HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 27A Motor Vehicle Insurance
SPONSOR(S): Representative Goodlette
TIED BILLS: None **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance		Cheek	Schulte
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

In recent years, Florida motorists have faced rising premiums for motor vehicle insurance and the companies writing motor vehicle insurance have faced rising losses. The increases in premiums and losses are frequently attributed to insurance fraud and problems with the no-fault system. This bill addresses the problem of motor vehicle insurance affordability. Major changes from current law include:

- Strengthening restrictions on solicitation of crash victims.
- Strengthening prohibitions on intentional motor vehicle crashes.
- Upgrading criminal penalties for motor vehicle insurance fraud.
- Restricting improper medical billing practices and improper claims handling practices.
- Restricting charges for certain diagnostic tests.
- Specifying factors to be considered in determining the reasonableness of medical charges.
- Providing for licensing and regulation of certain medical clinics by the Agency for Health Care Administration, rather than registration with the Department of Health.
- Strengthening clinic regulation, including restrictions on the involvement of convicted criminals.
- Authorizing the Financial Services Commission to increase the basic Personal Injury Protection (PIP) benefit from the current $10,000 if the commission determines that the bill reduces costs such that benefits can be increased without an increase in premiums.
- Revising the method of calculating PIP deductibles to provide higher benefits for the insured, and eliminating the option of a $2,000 deductible.
- Providing for Sunset of the No-Fault law in 2007 unless reenacted by the 2006 Legislature.

The bill includes an appropriation from the Health Care Trust Fund to the Agency for Health Care Administration.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

This bill addresses the rising cost of motor vehicle insurance in Florida, primarily by strengthening laws relating to motor vehicle insurance fraud and by strengthening regulation of clinics that exist primarily to treat motor vehicle crash victims.

Background

History of Florida no-fault auto insurance

Under Florida's no-fault automobile insurance system, all drivers must obtain insurance that covers their own injuries and their passengers' injuries in motor vehicle accidents without regard to which driver is at fault. This coverage is known as Personal Injury Protection (PIP). A person is allowed to sue for damages beyond the limits of no-fault coverage only with respect to specified, serious injuries.

This system was created in 1971 and revised extensively through the 1970s. The Legislature has, however, enacted relatively few changes to the no-fault law in the last 25 years. Insurance companies suggest that while the statute has remained relatively stable, a series of court-made changes to the law have weakened the ability of the no-fault system to keep insurers' losses and consumers' costs under control. The growth of insurance fraud has been cited by the Fifteenth Statewide Grand Jury, the Division of Insurance Fraud of the Department of Financial Services, insurance companies, and others as another cause of rising losses and rising automobile insurance premiums.

Rising premiums and loss costs

In 1999, Florida's auto insurance premiums ranked 19th in the nation, with average premiums for full coverage (PIP, property damage liability, bodily injury liability, collision, and other-than-collision) of $800. Since 1999, many insurers have been approved for two rounds of premium increases of approximately 10 percent and 15 percent.

In the last 2 years, loss costs have risen dramatically. Florida PIP loss costs rose by 22.1 percent in the 2000-2001 period (the last period for which full-year data are available). During the same period, Florida bodily injury liability loss costs rose by 15.8 percent.

From 1999 through 2002, 52 insurance companies became insolvent. The inability to cover losses from no-fault coverage was the primary cause of most of these insolvencies, according to insurance regulators.

2000 Statewide Grand Jury Report

The Fifteenth Statewide Grand Jury investigated PIP fraud in 2000. The grand jury concluded that the $10,000 no-fault coverage is a "personal slush fund" for certain legal and medical professionals. They determined that fraud starts with the solicitation of motor vehicle accident victims on behalf of unscrupulous health care providers and attorneys. The solicitation source document is the motor vehicle crash report.

The grand jury discovered that unethical medical professionals contribute to the problem by padding bills, charging inflated fees, charging for services never rendered, ordering unnecessary tests, etc. The grand jury found that the lack of a statutory definition of what is a reasonable and necessary treatment or charge adds to the problem. Patients often do not realize the size of their medical bills because they often assign payment rights directly to the provider. One chiropractor testified to the grand jury that he hired a technician to conduct nerve conduction studies at $100 and billed the no-fault insurer $900. Chiropractors, the grand jury learned, also use video fluoroscopy even though it is not medically indicated. These unethical chiropractors rent the machines for $1,500 per month and charge $650 for each session. Unethical attorneys refer patients to chiropractors who always find a permanent injury for purposes of pain and suffering suits, thwarting the intent of the tort threshold to reduce court congestion regarding small injury cases.

Seven Recommendations from the 2000 Statewide Grand Jury Report

The Statewide Grand Jury developed seven recommendations for legislative action. The majority of these became law in the 2001 Legislative Session (see chapter 2001-271, Laws of Florida). The seven recommendations from the 2000 Statewide Grand Jury Report can be summarized as:

- Prohibit the release of crash reports to anyone other than the victim;
- Increase the penalty for illegally using the information found in crash reports;
- Mandatory registration of medical facilities;
- Fee schedule;
- Allow insurers 30 extra days to investigate if fraud is suspected;
- Prohibit MRI brokering and allow insurers not to pay MRI bill if from a broker; and
- Insurer not required to pay if service rendered is part of an illegal solicitation.

While the 2001 no-fault insurance fraud legislation has proven helpful, it was never thought to be the ultimate fraud, abuse, and over-utilization solution. Rather, insurers accepted the changes for what they were, a first step. Two years after these changes, fraud, abuse, and over-utilization continue to be rampant. To effectively combat no-fault insurance fraud, it will be necessary to remove the incentive to commit fraud (one-sided, unfair litigation environment, lack of an objective standard for insurers to determine the reasonableness and necessity of bills submitted for payment, and a broken dispute resolution mechanism) and to make the penalty for committing fraud severe.

Current Status of Fraud Problem

According to the Department of Financial Services, Division of Insurance Fraud, the vast majority of PIP fraud involved solicitation of accident victims and staged accidents. Organized fraud rings use "runners" to obtain accident reports from law enforcement agencies and then solicit persons involved in these accidents on behalf of unscrupulous attorneys and doctors. Once recruited, the accident victim is sent to an attorney who refers the person to a medical provider or clinic where he or she receives a battery of unnecessary tests. According to the division, most of these tests often exhaust the insured's $10,000 PIP coverage benefit and position the attorney to improperly sue the insurer. Other "rings" stage vehicular accidents in order to defraud the PIP system. The proposed committee bill provides several reforms to combat fraud, to enhance penalties for those found guilty of "milking" the automobile

insurance system, and to provide investigative resources to the Division of Fraud within the Department of Financial Services.

Major Changes from Current Law

The bill makes the following major changes:

Strengthened fraud protections

- Solicitation of accident victims:

  - ✓ Provides that solicitation of a person involved in a motor vehicle accident with intent to defraud is a second-degree felony, increased from a third-degree felony, with a 2-year minimum mandatory sentence.

  - ✓ Provides that any solicitation, for the purpose of making a PIP claim within 60 days of a vehicle accident, except for advertising, a third-degree felony.

  - ✓ Provides that any solicitation more than 60 days after an accident by specified professionals (e.g., lawyers, chiropractors, medical providers, or owners of medical directors of clinics) at the victim's residence in person or by telephone contact, is a second-degree felony.

  - ✓ Provides that charges for services rendered by a person who violates the solicitation prohibitions are not compensable by the insurer or insured.

  - ✓ Amends the Offense Severity Ranking Chart law (s. 921.0022, F.S.) to increase the ranking of the following crimes: soliciting an accident victim with intent to defraud; unlawfully obtaining or using a confidential crash report; filing a false motor vehicle insurance application; operating an unregistered clinic or filing false registration information; and organizing, planning, or participating in an intentional motor vehicle collision.

  - ✓ Prohibits those who lawfully possess confidential or exempt information contained in police reports to disclose the information to third parties for the purpose of solicitation of crash victims or their family members.

  - ✓ Requires that any person attempting to access confidential crash reports, within 60 days from the date the report is filed must show photographic identification, proof of their exempt status, and sign a sworn statement stating that no confidential information from any crash report would be used for any commercial solicitation or disclosed to any third party for the purpose of such solicitation for the period of time that the crash report remains confidential.

  - ✓ Applies certain anti-solicitation provisions to all health care practitioners by applying these requirements to chiropractors and medical providers.

- "Upcoded" or "unbundled" services:

  - ✓ Provides that submitting a bill for "upcoded" or "unbundled" services, services not performed, or making use of confidential crash reports to solicit patients constitutes grounds for disciplinary action when in the context of a PIP claim and with intent to defraud.

- Intentional Motor Vehicle Crashes:

    - ✓ Provides that it is a second-degree felony to organize, plan, or participate in an intentional motor vehicle collision; requires a 2-year minimum mandatory sentence.

- False or fraudulent motor vehicle insurance application/insurance card:

    - ✓ Upgrades the penalty for filing a false or fraudulent motor vehicle application from a first-degree misdemeanor to a third-degree felony.

    - ✓ Creates the crime of making, selling, or presenting a false or fraudulent insurance card; provides a third-degree felony penalty for the violation.

- Fraudulent billing practices:

    - ✓ Provides that it is a fraudulent act for health care practitioners and providers to engage in the general business practice of billing at usual and customary rates when they do not intend to collect the entire charge.

- Effect of fraud on insurance coverage:

    - ✓ Provides that PIP fraud voids the entire motor vehicle insurance policy and that benefits are not due with respect to fraudulent claims.

Clinics

The bill transfers regulation of clinics not owned by physicians from the Department of Health to the Agency for Health Care Administration. The bill also:

- Licensing and enforcement:

    - ✓ Provides for licensing of clinics (rather than registration) and for restrictions on transfer of licenses.

    - ✓ Provides criminal penalties for operation of unlicensed clinics

    - ✓ Tightens regulatory provisions by providing for background investigations and unannounced inspections, access to records, emergency authority to close a clinic for specific violations, and other administrative tools to regulate clinic activity

    - ✓ Makes it a third-degree felony for any person convicted of knowingly filing a false or misleading clinic registration application or who files false or misleading information pertaining to the registration.

    - ✓ Exempts entities owned by licensed facilities, such as hospitals, from clinic registration requirements and provisions requiring that services must be billed only by a physician.

    - ✓ Provides that the Division of Insurance Fraud of the Department of Financial Services may assist the Department of Health in investigating medical clinics that do not comply with regulatory requirements.

- Accreditation

  - ✓ Provides that every clinic and subsequent providers engaged in MRI services must be accredited by the American College of Radiology or the Joint Commission on Accreditation of Healthcare Organizations.

  - ✓ Provides for accreditation and notification to insurance companies of accreditation .

  - ✓ Requires that an insurer not demand a copy of the certificate of accreditation from each clinic if it has been previously provided, so long as the clinic certifies that it maintains its accreditation.

  - ✓ Prohibits an insurer from denying payment to an MRI clinic based on failure to comply with accreditation requirements which the insurer can prove it was not provided with the required certification.

- Involvement of convicted criminals:

  - ✓ Requires owners of clinic (no matter what percentage of ownership) and clinic medical directors to have no prior disciplinary, civil, or criminal sanctions imposed within the past 5 years. If such a sanction has been imposed, the individual or entity may not own or serve as medical director of a clinic. If such sanction is discovered after registration, the clinic must dismiss the offender, face sanctions, and amend its registration.

  - ✓ Amends the definition of "disqualified person" to limit disqualifications based on convictions to convictions that occurred within the previous 10 years.

- Disqualified employees:

  - ✓ Requires medical directors to have had a clean record for at least 5 years (no convictions, no disciplinary action).

  - ✓ Requires a clinic to conduct due diligence on all employees.

<u>Billing</u>

  - ✓ Provides additional detail on requirements for proper billing of insurers.

  - ✓ Requires a statement to be signed by a patient and a physician under oath that specified services were rendered. Requires the physician to maintain the record and make it available for inspection.

  - ✓ Provides exceptions for global diagnostic imaging billing.

<u>Medical records; independent medical examinations</u>

  - ✓ Requires the physician performing an independent medical examination (IME) and the physician providing testimony on behalf of a claimant to maintain certain records for at least 3 years.

  - ✓ Prohibits insurers from changing the medical opinion in an IME report or directing the IME physician to change the opinion, and provides that such action is an unfair trade practice

Diagnostic tests; reasonableness of medical fees

- ✓ Provides that amounts charged for MRI services provided in facilities accredited by both the American College of Radiology and the Joint Commission on Accreditation of Health Care Organizations cannot exceed 200 percent of the participating physician fee schedule of Medicare Part B.

- ✓ Defines the "participating" Medicare schedule as part of the Medicare fee schedule that applies for billing purposes, and provides for annual revisions based on changes in the medical care portion of the Consumer Price Index.

- ✓ Provides that in determining the reasonableness of medical charges, evidence of fee schedules, reimbursement levels in the community, usual and customary charges accepted by the provider, and other relevant information may be considered.

- ✓ Requires the Department of Health, in consultation with professional licensing boards, to adopt a list of diagnostic tests that are not medically necessary in relation to PIP claims.

Demand letter; offer of judgment

- ✓ Expands the provisions of the current pre-suit demand letter (s. 627.736(11), F.S.) to be applicable to all PIP disputes and increases the time for insurers to respond to the letter from 7 business days to 15 calendar days.

Personal Injury Protection (PIP) benefits and deductibles

- ✓ Authorizes the Financial Services Commission to increase the minimum PIP benefit from the current $10,000 to a higher amount if the cost savings associated with the bill support an increase in benefits without an increase in premiums.

- ✓ Revises the method of calculation of PIP deductibles such that, after the deductible amount is met, the insured is eligible to receive up to $10,000 in benefits (currently the deductible is deducted from the $10,000 of total benefits). Also eliminates the option of a $2,000 deductible.

Report to Legislature

- ✓ Requires the Department of Financial Services, the Department of Health, and the Agency for Health Care Administration to submit reports to the Legislature by December 31, 2004, regarding implementation of the bill and recommendations on measures to improve the motor vehicle insurance market, reduce costs, and reduce fraud and abuse.

Sunset

- ✓ Repeals the Florida Motor Vehicle No-Fault Law (sections 627.730-627.7405, F.S.) effective October 1, 2007, unless re-enacted by the Legislature in the 2006 Regular Session, and provides for appropriate notice to policyholders.

C. SECTION DIRECTORY:

Section 1 provides findings and intent.

Section 2 amends s. 119.105, relating to protection of victims of crimes or accidents.

Section 3 amends s. 316.066, relating to written reports of crashes.

Section 4 creates part XIII of chapter 400, the Health Care Clinic Act.

Section 5 amends s. 456.0375, relating to registration of certain clinics.

Section 6 amends s. 456.072, relating to grounds for discipline of health care practitioners.

Section 7 amends s. 627.732, relating to definitions for use in the Florida Motor Vehicle No-Fault Act.

Section 8 amends s. 627.736, relating to required personal injury protection benefits.

Section 9 amends s. 627.739, relating to PIP deductibles.

Section 10 amends s. 817.234, relating to false and fraudulent insurance claims.

Section 11 amends s. 827.236, relating to false and fraudulent motor vehicle insurance applications.

Section 12 creates s. 817.2361, relating to false or fraudulent motor vehicle insurance cards.

Section 13 amends s. 921.0022, relating to the offense severity ranking chart.

Section 14 provides that the intent of the amendment to s. 456.0375(1)(b) is to clarify existing legislative intent.

Section 15 repeals s. 456.0375, relating to clinic registration, effective March 1, 2004.

Section 16 specifies applicability.

Section 17 provides for reports to the Legislature.

Section 18 provides an appropriation.

Section 19 provides for Sunset repeal.

Section 20 provides that this bill is not intended to supersede bills enacted during the 2003 Regular Session.

Section 21 provides that the bill takes effect July 1, 2003, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   Appropriates $2.5 million and 51 FTE from the Health Care Trust Fund to the Agency for Health Care Administration to implement the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the bill reduces fraud and unnecessary costs as intended, it should reduce (or slow the increase) in motor vehicle insurance losses, resulting in lower premiums for motor vehicle insurance or reduced increases in premiums.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority for the Agency for Health Care Administration and the Financial Services Commission.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.