

Bill No. HB 561, 1st Eng.

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1 protection benefits are paid ~~or payable~~. The plaintiff may
 2 prove all of his or her special damages notwithstanding this
 3 limitation, but if special damages are introduced in evidence,
 4 the trier of facts, whether judge or jury, shall not award
 5 damages for personal injury protection benefits paid ~~or~~
 6 ~~payable~~. In all cases in which a jury is required to fix
 7 damages, the court shall instruct the jury that the plaintiff
 8 shall not recover such special damages for personal injury
 9 protection benefits paid ~~or payable~~.

10 (6) REQUEST FOR DOCUMENTATION BY INSURER ~~DISCOVERY OF~~
 11 ~~FACTS ABOUT AN INJURED PERSON; DISPUTES.--~~

12 (a) Every employer shall, if a request is made by an
 13 insurer providing personal injury protection benefits under
 14 ss. 627.730-627.7405 against whom a claim has been made,
 15 furnish forthwith, in a form approved by the office, a sworn
 16 statement of the earnings, since the time of the bodily injury
 17 and for a reasonable period before the injury, of the person
 18 upon whose injury the claim is based.

19 (b) Every physician, hospital, clinic, or other
 20 medical institution providing, before or after bodily injury
 21 upon which a claim for personal injury protection insurance
 22 benefits is based, any products, services, or accommodations
 23 in relation to that or any other injury, or in relation to a
 24 condition claimed to be connected with that or any other
 25 injury, shall, if requested to do so by the insurer against
 26 whom the claim has been made:7

27 1. Furnish forthwith a written report of the history,
 28 condition, treatment, dates, and costs of such treatment of
 29 the injured person and why the items identified by the insurer
 30 were reasonable in amount and medically necessary.7

31 2. ~~Provide together with~~ a sworn statement that the

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1 treatment or services rendered were reasonable and necessary
 2 with respect to the bodily injury sustained. Such sworn
 3 statement must read as follows: "Under penalty of perjury, I
 4 declare that I have read the forgoing, and the facts alleged
 5 are true, to the best of my knowledge and belief."

6 3. Identify ~~and identifying~~ which portion of the
 7 expenses for such treatment or services was incurred as a
 8 result of such bodily injury., ~~and~~

9 4. Produce forthwith, and permit the inspection and
 10 copying of, his or her or its records regarding such history,
 11 condition, treatment, dates, and costs of treatment; provided
 12 that this shall not limit the introduction of evidence at
 13 trial. ~~Such sworn statement shall read as follows: "Under~~
 14 penalty of perjury, I declare that I have read the foregoing,
 15 and the facts alleged are true, to the best of my knowledge
 16 and belief."

17 (c) However, if the records are maintained at an
 18 alternative location, the requested records shall made
 19 available at the principal place of business within 25 working
 20 days after the request.

21 (d) A ~~No~~ cause of action for violation of the
 22 physician-patient privilege or invasion of the right of
 23 privacy is not ~~shall be~~ permitted against any physician,
 24 hospital, clinic, or other medical institution complying with
 25 ~~the provisions of~~ this section.

26 (e) The person requesting such records and such sworn
 27 statement shall pay all reasonable costs connected therewith.

28 (f) If an insurer makes a written request for
 29 documentation or information under this paragraph within 30
 30 days after having received notice of the amount of a covered
 31 loss under subsection (7) ~~paragraph (4)(a),~~ the amount or the

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1 partial amount that ~~which~~ is the subject of the insurer's
 2 inquiry shall become overdue if the insurer does not pay in
 3 accordance with paragraph (4)(b) or within 15 ~~10~~ days after
 4 the insurer's receipt of the requested documentation or
 5 information, whichever occurs later. For purposes of this
 6 paragraph, the term "receipt" includes, but is not limited to,
 7 inspection and copying pursuant to this subsection ~~paragraph~~.

8 (g) Any insurer that requests documentation or
 9 information pertaining to reasonableness of charges or medical
 10 necessity under this subsection ~~paragraph~~ without a reasonable
 11 basis for such requests as a general business practice is
 12 engaging in an unfair trade practice under the insurance code.

13 (h)~~(c)~~ In the event of any dispute regarding an
 14 insurer's right to request patient diagnostic or treatment
 15 information ~~discovery of facts~~ under this section, the insurer
 16 may petition a court of competent jurisdiction to enter an
 17 order permitting such request for patient diagnostic or
 18 treatment information ~~discovery~~. The order may be made only
 19 on motion for good cause shown and upon notice to all persons
 20 having an interest, and it shall specify the time, place,
 21 manner, conditions, and scope of the request for patient
 22 diagnostic or treatment information ~~discovery~~. Such court may,
 23 in order to protect against annoyance, embarrassment, or
 24 oppression, as justice requires, enter an order refusing the
 25 request for patient diagnostic or treatment information
 26 ~~discovery~~ or specifying conditions of discovery and may order
 27 payments of costs and expenses of the proceeding, including
 28 reasonable fees for the appearance of attorneys at the
 29 proceedings, as justice requires.

30 (i)~~(d)~~ The injured person shall be furnished, upon
 31 request, a copy of all information obtained by the insurer

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1 under the provisions of this section, and shall pay a
2 reasonable charge, if required by the insurer.

3 (j) A health care provider is entitled to reasonable
4 compensation for complying with a request for information by
5 an insurer.

6 (k)(e) Notice to an insurer of the existence of a
7 claim shall not be unreasonably withheld by an insured.

8 (7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;
9 REPORTS.--

10 (a) Whenever the mental or physical condition of an
11 injured person covered by personal injury protection is
12 material to any claim that has been or may be made for past or
13 future personal injury protection insurance benefits, such
14 person shall, upon the request of an insurer, submit to mental
15 or physical examination by a physician or physicians. The
16 costs of any examinations requested by an insurer shall be
17 borne entirely by the insurer. Such examination shall be
18 conducted within the municipality where the insured is
19 receiving treatment, or in a location reasonably accessible to
20 the insured, which, for purposes of this paragraph, means any
21 location within the municipality in which the insured resides,
22 or any location within 10 miles by road of the insured's
23 residence, provided such location is within the county in
24 which the insured resides. If the examination is to be
25 conducted in a location reasonably accessible to the insured,
26 and if there is no qualified physician to conduct the
27 examination in a location reasonably accessible to the
28 insured, then such examination shall be conducted in an area
29 of the closest proximity to the insured's residence. Personal
30 protection insurers are authorized to include reasonable
31 provisions in personal injury protection insurance policies

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1 | for mental and physical examination of those claiming personal
2 | injury protection insurance benefits. An insurer may not deny
3 | or withdraw payment of a treating physician without the
4 | consent of the injured person covered by the personal injury
5 | protection, unless the insurer first obtains a valid report by
6 | a Florida physician licensed under the same chapter as the
7 | treating physician whose treatment authorization is sought to
8 | be withdrawn, stating that treatment was not reasonable,
9 | related, or necessary. A valid report that is reasonable proof
10 | to timely deny or withdraw payment is one that is prepared and
11 | signed by the physician examining the injured person or by a
12 | physician who has not examined the patient but has reviewed
13 | complete ~~reviewing the~~ treatment records of the injured person
14 | and is factually supported by the examination and treatment
15 | records if reviewed and that has not been modified by anyone
16 | other than the physician. The physician preparing the report
17 | must be in active practice, unless the physician is physically
18 | disabled. Active practice means that during the 3 years
19 | immediately preceding the date of the physical examination or
20 | review of the treatment records the physician must have
21 | devoted professional time to the active clinical practice of
22 | evaluation, diagnosis, or treatment of medical conditions or
23 | to the instruction of students in an accredited health
24 | professional school or accredited residency program or a
25 | clinical research program that is affiliated with an
26 | accredited health professional school or teaching hospital or
27 | accredited residency program. The physician preparing a report
28 | at the request of an insurer and physicians rendering expert
29 | opinions on behalf of persons claiming medical benefits for
30 | personal injury protection, or on behalf of an insured through
31 | an attorney or another entity, shall maintain, for at least 3

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1 | years, copies of all examination reports as medical records
 2 | and shall maintain, for at least 3 years, records of all
 3 | payments for the examinations and reports. Neither an insurer
 4 | nor any person acting at the direction of or on behalf of an
 5 | insurer may materially change an opinion in a report prepared
 6 | under this paragraph or direct the physician preparing the
 7 | report to change such opinion. The denial of a payment as the
 8 | result of such a changed opinion constitutes a material
 9 | misrepresentation under s. 626.9541(1)(i)2.; however, this
 10 | provision does not preclude the insurer from calling to the
 11 | attention of the physician errors of fact in the report based
 12 | upon information in the claim file.

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

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1 personal injury protection benefits.

2 (12) VENUE.--Venue for any personal injury protection
3 benefits claim for an assignee of benefits shall be in the
4 jurisdiction where the insured resides, where the accident
5 occurs, where health care services were provided, or in a
6 forum convenient for material witnesses.

7 (13) JOINDER OF POTENTIAL CLAIMS.--The filing of a
8 lawsuit claiming personal injury protection benefits, brought
9 pursuant to 627.736, shall include all personal injury
10 protection benefit claims the plaintiff has standing to file
11 and for which all conditions precedent to file the lawsuit
12 have been met by the plaintiff at the time the lawsuit if
13 filed.

14
15
16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 On line 48, after the second semicolon,

19
20 insert:

21 amending s. 627.736, F.S.; revising provisions
22 governing insured's rights to recovery of
23 special damages in tort; revising provisions
24 governing requests to a medical institution by
25 an insurer for documentation concerning a claim
26 for personal injury protection benefits;
27 providing for resolution of disputes involving
28 such requests; providing for compensation for a
29 health care provider's response to an insurer's
30 requests for information; clarifying provisions
31 governing when an insurer may withdraw payment

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to a treating physician; authorizing denial of
such payment in circumstance when withdrawal of
payment is authorized; providing for venue,
requiring joinder of certain claims;