The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/CS/SB 2338

INTRODUCER: Commerce Committee, Banking and Insurance Committee, and Senator Aronberg

SUBJECT: Motor Vehicle Insurance

DATE: April 15, 2008 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	**Fav/CS**
2.	Earlywine	Cooper	CM	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This committee substitute clarifies the law relating to insurer reimbursement for medical services under Florida's no-fault law. Currently, insurers are allowed to limit reimbursement for benefits payable under no-fault to 80 percent of 200 percent of the Medicare Part B fee schedule for specified medical services, supplies and care. The committee substitute clarifies that insurers' reimbursement for medical services would be based on 200 percent of the allowable amount under the participating physicians Medicare Part B fee schedule.

Under Medicare Part B, a participating physician accepts Medicare's allowed charge as payment in full for all of their Medicare patients. The patient is still responsible for the 20 percent co-payment, but the physician cannot bill the patient for amounts in excess of the Medicare allowance.

This committee substitute substantially amends the following section of the Florida Statutes: 627.736.

II. Present Situation:

Motor Vehicle Insurance
Under the state's no-fault law, owners or registrants of motor vehicles are required to purchase $10,000 of personal injury protection (PIP) insurance which compensates persons injured in accidents regardless of fault.[1] Policyholders are indemnified by their own insurer with the intent being to provide such persons with prompt medical treatment. This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and prohibits limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold. Florida drivers are also required to purchase $10,000 in property damage liability coverage.

Section 626.737, F.S., provides that PIP benefits cover the named insured, relatives residing in the same household, passengers, persons operating the insured's vehicle and persons struck by the motor vehicle. With respect to injuries sustained in a motor vehicle accident, a vehicle owner's PIP coverage will pay 80 percent of all reasonable medical costs, 60 percent of disability benefits and a $5,000 per-person death benefit, up to a limit of $10,000. The 80 percent of medical benefits are limited, however, to services and care lawfully provided, supervised, ordered or prescribed by a licensed physician, osteopath, dentist or chiropractor, or provided by:

- A hospital or ambulatory surgical center;
- An ambulance or emergency medical technician that provided emergency transportation or treatment;
- An entity wholly owned by physicians, osteopaths, chiropractors, dentists, or such practitioners and their spouse, parent, child or sibling;
- An entity wholly owned by a hospital or hospitals;
- Licensed health care clinics that are accredited by a specified accrediting organization;
- Licensed health care clinics that:
  - Have a medical director that is a Florida licensed physician, osteopath, or chiropractor;
  - Have been continuously licensed for more than 3 years or are a publicly traded corporation; and
  - Provide at least four of the following medical specialties: general medicine, radiography, orthopedic medicine, physical medicine, physical therapy, physical rehabilitation, prescribing or dispensing outpatient prescription medication, or laboratory services.

Medical Fee Limits for PIP Reimbursement
The no-fault law allows insurers to limit reimbursement for benefits payable from PIP coverage to 80 percent of the following schedule of maximum charges:

- For emergency transport and treatment (ambulance and emergency medical technicians), 200 percent of Medicare;
- For emergency services and care provided by a hospital, 75 percent of the hospital's usual and customary charges;
- For emergency services and care and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community;

[1] Sections 627.730-627.7405, F.S., are cited as the "Florida Motor Vehicle No-Fault Law.

- For hospital inpatient services, 200 percent of Medicare Part A;
- For hospital outpatient services, 200 percent of Medicare Part A;
- For all other medical services, supplies, and care, 200 percent of Medicare Part B, not to be lower than the 2007 Medicare fee schedule;
- For medical care not reimbursable under Medicare, 80 percent of the workers' compensation fee schedule. If the medical care is not reimbursable under either Medicare or workers' compensation then the insurer is not required to pay.

The insurer may not apply any utilization limits that apply under Medicare or workers' compensation. Also, the insurer must reimburse any health care provider rendering services under the scope of his or her license, regardless of any restriction under Medicare that restricts payments to certain types of health care providers for specified procedures. Medical providers are not allowed to bill the insured for any excess amount when an insurer limits payment as authorized in the fee schedule, except for amounts that are not covered due to the PIP coinsurance amount (the 20 percent co-payment) or for amounts that exceed maximum policy limits. The insurer must further reserve $5,000 of PIP benefits for payment to licensed physicians, osteopaths, or dentists rendering emergency care or inpatient care at a hospital. The funds must be reserved for 30 days after the insurer receives notice of an accident that is potentially covered by PIP benefits, after which time the unclaimed amount of the reserve may be used to pay claims from other providers. The required time to pay claims to other providers is tolled to the extent that the PIP benefits not held in reserve are insufficient to pay the claim.

Medicare Participation Payment Options for Physicians

The Centers for Medicare & Medicaid Services (CMS) within the Department of Health and Human Services administers Medicare, the nation's largest health insurance program, which covers nearly 40 million Americans. Medicare is a health insurance program for people 65 years of age and older, some disabled people under 65 years of age, and people with End-Stage Renal Disease (permanent kidney failure treated with dialysis or a transplant).

Medicare Part A (hospital insurance) covers medically necessary inpatient care in hospitals, including critical access hospitals, and skilled nursing facilities (not custodial or long-term care). It also covers hospice care and some home health care.[2] Medicare Part B (medical insurance) covers medically necessary doctors' services and outpatient medical and surgical services and supplies, diagnostic tests, ambulatory surgery center facility fees for approved procedures, and durable medical equipment. Part B also covers outpatient mental health care, outpatient occupational and physical therapy, home health care, and various preventive medical screenings.[3]

Under Medicare Part B there are three contractual participation options for physicians, i.e., "participating," "non-participating" and "limiting."[4] Physicians may sign a participating agreement and accept Medicare's allowed charge as payment in full for all of their Medicare

[2] Beneficiaries must meet certain conditions to get these benefits. Most people don't pay a premium for Part A because they or a spouse already paid for it through their payroll taxes while working.
[3] See, Centers for Medicare & Medicaid Services, *Medicare & You, 2007*, the official government handbook on Medicare, which can be found online at http://www.medicare.gov/publications/pubs/pdf/10050.pdf. Most people pay a monthly premium for coverage under Part B.
[4] American Medical Assn., November 2007.

patients. The Medicare approved amount (80 percent that Medicare pays plus the 20 percent patient co-payment) is for all covered services for the duration of the calendar year. The patient or the patient's secondary insurer is still responsible for the 20 percent co-payment, but the physician cannot bill the patient for amounts in excess of the Medicare allowance. Medicare provides several incentives for participating physicians:

- The Medicare approved amount is 5 percent higher than the Medicare approved amount for non-participating physicians;
- Directories of participating physicians are provided to senior citizen groups and individuals who request them; and
- Carriers provide toll-free claims processing lines to participating physicians and process their claims more quickly.

Physicians who choose not to become a participating provider in the Medicare program may choose to accept assignment on Medicare claims on a claim-by-claim basis, i.e., a non-participating physician. Medicare approved amounts for services provided by non-participating physicians (including the 80 percent from Medicare plus the 20 percent co-payment) are set at 95 percent of Medicare approved amounts for participating physicians, but non-participating physicians can charge more than the Medicare approved amount.

Physicians who choose not to accept Medicare claims assignments may not charge the beneficiary more than the Medicare limiting charge, i.e., a limiting charge physician. Limiting charges for non-participating physicians are set at 115 percent of the Medicare approved amount for non-participating physicians. However, because Medicare approved amounts for non-participating physicians are 95 percent of the rates for participating physicians, the 15 percent limiting charge is effectively only 9.25 percent above the participating-approved amounts for the services.

An example of a service for which the Medicare fee schedule amount is $100 for the three types of payment arrangements for physicians is as follows:

Physician Type	Percent of Medicare Fee Schedule	Amount
Participating physician	100 %	$100.00
Non-participating physician	95 %	$95.00
Limiting charge physician	115 % of 95 % Medicare fee schedule	$109.25

Under the no-fault law, insurers, in most instances, pay 80 percent of 200 percent of the Medicare fee schedule. An example of the no-fault payment rate for the three types of payment arrangements for physicians is as follows:

- Participating physician: 200 percent of Medicare is $200. The no-fault insurer pays 80 percent of $200, which is $160.
- Non-participating physician: 95 percent of 200 percent of Medicare is $190. The no-fault insurer pays 80 percent of $190, which is $152.
- Limiting charge physician: 109.25 percent of 200 percent of Medicare is $218.50. The no-fault insurer pays 80 percent of $218.50, which is $174.80.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.736, F.S., pertaining to required PIP reimbursement by insurers. Current law allows insurers to limit reimbursement for benefits payable from PIP coverage to 80 percent of 200 percent of the Medicare Part B fee schedule for specified medical services, supplies and care. The committee substitute clarifies that insurers' reimbursement for medical services would be based on 200 percent of the allowable amount under the participating physicians Medicare Part B fee schedule.

The committee substitute also clarifies that insurers' reimbursement may not be less than the allowable amount under the participating physicians Medicare Part B fee schedule for medical services, supplies, and care subject to Medicare Part B.

Section 2. Provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Specifying that insurer payments for medical services, supplies and care is based on the allowable amount under the participating physicians Medicare Part B fee schedule will end confusion currently occurring under the PIP reimbursement provisions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce on April 15, 2008:
This committee substitute deletes the substance of CS/SB 2338 and replaces it with the substance of CS/SB 2174 as follows:

- Amends the motor vehicle no-fault insurance law to clarify the provision relating to insurer reimbursement for medical benefits under personal injury protection (PIP).
- Provides that if a PIP insurer limits reimbursement to 80 percent of 200 percent of the Medicare Part B fee schedule for medical services, as currently allowed, that this would be based on the allowable amount under the participating physicians Medicare Part B fee schedule.
- Clarifies that insurer's reimbursement may not be less than the allowable amount under the participating physicians Medicare Part B fee schedule for medical services subject to Medicare Part B.

CS by Banking and Insurance on April 8, 2008:

- Increases the time period from 30 to 45 days that insurers have to notify policyholders of their renewal premium under their motor vehicle insurance policy.
- If the insurer fails to provide the 45 day advanced written notice of a renewal premium that results in a premium increase, the policy remains in effect at the existing rates until 45 days after the notice is given or until the effective date of replacement coverage obtained by the insured, whichever occurs first.
- Removes the provision requiring motor vehicle insurers, who condition the renewal of a policy on a change of limits, elimination of coverage, or an increase in premium, to provide the insured with written notice at least 45 days prior to the renewal date.

B. Amendments:

None.