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## **PIP reform bill cuts incentives to providers, savings to be calculated**

*By Katherine Scott Webb and Erin T. Siska*

Reform of Florida's fraud-ridden personal injury protection system was a key issue during the recent legislative session. It is a no-fault system, with each insured required to carry \$10,000 in minimum coverage per person for bodily injuries sustained in a motor vehicle accident.

Initially, the Florida House wanted a bill that would cover only emergency room visits and cap attorney fees. In contrast, the Senate favored legislation that focused on stricter licensing requirements for medical clinics and did not cap attorney fees.

Ultimately, the two bodies worked out a compromise bill, CS/CS/HB 119, on the last day of the session. It contains some beneficial reform measures and some others whose effectiveness will need to be evaluated in the upcoming months and years.

The final legislation includes several provisions that remove or reduce the financial incentives that have led some medical care providers to take advantage of the current PIP system.

For example, the full \$10,000 PIP medical benefit will be available only if a physician, osteopathic physician, dentist, a supervised physician's assistant or an advanced registered nurse practitioner determines the insured has an "emergency medical condition." Otherwise, the PIP medical benefit will be limited to \$2,500.

For strains and sprains, which comprise the majority of auto accident injuries, there will be less money available for pain clinics and other care providers to submit abusive and fraudulent claims. When the legislation becomes effective, follow-up service and care will also require a referral from a physician, osteopath, chiropractor or dentist.

Massage therapists and acupuncturists will no longer be eligible for reimbursement from the PIP system.

Treatment of pain and soft-tissue injuries by massage therapists and acupuncturists have been huge cost drivers in the current PIP system.

The Florida Office of Insurance Regulation published its review of PIP data Call a year ago and found the number of massages increased 251 percent and the amount reimbursed for massages increased 202 percent from 2007 to 2010.

Also, the Florida Insurance Consumer Advocate's report on PIP insurance published last December found that in 2010, the highest average charges per PIP claimant were filed by

acupuncturists at \$3,674 and massage therapists at \$4,350. By contrast, emergency medical care providers had the lowest average charge per PIP claimant at \$1,613

Eliminating massage therapists and acupuncturists from the PIP reimbursement system may help rein in the skyrocketing loss costs insurers have experienced.

### **Clinic Licensing**

Another way the legislation should reduce fraud is through its clinic licensure requirements. It requires most health care clinics to be licensed in order to bill the PIP system, although exceptions were made for clinics that are owned by physicians, hospitals and educational institutions.

A similar ordinance was enacted in Hillsborough County with dramatic results. By 2012, the Hillsborough Consumer Protection Agency reported nearly 50 percent of suspected fraudulent clinics had closed. Five months after the ordinance took effective, staged auto accidents in the county were reportedly down 62 percent.

The compromise bill, HB 119, also contains a provision that allows insurance companies 90 days to investigate claims they reasonably believe to be fraudulent. The previous time period was 30 days.

Attorney fee reform is a vital component of PIP reform. Exposure to exorbitant attorney fee awards can cause insurers to settle suspicious claims that may be fraudulent.

HB 119 contains some attorney fee reform provisions. The bill prohibits the use of a contingency risk multiplier when calculating plaintiffs attorney fees. Elimination of the multiplier may result in more voluntary dismissals of abusive lawsuits.

The other significant litigation-related provisions of the bill concern Independent Medical Examinations and Examinations Under Oath. Insurance companies use IMEs and EUOs as tools to investigate fraudulent claims.

With this bill, the state will clarify that an insured's refusal to submit to or failure to appear at two mental or physical examinations raises a rebuttable presumption that the insured's refusal or failure was unreasonable.

Regarding EUOs, the law would clarify that the insured's submission to an EUO is a condition precedent to receiving benefits. But if an insurer makes a general business practice of requesting an EUO of insureds without a reasonable basis, it will be subject to Florida's Unfair Insurance Trade Practices Act.

The bill also makes it an unfair settlement practice for an insurance company to systematically fail to pay PIP claims within 30 days after the insurance company is furnished written notice of a covered loss and of the amount.

The legislation requires the OIR to contract with a consulting firm to calculate the expected savings from the act, which must be presented to the governor and Legislature by Sept. 15.

It remains to be seen whether the measure will result in actual savings when insurance companies submit their required rate filings to the OIR in October and again in January 2014.

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