

By the Committees on Criminal Justice; Banking and Insurance;
and Senators Campbell and Crist

307-1787-01

1 A bill to be entitled
2 An act relating to insurance fraud; providing
3 legislative findings; creating s. 456.0375,
4 F.S., relating to clinics; defining the term
5 "clinic"; imposing registration requirements
6 for certain clinics; providing for medical
7 directors; providing for enforcement; amending
8 s. 626.989, F.S., relating to Department of
9 Insurance investigation of insurance fraud;
10 revising immunity provisions; amending s.
11 627.732, F.S., relating to definitions;
12 defining the terms "medically necessary" and
13 "broker"; amending s. 627.736, F.S.; revising
14 provisions relating to required personal injury
15 protection benefits; deleting provisions
16 specifying what medical payments insurance
17 pays; revising provisions for charges for
18 treatments; providing for presuit notice;
19 amending s. 627.739, F.S.; providing
20 circumstances for which an insurer is not
21 required to pay any charge; amending s.
22 817.234, F.S.; revising provisions relating to
23 false and fraudulent insurance claims; amending
24 s. 817.505, F.S.; providing penalties; amending
25 s. 324.021, F.S.; conforming provisions to
26 changes made by the act; providing effective
27 dates.

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Legislative findings.--The Legislature
2 finds and declares that the purposes of the Florida Motor
3 Vehicle No-Fault Law have included providing to the public
4 affordable personal injury protection insurance, which is
5 intended to deliver to persons involved in motor vehicle
6 crashes medically necessary and appropriate medical care
7 quickly, and without undue litigation or other associated
8 costs, but that these purposes have been impeded by, among
9 other things, fraud, medically inappropriate over-utilization
10 of treatment and diagnostic services, inflated charges, and
11 other practices of a small number of health care providers,
12 entrepreneurs, and attorneys who are adding significant costs
13 to consumers, yet providing little or no real benefits. The
14 Legislature finds that some, but not all, of these practices
15 are described in the Statewide Grand Jury Report entitled
16 "Report on Insurance Fraud Related to Personal Injury
17 Protection" in case No. 95-746 in the Supreme Court of the
18 State of Florida, and the Legislature adopts and incorporates
19 in this section by reference as findings the entirety of such
20 report. The Legislature further finds that the problems
21 addressed in this report and in this act are matters of great
22 public interest and importance to public health, safety, and
23 welfare, and that the specific provisions of this act are the
24 least-restrictive reasonable means by which to solve these
25 problems.

26 Section 2. Effective October 1, 2001, section
27 456.0375, Florida Statutes, is created to read:

28 456.0375 Registration of certain clinics;
29 requirements; discipline; exemptions.--

30 (1) As used in this section, the term "clinic" means a
31 business operating in a single structure or facility or group

1 of adjacent structures or facilities under the same business
2 name or management at which health care services are provided
3 to individuals and for which such business tenders charges for
4 reimbursement for such services, unless it is otherwise
5 licensed, registered, or certified by the state pursuant to
6 chapter 390, chapter 394, chapter 395, chapter 400, chapter
7 463, chapter 465, chapter 466, chapter 478, chapter 480, or
8 chapter 484 or is exempt from federal taxation under 26 U.S.C.
9 s. 501(c)(3). This section shall also not apply to a group
10 practice, partnership, or corporation that provides health
11 care services by licensed health care practitioners in
12 accordance with chapter 457, chapter 462, chapter 463, chapter
13 466, chapter 467, chapter 484, chapter 486, chapter 490,
14 chapter 491, or part I, part III, part X, part XIII, or part
15 XIV of chapter 468 which is wholly owned by licensed health
16 care practitioners or the spouse, parent, or child of a
17 licensed health care practitioner.

18 (2)(a) A clinic in which an entity or individual other
19 than those licensed under chapter 458, chapter 459, chapter
20 460, or chapter 461 possesses an ownership interest must
21 register with the department. The clinic must at all times
22 maintain a valid registration. Each clinic location must be
23 registered separately even though operated under the same
24 business name or management. For purposes of determining
25 registration requirements under this paragraph, a clinic owned
26 by a physician licensed under chapter 458, chapter 459,
27 chapter 460, or chapter 461 also includes any clinic owned
28 jointly by the physician and the physician's spouse, parent,
29 or child if the licensed physician supervises the services
30 performed in the clinic and is legally responsible for the
31 clinic's compliance with all federal and state laws.

1 (b) The department shall adopt rules necessary to
2 administer the registration program, including rules
3 establishing the specific registration procedures, forms, and
4 fees. Registration fees must be calculated to reasonably cover
5 the cost of registration and must be in such amount that the
6 total fees collected do not exceed the cost of administering
7 and enforcing compliance with this section. The registration
8 program must require:

9 1. The clinic to file the registration form with the
10 department within 60 days after the effective date of this
11 section or prior to the inception of operation. The
12 registration expires automatically 2 years after its date of
13 issuance and must be renewed biennially thereafter.

14 2. The registration form to contain the name,
15 residence, and business address, phone number, and license
16 number of the medical director for the clinic.

17 3. The clinic to display the registration certificate
18 in a conspicuous location within the clinic which is readily
19 visible to all patients.

20 (3)(a) Each clinic owned by an individual other than a
21 fully licensed physician or owned by an entity other than a
22 professional corporation or limited liability company composed
23 only of fully licensed physicians must employ or contract with
24 a physician maintaining a full and unencumbered physician
25 license in accordance with chapter 458, chapter 459, chapter
26 460, or chapter 461 to serve as the medical director.

27 (b) A medical director must agree in writing to accept
28 legal responsibility for supervising the delivery of
29 appropriate health care services and supplies. The medical
30 director shall:

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1 1. Have signs identifying the medical director posted
2 in a conspicuous location within the clinic which is readily
3 visible to all patients.

4 2. Ensure that all practitioners providing health care
5 services or supplies to patients maintain a current active and
6 unencumbered Florida license.

7 3. Review any patient-referral contracts or agreements
8 executed by the clinic.

9 4. Ensure that all health care practitioners at the
10 clinic have active appropriate certification or licensure for
11 the level of care being provided.

12 5. Serve as the clinic records owner as defined in s.
13 456.057.

14 6. Comply with the medical recordkeeping,
15 office-surgery, and adverse-incident-reporting requirements of
16 chapter 456, the respective practice acts, and the rules
17 adopted thereunder.

18 7. Conduct systematic reviews of clinic billings to
19 ensure that the billings are not fraudulent or unlawful. Upon
20 discovery of an unlawful charge, the medical director must
21 take immediate corrective action.

22 (c) Any contract to serve as a medical director
23 entered into or renewed by a physician in violation of this
24 section is void as contrary to public policy. This section
25 applies to contracts entered into or renewed on or after
26 October 1, 2001.

27 (d) The department, in consultation with the boards,
28 shall adopt rules specifying limitations on the number of
29 registered clinics and licensees for which a medical director
30 may assume responsibility for purposes of this section. In
31 determining the quality of supervision a medical director can

1 provide, the department shall consider the number of clinic
2 employees, the clinic location, and the services provided by
3 the clinic.

4 (4)(a) All charges or reimbursement claims made by or
5 on behalf of a clinic that is required to be registered under
6 this section but that is not so registered are unlawful
7 charges and therefore are noncompensable and unenforceable.
8 Any person establishing, operating, or managing an
9 unregistered clinic otherwise required to be registered under
10 this section commits a felony of the third degree, as provided
11 in s. 775.082, s. 775.083, or s. 775.084.

12 (b) Any licensed health care practitioner who violates
13 this section is subject to discipline in accordance with
14 chapter 456 and the respective practice act.

15 (c) The department shall revoke the registration of
16 any clinic registered under this section for operating in
17 violation of the requirements of this section.

18 Section 3. Paragraph (c) of subsection (4) of section
19 626.989, Florida Statutes, is amended to read:

20 626.989 Investigation by department or Division of
21 Insurance Fraud; compliance; immunity; confidential
22 information; reports to division; division investigator's
23 power of arrest.--

24 (4)

25 (c) In the absence of fraud or bad faith, a person is
26 not subject to civil liability for libel, slander, or any
27 other relevant tort by virtue of filing reports, without
28 malice, or furnishing other information, without malice,
29 required by this section or required by the department or
30 division under the authority granted in this section, and no
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1 civil cause of action of any nature shall arise against such
2 person:

3 1. For any information relating to suspected
4 fraudulent insurance acts or persons suspected of engaging in
5 such acts furnished to or received from any local, state, or
6 federal law enforcement officials, their agents, or employees;

7 2. For any information relating to suspected
8 fraudulent insurance acts or persons suspected of engaging in
9 such acts furnished to or received from other persons subject
10 to the provisions of this chapter; ~~or~~

11 3. For any such information furnished in reports to
12 the department, the division, the National Insurance Crime
13 Bureau, ~~or~~ the National Association of Insurance
14 Commissioners, or any local, state, or federal enforcement
15 officials or their agents or employees; or

16 4. For other actions taken in cooperation with any of
17 the agencies or individuals specified in this paragraph in the
18 lawful investigation of suspected fraudulent insurance acts.

19 Section 4. Section 627.732, Florida Statutes, is
20 amended to read:

21 627.732 Definitions.--As used in ss. 627.730-627.7405,
22 the term:

23 (1) "Broker" means any person not possessing a license
24 under chapter 395, chapter 400, chapter 458, chapter 459,
25 chapter 460, chapter 461, or chapter 641 who charges or
26 receives compensation for any use of medical equipment and is
27 not the 100-percent owner or the 100-percent lessee of such
28 equipment. For purposes of this section, such owner or lessee
29 may be an individual, a corporation, a partnership, or any
30 other entity and any of its 100-percent-owned affiliates and
31 subsidiaries. For purposes of this subsection, the term

1 "lessee" means a long-term lessee under a capital or operating
2 lease, but does not include a part-time lessee. The term
3 "broker" does not include a hospital or physician management
4 company whose medical equipment is ancillary to the practices
5 managed, a debt collection agency, or an entity that has
6 contracted with the insurer to obtain a discounted rate for
7 such services; nor does the term include a management company
8 that has contracted to provide general management services for
9 a licensed physician or health care facility and whose
10 compensation is not materially affected by the usage or
11 frequency of usage of medical equipment or an entity that is
12 100-percent owned by one or more hospitals or physicians.

13 (2) "Medically necessary" refers to a medical service
14 or supply that a prudent physician would provide for the
15 purpose of preventing, diagnosing, or treating an illness,
16 injury, disease, or symptom in a manner that is:

17 (a) In accordance with generally accepted standards of
18 medical practice;

19 (b) Clinically appropriate in terms of type,
20 frequency, extent, site, and duration; and

21 (c) Not primarily for the convenience of the patient,
22 physician, or other health care provider.

23 (3)~~(1)~~ "Motor vehicle" means any self-propelled
24 vehicle with four or more wheels which is of a type both
25 designed and required to be licensed for use on the highways
26 of this state and any trailer or semitrailer designed for use
27 with such vehicle and includes:

28 (a) A "private passenger motor vehicle," which is any
29 motor vehicle which is a sedan, station wagon, or jeep-type
30 vehicle and, if not used primarily for occupational,

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1 professional, or business purposes, a motor vehicle of the
2 pickup, panel, van, camper, or motor home type.

3 (b) A "commercial motor vehicle," which is any motor
4 vehicle which is not a private passenger motor vehicle.

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6 The term "motor vehicle" does not include a mobile home or any
7 motor vehicle which is used in mass transit, other than public
8 school transportation, and designed to transport more than
9 five passengers exclusive of the operator of the motor vehicle
10 and which is owned by a municipality, a transit authority, or
11 a political subdivision of the state.

12 (4)~~(2)~~ "Named insured" means a person, usually the
13 owner of a vehicle, identified in a policy by name as the
14 insured under the policy.

15 (5)~~(3)~~ "Owner" means a person who holds the legal
16 title to a motor vehicle; or, in the event a motor vehicle is
17 the subject of a security agreement or lease with an option to
18 purchase with the debtor or lessee having the right to
19 possession, then the debtor or lessee shall be deemed the
20 owner for the purposes of ss. 627.730-627.7405.

21 (6)~~(4)~~ "Relative residing in the same household" means
22 a relative of any degree by blood or by marriage who usually
23 makes her or his home in the same family unit, whether or not
24 temporarily living elsewhere.

25 (7)~~(5)~~ "Recovery agent" means any person or agency who
26 is licensed as a recovery agent or recovery agency and
27 authorized under s. 324.202 to seize license plates.

28 Section 5. Subsections (1), (4), (5), (7), (8), and
29 (9) of section 627.736, Florida Statutes, are amended, and
30 subsections (11) and (12) are added to that section, to read:

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1 627.736 Required personal injury protection benefits;
2 exclusions; priority; claims.--

3 (1) REQUIRED BENEFITS.--Every insurance policy
4 complying with the security requirements of s. 627.733 shall
5 provide personal injury protection to the named insured,
6 relatives residing in the same household, persons operating
7 the insured motor vehicle, passengers in such motor vehicle,
8 and other persons struck by such motor vehicle and suffering
9 bodily injury while not an occupant of a self-propelled
10 vehicle, subject to the provisions of subsection (2) and
11 paragraph (4)(d), to a limit of \$10,000 for loss sustained by
12 any such person as a result of bodily injury, sickness,
13 disease, or death arising out of the ownership, maintenance,
14 or use of a motor vehicle as follows:

15 (a) Medical benefits.--Eighty percent of all
16 reasonable expenses for medically necessary medical, surgical,
17 X-ray, dental, and rehabilitative services, including
18 prosthetic devices, and medically necessary ambulance,
19 hospital, and nursing services. Such benefits shall also
20 include necessary remedial treatment and services recognized
21 and permitted under the laws of the state for an injured
22 person who relies upon spiritual means through prayer alone
23 for healing, in accordance with his or her religious beliefs;
24 however, this sentence does not affect the determination of
25 what other services or procedures are medically necessary.

26 (b) Disability benefits.--Sixty percent of any loss of
27 gross income and loss of earning capacity per individual from
28 inability to work proximately caused by the injury sustained
29 by the injured person, plus all expenses reasonably incurred
30 in obtaining from others ordinary and necessary services in
31 lieu of those that, but for the injury, the injured person

1 would have performed without income for the benefit of his or
2 her household. All disability benefits payable under this
3 provision shall be paid not less than every 2 weeks.

4 (c) Death benefits.--Death benefits of \$5,000 per
5 individual. The insurer may pay such benefits to the executor
6 or administrator of the deceased, to any of the deceased's
7 relatives by blood or legal adoption or connection by
8 marriage, or to any person appearing to the insurer to be
9 equitably entitled thereto.

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11 Only insurers writing motor vehicle liability insurance in
12 this state may provide the required benefits of this section,
13 and no such insurer shall require the purchase of any other
14 motor vehicle coverage other than the purchase of property
15 damage liability coverage as required by s. 627.7275 as a
16 condition for providing such required benefits. Insurers may
17 not require that property damage liability insurance in an
18 amount greater than \$10,000 be purchased in conjunction with
19 personal injury protection. Such insurers shall make benefits
20 and required property damage liability insurance coverage
21 available through normal marketing channels. Any insurer
22 writing motor vehicle liability insurance in this state who
23 fails to comply with such availability requirement as a
24 general business practice shall be deemed to have violated
25 part X of chapter 626, and such violation shall constitute an
26 unfair method of competition or an unfair or deceptive act or
27 practice involving the business of insurance; and any such
28 insurer committing such violation shall be subject to the
29 penalties afforded in such part, as well as those which may be
30 afforded elsewhere in the insurance code.

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1 (4) BENEFITS; WHEN DUE.--Benefits due from an insurer
2 under ss. 627.730-627.7405 shall be primary, except that
3 benefits received under any workers' compensation law shall be
4 credited against the benefits provided by subsection (1) and
5 shall be due and payable as loss accrues, upon receipt of
6 reasonable proof of such loss and the amount of expenses and
7 loss incurred which are covered by the policy issued under ss.
8 627.730-627.7405. When the Agency for Health Care
9 Administration provides, pays, or becomes liable for medical
10 assistance under the Medicaid program related to injury,
11 sickness, disease, or death arising out of the ownership,
12 maintenance, or use of a motor vehicle, benefits under ss.
13 627.730-627.7405 shall be subject to the provisions of the
14 Medicaid program.

15 (a) An insurer may require written notice to be given
16 as soon as practicable after an accident involving a motor
17 vehicle with respect to which the policy affords the security
18 required by ss. 627.730-627.7405.

19 (b) Personal injury protection insurance benefits paid
20 pursuant to this section shall be overdue if not paid within
21 30 days after the insurer is furnished written notice of the
22 fact of a covered loss and of the amount of same. If such
23 written notice is not furnished to the insurer as to the
24 entire claim, any partial amount supported by written notice
25 is overdue if not paid within 30 days after such written
26 notice is furnished to the insurer. Any part or all of the
27 remainder of the claim that is subsequently supported by
28 written notice is overdue if not paid within 30 days after
29 such written notice is furnished to the insurer. When an
30 insurer pays only a portion of a claim or rejects a claim, the
31 insurer shall include with the partial payment or rejection an

1 itemized specification of each item that the insurer had
2 reduced, omitted, or declined to pay and any information that
3 the insurer desires the claimant to consider related to the
4 medical necessity of the denied treatment or to explain the
5 reasonableness of the reduced charge, provided that this shall
6 not limit the insurer's evidence at trial; and the insurer
7 shall include the name and address of the person to whom the
8 claimant should respond and a claim number to be referenced in
9 future correspondence. However, notwithstanding the fact that
10 written notice has been furnished to the insurer, any payment
11 shall not be deemed overdue when the insurer has reasonable
12 proof to establish that the insurer is not responsible for the
13 payment, notwithstanding that written notice has been
14 furnished to the insurer.

15 1. An insurer shall have an additional 30 days from
16 the date the claim would otherwise have become overdue under
17 this subsection to pay a claim that the insurer refers within
18 30 days from the date of the claim to the Department of
19 Insurance pursuant to s. 626.989, if the insurer has
20 reasonable evidence to establish that the claim or a portion
21 of the claim arises from a fraudulent insurance act as defined
22 in s. 626.989 or is a criminal act involving insurance fraud,
23 including a violation of s. 817.234 or s. 817.505 or kickbacks
24 under s. 456.054 associated with a claim for personal injury
25 protection benefits in accordance with s. 627.736. Nothing in
26 this paragraph changes the standard in s. 626.989 which
27 requires an insurer to refer suspected fraudulent insurance
28 acts or other specified acts or practices to the department.
29 The insurer shall provide the department with any information
30 in support of the referral, and shall, except when the
31 department agrees that it would compromise the investigation,

1 notify the person submitting the claim that the claim has been
2 referred to the Department of Insurance for investigation. Any
3 insurer who engages in a general business practice of
4 forwarding valid claims or portions thereof for investigation
5 under this section commits an unfair trade practice under the
6 Insurance Code.

7 2. For the purpose of calculating the extent to which
8 any benefits are overdue, payment shall be treated as being
9 made on the date a draft or other valid instrument which is
10 equivalent to payment was placed in the United States mail in
11 a properly addressed, postpaid envelope or, if not so posted,
12 on the date of delivery. This paragraph does not preclude or
13 limit the ability of the insurer to assert that the claim was
14 unrelated, was not medically necessary, or was unreasonable or
15 that the amount of the charge was in excess of that permitted
16 under, or in violation of, subsection (5). Such assertion by
17 the insurer may be made at any time, including after payment
18 of the claim or after the 30-day time period for payment set
19 forth in this paragraph.

20 (c) All overdue payments shall bear simple interest at
21 the rate established by the Comptroller under s. 55.03 or the
22 rate established in the insurance contract, whichever is
23 greater, for the year in which the payment became overdue and
24 for claims referred to the Department of Insurance for
25 investigation under paragraph (b), calculated from the date
26 the insurer was furnished with written notice of the amount of
27 covered loss. Interest shall be due at the time payment of the
28 overdue claim is made of 10 percent per year.

29 (d) The insurer of the owner of a motor vehicle shall
30 pay personal injury protection benefits for:
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1 1. Accidental bodily injury sustained in this state by
2 the owner while occupying a motor vehicle, or while not an
3 occupant of a self-propelled vehicle if the injury is caused
4 by physical contact with a motor vehicle.

5 2. Accidental bodily injury sustained outside this
6 state, but within the United States of America or its
7 territories or possessions or Canada, by the owner while
8 occupying the owner's motor vehicle.

9 3. Accidental bodily injury sustained by a relative of
10 the owner residing in the same household, under the
11 circumstances described in subparagraph 1. or subparagraph 2.,
12 provided the relative at the time of the accident is domiciled
13 in the owner's household and is not himself or herself the
14 owner of a motor vehicle with respect to which security is
15 required under ss. 627.730-627.7405.

16 4. Accidental bodily injury sustained in this state by
17 any other person while occupying the owner's motor vehicle or,
18 if a resident of this state, while not an occupant of a
19 self-propelled vehicle, if the injury is caused by physical
20 contact with such motor vehicle, provided the injured person
21 is not himself or herself:

22 a. The owner of a motor vehicle with respect to which
23 security is required under ss. 627.730-627.7405; or

24 b. Entitled to personal injury benefits from the
25 insurer of the owner or owners of such a motor vehicle.

26 (e) If two or more insurers are liable to pay personal
27 injury protection benefits for the same injury to any one
28 person, the maximum payable shall be as specified in
29 subsection (1), and any insurer paying the benefits shall be
30 entitled to recover from each of the other insurers an

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1 equitable pro rata share of the benefits paid and expenses
2 incurred in processing the claim.

3 ~~(f) Medical payments insurance, if available in a~~
4 ~~policy of motor vehicle insurance, shall pay the portion of~~
5 ~~any claim for personal injury protection medical benefits~~
6 ~~which is otherwise covered but is not payable due to the~~
7 ~~coinsurance provision of paragraph (1)(a), regardless of~~
8 ~~whether the full amount of personal injury protection coverage~~
9 ~~has been exhausted. The benefits shall not be payable for the~~
10 ~~amount of any deductible which has been selected.~~

11 ~~(f)(g)~~ It is a violation of the insurance code for an
12 insurer to fail to timely provide benefits as required by this
13 section with such frequency as to constitute a general
14 business practice.

15 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.--

16 (a) Any physician, hospital, clinic, or other person
17 or institution lawfully rendering treatment to an injured
18 person for a bodily injury covered by personal injury
19 protection insurance may charge only a reasonable amount for
20 the ~~products, services, and~~ supplies accommodations rendered,
21 and the insurer providing such coverage may pay for such
22 charges directly to such person or institution lawfully
23 rendering such treatment, if the insured receiving such
24 treatment or his or her guardian has countersigned the
25 invoice, bill, or claim form approved by the Department of
26 Insurance upon which such charges are to be paid for as having
27 actually been rendered, to the best knowledge of the insured
28 or his or her guardian. In no event, however, may such a
29 charge be in excess of the amount the person or institution
30 customarily charges for like ~~products, services, or~~ supplies
31 ~~accommodations~~ in cases involving no insurance.

1 (b)1. An insurer is not required to pay a claim made
2 by a broker or by a person making a claim on behalf of a
3 broker.

4 2. Charges, ~~provided that charges~~ for medically
5 necessary cephalic thermograms, and peripheral thermograms,
6 spinal ultrasounds, extremity ultrasounds, video fluoroscopy,
7 surface electromyography, and nerve conduction testing
8 (including motor and sensory nerves as well as F waves, H
9 reflexes, somatosensory evoked potentials, and dermatomal
10 studies) shall not exceed the maximum reimbursement allowance
11 for such procedures as set forth in the applicable fee
12 schedule or other payment methodology established pursuant to
13 s. 440.13.

14 3. Charges for medically necessary magnetic resonance
15 imaging service may not exceed 75 percent of the Ingenix
16 Customized Fee Analyzer for the Zip Code prefix 330 for
17 Florida year 2000 plus annual increases equal to the medical
18 Consumer Price Index for Florida. Procedures not reimbursed
19 under the Ingenix Customized Fee Analyzer for Zip Code prefix
20 330 shall not be reimbursed for magnetic resonance imaging
21 centers or magnetic resonance imaging leasing companies in
22 Florida to reduce costs and prevent fraud. This subparagraph
23 does not apply to charges for magnetic resonance imaging
24 services billed and collected by facilities licensed under
25 chapter 395.

26 (c)(b) With respect to any treatment or service, other
27 than medical services billed by a hospital or other provider
28 for emergency services as defined in s. 395.002 or inpatient
29 services rendered at a hospital-owned facility, the statement
30 of charges must be furnished to the insurer by the provider
31 and may not include, and the insurer is not required to pay,

1 charges for treatment or services rendered more than 35 ~~30~~
2 days before the postmark date of the statement, except for
3 past due amounts previously billed on a timely basis under
4 this paragraph, and except that, if the provider submits to
5 the insurer a notice of initiation of treatment within 21 days
6 after its first examination or treatment of the claimant, the
7 statement may include charges for treatment or services
8 rendered up to, but not more than, 75 ~~60~~ days before the
9 postmark date of the statement. The injured party is not
10 liable for, and the provider shall not bill the injured party
11 for, charges that are unpaid because of the provider's failure
12 to comply with this paragraph. Any agreement requiring the
13 injured person or insured to pay for such charges is
14 unenforceable. If, however, the insured fails to furnish the
15 provider with the correct name and address of the insured's
16 personal injury protection insurer, the provider has 35 days
17 from the date the provider obtains the correct information to
18 furnish the insurer with a statement of the charges. The
19 insurer is not required to pay for such charges unless the
20 provider includes with the statement documentary evidence that
21 was provided by the insured during the 35-day period
22 demonstrating that the provider reasonably relied on erroneous
23 information from the insured and either:
24 1. A denial letter from the incorrect insurer; or
25 2. Proof of mailing, which may include an affidavit
26 under penalty of perjury, reflecting timely mailing to the
27 incorrect address or insurer.For emergency services and care
28 as defined in s. 395.002 rendered in a hospital emergency
29 department or for transport and treatment rendered by an
30 ambulance provider licensed pursuant to part III of chapter
31 401, the provider is not required to furnish the statement of

1 charges within the time periods established by this paragraph;
2 and the insurer shall not be considered to have been furnished
3 with notice of the amount of covered loss for purposes of
4 paragraph (4)(b) until it receives a statement complying with
5 paragraph (e)~~(5)(d)~~, or copy thereof, which specifically
6 identifies the place of service to be a hospital emergency
7 department or an ambulance in accordance with billing
8 standards recognized by the Health Care Finance
9 Administration. Each notice of insured's rights under s.
10 627.7401 must include the following statement in type no
11 smaller than 12 points:

12 BILLING REQUIREMENTS.--Florida Statutes provide
13 that with respect to any treatment or services,
14 other than certain hospital and emergency
15 services, the statement of charges furnished to
16 the insurer by the provider may not include,
17 and the insurer and the injured party are not
18 required to pay, charges for treatment or
19 services rendered more than 35 ~~30~~ days before
20 the postmark date of the statement, except for
21 past due amounts previously billed on a timely
22 basis, and except that, if the provider submits
23 to the insurer a notice of initiation of
24 treatment within 21 days after its first
25 examination or treatment of the claimant, the
26 statement may include charges for treatment or
27 services rendered up to, but not more than, 75
28 ~~60~~ days before the postmark date of the
29 statement.

30 (d)~~(c)~~ Every insurer shall include a provision in its
31 policy for personal injury protection benefits for binding

1 arbitration of any claims dispute involving medical benefits
2 arising between the insurer and any person providing medical
3 services or supplies if that person has agreed to accept
4 assignment of personal injury protection benefits. The
5 provision shall specify that the provisions of chapter 682
6 relating to arbitration shall apply. The prevailing party
7 shall be entitled to attorney's fees and costs. For purposes
8 of the award of attorney's fees and costs, the prevailing
9 party shall be determined as follows:

10 1. When the amount of personal injury protection
11 benefits determined by arbitration exceeds the sum of the
12 amount offered by the insurer at arbitration plus 50 percent
13 of the difference between the amount of the claim asserted by
14 the claimant at arbitration and the amount offered by the
15 insurer at arbitration, the claimant is the prevailing party.

16 2. When the amount of personal injury protection
17 benefits determined by arbitration is less than the sum of the
18 amount offered by the insurer at arbitration plus 50 percent
19 of the difference between the amount of the claim asserted by
20 the claimant at arbitration and the amount offered by the
21 insurer at arbitration, the insurer is the prevailing party.

22 3. When neither subparagraph 1. nor subparagraph 2.
23 applies, there is no prevailing party. For purposes of this
24 paragraph, the amount of the offer or claim at arbitration is
25 the amount of the last written offer or claim made at least 30
26 days prior to the arbitration.

27 4. In the demand for arbitration, the party requesting
28 arbitration must include a statement specifically identifying
29 the issues for arbitration for each examination or treatment
30 in dispute. The other party must subsequently issue a
31 statement specifying any other examinations or treatment and

1 any other issues that it intends to raise in the arbitration.
2 The parties may amend their statements up to 30 days prior to
3 arbitration, provided that arbitration shall be limited to
4 those identified issues and neither party may add additional
5 issues during arbitration.

6 (e)~~(d)~~ All statements and bills for medical services
7 rendered by any physician, hospital, clinic, or other person
8 or institution shall be submitted to the insurer on a Health
9 Care Finance Administration 1500 form, UB 92 forms, or any
10 other standard form approved by the department for purposes of
11 this paragraph. All billings for such services shall, to the
12 extent applicable, follow the Physicians' Current Procedural
13 Terminology (CPT) in the year in which services are rendered.
14 No statement of medical services may include charges for
15 medical services of a person or entity that performed such
16 services without possessing the valid licenses required to
17 perform such services. For purposes of paragraph (4)(b), an
18 insurer shall not be considered to have been furnished with
19 notice of the amount of covered loss or medical bills due
20 unless the statements or bills comply with this paragraph.

21 (7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;
22 REPORTS.--

23 (a) Whenever the mental or physical condition of an
24 injured person covered by personal injury protection is
25 material to any claim that has been or may be made for past or
26 future personal injury protection insurance benefits, such
27 person shall, upon the request of an insurer, submit to mental
28 or physical examination by a physician or physicians. The
29 costs of any examinations requested by an insurer shall be
30 borne entirely by the insurer. Such examination shall be
31 conducted within the municipality where the insured is

1 receiving treatment, or in a location reasonably accessible to
2 the insured, which, for purposes of this paragraph, means any
3 location within the municipality in which the insured resides,
4 or any location within 10 miles by road of the insured's
5 residence, provided such location is within the county in
6 which the insured resides. If the examination is to be
7 conducted in a location reasonably accessible to the insured,
8 and if there is no qualified physician to conduct the
9 examination in a location reasonably accessible to the
10 insured, then such examination shall be conducted in an area
11 of the closest proximity to the insured's residence. Personal
12 protection insurers are authorized to include reasonable
13 provisions in personal injury protection insurance policies
14 for mental and physical examination of those claiming personal
15 injury protection insurance benefits. An insurer may not
16 withdraw payment of a treating physician without the consent
17 of the injured person covered by the personal injury
18 protection, unless the insurer first obtains a valid report by
19 a physician licensed under the same chapter as the treating
20 physician whose treatment authorization is sought to be
21 withdrawn, stating that treatment was not reasonable, related,
22 or necessary. A valid report is one that is prepared and
23 signed by the physician examining the injured person or
24 reviewing the treatment records of the injured person and is
25 factually supported by the examination and treatment records
26 if reviewed and that has not been modified by anyone other
27 than the physician. The physician preparing the report must be
28 in active practice, unless the physician is physically
29 disabled. Active practice means that during the 3 years
30 immediately preceding the date of the physical examination or
31 review of the treatment records the physician must have

1 devoted professional time to the active clinical practice of
2 evaluation, diagnosis, or treatment of medical conditions or
3 to the instruction of students in an accredited health
4 professional school or accredited residency program or a
5 clinical research program that is affiliated with an
6 accredited health professional school or teaching hospital or
7 accredited residency program.

8 (b) If requested by the person examined, a party
9 causing an examination to be made shall deliver to him or her
10 a copy of every written report concerning the examination
11 rendered by an examining physician, at least one of which
12 reports must set out the examining physician's findings and
13 conclusions in detail. After such request and delivery, the
14 party causing the examination to be made is entitled, upon
15 request, to receive from the person examined every written
16 report available to him or her or his or her representative
17 concerning any examination, previously or thereafter made, of
18 the same mental or physical condition. By requesting and
19 obtaining a report of the examination so ordered, or by taking
20 the deposition of the examiner, the person examined waives any
21 privilege he or she may have, in relation to the claim for
22 benefits, regarding the testimony of every other person who
23 has examined, or may thereafter examine, him or her in respect
24 to the same mental or physical condition. If a person
25 unreasonably refuses to submit to an examination, the personal
26 injury protection carrier is no longer liable for subsequent
27 personal injury protection benefits.

28 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY'S
29 FEES.--With respect to any dispute under the provisions of ss.
30 627.730-627.7405 between the insured and the insurer, or
31 between an assignee of an insured's rights and the insurer,

1 the provisions of s. 627.428 shall apply, except as provided
2 in subsection (11).

3 (9) REPORTING REQUIREMENTS.--

4 (a) Each insurer which has issued a policy providing
5 personal injury protection benefits shall report the renewal,
6 cancellation, or nonrenewal thereof to the Department of
7 Highway Safety and Motor Vehicles within 45 days from the
8 effective date of the renewal, cancellation, or nonrenewal.
9 Upon the issuance of a policy providing personal injury
10 protection benefits to a named insured not previously insured
11 by the insurer thereof during that calendar year, the insurer
12 shall report the issuance of the new policy to the Department
13 of Highway Safety and Motor Vehicles within 30 days. The
14 report shall be in such form and format and contain such
15 information as may be required by the Department of Highway
16 Safety and Motor Vehicles which shall include a format
17 compatible with the data processing capabilities of said
18 department, and the Department of Highway Safety and Motor
19 Vehicles is authorized to adopt rules necessary with respect
20 thereto. Failure by an insurer to file proper reports with the
21 Department of Highway Safety and Motor Vehicles as required by
22 this subsection or rules adopted with respect to the
23 requirements of this subsection constitutes a violation of the
24 Florida Insurance Code. Reports of cancellations and policy
25 renewals and reports of the issuance of new policies received
26 by the Department of Highway Safety and Motor Vehicles are
27 confidential and exempt from the provisions of s. 119.07(1).
28 These records are to be used for enforcement and regulatory
29 purposes only, including the generation by the department of
30 data regarding compliance by owners of motor vehicles with
31 financial responsibility coverage requirements. In addition,

1 the Department of Highway Safety and Motor Vehicles shall
2 release, upon a written request by a person involved in a
3 motor vehicle accident, by the person's attorney, or by a
4 representative of the person's motor vehicle insurer, the name
5 of the insurance company and the policy number for the policy
6 covering the vehicle named by the requesting party. The
7 written request must include a copy of the appropriate
8 accident form as provided in s. 316.065, s. 316.066, or s.
9 316.068. Electronic access to the vehicle insurer information
10 maintained in the vehicle database of the Department of
11 Highway Safety and Motor Vehicles may be provided by an
12 approved third-party provider to insurers, lawyers, and
13 financial institutions for subrogation and claims purposes
14 only. The compilation of and retention of this information is
15 strictly prohibited.

16 (b) Every insurer with respect to each insurance
17 policy providing personal injury protection benefits shall
18 notify the named insured or in the case of a commercial fleet
19 policy, the first named insured in writing that any
20 cancellation or nonrenewal of the policy will be reported by
21 the insurer to the Department of Highway Safety and Motor
22 Vehicles. The notice shall also inform the named insured that
23 failure to maintain personal injury protection and property
24 damage liability insurance on a motor vehicle when required by
25 law may result in the loss of registration and driving
26 privileges in this state, and the notice shall inform the
27 named insured of the amount of the reinstatement fees required
28 by s. 627.733(7). This notice is for informational purposes
29 only, and no civil liability shall attach to an insurer due to
30 failure to provide this notice.

31 (11) DEMAND LETTER.--

1 (a) As a condition precedent to filing any action for
2 an overdue claim for benefits under paragraph (4)(b) for any
3 claim that is overdue, and not more than 45 days after the
4 insurer's receipt of written notice of the fact of a covered
5 loss and of the amount of same, an insured or an assignee of
6 an insured's rights must first provide the insurer with
7 written notice of intent to initiate litigation. Such notice
8 may not be sent until the claim is overdue, including any
9 additional time the insurer has to pay the claim pursuant to
10 paragraph (4)(b).

11 (b) This notice must state with specificity:

12 1. The name of the insured with respect to whom such
13 benefits are being sought;

14 2. The claim number or policy number under which such
15 claim was originally submitted to the insurer; and

16 3. To the extent applicable, the name of any medical
17 provider who rendered the treatment, services, accommodations,
18 or supplies to an insured which form the basis of such claim;
19 and an itemized statement specifying the exact amount, the
20 dates of treatment, services, or accommodations, and the types
21 of benefits claimed to be due.

22 (c) Each notice required by this section must be
23 delivered to the insurer by U.S. certified or registered mail,
24 return receipt requested, which postal costs are to be
25 reimbursed by the insurer if so requested by the provider in
26 the notice. Such notice must be sent to the insurer at the
27 address to which the claim in issue was sent, or current
28 address, if known, and to the attention of the adjuster
29 handling the claim, if known.

30 (d) If, within 7 business days after receipt of notice
31 by the insurer, the overdue claim specified in the notice is

1 paid by the insurer along with applicable interest, no action
2 for nonpayment or late payment may be brought against the
3 insurer. For purposes of this subsection, payment is
4 considered to have been made on the date a draft or other
5 valid instrument that is equivalent to payment has been placed
6 in the U.S. mail in a properly addressed, postpaid envelope,
7 or if not so posted, on the date of delivery. The insurer is
8 not obligated to pay any attorney's fees if the insurer pays
9 the claim within the time prescribed by this subsection.

10 (e) The applicable statute of limitation for an action
11 under this section shall be tolled for a period of 15 business
12 days by the mailing of the notice required by this subsection.

13 (f) Any insurer who engages in a general business
14 practice of taking no action to pay, deny, or reduce valid
15 claims or portions thereof until receipt of the notice
16 required by this section commits an unfair trade practice
17 under the Insurance Code.

18 (12) CIVIL ACTION AGAINST PERSONS CONVICTED OF
19 FRAUD.--An insurer shall have a cause of action against any
20 person who, as a result of or in connection with a claim for
21 personal injury protection benefits under s. 627.736, is found
22 guilty of or pleads guilty or nolo contendere to, regardless
23 of adjudication of guilt, a violation of s. 817.234, s.
24 817.505, or s. 456.054. An insurer prevailing in an action
25 brought under this subsection may recover compensatory,
26 consequential, and punitive damages subject to the
27 requirements and limitations of part II of chapter 768, and
28 attorney's fees and costs incurred in litigating a cause of
29 action.

30 Section 6. Subsection (6) is added to section 627.739,
31 Florida Statutes, to read:

1 627.739 Personal injury protection; optional
2 limitations; deductibles.--

3 (6) An insurer is not required to pay any charge as to
4 which the provider has failed to bill a copayment or
5 deductible, except that this does not apply when a provider
6 has waived a copayment or deductible in individual infrequent
7 cases (not as a general business practice) related to a
8 specific patient's ability to pay.

9 Section 7. Subsections (8), (9), and (11) of section
10 817.234, Florida Statutes, are amended to read:

11 817.234 False and fraudulent insurance claims.--

12 (8) It is unlawful for any person, in his or her
13 individual capacity or in his or her capacity as a public or
14 private employee, or for any firm, corporation, partnership,
15 or association, to solicit or cause to be solicited any
16 business from a person involved in a motor vehicle crash by
17 any means of communication other than advertising directed to
18 the public in or about city receiving hospitals, city and
19 county receiving hospitals, county hospitals, justice courts,
20 or municipal courts; in any public institution; in any public
21 place; upon any public street or highway; in or about private
22 hospitals, sanitariums, or any private institution; or upon
23 private property of any character whatsoever for the purpose
24 of making motor vehicle tort claims or claims for personal
25 injury protection benefits required by s. 627.736. Charges
26 for any services rendered by a health care provider or
27 attorney who violates this subsection in regard to the person
28 for whom such services were rendered are noncompensable and
29 unenforceable as a matter of law. Any person who violates the
30 provisions of this subsection commits a felony of the third
31 degree, punishable as provided in s. 775.082, s. 775.083, or

1 s. 775.084. A person who is convicted of a violation of this
2 subsection shall be sentenced to a minimum term of
3 imprisonment of 6 months.

4 (9) It is unlawful for any attorney to solicit any
5 business relating to the representation of a person involved
6 ~~persons injured~~ in a motor vehicle accident for the purpose of
7 filing a motor vehicle tort claim or a claim for personal
8 injury protection benefits required by s. 627.736. The
9 solicitation by advertising of any business by an attorney
10 relating to the representation of a person injured in a
11 specific motor vehicle accident is prohibited by this section.
12 Any attorney who violates the provisions of this subsection
13 commits a felony of the third degree, punishable as provided
14 in s. 775.082, s. 775.083, or s. 775.084. A person who is
15 convicted of a violation of this subsection shall be sentenced
16 to a minimum term of imprisonment of 6 months.Whenever any
17 circuit or special grievance committee acting under the
18 jurisdiction of the Supreme Court finds probable cause to
19 believe that an attorney is guilty of a violation of this
20 section, such committee shall forward to the appropriate state
21 attorney a copy of the finding of probable cause and the
22 report being filed in the matter. This section shall not be
23 interpreted to prohibit advertising by attorneys which does
24 not entail a solicitation as described in this subsection and
25 which is permitted by the rules regulating The Florida Bar as
26 promulgated by the Florida Supreme Court.

27 (11) If the value of any property involved in a
28 violation of this section:

29 (a) Is less than \$20,000, the offender commits a
30 felony of the third degree, punishable as provided in s.
31 775.082, s. 775.083, or s. 775.084, and a convicted offender

1 shall be sentenced to a minimum term of imprisonment of 6
2 months.

3 (b) Is \$20,000 or more, but less than \$100,000, the
4 offender commits a felony of the second degree, punishable as
5 provided in s. 775.082, s. 775.083, or s. 775.084, and a
6 convicted offender shall be sentenced to a minimum term of
7 imprisonment of 1 year.

8 (c) Is \$100,000 or more, the offender commits a felony
9 of the first degree, punishable as provided in s. 775.082, s.
10 775.083, or s. 775.084, and a convicted offender shall be
11 sentenced to a minimum term of imprisonment of 2 years.

12 Section 8. Subsection (4) of section 817.505, Florida
13 Statutes, is amended to read:

14 817.505 Patient brokering prohibited; exceptions;
15 penalties.--

16 (4) Any person, including an officer, partner, agent,
17 attorney, or other representative of a firm, joint venture,
18 partnership, business trust, syndicate, corporation, or other
19 business entity, who violates any provision of this section
20 commits a felony of the third degree, punishable as provided
21 in s. 775.082, s. 775.083, or s. 775.084. A person who is
22 convicted of a violation of this section shall be sentenced to
23 a minimum term of imprisonment of 6 months.

24 Section 9. Subsection (1) of section 324.021, Florida
25 Statutes, is amended to read:

26 324.021 Definitions; minimum insurance required.--The
27 following words and phrases when used in this chapter shall,
28 for the purpose of this chapter, have the meanings
29 respectively ascribed to them in this section, except in those
30 instances where the context clearly indicates a different
31 meaning:

1 (1) MOTOR VEHICLE.--Every self-propelled vehicle which
2 is designed and required to be licensed for use upon a
3 highway, including trailers and semitrailers designed for use
4 with such vehicles, except traction engines, road rollers,
5 farm tractors, power shovels, and well drillers, and every
6 vehicle which is propelled by electric power obtained from
7 overhead wires but not operated upon rails, but not including
8 any bicycle or moped. However, the term "motor vehicle" shall
9 not include any motor vehicle as defined in s. 627.732(3)~~s-~~
10 ~~627.732(1)~~when the owner of such vehicle has complied with
11 the requirements of ss. 627.730-627.7405, inclusive, unless
12 the provisions of s. 324.051 apply; and, in such case, the
13 applicable proof of insurance provisions of s. 320.02 apply.

14 Section 10. (1) Except as otherwise expressly
15 provided in this act, this act shall take effect upon becoming
16 a law.

17 (2) Paragraph (1)(a), (4)(c), (7)(a), and subparagraph
18 (4)(b)1. of s. 627.736, Florida Statutes, as amended by
19 section 5 of this act, and the deletion of paragraph (4)(f)
20 and redesignation of paragraph (4)(g) as (4)(f) by section 5
21 of this act shall apply to policies issued new or renewed on
22 or after October 1, 2001.

23 (3) Paragraphs (5)(b) and (5)(c) of s. 627.736,
24 Florida Statutes, as amended by section 5 of this act, and
25 subsection (6) of section 627.739 as added by section 6 of
26 this act, shall apply to treatment and services occurring on
27 or after October 1, 2001.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/SB 1092

- Restores current law on deductibles and deletes provision that would eliminate the \$2,000 deductible and requires proof of health insurance in order to obtain a deductible above \$500.
- Provides that insurer in prescribed circumstances and subject to time limitations may refer claims to the Department of Insurance for investigation that are a violation of s. 626.989, F.S., or insurance fraud or kickbacks associated with PIP benefits.
- Mandates "presuit notice" as a condition precedent to filing an action for overdue claims against an insurer. However, such notice only applies to claims that are overdue and not more than 45 days after the insurer's receipt of written notice of the fact of a covered loss and of the amount of same.