

HOUSE BILL 119 PERSONAL INJURY PROTECTION 2012

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Brief Synopsis

Under the bill, to be eligible for no-fault medical benefits, persons injured in motor vehicle accidents are required to receive initial treatment and care within 14 days from specified providers. Up to \$10,000 in medical benefits is available for **emergency medical conditions**; up to \$2,500 in medical benefits is available for **non-emergency medical conditions**.

The bill retains aspects of the current PIP system and includes various changes, such as:

- 1) Amending traffic crash reporting requirements.
- 2) Specifying certain actions that constitute fraud.
- 3) Requiring health care clinics that seek PIP reimbursement to be licensed, with specified exceptions.
- 4) Authorizing a direct-support organization to combat motor vehicle insurance fraud.
- 5) Providing that the PIP funeral benefit of \$5,000 is in addition to medical and disability benefits.
- 6) Excluding massage and acupuncture from covered medical benefits.
- 7) Amending the PIP schedule of maximum charges; requiring insurers to include the schedule in their forms; permitting use of Medicare coding policies.
- 8) Providing an insurer's failure to timely pay PIP claims as a general business practice is an unfair and deceptive trade practice.
- 9) Tolling the PIP payment period when fraud is reasonably suspected.
- 10) Requiring insureds to comply with all policy terms, including requests for Examination Under Oath.
- 11) Creating a rebuttable presumption the failure to appear for two mental or physical examinations constitutes an "unreasonable refusal" to submit to examination.
- 12) Prohibiting the use of contingency risk multipliers; providing guidelines for judges to consider in determining whether the amount of an attorney fee award is appropriate.
- 13) Revoking the license of health care practitioners found guilty of insurance fraud for five years.
- 14) Providing for PIP insurers to make rate filings by October 1, 2012, and January 1, 2014, that decrease premium rates by at least 10 percent and 25 percent, respectively

Florida Statute section 316.066: Florida Traffic Crash Report

A **long form** Florida Traffic Crash Report (FTCR) is now **required** where:

- 1) There is death, personal injury, or "any indication of complaints of pain or discomfort" by anyone involved in the crash;
- 2) An involved vehicle is rendered inoperable such that it must be towed from the scene of the crash;
- 3) An involved vehicle is a commercial motor vehicle.

The **long form** Florida Traffic Crash Report **must include**:

- 1) The date, time, and location of the crash;
- 2) A description of the vehicles involved;
- 3) The names and addresses of the parties involved including all drivers and passengers in each vehicle;
- 4) The names and addresses of witnesses;
- 5) The name, badge number, and agency of the investigating officer;
- 6) The names of the insurance companies for the 'respective parties' involved in the crash.

A **short form** FTCR or Driver Exchange of Information Form **must include**:

All involved drivers and passengers,

The identification of each vehicle that the drivers and passengers were in.

Florida Statute section 400.9905: Changes to Clinic Ownership and Exemption

Clinics that bill PIP must now be licensed unless . . .

The following new language is added:

*“An entity is deemed to be a health care clinic and **must be licensed** under the Health Care Clinic Act in order to receive **reimbursement** under the Florida Motor Vehicle No-Fault Law **unless exempted** under Florida Statute section 627.735(5)(h)”*

Florida Statute section 627.736(5)(h) exempts

Exempt Clinics Under PIP Defined:

- 1) Entities **wholly owned** by a medical doctor, an osteopath or the physician and the spouse, parent, child, or sibling of the physician;
- 2) Entities **wholly owned** by a dentist or the dentist and the spouse, parent, child, or sibling of the dentist;
- 3) Entities **wholly owned** by a chiropractor or the chiropractor and the spouse, parent, child, or sibling of the chiropractor;
- 4) **A hospital** or ambulatory surgery center;
- 5) **An entity that wholly owns** or is wholly owned, directly or indirectly, by a hospital;
- 6) An entity that is a **clinical facility affiliated** with an accredited medical school.

The term “**entity wholly owned**” is defined by new Florida Statute section 627.732(17) as:

A proprietorship, group practice, partnership, or corporation that provides health care services rendered by licensed health care practitioners and in which licensed health care practitioners are the business owners of **all aspects** of the business entity, including, but not limited to,

being reflected as the business owners on the title or lease of the physical facility;

filing taxes as the business owners;

being account holders on the entity’s bank account;

being listed as the principals on all incorporation documents required by this state; and

having ultimate authority over all personnel and compensation decisions relating to the entity.

Florida Statute section 400.991: Fraud Notice

Subsection (6) requires that all forms for health care clinic registration or exemption **must contain this insurance fraud notice:**

A person who knowingly submits a false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking exemption from licensure as a health care clinic, or demonstrated compliance with the [Health Care Clinic Act] with the intent to use the license, exemption from licensure, or demonstration to provide services or seek reimbursement under the Florida Motor Vehicle No-Fault Law, commits a fraudulent insurance act, as defined in s. 626.989, Florida Statutes. A person who presents a claim for personal injury protection benefits knowing that the payee knowingly submitted such health care clinic application or document, commits insurance fraud as defined in s. 817.235, Florida Statutes.

Florida Statute section 626.98: Fraudulent Insurance Act

Subsection (1)(a)(2) is added, which states:

A person commits a “fraudulent insurance act” if the person . . . knowingly submits:

- 1) a false, misleading, or fraudulent application or other document when **applying for licensure** as a health care clinic, **seeking exemption from licensure** as a health care clinic, or demonstrated compliance with the [Health Care Clinic Act] with the intent to use the license, exemption from licensure, or demonstration to provide services or seek reimbursement under the Florida Motor Vehicle No-Fault Law; or
- 2) a claim for payment or other benefit pursuant to a personal injury protection insurance policy under the Florida Motor Vehicle No-Fault Law if the person knows that the payee knowingly submitted a **false, misleading, or fraudulent application or other document when applying for licensure** as a health care clinic, **seeking exemption from licensure** as a health care clinic, or demonstrating compliance with the [Health Care Clinic Act].

Issues: The information regarding the exempt status only has to be correct at the time of application, and there is no continuing duty to update information for exemptions to AHCA.

Florida Statute section 626.9541: Bad Faith

Subsection (1)(i)(3)(i) is added, which includes as a **new express unfair claim settlement practice: Failing to pay** personal injury protection insurance claims within the time periods required by s. 627.736(4)(b).

*The [Office of Insurance Regulation] may order the insurer to **pay restitution** to a policyholder, medical provider, or other claimant, including interest [at the statutory rate], for the time period within which an insurer fails to pay claims as required by law.*

***Restitution is in addition** to any other penalties **allowed by law**, including, but not limited to, the suspension of the insurer's certificate of authority.*

Also Abusing the Examination Under Oath, Failing to Pay Claims Until Receipt of Presuit Demand = Bad Faith

Florida Statute section 626.9895

Direct support organization known as the “Automobile Insurance Fraud Strike Force” to support the prevention, investigation, and prosecution of motor vehicle insurance fraud.

The “Strike Force” is authorized to raise funds; receive grants, gifts, and bequests, and to disburse funds for the support of DIF, prosecutors, law enforcement, AHCA, and DOH to advance the prevention, investigation, and prosecution of motor vehicle insurance fraud.

Contributions to the “Strike Force” from insurers are permitted business expenses from all regulatory purposes.

Florida Statute section 627.7311

Entitled “Effect of law on personal injury protection policies”.

*The provisions and procedures authorized in ss. 627.730-627.7405 **shall be implemented** by insurers offering policies pursuant to the Florida Motor Vehicle No-Fault Law.*

*The legislature intends that these provisions and procedures **have full force and effect regardless of their express inclusion** in an insurance policy form, and a specific provision or procedure authorized in 627.730-627-7405 **shall control over general provisions in an insurance policy form.***

An insurer is not required to amend its policy form or to expressly notify providers, claimants, or insureds in order to implement and apply such provisions or procedures.

Florida Statute section 627.732

There are two new definitions sections of the Florida Motor Vehicle No-Fault Law

New subsection (16) is added to define “**emergency medical condition**” as:

*A medical condition manifesting itself by **acute** symptoms of sufficient **severity**, which may include severe pain, such that the absence of immediate medical attention could **reasonably be expected to result** in any of the following:*

- Serious jeopardy to patient health;*
- Serious impairment to bodily functions;*
- Serious dysfunction of any bodily organ or part.*

Subsection (17) is added to define “**entity wholly owned**” as:

*A proprietorship, group practice, partnership, or corporation that provides health care services rendered by licensed health care practitioners and in which licensed health care practitioners are the business owners of **all aspects** of the business entity, including, but not limited to, being reflected as the business owners on the **title or lease** of the physical facility, **filing taxes** as the business owners, being account holders on the entity’s **bank account**, being listed as the principals on all **incorporation documents** required by this state, and having ultimate **authority over all personnel and compensation** decisions relating to the entity.*

Note: This definition does not apply to hospitals.

Florida Statute section 627.736(1): Required Benefits

“Initial services”

Subsection (1)(a) requires that the claimant receive **initial services and care within 14 days** after the motor vehicle accident in order to be eligible for benefits under the Florida Motor Vehicle No-Fault Law.

This means a PIP claimant must treat within 14 days of the accident, or they will not be entitled to PIP!

Issue: When do “Initial Services” stop?
The PIP statute does not define “Initial Services”

The initial services and care **must be provided by:**

- a medical doctor, an osteopath, a dentist, or a **chiropractor, or**
- a hospital, **or** a facility that is owned or is wholly owned by a hospital, **or**
- by emergency medical services personnel.

Follow up services

On referral from the healthcare professional that provided the initial services and care

Follow-up care for the diagnosed injuries may be provided by:

A hospital or ambulatory surgery center, a medical doctor, an osteopath, a dentist, a chiropractor, a physician’s assistant, an advanced registered nurse practitioner, a physical therapist, and certain health care clinics.

*Note that while **chiropractors** are among those practitioners authorized to provide initial follow-up care, they are not amongst those practitioners authorized to determine that a claimant suffered from an **emergency medical condition** thus warranting the full \$10,000.00 medical benefit.*

“Emergency Medical Condition”

If a patient suffers an “Emergency medical condition” they are then entitled to up to \$10,000 of PIP benefits.

If a medical doctor, an osteopath, a dentist, a physician's assistant, or an advanced registered nurse practitioner (NOT A CHIROPRACTOR) determines that the claimant suffered from an emergency medical condition, reimbursement for all services and care is up to \$10,000.00.

NOTE: Professionals and referral services have already begun sending out solicitations offering to provide one of the above to certify an EMC!!!

Non-Emergency Medical Condition

If, however, a "Medical doctor, an osteopath, a dentist, a chiropractor, a physician's assistant, or an advanced registered nurse practitioner" determines that the claimant did not suffer from an emergency medical condition, reimbursement for all services and care is limited to \$2,500.00.

There is no longer PIP coverage available for massage or acupuncture

Subsection (1)(a) provides that **massage and acupuncture are not reimbursable** under the Florida Motor Vehicle No-Fault Law.

Medical benefits do not include:

Massage as defined in **s. 480.033** or

Acupuncture as defined in **s. 457.102**, regardless of the person, entity, or licensee providing massage or acupuncture, and

a licensed massage therapist or licensed acupuncturist **may not be reimbursed** for medical benefits under this section.

480.033 Definitions

(3) "Massage" means the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.

Subsection (1)(c) Death benefit

Provides that the \$5,000.00 death benefit **is over and above** to the \$10,000.00 medical and disability benefits.

Florida Statute section 627.736(4): Payment of Benefits

Where Medicaid pays for services otherwise payable pursuant to the Florida Motor Vehicle No-Fault Law insurers have just 30 days to reimburse Medicaid the full amount it paid.

Subsection (4)(a)(3) Curing claims errors:

*If an insurer pays only a portion of a claim or rejects a claim due to an **alleged error** in the claim, the insurer, at the time of the partial payment or rejection, **shall provide an itemized specification or explanation** of benefits due to the specified error.*

*Upon receiving the specification or explanation, the person making the claim, at the person's option and without waiving any other legal remedy for payment, has **15 days to submit a revised claim**, which shall be considered a timely submission of written notice of a claim.*

Subsection (4)(i): Anti-fraud provision allowing for additional time to investigate suspicious losses:

*If an insurer has a **reasonable belief** that a fraudulent insurance act, for the purposes of s. 626.989 or s. 817.234, has been committed, the insurer **shall notify the claimant, in writing, within 30 days** after submission of the claim that the claim is being investigated for suspected fraud.*

No other specifics are required in the notice!

Insurer has additional 60 days to investigate the claim.
Must pay or issue denial; if Denial must report to DIF.

PIP log requirement

Subsection (4)(j) requires the insurer to **create and maintain a payout log**, and, if litigation is commenced, **to provide a copy** of it to the insured **within 30 days of the insured's request**.

Florida Statute section 627.736(5): Charges for Treatment of Injured Persons

The **Medicare fee schedule is fixed as the one in effect on March 1** of each year and is the one to be used until March 1 of the following year notwithstanding any subsequent change made to the fee schedule or payment limitation.

Changes:

Medicare fee schedule provisions for ambulatory surgical centers and clinical laboratories (200 percent of the Medicare Part B Fee Schedule), and

Providers of durable medical equipment (200 percent of the Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Fee Schedule).

Insurers may use the Medicare coding policies and payment methodologies (OPPS, NCCI, etc.) of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care,

So long as the coding policy or payment methodology does not constitute a utilization limit.

Florida Statute section 627.736(5)(a)(5)

Effective July 1, 2012, an insurer **may limit payment** as authorized by this paragraph only if the **insurance policy includes a notice at the time of issuance or renewal** that the insurer may limit payment pursuant to the schedule of charges specified in this paragraph. A **policy form approved by the [Office of Insurance Regulation]** satisfies this requirement. If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted.

Florida Statute section 627.736(6): Discovery of Facts About an Injured Person and Disputes

Subsection (6)(f): Requires the insurer to notify the claimant of exhaustion upon request within 15 days after the policy limits have been reached"

Subsection (6)(g): *An insured seeking benefits under ss. 627.730- 627.7405, including an omnibus insured, Must comply with the terms of the policy, which include, but are not limited to, submitting to an examination under oath. The scope of questioning during the examination under oath is limited to relevant information or information that could reasonably be expected to lead to relevant information. Compliance is a condition precedent to receiving benefits.*

Florida Statute section 627.736(7): Mental and Physical Examination of Injured Person and Reports

Creates a **rebuttable presumption** that an insured's failure to submit to or failure to appear at **two examinations is unreasonable**

Florida Statute section 627.736(8)

Applicability of Provision Regulating Attorney Fees, Offers of Judgment

- 1) Attorney fees recovered under the Florida Motor Vehicle No-Fault Law must be calculated **without a contingency risk multiplier**;
- 2) Both 627.428 and 768.79 (**the offer of judgment statute**) **apply** in actions under the Florida Motor Vehicle No-Fault Law;
- 3) Any attorney fees recovered **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 and necessary to achieve the result obtained.

Florida Statute sections 627.736(9): Preferred Providers and 627.736(10): Demand Letter

These amendments are technical in nature

Florida Statute section 627.736(11): Failure to Pay Valid Claims and Unfair or Deceptive Practice

Subsection (11), dealing with failure to pay valid claims and unfair and deceptive practices, is amended to include new subsections (11)(a)(1) and (11)(a)(2):

An insurer is engaging in a prohibited unfair or deceptive practice . . . if the insurer, with such frequency so as to indicate a general business practice:

- Fails to pay valid claims for personal injury protection; or**
- Fails to pay valid claims until receipt of the presuit demand letter**

Florida Statute section 627.736(16): Secure Electronic Data Transfer

This allows for **electronic transmission of claim materials**, so long as the transmission is **secure and in compliance with state and federal privacy and security laws**.

Eliminates requirement that “all parties mutually and expressly agree” to the electronic communication of claim materials.

Florida Statute section 627.736(17): Nonreimbursible Claims = Anti-broking provision

Claims arising from acts prohibited by Florida Statute section 817.505, the **patient broking** statute, are not reimbursable under the Florida Motor Vehicle No-Fault Law.

Florida Statute section 627.7405: Subrogation

Subsection (2) states that the insurer’s **right of reimbursement does not extend to taxi-cabs**.

Florida Statute section 817.234

Adds subsection (1)(a)(4) providing that a person commits insurance fraud:

If that person, with the intent to injure, defraud, or deceive any insurer knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer a claim for payment or other benefit under a personal injury protection insurance policy if the person knows that the payee knowingly submitted a false, misleading, or fraudulent application or other document when **applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with [the Health Care Clinic Act]**.

And adds new subsection (10) which states a licensed health care practitioner who is found guilty of insurance fraud under this section for an act relating to a personal injury protection insurance policy:

Loses his or her license to practice for 5 years and,

May not receive reimbursement for personal injury protection benefits for 10 years

HB 119 Effective Dates

- Section 18 of the bill states “[e]xcept as otherwise expressly provided in this act, this act shall take effect July 1, 2012.”
- Section 10 of the bill states that the amendments to Florida Statute subsections 627.736(1), (4), (5), (6), (7), (8), (9), (10), and (11) and the addition of subsection (17) are effective 1/1/13.
- Exception that new Florida Statute section 627.736(5)(a)(5) above.
- Section 11 (electronic transmission) of the bill states that the amendments to Florida Statute section 627.736(16) are effective December 1, 2012.

For more information on the new Florida PIP law provisions, or other matters associated with Florida law please contact us at any time. We welcome the opportunity to be of service to you and your company.



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