

The Florida Senate
HOUSE MESSAGE SUMMARY

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BILL: CS/CS/HB 119, 2nd Eng.

INTRODUCER: Economic Affairs Committee, Insurance and Banking Subcommittee, Rep. Boyd and others

SUBJECT: Motor Vehicle Personal Injury Protection Insurance

DATE: March 9, 2012

I. Amendments Contained in Message:

House Amendment 1 – 945239 to Senate Amendment 1 – 918912 (body with title)

II. Summary of Amendments Contained in Message:

House Amendment 1 revises the Florida Motor Vehicle No-Fault Law and associated provisions. The amendment substantially changes provisions in Senate Amendment 918912 relating to Personal Injury Protection (PIP) benefits. The amendment revises the provision of Personal Injury Protection medical benefits under the No Fault Law by requiring a covered individual to obtain treatment within 14 days in an ambulance or hospital, or from a physician, osteopathic physician, chiropractic physician, or dentist. The full \$10,000 PIP medical benefit is only available if a physician, osteopathic physician, dentist, or a supervised physician’s assistant or advanced registered nurse practitioner determines that the insured has an “emergency medical condition.” Otherwise, the PIP medical benefit is limited to \$2,500. Follow up services and care requires a referral from a physician, osteopath, chiropractor or dentist. Senate Amendment 1 does not require an emergency medical condition to be present for the insured to access the full \$10,000 in coverage. The amendment eliminates PIP reimbursement for massage and acupuncture, regardless of who the type of provider rendering such services. The amendment also revises the PIP death benefit, making it an additional \$5,000 benefit, rather than part of the \$10,000 PIP benefit as under current law.

House Amendment 1 revises provisions related to the PIP medical fee schedule. The bill clarifies the reimbursement levels (200 percent of the appropriate Medicare Part B schedule) for care provided by ambulatory surgical centers and clinical laboratories and for durable medical equipment. The bill creates an annual update that occurs on March 1. Insurers are authorized to use Medicare coding policies and CMS payment methodologies when applying the fee schedule, a provision not contained in Senate Amendment 1. The bill also requires insurers to include notice of the fee schedule in their policies.

House Amendment 1 also contains numerous provisions designed to address PIP fraud. The bill requires use of long-form report when there is an indication of pain or discomfort by any party to the crash. The amendment requires clinic licensure (with exceptions for hospitals and practices

wholly owned by physicians and educational institutions) to bill the PIP system. The amendment creates standards for evaluating whether a clinic claiming an exemption is actually wholly owned by a physician, which are not contained in Senate Amendment 1. Persons submitting PIP claims on behalf of fraudulent clinics are subject to criminal penalties. The amendment also provides insurers 60 additional days (90 total) to investigate suspected fraudulent claims, but requires an insurer that pays such claims to pay an interest penalty; however it deletes a provision in Senate Amendment 1 requiring the insurer to execute an affidavit that it has a factual evidence of fraud. Claims that are unlawful under the patient brokering law (s. 817.505, F.S.) are not reimbursable under the No-Fault Law, a provision that replaces language in Senate Amendment 1 requiring disclosure of referral fees. A health care practitioner found guilty of insurance fraud under s. 817.234, F.S., loses his or her license for 5 years and may not receive PIP reimbursement for 10 years. The amendment defines failure to pay PIP claims within the time limits of 627.736(4)(b), F.S., as an unfair and deceptive practice. The OIR may order restitution to the insured or provider, but is not limited in its other administrative penalties, which may include suspending the insurer's certificate of authority.

House Amendment 1 makes changes to how attorney's fees are awarded in a PIP dispute. The bill applies the offer of judgment statute, allowing insurers to recover fees if the plaintiff's recovery does not exceed the insurer's offer by a statutorily specified percentage. The amendment also creates standards for awarding attorney's fees, which must comply with prevailing professional standards; not overstate or inflate the number of hours reasonably necessary for a case of comparable skill or complexity; and represent legal services that are reasonable to achieve the result obtained. The House amendment also prohibits the application of attorney fee multipliers, a change from Senate Amendment 1 which allows multipliers but enacts requirements for their use.

House Amendment 1 creates a non-profit direct support organization (Automobile Insurance Fraud Task Force) that can accept private donations for the purposes of preventing, investigating, and prosecuting motor vehicle insurance fraud. Monies can fund prosecutions but cannot interfere with prosecutorial independence. Funds may not be used to advertise using the likeness or name of any elected official or for lobbying.

House Amendment 1 makes numerous changes to the statutory process for the payment of PIP benefits, primarily to assist claimants in their claim submissions. The amendment allows for the electronic submission of records. A claimant whose claim is denied due to an error is given 15 additional days to correct the erroneous claim and resubmit it timely. The insurer must maintain a log of all PIP benefits paid on behalf of the insured and must provide the log to the insurer upon his or her request if litigation has initiated. If a dispute between insurers and insureds occurs, the insurer must provide notice within 15 days of the exhaustion of PIP benefits. Insurers must reimburse Medicaid within 30 days.

House Amendment 1 authorizes insurers to take an examination under oath (EUO) of an insured. Compliance is a condition precedent for receiving benefits (the insurer owes zero benefits if the insurer does not comply). An insurer that unreasonably requests EUOs as a general business practice (as determined by the Office of Insurance Regulation) is subject to the unfair insurance trade practice law. The amendment also provides that if a person unreasonably fails to appear for an independent medical examination (IME), the carrier is no longer responsible for benefits.

Refusal or failure to appear for two IMEs raises a rebuttable presumption that the refusal or failure was unreasonable. These provisions are not included in Senate Amendment 1.

House Amendment 1 requires the Office of Insurance Regulation to contract with a consulting firm to calculate the expected savings from the act, which must be presented to the Governor and Legislature by September 15, 2012. By October 1, 2012, insurer must submit a rate filing. If the insurer does not request at least a 10% rate reduction, it must explain in detail its reasons for failing to achieve those savings. A second rate filing must be made by January 1, 2014. If the insurer does not request a rate reduction of at least 25%, it must explain in detail its reasons for failing to achieve those savings. The amendment appropriates \$200,000 in nonrecurring revenue from the Insurance Regulatory Trust Fund for the OIR to meet these requirements during the 2011-2012 fiscal year. An unexpended balance of the appropriation at the end of the fiscal year is carried forward and available for expenditure during the 2012-2013 fiscal year. Senate Amendment 1 required OIR to order PIP insurers to reduce rates by a factor that reflects the bills expected effects, effective January 1, 2013, and created a presumption that the reduction is at least 25 percent absent clear and convincing evidence to the contrary.

House Amendment 1 is effective July 1, 2012, except as otherwise provided. The revisions to s. 627.736, F.S. (the main PIP statute) are not effective until January 1, 2013.