insurance

CS/CS/HB 119 — Motor Vehicle Personal Injury Protection Insurance

by Economic Affairs Committee; Insurance and Banking Subcommittee; and Rep. Boyd and others (CS/CS/SB 1860 by Budget Committee; Banking and Insurance Committee; and Senator Negrón)

Senate Bill 1860 revises the Florida Motor Vehicle No-Fault Law. The bill primarily amends laws governing Personal Injury Protection (PIP) benefits under the No-Fault law and laws related to PIP motor-vehicle insurance fraud. The major changes enacted by the bill are as follows:

PIP Medical Benefits

The bill revises the provision of Personal Injury Protection medical benefits under the Florida Motor Vehicle No-Fault Law, effective January 1, 2013. Individuals seeking PIP medical benefits are required to receive initial services and care within 14 days after the motor vehicle accident. Initial services and care are only reimbursable if lawfully provided, supervised, ordered or prescribed by a licensed physician, licensed osteopathic physician, licensed chiropractic physician, licensed dentist, or must be rendered in a hospital, a facility that owns or is owned by a hospital, or a licensed emergency transportation and treatment provider. Follow up services and care require a referral from such providers and must be consistent with the underlying medical diagnosis rendered when the individual received initial services and care.

The bill applies two different coverage limits for PIP medical benefits, based upon the severity of the medical condition of the individual. An individual may receive up to \$10,000 in medical benefits for services and care if a physician, osteopathic physician, dentist, physician's assistant or advanced registered nurse practitioner has determined that the injured person had an emergency medical condition. An emergency medical condition is defined as a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to patient health, serious impairment to bodily functions, or serious dysfunction of a body organ or part. An individual who is not diagnosed with an emergency medical condition, the PIP medical benefit limit is \$2,500. Massage and acupuncture are not reimbursable, regardless of who the type of provider rendering such services.

PIP Death Benefit

Personal Injury Protection now offers \$5,000 in death benefits in addition to \$10,000 in medical and disability benefits. Previously, the death benefit was the lesser of the unused PIP benefits, up to a limit of \$5,000. The increased death benefit is effective January 1, 2013.

PIP Medical Fee Schedule

The bill revises provisions related to the PIP medical fee schedule in an effort to resolve alleged ambiguities in the schedule that have led to conflicts and litigation between claimants and insurers. The bill clarifies that the reimbursement levels for care provided by ambulatory surgical

centers and clinical laboratories and for durable medical equipment is 200 percent of the appropriate Medicare Part B schedule. The Medicare fee schedule on effect on March 1 will be the applicable fee schedule for the remainder of that year until the subsequent update. Insurers are authorized to use Medicare coding policies and payment methodologies of the Centers for Medicare and Medicare Services, including applicable modifiers, when applying the fee schedule if they do not constitute a utilization limit. The bill also requires insurers to include notice of the fee schedule in their policies. These provisions are effective January 1, 2013.

Attorney Fees

The bill amends provisions related to attorney fee awards in No-Fault disputes. The bill prohibits the application of attorney fee multipliers. The offer of judgment statute, s. 768.79, F.S., is applied to No-Fault cases, providing statutory authority for insurers to recover fees if the plaintiff's recovery does not exceed the insurer's settlement offer by a statutorily specified percentage. The bill maintains current law allowing a party that obtains a favorable judgment from an insurer to recover reasonable attorney fees from the insurer. The bill also requires that the attorney fees awarded must comply with prevailing professional standards, not overstate or inflate the number of hours reasonably necessary for a case of comparable skill or complexity, and represent legal services that are reasonable to achieve the result obtained.

Investigation and Payment of Claims

Provisions relating to the investigation of PIP claims by insurers are revised, effective January 1, 2013. Insurers are authorized to take an examination under oath (EUO) of an insured. Compliance is a condition precedent for receiving benefits (the insurer owes zero benefits if the insured does not comply). An insurer that unreasonably requests EUOs as a general business practice, as determined by the Office of Insurance Regulation (OIR), is subject to s. 626.9541, F.S. of the Unfair Insurance Trade Practices Act. The bill also provides that if a person unreasonably fails to appear for an independent medical examination (IME), the carrier is no longer responsible for benefits. Refusal or failure to appear for two IMEs raises a rebuttable presumption that the refusal or failure was unreasonable.

Changes are made to the statutory process for the payment of PIP benefits, primarily to assist claimants in their claim submissions, effective January 1, 2013. A claimant whose claim is denied due to an error in the claim is given 15 additional days to correct the erroneous claim and resubmit it timely. The insurer must maintain a log of all PIP benefits paid on behalf of the insured and must provide the log to the insured upon his or her request if litigation has initiated. If a dispute between insurers and insureds occurs, the insurer must provide notice within 15 days of the exhaustion of PIP benefits. Insurers must reimburse Medicaid within 30 days. The electronic submission of records is authorized, effective December 1, 2012.

Prevention of PIP-Related Insurance Fraud

House Bill 119 contains numerous provisions designed to curtail PIP fraud. The bill defines insurance fraud as knowingly presenting a PIP claim to an insurer for payment or other benefits

on behalf of a person or entity that committed fraud when applying for health care clinic licensure, seeking an exemption from clinic licensure, or demonstrating compliance with the Health Care Clinic Law. Claims that are unlawful under the patient brokering law (s. 817.505, F.S.) are not reimbursable under the No-Fault Law. A health care practitioner found guilty of insurance fraud under s. 817.234, F.S., loses his or her license for 5 years and may not receive PIP reimbursement for 10 years. Insurers are provided an additional 60 days (90 total) to investigate suspected fraudulent claims, however, an insurer that ultimately pays the claim must also pay an interest penalty.

All entities seeking reimbursement under the No-Fault Law must obtain health care clinic licensure except for hospitals, ambulatory surgical centers, entities owned or wholly owned by a hospital, clinical facilities affiliated with an accredited medical school and practices wholly owned by a physician, dentist, or chiropractic physician or by such physicians and specified family members. The bill creates standards for evaluating whether an entity claiming it is exempt from the requirement to obtain clinic licensure is actually wholly owned by a physician.

The bill defines failure to pay PIP claims within the time limits of s. 627.736(4)(b), F.S., as an unfair and deceptive practice. The OIR may order restitution to the insured or provider, but is not limited in its other administrative penalties, which may include suspending the insurer's certificate of authority.

Law enforcement is required to complete a long-form crash report when there is an indication of pain or discomfort by any party to a crash. All crash reports completed by law enforcement must identify the vehicle in which each party was a driver or passenger. For all crashes that do not require a law enforcement report, the vehicle driver must submit a report on the crash to the Department of Highway Safety and Motor Vehicles within 10 days of the crash.

The bill creates a non-profit direct support organization, the Automobile Insurance Fraud Strike Force, which can accept private donations for the purposes of preventing, investigating, and prosecuting motor vehicle insurance fraud. Monies raised by the Strike Force may fund the salaries of insurance fraud investigators, prosecutors, and support personnel so long as such grants or expenditures do not interfere with prosecutorial independence. Funds may not be used to advertise using the likeness or name of any elected official or for lobbying.

Mandatory Rate Filings and Data Call

The Office of Insurance Regulation must contract with a consulting firm to calculate the expected savings from the act, which must be presented to the Governor and Legislature by September 15, 2012. By October 1, 2012, each insurer that writes private passenger automobile personal injury protection insurance must submit a rate filing. If the insurer requests a rate that does not provide at least a 10 percent reduction of its current rate, it must explain in detail its reasons for failing to achieve those savings. A second rate filing must be made by January 1, 2014. If the insurer requests a rate that does not provide at least a 25 percent reduction of the rate that was in effect on July 1, 2012, it must explain in detail its reasons for failing to achieve those

savings. The Office of Insurance Regulation must order an insurer to stop writing new PIP policies if the insurer requests a rate in excess of the statutorily required rate reduction and fails to provide a detailed explanation for that failure. The Office of Insurance Regulation must perform a comprehensive PIP data call and publish the results by January 1, 2015. The data call will analyze the impact of the act's reforms on the PIP insurance market.

If approved by the Governor, these provisions take effect July 1, 2012, except as otherwise provided.

Vote: Senate 22-17; House 80-34