

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: CS/SB 1188

INTRODUCER: Banking and Insurance Committee and Senator Lynn

SUBJECT: Health Insurers Contracts - Direct Payment to Basic or Advanced Life Support Providers

DATE: April 16, 2007

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Emrich	Deffenbaugh	BI	Fav/CS
2. _____	_____	HP	_____
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4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1188 mandates payment restrictions which apply to health insurers for the provision of basic or advanced life support medical (transportation) services. Specifically, the bill:

- Mandates that health insurance contracts may not prohibit the direct payment of benefits to a licensed basic or advanced life support provider for emergency services, transportation or treatment;
- Provides that a health insurance policy may provide for direct payment of benefits to licensed basic or advanced life support providers; and,
- Provides that if an insured assigns benefits to a basic or advanced life support provider, the insurer must pay the provider directly, unless otherwise provided in the contract.

This bill amends the following section of the Florida Statutes: 627.638.

II. Present Situation:

Basic Life Support and Advanced Life Support Services

Under current law, “basic life support” involves treatment of medical emergencies by qualified persons through the use of various techniques which range from bandaging and CPR (cardiopulmonary resuscitation) to administration of oxygen.¹ “Basic life support service” means any emergency medical service which uses only basic life support techniques.² “Advanced life

¹ Section 401.23(7), F.S.

² Section 401.23(8), F.S.

support” entails treatment of life-threatening medical emergencies involving, but not limited to, procedures for endotracheal intubation, cardiac monitoring or cardiac defibrillation.³ “Advanced life support service” is any emergency medical transport or nontransport service which uses advanced life support techniques.⁴ “Air ambulances” services means the use of fixed-wing or rotary-winged aircraft used for air transportation of sick or injured persons requiring or likely to require medical attention.

Every person, firm or entity furnishing prehospital or interfacility basic life support transportation services or advanced life support services (i.e., emergency medical services (EMS)) must be licensed as a basic life support service or advanced life support service provider by the Department of Health under ch. 401.25, F.S. An applicant for licensure must obtain a certificate of public convenience and necessity (COPCN) from each county in which the applicant will operate. According to representatives with the Florida Association of Counties (FAC), the various counties or cities establish the geographical location in which the EMS will operate and the types of services provided, i.e., prehospital or interfacility life support transportation services. Some EMS providers are owned and operated by a county or municipality, while others are under the control of a private entity. EMS services must provide medical transportation services to all persons who need such services regardless of ability to pay or payment status.

Direct Payment by Health Insurers to Hospitals and Physicians

Under s. 627.638, F.S., any health insurance policy which insures against loss or expense due to hospital confinement or to medical and related services may provide for direct payment to any recognized hospital, doctor, or other person who provided the medical services, in accordance with the provisions of the insurance policy. Additionally, unless the contract provides otherwise, when an insured specifically authorizes or assigns payment of benefits directly to any recognized hospital, physician, or dentist, the insurer must pay the designated provider.

However, when payment for services involve emergency care under s. 395.1041, F.S., the insurance contract may not prohibit, and claims forms must provide for, direct payment of benefits to a licensed hospital, physician, or dentist. Insurers are allowed to require insureds to attest in writing to an assignment of benefits in this instance. When the insurer pays the provider directly, such payment may not be more than the amount the insurer would otherwise have paid without an assignment.

Section 395.1041, F.S., provides for the administration of emergency services and care by hospitals and physicians under the regulatory authority of the Department of Health. Every general hospital which has an emergency department must provide emergency services for any emergency when any person requests emergency services.

Health Care Contracts

According to representatives with one of the state’s largest health insurers, it currently has contracts with 10 emergency medical services (EMS) in 7 Florida counties (Dade, Broward, Orange, Hillsborough, Pinellas, Monroe, and St Lucie). Under its health care contract, EMS

³ Section 401.23(1), F.S.

⁴ Section 401.23(2), F.S.

providers are reimbursed directly by the insurer, the contract is structured based on a negotiated fee for services, and the EMS providers are prohibited from balance billing their insureds. If there is not a contract with EMS providers, the health insurer pays their insureds directly and the assignment of benefits to non-network providers is prohibited since the contract is between the health insurer and insured.

In a recent decision by the Fourth District Court of Appeal (*Kohl, D.C. v. Blue Cross and Blue Shield of Florida*, No. 4D06-2533)⁵, the Court held that a health insurance contract between a health insurer and an insured which prohibited the assignment of benefits to non-participating providers was valid and that all benefits rendered by non-participating providers could be paid directly to the insured. The Court found that anti-assignment clauses prohibiting insured's assignments to out-of-network medical providers are in accord with the public interest in limiting health care costs.

According to EMS officials, up until a year and a half ago, this same large health insurer reimbursed EMS providers directly for services provided to their insureds whether or not there was an existing contract with the EMS provider. However, in what was believed to be an effort to negotiate contracts with EMS providers, this insurer stopped reimbursing providers directly and began treating EMS providers as out-of-network providers and sent the claim remittance directly to the patient. When EMS provides services to patients it has them sign an "Informed Consent to Treatment" form which states that benefits are to be assigned to the EMS provider.

EMS providers state that they have not been able to successfully contract with this insurer and accuse it of not acting in good faith. Also, these providers have had great difficulty in collecting their usual and customary charges from the insureds of this one insurer and as a result have sustained losses of \$10.1 million over the past year and a half. This figure represents the total EMS provider losses for 25 Florida counties.⁶ Ultimately, the county or city taxpayer ends up paying for EMS losses, according to these providers.

Representatives with the large health insurer assert that EMS providers have not negotiated in good faith because they will not accept any negotiated fee below their usual and customary charges and want to have the ability to balance bill the insureds which is not allowed under the health insurance contract. Also, since the health insurance contract is with their insureds and not the EMS provider, it is appropriate to remit the claim remittance directly to their insured. These representatives state that they have not been provided with the name of any insured who has not paid for EMS services to a provider.

III. Effect of Proposed Changes:

Section 1. Amends s. 626.638, F.S., by adding licensed basic life support or advanced life support providers to the class of providers (hospitals and specified health care providers) for whom health insurers are authorized to provide for direct payment of benefits. Specifically, the bill provides for the following:

⁵ Issued on March 21, 2007.

⁶ This list was provided to committee staff by the Florida Association of counties: Brevard, Broward, Charlotte, Hardee, Hendry, Highlands, Lee, Leon, Dade, Monroe, Okaloosa, Orange, Osceola, Palm Beach, Polk, Sarasota, Columbia, Gilchrist, Lake, Marion, Pinellas, Sumter, Escambia, Union and Volusia.

1. Mandates that health insurance contracts may not prohibit, and claims forms must provide for, the direct payment of benefits to a licensed basic or advanced life support provider for emergency services, transportation, or treatment under s. 395.1041, F.S. and under ch. 401, F.S.;⁷ provides that the health insurer may require a written assignment of benefits and that payment to the provider may not be more than the amount that the insurer would otherwise have paid without an assignment;
2. Provides that a health insurance policy may provide for direct payment of benefits to a licensed basic or advanced life support provider, pursuant to the provisions of the insurance policy; and,
3. Provides that if an insured assigns benefits to a basic or advanced life support provider, the insurer must pay the provider directly, unless otherwise provided in the contract.

Provision # 1 directly contravenes the right of a health insurer, in a contract with its insured, to prohibit the assignment of benefits to an out-of-network or non-participating provider of basic or advanced life support services. The provision would appear to impair existing contracts between health insurers and insureds since it provides that contracts may not prohibit the direct payment of benefits to such providers.

As drafted, the language in the bill is applicable only to health insurance contracts issued to individuals and does not apply to large group, small group, out of state or to Health Maintenance Organization contracts.

Section 2. Provides that the act shall take effect July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions of the bill which prohibit a health insurance contract from paying benefits directly to a licensed basic or advanced life support provider would appear to impair

⁷ Ch. 401, F.S., has three parts: Part I regulates emergency telecommunication systems; Part II pertains to emergency medical services grants and Part III administers medical transportation services. Basic or advance life support providers are licensed and regulated under Part III.

existing health insurance contracts. Article I, Section 10 of the Florida Constitution prohibits a law impairing the obligation of contracts.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Health insurers in their contracts with insureds may not prohibit the direct payment of benefits to providers for emergency transportation services.

Emergency transportation providers will obtain direct payment of benefits from insurers under the bill's provisions.

The effect of the bill is to limit insurers' ability to negotiate rates with providers because the bill's provisions require direct payment for services rendered and insurer claims costs could increase. Likewise, emergency transportation providers would have less incentive to negotiate with health insurers since they will receive direct payment for all services rendered.

The bill also appears to allow providers to balance bill insureds.

C. Government Sector Impact:

Emergency transportation providers which are owned and operated by counties and municipalities will benefit because such providers will be paid directly by health insurers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
