



NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS – FLORIDA

1836 Hermitage Blvd, Suite 200, Tallahassee, FL 32308

Contact: Paul S. Brawner

(850) 422-1701

brawner@faifa.org

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HERE'S HOW IT WORKS: Read the following article and when you're ready to take the exam, simply contact Paul S. Brawner at brawner@faifa.org and request the exam. You'll receive the exam and an affidavit attesting you did not receive help on the exam. Return the exam and signed affidavit via fax, e-mail or regular mail (see contact information at top of page). Upon successful completion of the exam (70% or higher), NAIFA–FL will send you a Certificate of Completion within 20 business days.

Florida Legislative and Regulatory Update – 2011

1 Hour of Self-Study CE

Course Reading Assignment

I. INTRODUCTION

This course will provide updates on property and casualty, life and health and other insurance related issues which were approved by the Legislature and regulators during the 2011 Legislative Session.

II. Florida Health Choices – HB 1125 (Statutes referenced by this bill: 408.910; 409.821; 409.912)

Many agents are aware of the existence of Florida Health Choices (FHC) which was established legislatively about two years prior to President Barak Obama being elected. Interestingly, the technology platform that will be utilized by FHC it looks an awful lot like what the federal health

reforms, now being enacted by the Obama administration, will be requiring in the new health exchanges slated to come on line in 2014.

While there are numerous legal challenges to the health reforms that could end up decided by the U. S. Supreme Court, many have counseled that agents should proceed as if the reforms will end up going forward. How this ends up after the politicians and lawyers finish their maneuvers is of less importance than agents not being left behind on the knowledge and education needed to serve their clients when all is finally settled.

As it stands now, in the law, there will be a health insurance exchange in Florida either run out of Tallahassee, established by the Florida Legislature, that we have some say or some control in, otherwise it will be an exchange run out of Washington D.C. by the Health Care Finance Administration under the auspices of the Obama Administration.

People can and are choosing who they want to run the exchange, but there is a strong view that we, as a state, should get on board so that we can design it to fit our state's needs and not have it foisted on us by regulators out of Washington D.C. The FHC platform under development is likely the closest thing to an exchange that we have. It may need some tweaking to be used as such, however, as the federal government has put out another 225 pages of rules recently.

In Florida, legislative leadership and the governor have elected not to support anything that would advance federal health care reform. But if the Supreme Court does not agree with this view, then we risk missing the boat as federal health regulators will not let us come back and throw an exchange together in 2014.

The new FHC legislation made a number of changes to the existing FHC law such as allowing prepaid limited health organizations and discount medical plans as things that can be sold out of the plan. It removed the limitation that FHC can only be used by plans with groups of one to 50 lives. Now it can market to small or large groups and individuals. It also removed the requirement that in addition to an Office of Insurance Regulation review of rates of products on FHC, the FHC Board would also review the rates of its products. Now the insurance commissioner's review will be adequate.

It allows the FHC Board to "implement options for employer participation which conform to common insurance practices," which sounds a bit obtuse, but it has some significant meaning. Imagine if a group of three employees from a business all went on FHC and, as an example, one picked Blue Cross, one picked Humana and one picked CIGNA, yet it is somehow supposed to be a group plan. Originally this was looked at as something out of the box but FHC has been convinced they will need to be a little more mainstream of how insurance works and is offered under state and federal law. Otherwise the agents won't participate and the vendors won't participate and no one will use it.

So the jury is still out on how and if FHC will work, but it might be, in the best of all worlds, a tool to help us conform in this brave new world we are anticipating.

REVIEW QUESTION 1 (check answer at end of reading assignment)

Which of the following is **NOT** a change resulting from the new FHC legislation?

- a. Allowing prepaid limited health organizations to be sold out of the plan
- b. Allowing discount medical plans to be sold from plans
- c. Imposed a limitation that FHC can only be used for groups of 1 – 50 lives**
- d. Removed the requirement for the FHC board to review rates with OIR.

III. Agent licensing – HB 1087 (Statutes referenced by this bill: 627.4133; 627.7277; 627;728; 627.7281; 627.403; 627.4137; 440.12; 440.20; 624.402; 624.424; 626.207; 626.8651)

You may remember during the closing days of the 2010 governor’s race between Alex Sink and Rick Scott the issue arose of how so many licensees who were convicted felons were able to obtain licenses as either as securities agents, adjusters or insurance agents. And the reason for that is that the law is clear: after you have completed your sentence and waited a proscribed amount of time and rehabilitated yourself into the community, then you could apply for licensure and get approved.

So our new CFO, Jeff Atwater, has decided to narrow that down a bit so that if you are convicted of a capital felony, a first degree felony or any kind of financial crime you are forever barred from applying to get licensed. Potential applicants with other felonies and misdemeanors, that are not financial crimes, such as fraud or embezzlement, could still go through the process. And they put in statute what used to be in rule: A 15 year waiting period and you would have to have mitigating or aggravating factors, and the burden is on the applicant to prove they are competent, trustworthy and they deserve to be licensed.

IV. Health Insurance Mandates – HB 1193 (Statutes referenced by this bill: 624.24)

This legislation states that a person cannot be compelled to purchase health insurance in Florida unless one of three enumerated situations is met: If it is a private contract between an employer and employee; if it is a public employment plan; if it is the operation of a dangerous instrumentality or a hazardous occupation which requires one to have insurance.

Other than these situations, where insurance can be required, this measure is a proverbial stake in the ground saying that Florida is not going to participate in the federal health reform mandated health insurance coverage beginning in 2014.

Along with this statute the Legislature passed a second bill – **Senate Joint Resolution 2**. A joint resolution is a vehicle to put a measure on the statewide elections ballot and there will be a constitutional referendum on the ballot for next fall's elections in November.

Basically it preserves the freedom of residents to provide for their own healthcare. Yet, it comes at it a little differently; it doesn't necessarily talk about insurance. What it says is individuals in Florida have the right to pay for their healthcare directly, and providers such as doctors and hospitals have the right to receive payment directly from individuals choosing to pay.

Political analysts have said that this resolution is a way to put language in our constitution to set up a showdown between the Florida Constitution and the U.S. Constitution as a measure of support to those who are opposing federal healthcare reform both politically and in the courts.

It has been questioned by some whether it can work. Some legal experts say that the federal Constitution likely takes a pre-emption to the Florida Constitution, but it makes a statement that this Legislature and governor are against the concept of the government requiring people to buy health insurance.

V. Wellness Legislation – HB 445 (Statutes referenced by this bill: 626.9541; 641.3903)

This legislation by Rep. Clay Ford, of Pensacola, allows individual and group health plans to offer a group wellness health improvement program. Insurers or agents are not allowed to offer rebates or incentives back to policyholders due to unlawful rebating or commission splitting prohibitions (rebating is allowed but only in certain specified instances). This comes at these prohibitions and goes into the unfair trade practices act and says it is not an unfair trade practice or illegal rebating if an insurer comes up with a wellness program to encourage its insureds to lose weight, quit smoking, exercise more (or start exercising period) and do things that will get them healthier and lower health care costs. For such health improvements insurers can offer rewards, incentives, cash payments, health savings accounts, or merchandise. It did say that if an insured is certified by his doctor that he or she cannot participate in such activities that they would also be eligible for whatever rewards have been offered to those who can participate.

REVIEW QUESTION 2 (check answer at end of reading assignment)

Which of following would **NOT** prevent an individual from obtaining an insurance license?

- a. Conviction for a capital felony
- b. Conviction for a first degree felony
- c. Conviction of any kind of financial crime
- d. Conviction of other felonies and misdemeanors, that are not financial crimes**

REVIEW QUESTION 3 (check answer at end of reading assignment)

HB 1193 states that a person cannot be compelled to purchase health insurance in Florida unless one of three situations is met. Which of the following is a correct situation?

- a. It is a private contract between an employer and employee**
- b. It is a private employment plan
- c. It is not a hazardous occupation
- d. It is not a dangerous instrumentality

VI. Property Insurance – SB 408 (Statutes referenced by this bill: 95.11; 215.555; 215.5595; 624.407; 624.408; 626.854; 624.408; 626.854; 626.8796; 627.0613; 627.062; 627.06281; 627.0629; 627.351; 627.3511; 627.4033; 627.43151; 627.7011; 627.70131; 627.706; 627.7061; 627.7065; 627.707; 627.7073; 627.7074; 627.711; 627.712; 631.54)

This bill was signed into law just days after Legislative Session ended even though it passed in the waning days as they wanted to get the sinkhole provisions instituted as soon as possible. As Florida law stood, it only took \$5 million in capital to form a property insurance company in Florida. This bill raised those capital surplus requirements to \$15 million. The average insurers in this state may insure around 100,000 homes and have a \$250 million liability in the event of a 1 in 100 year storm. Therefore even the \$15 million requirement may appear low. This is why Florida insurers purchase such large amounts of reinsurance. However, the supporters of this bill felt this new requirement is a step in the right direction to make Florida insurers better able to handle potential large losses from hurricanes. It will keep the more thinly capitalized companies from entering the market, and it does allow companies that are presently licensed a glide path to get up to these levels over several years.

SB 408 had numerous public adjuster reforms. Regarding claims of Citizens Property Insurance Corporation, public adjusters will only be allowed to charge 10% of any claim that a policyholder hires them to adjust in the wake of a declared hurricane for a period of one year. Public adjusters will be limited to charging 20% of any hurricane claim beyond that one year period, whereas in the past we have seen some agreements that took 30, 35 and sometimes 40% out of hurricane claims settlements in succeeding years.

Unfair advertising, deceptive advertising is prohibited by public adjusters including using official looking seals like that of the state of Florida in ads. They cannot act like they have inside knowledge about your insurance policy or are in any way affiliated with your insurance company.

Other provisions that will limit public adjusters include:

- a. There is now a five year statute of limitations on filing claims from the date of loss. A lot of people thought that is what the law has always been and that is not the case. In Florida, the statute of limitations runs from the breach of the contract, which is the insurance policy. So if a policyholder doesn't file a claim and get denied there is no breach. You essentially could bring a Hurricane Andrew claim today under certain circumstances.
Now there are other provisions in the policy. You have a duty to mitigate and a duty to timely bring a claim, so there are other ways to turn those claims down. But under this new measure it is a definite five years to bring a lawsuit.
- b. Additionally, we now have a three-year windstorm and hurricane claim filing deadline. This was very controversial when it was presented to the Legislature and was one of the hardest fought parts of the bill.
- c. The other big provision included in the bill was a change to the Actual Cash Value (ACV) versus Replacement Cost Value (RCV) provisions in insurance policies. In virtually every other part of the country, if you have a claim you receive ACV which is the depreciated value of the damage to the house. Maybe the ACV is \$20,000 for an estimate of damage that is \$100,000. That \$20,000 is essentially the down payment the insurer makes to start your claim. You engage contractors to begin work and as work is completed you forward invoices from the contractor as work is completed up to the \$100,000 (or thereabouts) value of the claim and your house is rebuilt.
In Florida over the last five years you were given that \$100,000 right off the bat. However, in many cases, and particularly in regard to partial loss sinkhole claims, some people were not getting the repairs made and spent the money on other things or paid off the mortgage. So now policyholders will get the depreciated value of the claim unless and until all repairs called for under the claim are effectuated.

There has been much written in the media about the expedited rate filing provisions of the bill that made it sound like some kind of automatic rate increase. However, it is simply an expedited filing which the Office of Insurance Regulation can still deny, but they have 45 days, rather than the usual 90, to act

on it. The idea is speed-to-market and it is only for the portion of a rate filing dealing with costs of reinsurance. It is a simple filing to review and it was instituted because legislators were convinced that insurers need to recover this money quickly so there is not a drawdown on their surplus when they purchase reinsurance.

The legislation also makes substantial changes to how a policy may be cancelled or non-renewed. The first is that if a company is in trouble it can now non-renew a policy mid-term with a 45 day notice rather than the normal 180 day notice that must be given when the end of the policy term is approaching. The Office of Insurance Regulation must approve any of these non-renewals upon a finding that for whatever reason – lack of reinsurance, inadequate surplus, inadequate risk dispersion – the company is in a perilous financial condition. This was a very controversial provision of SB 408. However, it received virtually no debate which was kind of odd.

There also are changes to the practice where a policyholder receives a policy cancellation in the mail while also receiving a renewal policy at the same time. This is because under Florida law if you change coverage in a policy, the law says that essentially is a non-renewal. This has been confusing to many people so language was inserted into the insurance code that now allows insurers to put a *Notice of Coverage Change* in the same envelope as the renewal policy and do not have to send the non-renewal of the policy.

The majority of SB 408 had to do with substantial changes to sinkhole provisions of Florida law. The changes were aimed at problems that have arisen out of the original sinkhole laws promulgated in 2005. Much of the debate over these changes had to do with damage to a structure caused by settling as opposed to structures that completely fall into a hole in what is called catastrophic ground cover collapse.

Many claims have been filed due to cracks on walls or foundations that may have been caused by normal settling and do not threaten the structure. Under the new law there has to be peril to the structure. If that standard is met then engineers do tests to determine whether there is a reasonable degree of professional probability that there is a sinkhole in the area that could be causing that damage. Some of the major sinkhole provisions that were included in SB 408 include:

- The bill authorizes insurers to restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building only. The bill also allows an insurer to require a property inspection prior to issuing sinkhole loss coverage.
- The bill changes the definition of “sinkhole loss,” by creating a definition of “structural damage.” The bill creates a definition of “structural damage” for purposes of determining whether a sinkhole loss has occurred. It specifies five distinct types of damage that constitute structural damage. Each type of damage is tied to standards contained in the Florida Building Code or used in the construction industry. Accordingly, in order for the policyholder to obtain policy benefits

the insured structure must sustain structural damage as defined by the bill that is caused by sinkhole activity.

- The bill creates a new process for an insurer's investigation of a sinkhole claim. The process requires the insurer to determine whether: (1) the building has incurred structural damage that (2) has been caused by sinkhole activity. Coverage for sinkhole loss is not available if structural damage is not present or sinkhole activity is not the cause of structural damage.
- Payment of Sinkhole Claims – The insurer continues to be required to pay to stabilize the land and building and repair the foundation upon the verification of a sinkhole loss. Payment shall be made to conduct such repairs in accordance with the recommendations of the professional engineer retained by the insurer
- The bill revises the statutory authorization specifying that the insurer may limit payment to the actual cash value of the sinkhole loss, not including below-ground repair techniques, until the policyholder enters into a contract for the performance of building stabilization repairs. Stabilization and all other repairs to the structure and contents must be completed within 12 months after the policyholder enters into the contract for repairs unless the insurer and policyholder mutually agree otherwise, the claim is in litigation, or the claim is in neutral evaluation, appraisal or mediation.
- The bill specifies that neutral evaluation must determine causation (whether a sinkhole loss has occurred and, if so, whether the observed damage was caused by sinkhole activity); all methods of stabilization and repair both above and below ground; the costs for stabilization and all repairs; and all information needed to determine whether a sinkhole loss has been verified and render an opinion on all matters at dispute in the neutral evaluation. The neutral evaluator must be provided with information necessary to perform his or her duties.
- Citizens and private insurers no longer have to cover appurtenant structures for sinkholes. Driveways, sheds, pool houses, fences and others do not have to be covered, but it is dictated by what is on the declarations page.

REVIEW QUESTION 4 (check answer at end of reading assignment)

What was the primary focus for legislation approved in SB 408?

- a. Public Adjuster reforms
- b. Windstorm and hurricane claim filing deadlines
- c. Capital surplus requirements
- d. Sinkhole provisions**

REVIEW QUESTION 5 (check answer at end of reading assignment)

As a result of SB 408, what is the new minimum capital requirement to form a new insurance company in Florida?

- a. \$5 million
- b. \$15 million**
- c. \$25 million
- d. \$250 million

VII. Medicaid Reform – HB 7107 (Statutes referenced by these bills: 409.961; 409.962; 409.963; 409.964; 409.965; 409.966; 409.967; 409.968; 409.969; 409.97; 409.971; 409.972; 409.973; 409.974; 409.975; 409.976; 409.977; 409.978; 409.979; 409.981; 409.982; 409.983; 409.984; 409.985; 409.986; 409.987; 409.988; 409.989; 409.9841; 409.99; 409.961; 409.961; 409.962; 409.963; 409.964; 409.965; 409.966; 409.967; 409.968; 409.969; 409.97; 409.971)

Presently Medicaid is a managed care program in only one county in Florida. The Legislature now has passed legislation to convert it to a managed care program statewide. They believe this will reduce the costs of the program as state government economists have estimated that Medicaid will grow from taking 17 percent of the state budget to over 34 percent in five years if nothing is done to change how it is run. The Florida Agency for Health Care Administration must file for a waiver to the United States Department of Health and Human Services before the program can be started.

VIII. Planned Health Exchanges – HB 97 (Statutes referenced by this bill: 641.31099; 627.64995; 627.6699; 627.66996; 627.6515)

This legislation deals with the planned health exchanges under the federal Patient Protection and Affordable Care Act. It essentially says that in the event there is ever actually an exchange in Florida there will be no coverage for abortion procedures in the exchange.

IX. Commercial Deregulation – HB 99 (Statutes referenced by this bill: 627.062; 627.0651; 627.062; 627.0651)

Last year the Legislature deregulated some of the commercial property and casualty insurance rates in the state. Excess or umbrella coverages; surety and fidelity; boiler and machinery; errors and omissions; directors and officers; intellectual property; advertising and internet liability; and property risks under a highly protected risk rating plan were all deregulated. Under the new law, for a period of two years the Office of Insurance Regulation can come in and order changes if the rates are found to be discriminatory

or somehow unfair but otherwise they are deregulated and no rate filing needs to be made. The list of the deregulated coverages was expanded this year to include fiduciary liability, general liability, nonresidential property, non-residential multi-peril, excess property, burglary and theft. Last year they also deregulated commercial motor vehicle insurance covering fleets of 20 or more. They now removed the 20 or more language and any commercial motor vehicle policy is now deregulated with regard to rates.

REVIEW QUESTION 6 (check answer at end of reading assignment)

Which legislation passed in 2011 states that if health care exchanges are ever created in Florida abortion care will not be coverage?

- a. HB 1097
- b. HB 1125
- c. **CS HB 97**
- d. HB 1193

X. Life insurer Notification of Beneficiaries (No CE credit for this section)

This issue is likely to become a part of legislation in the near future. Many agents are aware of the life insurance inquiry going on and the hearings held at the Capitol by the Florida Insurance Commissioner, and ten other insurance commissioners, in May 2011. Two companies, MetLife and Nationwide, were called in to testify for the industry at large.

The issue they were probing was that the Social Security Administration produces a list that is called the Master Death File (MDF) which contains the social security number of every person that dies in America. There are many allegations surrounding the MDF, but at the core of the issue is this: Does the life insurance industry quickly utilize the MDF to stop payments to annuitants that have died, but ignore the existence of the MDF when a person dies and is due life insurance benefits? Every insurance company has different claims practices, but generally speaking, if an insurer shuts off an annuitant's payments, it's not permanent if in fact they investigate and determine the facts relating to a person's death are false. In those cases, the annuity company begins the payments again, and pays the annuitant for lost interest on their money.

As for standard life insurance, almost every life insurance policy form approved by insurance commissioners for over a hundred years contains language requiring beneficiaries to actually make a

claim and submit proof of death before triggering eligibility for a claim payment. Regulators contend that the MDF is proof of death or, at a minimum, triggers a duty by insurers to investigate claims.

This brings us to the second half of the issue. If an insurer has "proof of death" under Florida law, then under our escheatment laws a five-year clock begins to tick for the insurer to pay the claim to the beneficiary, and if they cannot find the beneficiary then they must "escheat" the benefit payment to the State of Florida. However, Florida law also says that if an insurer gets no proof of death, then the benefit payments under the policy are payable at the attained age under the policy (which is an actuarially determined figure, currently over 120 years).

To be fair, regulators are concerned that beneficiaries get paid quickly. But under Florida law, the fact that a person's name pops up on the MDF does not constitute "proof" they are dead. It's constructive knowledge at best. Recent reports indicate that thousands of people that are still alive are on the death file, and, conversely, many who have died are not. When insurers investigate whether someone is dead they essentially must ask, "This is ABC life insurance company calling to inquire if Mrs. Smith has passed away?" Needless to say, this could be a troubling call for Mrs. Smith to receive if in fact she has not passed away.

The Commissioners have not stated what, if anything, will be changed to deal with these issues. Commissioner McCarty is due to become the next president of the National Association of Insurance Commissioners and we can reasonably expect that this will be one of the issues that come up for debate in that association.

REVIEW QUESTION 7 (check answer at end of reading assignment)

Under Florida law, once a notice of death is provided, how much time is allowed for life insurers to pay a claim to the beneficiary?

- a. 1 year
- b. 5 years**
- c. 7 years
- d. There is no time limit

XI. Unauthorized Entities

Unauthorized entities engaging in insurance are a serious and growing problem in Florida for consumers and agents. Consumers are substantially harmed with these entities failing to pay claims and defrauding through deception. Agents are unwittingly (sometimes knowingly) representing these entities and

placing clients and themselves at risk. Florida law is violated under the guise of these unauthorized entities claiming to be ERISA exempt or some type of association plan that claims to not be insurance or to be exempt from Florida regulation. All of this is simply not true! This is a problem in the state of Florida and other states.

The problem of unauthorized entities selling unauthorized products originated in the health insurance arena, although the problem now seems to be spreading into property-casualty arena as well. These unauthorized entities promised low health insurance premiums, a promise fueled by skyrocketing health insurance premiums with legitimate health insurance carriers. In the current market, low health insurance rates just do not exist. The public and certain agents, apparently, were ripe for the picking by these scam artists. Remember, these are scams and the intent is to collect as much premium as possible without having to pay claims, or very few claims.

Unsuspecting licensed insurance agents are also vulnerable to this type of scam because representatives of the unauthorized entity will contact the licensed agents and send them (or give them in person) printed marketing materials touting the unauthorized entity and their bogus products which, again, gives the impression of legitimacy and credibility.

Maybe the agent is asking too many questions of the representative – is just a little too inquisitive – about who they are, where they're located, how long they've been in business, etc. The agent may even question the legitimacy of the product. Some of the scam artists are telling agents that their products do not have to be authorized by the Department because the plan is an ERISA plan, or that the plan is part of a MEWA (multiple employer welfare arrangement) or it's to be sold to labor unions – all the while stating that under any of these previously-mention circumstances, the products do not have to be approved or authorized by the Department.

The representative of the unauthorized entity might say, "It doesn't require approval, because this is an ERISA plan." Or, "It doesn't require approval because this plan is part of a MEWA plan." Or "This plan doesn't require approval because it's for labor unions." None of this is correct! Any product which contains an insurance component is required, by law, to receive authorization of that component by the Department before it can be sold in Florida. Any legitimate company representative who approaches you about selling and representing their products should not mind the scrutiny you put them under by verifying their status with the Department.

626.902 Penalty for representing unauthorized insurer.—

(1) In addition to any other penalties provided in the insurance code:

(a) Any agent licensed in this state who in this state represents or aids an unauthorized insurer in violation of s. 626.901 commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person other than an insurance agent licensed in this state who in this state represents or aids an unauthorized insurer in violation of s. 626.901 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.(2) In addition to the penalties provided for in subsection (1), such violator shall be liable, personally, jointly and severally with any other person or persons liable therefore, for payment of taxes payable on account of such insurance under s. 626.938. Agents or any other persons are prohibited from representing or aiding an unauthorized insurer. If an agent or any other person represents an unauthorized insurer, they are subject to severe penalties, including possible civil and criminal action. Agents are subject to suspension or revocation of their licenses and/or monetary penalties for violation of the unauthorized insurer law. Agents can be held liable for claims and losses not paid by unauthorized insurers. Agents who represent or aid an unauthorized insurer commit a felony of the third degree.

Don't be fooled by phony products that sound too good to be true! Investigate before you sell or buy these plans. Check to see if an entity or plan is an authorized insurer by calling the Department of Financial Services at 877-693-5236 or 850-413-3089.

Review Exercise Answer Key

1. C

2. D

3. A

4. D

5. B

6. C

7. B