Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate	House
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Representative(s) Ross offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (10) is added to section 624.155, Florida Statutes, to read:

624.155 Civil remedy.--

(10) Notwithstanding the provisions of paragraph (8), before a person may file any statutory or common law cause of action arising out of a violation of this subsection relating to the actons of a motor vehicle insurer or any other cause of action alleging that a motor vehicle insurer did not act in good faith or fairly and honestly toward its insured or with due regard for the insured's interests, the notice requirements pursuant to paragraph (3)(a) must be met. These requirements apply to a claim made by a third party.

Section 2. Section 627.731, Florida Statutes, is amended to read:

627.731 Purpose.--The purpose of ss. 627.730-627.7405 is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault, and to require motor vehicle insurance securing such benefits, for motor vehicles required to be registered in this state and, with respect to motor vehicle accidents, a limitation on the right to claim non-economic or general damages, including, but not limited to, damages for pain, suffering, mental anguish, physical impairment, loss of capacity to enjoy life, and inconvenience.

Section 3. Section 627.732, Florida Statutes, is amended to read:

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

(1) "Broker" means an individual, person, or entity acting as an intermediary for compensation and arranging for services to be performed by another individual, person, or entity ~~any person not possessing a license under chapter 395, chapter 400, chapter 458, chapter 459, chapter 460, chapter 461, or chapter 641 who charges or receives compensation for any use of medical equipment and is not the 100-percent owner or the 100-percent lessee of such equipment. For purposes of this section, such owner or lessee may be an individual, a corporation, a partnership, or any other entity and any of its 100 percent-owned affiliates and subsidiaries. For purposes of this subsection, the term "lessee" means a long-term lessee under a capital or operating lease, but does not include a part time lessee. The term "broker" does not include a hospital or~~

~~physician management company whose medical equipment is ancillary to the practices managed, a debt collection agency, or an entity that has contracted with the insurer to obtain a discounted rate for such services; nor does the term include a management company that has contracted to provide general management services for a licensed physician or health care facility and whose compensation is not materially affected by the usage or frequency of usage of medical equipment or an entity that is 100-percent owned by one or more hospitals or physicians. The term "broker" does not include a person or entity that certifies, upon request of an insurer, that:~~

~~(a) It is a clinic licensed under ss. 400.990 400.995;~~

~~(b) It is a 100-percent owner of medical equipment; and~~

~~(c) The owner's only part-time lease of medical equipment for personal injury protection patients is on a temporary basis not to exceed 30 days in a 12-month period, and such lease is solely for the purposes of necessary repair or maintenance of the 100 percent owned medical equipment or pending the arrival and installation of the newly purchased or a replacement for the 100 percent owned medical equipment, or for patients for whom, because of physical size or claustrophobia, it is determined by the medical director or clinical director to be medically necessary that the test be performed in medical equipment that is open-style. The leased medical equipment cannot be used by patients who are not patients of the registered clinic for medical treatment of services. Any person or entity making a false certification under this subsection commits insurance fraud as defined in s. 817.234. However, the 30 day period provided in this paragraph may be extended for an additional 60~~

~~days as applicable to magnetic resonance imaging equipment if the owner certifies that the extension otherwise complies with this paragraph~~.

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

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

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

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

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

(a) A "private passenger motor vehicle," which is any motor vehicle which is a sedan, station wagon, or jeep-type vehicle and, if not used primarily for occupational, professional, or business purposes, a motor vehicle of the pickup, panel, van, camper, or motor home type.

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

The term "motor vehicle" does not include a mobile home or any motor vehicle which is used in mass transit, other than public school transportation, and designed to transport more than five

passengers exclusive of the operator of the motor vehicle and which is owned by a municipality, a transit authority, or a political subdivision of the state.

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

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

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

(7) "Certify" means to swear or attest to being true or represented in writing.

(8) "Immediate personal supervision," as it relates to the performance of medical services by nonphysicians not in a hospital, means that an individual licensed to perform the medical service or provide the medical supplies must be present within the confines of the physical structure where the medical services are performed or where the medical supplies are provided such that the licensed individual can respond immediately to any emergencies if needed.

(9) "Incident," with respect to services considered as incident to a physician's professional service, for a physician licensed under chapter 458, chapter 459, chapter 460, or chapter

461, if not furnished in a hospital, means such services must be an integral, even if incidental, part of a covered physician's service.

(10) "Knowingly" means that a person, with respect to information, has actual knowledge of the information; acts in deliberate ignorance of the truth or falsity of the information; or acts in reckless disregard of the information, and proof of specific intent to defraud is not required.

(11) "Lawful" or "lawfully" means in substantial compliance with all relevant applicable criminal, civil, and administrative requirements of state and federal law related to the provision of medical services or treatment.

(12) "Hospital" means a facility that, at the time services or treatment were rendered, was licensed under chapter 395.

(13) "Properly completed" means providing truthful, substantially complete, and substantially accurate responses as to all material elements to each applicable request for information or statement by a means that may lawfully be provided and that complies with this section, or as agreed by the parties.

(14) "Upcoding" means an action that submits a billing code that would result in payment greater in amount than would be paid using a billing code that accurately describes the services performed. The term does not include an otherwise lawful bill by a magnetic resonance imaging facility, which globally combines both technical and professional components, if the amount of the global bill is not more than the components if

billed separately; however, payment of such a bill constitutes payment in full for all components of such service.

(15) "Unbundling" means an action that submits a billing code that is properly billed under one billing code, but that has been separated into two or more billing codes, and would result in payment greater in amount than would be paid using one billing code.

(16) "Services" includes treatment, procedures, supplies, and equipment.

(17) "Contracted services" means goods or services provided or performed by anyone other than a statutory employee of the supplier or provider.

(18) "Rendered" means actually performed a treatment or a service.

(19) "Licensed facility" means a facility licensed under chapter 395 at the time services were rendered.

(20) "Clinic" for the purposes of personal injury protection insurance means those entities defined in s. 400.9905(4).

(21) "Procedurally appropriate" means that care which ensures a reasonable standard of care for the health and well being of the patient and:

a. Is performed in conformity with the treatment protocols generally recognized within the licensing chapter of the provider;

b. Is generally recommended for treatment of similar injuries by licensed professionals, licensed under the same chapter; and

c. Follows an appropriate system, rule, guide, policy or method for which an unavoidable, essential or urgent need is established.

(22) "Noneconomic" or "general" damages means all damages, by whatever name, that are indefinite or for which an actual dollar figure cannot be measured, including damages for pain, suffering, mental anguish, physical impairment, loss of capacity to enjoy life, and inconvenience arising from bodily injury, sickness, or disease arising out of the ownership, maintenance, operation, or use of a motor vehicle. The term also includes damages under derivative suits for general or non-economic damages such as damages for loss of consortium.

(23) "Florida Diagnostic Testing Facility" means a clinic licensed pursuant to s. 400.991 that performs the technical component of magnetic resonance imaging, computed tomography or position emission tomography and also provides the professional components of such services through either an employee or independent contractor, in a fixed facility, that is accredited by the Joint Commission on Accreditation of Healthcare Organizations and the American College of Radiology and:

(a) Does not accept patient referrals prohibited by s. 456.053(5);

(b) Does not directly or indirectly provide any services to patients other than magnetic resonance imaging, computed tomography or position emission tomography; and

(c) Is affiliated through joint indirect or direct ownership of no less than 50 percent, with 4 or more other clinics that meet the requirements of this section.

Section 4. Effective October 1, 2006, section 627.736, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 627.736, F.S., for current text.)

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

(1) REQUIRED PERSONAL INJURY PROTECTION BENEFITS.--Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle, and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, subject to the provisions of this section to a limit of $10,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

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

(b)1. Disability benefits.--Sixty percent of any loss of gross income and loss of earning capacity per individual from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his or her household. All disability benefits payable under this provision shall be paid not less than every 2 weeks.

2. An injured person who is self employed or an injured person who owns over a 25-percent interest in his or her employer, as a condition precedent to payment for lost wages, must produce to the insurer reasonable proof as to the injured person's net income and loss of earning capacity or additional expense, such that the insurer may reasonably calculate the amount of the loss of income.

3. Every employer shall, if a request is made by an insurer providing personal injury protection benefits under ss. 627.730-627.7405 against whom a claim has been made, furnish expeditiously, in a form approved by the office, a sworn statement of the earnings, since the time of the bodily injury and for a 13 week period before the injury, of the person upon whose injury the claim is based.

4. If the insured elects to have disability benefits reserved for lost wages, the insured shall notify the insurer in writing. Receipt of such notification shall take priority over all claims subject to an assignment of benefits received after receipt of such notice, except that receipt of a properly perfected hospital lien received by the insurer shall take

priority over the insured's election to reserve all benefits for lost wages.

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

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

(2) AMOUNT OF PROPERTY DAMAGE COVERAGE.--

(a) Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section, and no such insurer shall require the purchase of any other motor vehicle coverage other than the purchase of property damage liability coverage as required by s. 627.7275 as a condition for providing such required benefits.

(b) Insurers may not require that property damage liability insurance in an amount greater than $10,000 be purchased in conjunction with personal injury protection. Such insurers shall make benefits and required property damage liability insurance coverage available through normal marketing channels. Any insurer writing motor vehicle liability insurance in this state who fails to comply with such availability requirement as a general business practice shall be deemed to have violated part IX of chapter 626, and such violation shall constitute an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance; and any such insurer committing such violation shall be subject to the penalties afforded in such part, as well as those which may be afforded elsewhere in the insurance code.

(3) AUTHORIZED EXCLUSIONS.--Any insurer may exclude benefits:

(a) For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy or for injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.

(b) To any injured person, if such person's conduct contributed to his or her injury under any of the following circumstances:

1. Intentionally causing injury or making a claim for an injury to himself or herself;

2. Being injured while committing a felony; or

3. Being injured while attempting to flee or elude arrest or detainment by a law enforcement officer.

Whenever an insured is charged with conduct as set forth in this subsection, the 30-day payment provision of paragraph (4)(b) shall be held in abeyance, and the insurer shall withhold payment of any personal injury protection benefits pending the outcome of the case at the trial level. If the charge is nolle prossed or dismissed or the insured is acquitted, the 30-day payment provision shall run from the date the insurer is notified of such action.

(4) INSURED'S RIGHTS TO RECOVERY OF SPECIAL DAMAGES IN TORT CLAIMS.--No insurer shall have a lien on any recovery in tort by judgment, settlement, or otherwise for personal injury protection benefits, whether suit has been filed or settlement has been reached without suit. An injured person who is entitled to bring suit under ss. 627.730-627.7405, or his or her legal representative, has no right to recover any damages for which personal injury protection benefits are paid, payable, or otherwise available. The plaintiff may prove all of his or her special damages notwithstanding this limitation, but if special damages are introduced in evidence, the trier of facts, whether judge or jury, shall not award damages for personal injury

protection benefits paid, payable, or otherwise available. Effective October 1, 2006, only a physician licensed under chapter 458 or chapter 459 may render an opinion as to whether the requirements of s. 627.737(2)(b) have been met. In all cases in which a jury is required to fix damages, the court shall instruct the jury that the plaintiff shall not recover such special damages for personal injury protection benefits paid, payable, otherwise available, or for damages not lawfully rendered or not compensable under s. 627.736.

(5) MEDICAL FEE SCHEDULE.--As used in this section, the term "reasonable amount" shall not be an amount in excess of the following:

(a) For hospitals licensed pursuant to this chapter, 75 percent of billed charges, except as otherwise provided. In no event may billed charges be in excess of the amount the hospital charges other patients.

(b) For a health care provider providing treatment of an emergency medical condition as defined in s. 395.002(9) within 48 hours of the date of loss, usual and customary charges for the provision of such treatment.

(c) Except for emergency services and care provided pursuant to s. 395.002 within 48 hours after the date of a loss, a health care provider or service provider's charges in excess of 200 percent of the maximum allowance for each procedure as set forth in the Medicare Part B participating fee schedule in effect at the time services are performed for the region in which services are performed are presumed to be unreasonable. The presumptions provided in the subsection do not limit the introduction of other evidence regarding whether the charges

were reasonable in amount for like services provided in the same geographic region.

(6) NONREIMBURSABLE SERVICES.--The Department of Health, in consultation with the appropriate professional licensing boards, shall adopt, by rule, a list of diagnostic tests deemed not to be medically necessary for use in the treatment of persons sustaining bodily injury covered by personal injury protection benefits under this section. The list shall be revised from time to time as determined by the Department of Health, in consultation with the respective professional licensing boards. Inclusion of a test on the list of invalid diagnostic tests shall be based on lack of demonstrated medical value and a level of general acceptance by the relevant provider community and shall not be dependent for results entirely upon subjective patient response. Notwithstanding its inclusion on a fee schedule in this section, an insurer or insured is not required to pay any charges or reimburse claims for any invalid diagnostic test as determined by the Department of Health.

(7) REQUIRED PAYMENT OF BENEFITS.--The insurer of the owner of a motor vehicle shall pay personal injury protection benefits for:

(a) Accidental bodily injury sustained in this state by the owner while occupying a motor vehicle, or while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with a motor vehicle.

(b) Accidental bodily injury sustained outside this state, but within the United States of America or its territories or possessions or Canada, by the owner while occupying the owner's

motor vehicle or if the injury is caused by physical contact with a motor vehicle.

(c) Accidental bodily injury sustained by a relative of the owner residing in the same household, under the circumstances described in paragraphs (a) and (b), provided the relative at the time of the accident is domiciled in the owner's household and is not the owner of a motor vehicle with respect to which security is required under ss. 627.730-627.7405.

(d) Accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle or, if a resident of this state, while not an occupant of a self-propelled vehicle, if the injury is caused by physical contact with such motor vehicle, provided the injured person is not:

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

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

(e) If two or more insurers are liable to pay personal injury protection benefits for the same injury to any one person, the maximum payable shall be as specified in subsection (1), and any insurer paying the benefits shall be entitled to recover from each of the other insurers an equitable pro rata share of the benefits paid and expenses incurred in processing the claim.

(8) CLAIMS SUBMISSION.--Benefits due from an insurer under ss. 627.730-627.7405 shall be primary, except that benefits received under any workers' compensation law shall be credited against the benefits provided by subsection (1) and shall be due and payable as loss accrues, upon receipt of reasonable proof of

such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405, subject to the following:

(a) Personal injury protection application.--An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by ss. 627.730-627.7405. If the injured person is a minor, the parent or legal guardian of the minor, if requested by the insurer, shall accurately complete the personal injury protection application.

(b) Billing requirements; charges for treatment of injured persons.--

1. Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered, and the insurer providing such coverage may pay for such charges directly to the person or institution lawfully rendering such treatment, if the insured receiving the treatment, or his or her guardian has authorized by countersigning the properly completed invoice, bill, or claim form approved by the office upon which such charges are to be paid as having actually been rendered, to the best knowledge of the insured or his or her guardian. In no event, however, may a charge be in excess of the amount the person or institution customarily charges for like services or supplies. With respect to a determination of whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be

given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, and reimbursement levels in the community, and various federal and state medical fee schedules applicable to automobile and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply.

2. All statements and bills for medical services rendered by any physician, hospital, clinic, or other person or institution shall be submitted to the insurer on a properly completed Centers for Medicare and Medicaid Services (CMS) 1500 form or a UB 92 form, or successor forms for such forms, or any other standard form approved by the office or adopted by the commission.

3. All billings for such services, procedures, and supplies submitted by health care providers and medical suppliers shall comply with the Healthcare Correct Procedural Coding System (HCPCS) and International Classification of Diseases (ICD-9-CM) in effect for the year in which services are rendered.

4. All claims forms submitted by health care providers and medical suppliers other than hospitals and physicians providing emergency care and services shall include on the applicable claim form the signature and professional license number of the provider who rendered the service in the line or space provided for "Signature of Physician or Supplier, Including Degrees or Credentials" and the date of the signature.

5. Charges for medically necessary cephalic thermograms, peripheral thermograms, spinal ultrasounds, extremity

ultrasounds, video fluoroscopy, and surface electromyography shall not exceed the maximum reimbursement allowance for such procedures as set forth in the applicable fee schedule or other payment methodology established pursuant to s. 440.13.

6. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for medically necessary nerve conduction testing when done in conjunction with a needle electromyography procedure and both are performed and billed solely by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 who is also certified by the American Board of Electrodiagnostic Medicine or by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association or who holds diplomate status with the American Chiropractic Neurology Board or its predecessors shall not exceed 200 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor.

7. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for medically necessary nerve conduction testing that does not meet the requirements of subparagraph 3 shall not exceed the applicable fee schedule or other payment methodology established pursuant to s. 440.13.

8. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services shall not exceed 175 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year, except that allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services provided in facilities accredited by the Accreditation Association for Ambulatory Health Care, the American College of Radiology, or the Joint Commission on Accreditation of Healthcare Organizations shall not exceed 200 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year. This paragraph does not apply to charges for magnetic resonance imaging services and nerve conduction testing for inpatients and treatment for emergency services and care as defined in s. 395.002(10) rendered by facilities licensed under chapter 395.

9. A statement of medical services may not include charges for medical services of a person or entity that rendered such services without possessing all valid qualifications and licenses required to lawfully provide and bill for such services.

10. For purposes of subsection (9), an insurer shall not be considered to have been furnished with notice of the amount of covered loss or medical bills due unless the statements or bills comply with this paragraph, and unless the statements or bills are properly completed in their entirety as to all material provisions, with all required information being provided therein.

(c) Direct billing an insurer for personal injury protection benefits.--

1. The insurer providing such coverage may pay for such charges directly to the insured or the insured's assignee.

2. The insured receiving such treatment or his or her guardian, if a minor, shall countersign the properly completed CMS 1500. This shall not apply to any bill submitted by a hospital licensed pursuant to chapter 395, for emergency services and care as defined in s. 395.002(10), for emergency transport and treatment rendered by an ambulance provider licensed pursuant to part III of chapter 401, or for or for magnetic resonance imaging (MRI), static radiographs (static x ray), computed tomography, position emission tomography and approved diagnostic procedures rendered in a clinic as defined by s. 400.9905(4).

3. Notwithstanding the exhaustion of benefits, to the extent services are not lawfully rendered or not compensable

under any section of this statute, the insured is relieved of any responsibility for the services.

4. All health care providers who provide personal injury protection services shall retain all patient medical records that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test and laboratory results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations, along with other similar or pertinent information, for at least 5 years from the last patient contact.

5. A health care provider or service provider, a clinic's medical director and clinical director, have a duty to the insurer to make certain each claim submitted is true and accurate and is for goods or services rendered.

(d) Nonemergency services.--With respect to any treatment or service, other than medical services billed by a hospital or other provider for treatment of emergency services and care as defined in s. 395.002(10) or inpatient services rendered at a hospital-owned facility, the statement of charges must be furnished to the insurer by the provider and may not include, and the insurer is not required to pay, charges for treatment or services rendered more than 35 days before the postmark date of the statement, except for the following:

1. Past due amounts previously billed on a timely basis under this subsection.

2. If the insured fails to furnish the provider with the correct name and address of the insured's personal injury protection insurer, the provider has 35 days from the date the provider obtains the correct information to furnish the insurer

with a statement of the charges. The insurer is not required to pay for such charges unless the provider includes with the statement documentary evidence that was provided by the insured during the 35-day period demonstrating that the provider reasonably relied on erroneous information from the insured and either:

a. A denial letter from the incorrect insurer; or

b. Proof of mailing, which may include an affidavit under penalty of perjury, reflecting timely mailing to the incorrect address or insurer.

(e) Emergency services.--

1. For emergency services and care as defined in s. 395.002(10) rendered by a physician in a hospital emergency department, by a physician in a hospital emergency department, or for transport and treatment rendered by an ambulance provider licensed pursuant to part III of chapter 401, the provider shall submit a statement of charges within 75 days after the date of treatment or discharge, whichever is applicable. The insurer shall not be considered to have been furnished with notice of the amount of a covered loss for purposes of subsection (9) until the insurer receives a statement complying with subsection (7), or a copy thereof, which specifically identifies the place of service to be a hospital emergency department or an ambulance.

2. The injured person is not liable for, and the provider shall not bill the injured person for, charges that are unpaid because of the provider's failure to comply with this paragraph. Any agreement requiring the injured person or insured to pay for such charges is unenforceable.

3. For emergency services and care as defined in s. 395.002 (10) rendered in a hospital, the health care provider is not required to comply with ss. (8)(c)2. and (9) of this section.

4. In determining whether claims forms have been submitted as required by this paragraph, a claim is considered submitted on the date placed in the United States mail in a properly addressed, postpaid envelope or, if not so posted by mail, on the date of delivery to the insurer.

(f) Billing notice and disclosures.--Each notice of insured's rights under s. 627.7401 must include the following statement in type no smaller than 12-point font:
BILLING REQUIREMENTS.--Florida Statutes provide that with respect to any treatment or services, other than certain hospital and emergency services, the statement of charges furnished to the insurer by the provider may not include, and the insurer and the injured person are not required to pay, charges for treatment or services rendered more than 35 days before the postmark date of the statement, except for past due amounts previously billed on a timely basis.

(9) ASSIGNMENT OF BENEFITS.--

(a) Personal injury protection benefits are not assignable, except that the insured may assign the after-loss personal injury protection benefits to any health care provider sufficient to cover any cost or expense associated with the provision of health care. Any such assignment of benefits covers the provider's present and future medical expenses.

(b) An insured may execute an assignment of benefits to different health care providers. All such assignments of

benefits are irrevocable. The insurer shall pay the claims when the insurer obtains sufficient information to determine that the claims are properly payable. The insurer is not required to reserve personal injury protection benefits for any provider during the investigation of its bills.

(c) An assignment of personal injury protection benefits to the provider shall be deemed a novation. The insured is relieved of all obligations for the medical bills once an assignment of benefits is executed. Any agreement requiring the injured person or insured to pay for charges is unenforceable. Notwithstanding such assignment of benefits, the insured shall be responsible for the provider's properly payable bills once the personal injury protection benefits have been exhausted.

(d) A provider's attorney's fees shall not be recoverable pursuant to s. 627.428 if the provider did not accept a valid assignment of benefits. A valid assignment of benefits must contain the words: "I irrevocably assign my benefits to..." and does not create any personal liability for the insured to the extent personal injury protection benefits are available and properly payable.

(e) If the insured's actions result in no coverage for the loss, or if the insured notifies the insurer in writing of his or her election to use all personal injury protection benefits for disability benefits, the assignment of benefits received before or after such notice shall be deemed void as a matter of law.

(f) To the extent that the insured's obligations in a direction to pay or a letter of protection conflict with the insurer's obligation pursuant to the assignment of benefits, the

assignment of benefits shall void the terms of the direction to pay and letter of protection that contradict any provision of the assignment of benefits.

(g) For the purposes of this subsection, the term:

1. "Letter of protection" means an agreement between a health care provider and an insured in which the health care provider agrees to postpone its right to immediate payment in exchange for the insured's agreeing to pay the health care provider out of the proceeds of any settlement or judgment resulting from a bodily injury or uninsured motorist claim.

2. "Direction to pay" means a written instruction from the insured to the insurer directing the insurer to pay the health care provider directly.

(10) OVERDUE PERSONAL INJURY PROTECTION BENEFITS.--

(a) Personal injury protection insurance benefits paid pursuant to this section shall be overdue if not paid within 30 days after the insurer is furnished written notice of the amount of a covered loss, including a properly completed CMS 1500 or UB 92 form, medical records, assignment of benefits, or, in the case of disability benefits, properly written documentation of the claim. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. When an insurer pays only a portion of a claim or rejects a claim, the insurer shall provide at the time of the partial payment or rejection an

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

(b) This paragraph does not preclude or limit the ability of the insurer to assert that the claim was unrelated, was for services not lawfully performed, was not medically necessary, or was unreasonable or that the amount of the charge was in excess of that permitted under, or in violation of, this section. Such assertion by the insurer may be made at any time, including after payment of the claim or after the 30-day time period for payment set forth in this subsection.

(c) It is a violation of the insurance code for an insurer to fail to timely provide benefits as required by this section with such frequency as to constitute a general business practice.

(d) Benefits shall not be due or payable to or on the behalf of an insured person if that person has committed, by a material act or omission, any insurance fraud relating to personal injury protection coverage under his or her policy, if

the fraud is admitted to in a sworn statement by the insured or if it is established in a court of competent jurisdiction. Any insurance fraud shall void all coverage arising from the claim related to such fraud under the personal injury protection coverage of the insured person who committed the fraud, irrespective of whether a portion of the insured person's claim may be legitimate, and any benefits paid prior to the discovery of the insured person's insurance fraud shall be recoverable by the insurer from the person who committed insurance fraud in their entirety. The prevailing party is entitled to its costs and attorney's fees in any action in which it prevails in an insurer's action to enforce its right of recovery under this paragraph.

(11) CALCULATION OF TIME OF PAYMENT.--For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument that is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope or, if not so posted, on the date of delivery.

(12) INTEREST ON OVERDUE PAYMENTS.--All overdue payments shall bear simple interest at the rate established under s. 55.03 or the rate established in the insurance contract, whichever is greater, for the year in which the payment became overdue, calculated from the date the insurer was furnished with written notice of the amount of covered loss. In the case of payment made by an insurer to the insured, or insured's assignee, interest shall be due at the time payment of the overdue claim is made. All amounts repayable to the insurer shall bear simple interest at the rate established under s.

55.03 for the year in which the payment became repayable, calculated from the date the insurer tendered payment.

(13) CLAIMS NOT PROPERLY PAYABLE.--An insurer or insured is not required to pay a claim or charges:

(a) For any service or treatment that was not lawful at the time rendered;

(b) To any person who knowingly submits a false or misleading statement relating to the claim or charges;

(c) With respect to a bill or statement that does not substantially meet the applicable requirements of paragraph (7)(b);

(d) For any treatment or service that is upcoded, or that is unbundled when such treatment or services should be bundled, in accordance with subsection (8). To facilitate prompt payment of lawful services, an insurer may change codes that it determines to have been improperly or incorrectly upcoded or unbundled, and may make payment based on the changed codes, without affecting the right of the provider to dispute the change by the insurer, provided that before doing so, the insurer must contact the health care provider and discuss the reasons for the insurer's change and the health care provider's reason for the coding, or make a reasonable good faith effort to do so, as documented in the insurer's file; and

(e) For medical services or treatment billed by a physician and not provided in a hospital unless such services are rendered by the physician or are incident to his or her professional services and are included on the physician's bill, including documentation verifying that the physician is

responsible for the medical services that were rendered and billed.

(14) VENUE.--Venue for any personal injury protection claim shall be in the jurisdiction where the insured resides, where the accident occurs, or, in the case of an assignment of benefits, where the disputed health care services were performed. Venue may be raised at any time. The cost of transferring venue shall be borne by the plaintiff, and such costs shall not be recoverable as plaintiff's damages.

(15) DEMAND LETTER.--

(a) As a condition precedent to filing any action for benefits under this section, the insurer must be provided with written notice of an intent to initiate litigation. Such notice may not be sent until the claim is overdue, including any additional time the insurer has to pay the claim pursuant to subsection (9).

(b) The notice required shall state that it is a "demand letter under s. 627.736(15)" and shall state with specificity:

1. The name of the insured upon whom such benefits are being sought, including a copy of the assignment giving rights to the claimant if the claimant is not the insured.

2. The claim number or policy number upon which such claim was originally submitted to the insurer.

3. To the extent applicable, the name of any medical provider who rendered to an insured the treatment, services, accommodations, or supplies that form the basis of such claim; and an itemized statement specifying each exact amount, the date of treatment, service, or accommodation, and the type of benefit claimed to be due. A completed form satisfying the requirements

of subsection (7) or the lost-wage statement previously submitted may be used as the itemized statement. To the extent that the demand involves an insurer's withdrawal of payment under subsection (17) for future treatment not yet rendered, the claimant shall attach an itemized statement of the type, frequency, and duration of future treatment claimed to be reasonable and medically necessary.

(c) Each notice required by this subsection must be delivered to the insurer by United States certified or registered mail, return receipt requested. Such postal costs shall be reimbursed by the insurer if so requested by the claimant in the notice, when the insurer pays the claim. Such notice must be sent to the person and address specified by the insurer for the purposes of receiving notices under this subsection. Each licensed insurer, whether domestic, foreign, or alien, shall file with the office designation of the name and address of the person to whom notices pursuant to this subsection shall be sent which the office shall make available on its Internet website. The name and address on file with the office pursuant to s. 624.422 shall be deemed the authorized representative to accept notice pursuant to this subsection in the event no other designation has been made.

(d) If, within 21 days after receipt of notice by the insurer, the overdue claim specified in the notice is paid by the insurer together with applicable interest and a penalty of 10 percent of the overdue amount paid by the insurer, subject to a maximum penalty of $350, no action may be brought against the insurer. If the demand involves an insurer's withdrawal of payment under subsection (17) for future treatment not yet

rendered, no action may be brought against the insurer if, within 21 days after its receipt of the notice, the insurer mails to the person filing the notice a written statement of the insurer's agreement to pay for such treatment in accordance with the notice and to pay a penalty of 10 percent, subject to a maximum penalty of $350, when it pays for such future treatment in accordance with the requirements of this section. To the extent the insurer determines not to pay any amount demanded, the penalty shall not be payable in any subsequent action. For purposes of this subsection, payment or the insurer's agreement shall be treated as being made on the date a draft or other valid instrument that is equivalent to payment, or the insurer's written statement of agreement, is placed in the United States mail in a properly addressed, postpaid envelope, or if not so posted, on the date of delivery. The insurer is not obligated to pay any attorney's fees if the insurer pays the claim or mails its agreement to pay for future treatment within the time prescribed by this subsection.

(e) The applicable statute of limitation for an action under this section shall be tolled for a period of 21 business days by the mailing of the notice required by this subsection.

(f) Any insurer making a general business practice of not paying valid claims until receipt of the notice required by this subsection is engaging in an unfair trade practice under the insurance code.

(16) PATIENT LOG.--The provider must maintain a patient log signed by the patient, in chronological order by date of service, that is consistent with the services being rendered to the patient as claimed. The requirements of this subsection

~~subparagraph~~ for maintaining a patient log signed by the patient may be met by a hospital that maintains medical records as required by s. 395.3025 and applicable rules and makes such records available to the insurer upon request.

~~(f) Upon written notification by any person, an insurer shall investigate any claim of improper billing by a physician or other medical provider. The insurer shall determine if the insured was properly billed for only those services and treatments that the insured actually received. If the insurer determines that the insured has been improperly billed, the insurer shall notify the insured, the person making the written notification and the provider of its findings and shall reduce the amount of payment to the provider by the amount determined to be improperly billed. If a reduction is made due to such written notification by any person, the insurer shall pay to the person 20 percent of the amount of the reduction, up to $500. If the provider is arrested due to the improper billing, then the insurer shall pay to the person 40 percent of the amount of the reduction, up to $500.~~

~~(g) An insurer may not systematically downcode with the intent to deny reimbursement otherwise due. Such action constitutes a material misrepresentation under s. 626.9541(1)(i)2.~~

(17)~~(6)~~ DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.--

~~(a) Every employer shall, if a request is made by an insurer providing personal injury protection benefits under ss. 627.730-627.7405 against whom a claim has been made, furnish forthwith, in a form approved by the office, a sworn statement~~

~~of the earnings, since the time of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.~~

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

1. Furnish ~~forthwith~~ a written report of the history, condition, treatment, dates, and costs of such treatment of the injured person and why the items identified by the insurer were reasonable in amount and medically necessary lawfully rendered and procedurally appropriate.~~,~~

2. Provide ~~together with~~ a sworn statement that the treatment or services rendered were reasonable and necessary with respect to the bodily injury sustained. Such sworn statement shall read as follows: "Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief."

3. Identify which portion of the expenses for such treatment or services was incurred as a result of such bodily injury.

4. Produce forthwith, and permit the inspection and copying of, the records regarding such history, condition, treatment, dates, and costs of treatment; provided that this shall not limit the introduction of evidence at trial.

(b) However, if the records are maintained at an alternative location, the requested records shall be made available at the principal place of business within 15 working days after the request. Failure of the health care or service provider to produce the requested records shall preclude the health care or service provider from maintaining any action, against the insured or insurer, to obtain payment of the insured's bill. At the time of the records inspection, the health care provider shall allow the insurer to inspect and copy records and photograph the equipment and associated documents associated with the insured's treatment, services, or supplies.

(c) The insured, the assignee of the insured, the health care provider, the providers' billing and medical records custodian, or any other person seeking payment under an automobile policy directly, or as an assignee, must submit to examination under oath by any person named by the insurer. If an examination under oath is requested of a health care provider licensed under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 484, chapter 486, chapter 490, or chapter 491, part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, the insurer shall pay the person $175 per hour for attendance at the examination under oath. Time spent in preparation for the examination under oath is noncompensable. Once requested, the examination under oath is a condition precedent to filing suit. The insurer may request one examination under oath of the medical records or billing custodian and one examination under oath of the health care provider, per claim, to be conducted at a time, within 30 days

of the insurer's request, and location reasonably convenient to the health care provider.

(d) A cause of action for violation of the physician-patient privilege or invasion of the right of privacy is not permitted against any physician, hospital, clinic, or other medical institution complying with this section.

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

(f) If an insurer makes a written request for documentation or information under this paragraph within 30 days after having received notice of the amount of a covered loss under subsection (7), the amount or the partial amount that is the subject of the insurer's inquiry shall become overdue if the insurer does not pay in accordance with subsection (9) or within 15 days after the insurer's receipt of the requested documentation or information, whichever occurs later. For purposes of this paragraph, the term "receipt" includes, but is not limited to, inspection and copying pursuant to this subsection.

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

(h) In the event of any dispute regarding an insurer's right to discovery of facts under this section, the insurer may petition a court of competent jurisdiction to enter an order permitting such discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an

interest, and it shall specify the time, place, manner, conditions, and scope of the discovery. Such court may, in order to protect against annoyance, embarrassment, or oppression, as justice requires, enter an order refusing discovery or specifying conditions of discovery and may order payments of costs and expenses of the proceeding, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

(i) The injured person shall be furnished, upon request, a copy of all information obtained by the insurer under the provisions of this section, and shall pay a reasonable charge, if required by the insurer.

(j) Notice to an insurer of the existence of a claim shall not be unreasonably withheld by an insured. In no event may this notice be later than 1 year after the occurrence.

(18) INDEPENDENT MEDICAL EXAMINATIONS.--

(a) Whenever the mental or physical condition of an injured person covered by personal injury protection is material to any claim that has been or may be made for past or future personal injury protection insurance benefits, such person shall, upon the request of an insurer, submit to mental or physical examination by a physician or physicians.

(b) The costs of any examinations requested by an insurer shall be borne entirely by the insurer, except that, if the insured has unreasonably failed to appear for the examinations, the cost for nonappearance, if any, shall be paid by the insurer from the insured's available personal injury protection benefits.

(c) Such examination shall be conducted within the municipality where the insured is receiving treatment, or in a location reasonably accessible to the insured, which, for purposes of this paragraph, means any location within the municipality in which the insured resides, or any location within 10 miles by road of the insured's residence, provided such location is within the county in which the insured resides.

(d) If the examination is to be conducted in a location reasonably accessible to the insured, and if there is no qualified physician to conduct the examination in a location reasonably accessible to the insured, then such examination shall be conducted in an area of the closest proximity to the insured's residence. The insurer shall pay, to the extent personal injury protection benefits are available, lost wages for time missed from work as a result of attending any such examination.

(e) Insurers are authorized to include reasonable provisions in personal injury protection insurance policies for mental and physical examination of those claiming personal injury protection insurance benefits.

(f) An insurer may not withdraw payment of a treating physician without the consent of the injured person covered by the personal injury protection, unless the insurer first obtains a valid report by a Florida physician licensed under the same chapter as the treating physician whose treatment authorization is sought to be withdrawn, stating that treatment was not reasonable, related, or necessary.

(g) A valid report is one that is prepared and signed by the physician examining the injured person or reviewing the

treatment records of the injured person, or other relevant information if reviewed and that has not been modified by anyone other than the physician. Such a report may be written by a physician who has reviewed the medical records of the insured, even if the physician has not physically examined the insured.

(h) The physician preparing the report must be in active practice, unless the physician is physically disabled. Active practice means that during the 3 years immediately preceding the date of the physical examination or review of the treatment records the physician must have devoted professional time to the active clinical practice of evaluation, diagnosis, or treatment of medical conditions or to the instruction of students in an accredited health professional school or accredited residency program or a clinical research program that is affiliated with an accredited health professional school or teaching hospital or accredited residency program.

(i) The physician preparing a report at the request of an insurer and physicians rendering expert opinions on behalf of persons claiming medical benefits for personal injury protection, or on behalf of an insured through an attorney or another entity, shall maintain, for at least 3 years, copies of all examination reports as medical records and shall maintain, for at least 3 years, records of all payments for the examinations and reports.

(j) Neither an insurer nor any person acting at the direction of or on behalf of an insurer may materially change an opinion in a report prepared under this subsection or direct the physician preparing the report to change such opinion. The denial of a payment as the result of such a changed opinion

constitutes a material misrepresentation under s. 626.9541(1)(i)2.; however, this provision does not preclude the insurer from calling to the attention of the physician errors of fact in the report based upon information in the claim file or on new information that will become part of the claim file.

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

(l) During the independent medical examination, neither the insurer, the insured, nor the assignee of the insured may have counsel, a court reporter, or a videographer present.

(m) Nothing in this section shall be interpreted to preclude or limit the ability of the insurer to assert that the claim was unrelated, was not medically necessary, or was unreasonable, or that the amount of the charge was in excess of that permitted under, or in violation of, this section. Such assertion by the insurer may be made, through or without expert testimony, at any time, including after payment of the claim or after the 30-day time period for payment set forth in this section.

(19) CANCELLATION OR NONRENEWAL.--

(a) Each insurer that has issued a policy providing personal injury protection benefits shall report the renewal, cancellation, or nonrenewal thereof to the Department of Highway Safety and Motor Vehicles within 45 days from the effective date of the renewal, cancellation, or nonrenewal.

(b) Upon the issuance of a policy providing personal injury protection benefits to a named insured not previously insured by the insurer thereof during that calendar year, the insurer shall report the issuance of the new policy to the Department of Highway Safety and Motor Vehicles within 30 days. The report shall be in such form and format and contain such information as is required by the Department of Highway Safety and Motor Vehicles which shall include a format compatible with the data processing capabilities of such said department, and the Department of Highway Safety and Motor Vehicles is authorized to adopt rules necessary with respect thereto. Failure by an insurer to file proper reports with the Department of Highway Safety and Motor Vehicles as required by this subsection or rules adopted with respect to the requirements of

this subsection constitutes a violation of the Florida Insurance Code.

(c) Reports of cancellations and policy renewals and reports of the issuance of new policies received by the Department of Highway Safety and Motor Vehicles are confidential and exempt from the provisions of s. 119.07(1).

(d) These records are to be used for enforcement and regulatory purposes only, including the generation by the department of data regarding compliance by owners of motor vehicles with financial responsibility coverage requirements. In addition, the Department of Highway Safety and Motor Vehicles shall release, upon a written request by a person involved in a motor vehicle accident, by the person's attorney, or by a representative of the person's motor vehicle insurer, the name of the insurance company and the policy number for the policy covering the vehicle named by the requesting party. The written request must include a copy of the appropriate accident form as provided in s. 316.065, s. 316.066, or s. 316.068.

(e) Every insurer with respect to each insurance policy providing personal injury protection benefits shall notify the named insured or in the case of a commercial fleet policy, the first named insured in writing that any cancellation or nonrenewal of the policy will be reported by the insurer to the Department of Highway Safety and Motor Vehicles. The notice shall also inform the named insured that failure to maintain personal injury protection and property damage liability insurance on a motor vehicle when required by law may result in the loss of registration and driving privileges in this state, and the notice shall inform the named insured of the amount of

the reinstatement fees required by s. 627.733(7). This notice is for informational purposes only, and no civil liability shall attach to an insurer due to failure to provide this notice.

(20) ATTORNEY'S FEES.-- With respect to any dispute under ss. 627.730-627.7405 between the insured and the insurer, or between an assignee of an insured and the insurer:

(a) Section 768.79 shall apply; and

(b) A contingency risk multiplier shall not be applied.

(21) CIVIL ACTION FOR INSURANCE FRAUD.--An insurer shall have a cause of action against any person convicted of, or who, regardless of adjudication of guilt, pleads guilty or nolo contendere to insurance fraud under s. 817.234, patient brokering under s. 817.505, or kickbacks under s. 456.054, associated with a claim for personal injury protection benefits in accordance with this section. An insurer prevailing in an action brought under this subsection may recover compensatory, consequential, and punitive damages subject to the requirements and limitations of part II of chapter 768, and attorney's fees and costs incurred in litigating a cause of action against any person convicted of, or who, regardless of adjudication of guilt, pleads guilty or nolo contendere to insurance fraud under s. 817.234, patient brokering under s. 817.505, or kickbacks under s. 456.054, associated with a claim for personal injury protection benefits in accordance with this section.

(22) PILOT PROGRAM.--A 6-year pilot program effective October 1 of 2006, shall be created for the delivery of magnetic resonance imaging (MRI), static radiographs (static x ray), computed tomography, position emission tomography and approved diagnostic procedures at Hospitals as defined in s. 395.002(13)

, physician-owned centers as defined in s. 456.001(4) and Florida Diagnostic Testing Facilities as defined in s. 627.732(13) in Miami-Dade, Broward and Palm Beach counties. participation in the pilot program by Hospitals as defined in s. 395.002(13), physician-owned centers as defined in s. 456.001(4) and Florida Diagnostic Testing Facilities as defined in s. 627.732 shall be required for reimbursement under a personal injury protection insurance policy of any magnetic resonance imaging, static radiographs (static x ray), computed tomography, position emission tomography, and approved diagnostic procedures conducted in Miami-Dade, Broward and Palm Beach. The pilot program shall focus on the elimination of fraud and the development of a more efficient personal injury protection delivery system that shall include:

(a) The formulation of a cost-effective electronic billing system using approved health care billing standards;

(b) The development of patient care standards; and

(c) The monitoring of fraudulent activity.

The percentage of scans billed to all personal injury protection insurance carriers in the pilot program shall not be used for the calculation in s. 400.9935(1)(g). The Office of the Chief Financial Officer shall report these outcomes to the legislature in January of 2012.

(23) NONPREEMPTION.—This section shall not be deemed to preempt or supersede any cause of action that may otherwise be available to the insurer.

Section 5. Subsections (1) and (2) of section 627.737, Florida Statutes, are amended to read:

627.737 Tort exemption; limitation on right to damages; punitive damages.--

(1) Every owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.7405, and every person or organization legally responsible for her or his acts or omissions, is hereby exempted from tort liability for damages arising from ~~because of~~ bodily injury, sickness, or disease arising out of the ownership, operation, maintenance, or use of such motor vehicle in this state to the extent that the benefits described in s. 627.736(1) are payable for such injury, or would be payable but for any exclusion authorized by ss. 627.730-627.7405, under any insurance policy or other method of security complying with the requirements of s. 627.733, or by an owner personally liable under s. 627.733 for the payment of such benefits, unless a person is entitled to maintain an action to recover non-economic or general damages including damages for pain, suffering, mental anguish, physical impairment, loss of capacity to enjoy life, and inconvenience for such injury under the provisions of subsection (2).

(2) In any action of tort brought against the owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.7405, or against any person or organization legally responsible for her or his acts or omissions, a plaintiff may recover non-economic or general damages in tort including ~~for~~ pain, suffering, mental anguish, physical impairment, loss of capacity to enjoy life, and inconvenience arising from ~~because of~~ bodily injury, sickness, or disease arising out of the

ownership, maintenance, operation, or use of such motor vehicle only in the event that the injury or disease consists in whole or in part of:

~~(a) Significant and permanent loss of an important bodily function.~~

(a)~~(b)~~ Significant permanent injury resulting in loss of an important bodily function within a reasonable degree of medical probability, other than scarring or disfigurement, that has a substantial and permanent impact on the plaintiff's general ability to perform in activities associated with a reasonably normal lifestyle.

(b)~~(c)~~ Significant and permanent scarring or disfigurement.

(c)~~(d)~~ Death.

Section 6. Effective October 1 2006, subsection (1) of section 627.7401, Florida Statutes, is amended to read:

627.7401 Notification of insured's rights.--

(1) The commission, by rule, shall adopt a form for the notification of insureds of their right to receive personal injury protection benefits under the Florida Motor Vehicle No-Fault Law. Such notice shall include:

(a) A description of the benefits provided by personal injury protection, including, but not limited to, the specific types of services for which medical benefits are paid, disability benefits, death benefits, significant exclusions from and limitations on personal injury protection benefits, when payments are due, how benefits are coordinated with other insurance benefits that the insured may have, penalties and interest that may be imposed on insurers for failure to make

timely payments of benefits, and rights of parties regarding disputes as to benefits; and.

(b) Notify the insured that:

1. Pursuant to s. 626.9892, the Department of Financial Services may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the Division of Insurance Fraud arising from violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234; and

2. Solicitation of a person injured in a motor vehicle crash for purposes of filing personal injury protection or tort claims could be a violation of s. 817.234, s. 817.505, or the rules regulating The Florida Bar and should be immediately reported to the Division of Insurance Fraud if such conduct has taken place.

Section 7. Section 627.7403, Florida Statutes, is amended to read:

627.7403 Mandatory joinder of derivative claim.--

(1) In any action brought pursuant to the provisions of s. 627.737 claiming personal injuries, all claims arising out of the plaintiff's injuries, including all derivative claims, shall be brought together, unless good cause is shown why such claims should be brought separately.

(b) In any action brought pursuant to the provisions of s. 627.736 claiming personal injury protection benefits, all claims arising out of the claimant's injuries, including all claims resulting from a valid assignment of benefits that are, or with due diligence could have been identified, must be brought at the

same time and consolidated into one cause of action or shall be deemed waived.

Section 8. Section 627.7404, Florida Statutes, is created to read:

627.7404 Interpleader.--An action for interpleader or in the nature of interpleader may be brought against two or more adverse claimants who claim or may claim entitlement to benefits that may be available pursuant to a policy of motor vehicle insurance. The claims of the several defendants need not have a common origin or be identical but may be adverse to and independent of each other. The plaintiff may deny liability in whole or in part to any or all of the defendants. A defendant may likewise obtain interpleader by way of counterclaim or cross-claim. The complaint for interpleader shall specify the nature and value of the benefits and must be accompanied by payment or tender into court of the benefits available. The complaint may request, and the court may grant prior to the entry of an order of interpleader, appropriate ancillary relief, including, but not limited to, preliminary injunctive relief. Interpleading of policy limits shall be prima facia evidence of good faith on the part of the insurance company. No part of this section shall limit in any way the joinder of parties otherwise required or permitted by Florida law.

Section 9. Subsection (2) of section 316.068, Florida Statutes, is amended to read:

316.068 Crash report forms.--

(2) Every crash report required to be made in writing must be made on the appropriate form approved by the department and must contain all the information required therein to include:

(a) The date, time, and location of the crash;

(b) A description of the vehicles involved;

(c) The names and addresses of the parties involved;

(d) The names and addresses of all drivers and passengers in the vehicles involved;

(e) The names and addresses of witnesses;

(f) The name, badge number, and law enforcement agency of the officer investigating the crash; and

(g) The names of the insurance companies for the respective parties involved in the crash unless not available. The absence of information in such written crash reports regarding the existence of passengers in the vehicles involved in the crash constitutes a rebuttable presumption that no such passengers were involved in the reported crash.

Notwithstanding any other provisions of this section, a crash report produced electronically by a law enforcement officer must, at a minimum, contain the same information as is called for on those forms approved by the department.

Section 10. Subsection (9) is added to section 322.26, Florida Statutes, to read:

322.26 Mandatory revocation of license by department.--The department shall forthwith revoke the license or driving privilege of any person upon receiving a record of such person's conviction of any of the following offenses:

(9) Conviction in any court having jurisdiction over offenses committed under s. 817.234(8) or (9).

Section 11. Subsection (9) of section 817.234, Florida Statutes, is amended to read:

817.234 False and fraudulent insurance claims.--

(9) A person may not organize, plan, or knowingly participate in an intentional motor vehicle crash or a scheme to create documentation of a motor vehicle crash that did not occur for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits as required by s. 627.736. Any person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who is convicted of a violation of this subsection shall be sentenced to a minimum term of imprisonment of 2 years.

Section 12. Section 817.2361, Florida Statutes, is amended to read:

817.2361 False or fraudulent proof of motor vehicle insurance card.--Any person who, with intent to deceive any other person, creates, markets, or presents a false or fraudulent proof of motor vehicle insurance card commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 13. Section 19 of chapter 2003-411, Laws of Florida, is repealed.

Section 14. Unless otherwise provided herein, this act shall take effect upon becoming law.

======= T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

A bill to be entitled

An act relating to motor vehicle insurance; amending s. 624.155, F.S.; providing notice requirements for causes of

action against motor vehicle insurers; amending s. 627.731, F.S.; revising purposes; amending s. 627.732, F.S.; revising definition; providing additional definitions; amending s. 627.736, F.S.; providing that a self-employed injured person or an injured person owning 25 percent or more interest in an employer offer proof of income and lost wages to insurers as a condition precedent for payment; providing for a statement of earnings; requiring an insured to notify an insurer in writing of election to reserve benefits for lost wages; specifying that such notification takes priority over other claims, except specified hospital liens; providing for Medicaid benefits; requiring the Department of Health to determine by rule tests deemed not to be medically necessary; providing guidance as to criteria to be considered; providing for required payment of benefits; authorizing a parent or legal guardian of an injured minor to complete application for personal injury protection benefits; providing for changes for treatment of injured persons; providing requirements for compliance with billing procedures; specifying the time period within which a health care provider or other specified provider must submit a statement of charges; prohibiting providers from billing an injured person under specified conditions for emergency services and care; requiring insurers to provide specified documents to insureds; requiring that amounts repayable to an insurer include the statutory interest penalty; increasing the time period for an insurer to respond to a demand letter; providing requirements for the

production and inspection of an injured person's medical records from a provider; providing a right of compensation to health care providers for responding to requests for information by insurers; providing for application of attorney's fees; providing that persons notifying insurers of improper billing may obtain a reward; restricting venue for any personal injury protection claim to specified jurisdictions and providing for costs of transferring venue; amending s. 627.737, F.S.; revising a tort exemption provision; revising certain limitations on rights to damages; amending s. 627.7401, F.S.; specifying additional information requirements for notification of an insured's right to receive personal injury protection benefits under the Florida Motor Vehicle No-Fault Law relating to anti-fraud rewards; amending s. 627.7403, F.S.; revising provisions relating to mandatory joinder of derivative claims; creating s. 627.404, F.S.; providing procedures, requirements, and limitations on actions for interpleader; amending s. 316.068, F.S.; specifying additional information to be included in a crash report; creating a rebuttable presumption relating to the existence of passengers in vehicles involved in a crash; amending s. 322.26, F.S.; providing an additional circumstance relating to insurance crimes for mandatory revocation of a person's driver's license; amending s. 817.234, F.S.; prohibiting scheming to create documentation of a motor vehicle crash that did not occur; providing a criminal penalty; amending s. 817.2361, F.S.; providing that creating, marketing, or presenting

fraudulent proof of motor vehicle insurance is a felony of the third degree; repealing section 19, ch. 2003, Laws of Florida, relating to the repeal of the Florida Motor Vehicle No-Fault Law; providing an effective date.