



# Advisor Newsletter

*(Monthly Newsletter of the Florida Association of Insurance and Financial Advisors)*

**JULY / AUGUST 2006**

## **LEGISLATIVE AND REGULATORY REPORT**

by Timothy J. Meenan, FAIFA Lobbyist

### **GOVERNOR VETOES HEALTH INSURANCE IDENTIFICATION CARD LEGISLATION**

As I reported to you last month, insurance industry representatives asked Governor Bush to veto House Bill 1361 which includes provisions requiring insurers and HMOs to provide all policyholders with identification cards outlining specific information regarding their health insurance or HMO coverage.

On June 27, 2006, the Governor vetoed HB1361 citing, among other reasons, the July 1, 2006 implementation date for the health identification card which was changed from the original July 1, 2007 implementation date late in the Session. While noting that the “underlying policy behind these provisions is solid,” the Governor agreed that a July 1, 2006, implementation date would not “allow companies sufficient time to conform to the law” and the imposition of penalties against insurers for failure to comply would be unfair. I expect this legislation to be enacted next year.

### **GOVERNOR VETOES DISCOUNT MEDICAL PLAN ORGANIZATION LEGISLATION – ALSO FOUND IN HB 1361**

Changes to the laws regulating Discount Medical Plan Organizations (DMPOs) were also vetoed along with the health insurance identification card legislation (HB 1361) reported on above.

Beginning in 2004 with enactment of the “Affordable Health Care for Floridians Act,” Florida became the first state to comprehensively regulate discount medical plan organizations (DMPOs). Insurance Commissioner Kevin McCarty says that the regulatory effects are impressive after a recent internal review. “Whether it is the increased financial oversight, more truth in advertising, or ensuring that consumers receive fair value for their purchase, the new law has accomplished its objectives,” he said.

Prior to adoption of the Act, angry consumers who had been duped by unscrupulous DMPOs filed more than 1,000 complaints annually. Complaints since the law took effect are down more than 70 percent. However, the Commissioner noted that recent market conduct examinations show that several DMPOs have continually violated laws relating to form filings and the use of prohibited language in marketing materials. The Governor also received requests that he veto HB 1361 because of the provisions loosening the regulation of DMPOs.

The Governor acknowledged DMPOs as important products that provide for “families that do not have a health insurance plan [a means] to access medical services.” However, he stated that he also decided to veto HB 1361 because provisions in the bill “remove some of the necessary consumer protections that were put into place in 2004 and 2005.” He went on to say, “I do not support changes made in the bill to reduce state oversight of discount medical plan organizations and increase the cap on monthly charges.” The “cap” the Governor referred to is a provision in the bill that raised from \$30 to \$60 per month the charges allowed for a discount medical plan product.

#### FREE INSURANCE EFFORT FAILS WITH GOVERNOR’S VETO OF HB 1361

In addition to the health identification card provisions and the DMPO provisions noted above, House Bill 1361 also contained a proposed new law authorizing “free insurance.” This provision of the bill created a limited exemption from the Unfair Methods of Competition and Unfair or Deceptive Acts or Practices law for free insurance products covering property, other than real estate and motor vehicles. Free insurance is currently prohibited in Florida. The Governor did not elaborate in his veto message on the free insurance provision of the bill.

FAIFA vigorously opposed this change in law because it would establish a troubling precedent that must not be allowed to take hold in Florida. It would allow the cost of insurance to be rolled into the cost of the product covered and would limit consumer control over the type of insurance coverage they could purchase and would prevent them from shopping around for coverage. Customers would not have an opportunity to choose to purchase the consumer product without mandatory insurance coverage. In reality, “free insurance” isn’t “free” since the cost of the consumer product is just increased to cover the premium. This practice is misleading to consumers.

#### GOVERNOR SIGNS LONG-TERM CARE INSURANCE BILL – THE REALLY GOOD AND THE REALLY BAD

In previous reports, I have reported that the long-term care legislation had some bad stuff put in it. So what started out as a really good bill later ended up with controversial provisions opposed strongly by insurers and agents. Here’s the good news: On June 20, 2006, Governor Bush signed House Bill 947, the long-term care insurance bill that creates a qualified state Long-Term Care Insurance Partnership Program in Florida in compliance with federal law.

The Program is designed to:

- 1) provide incentives for consumers to obtain or maintain insurance to cover the cost of long-term care; 2) provide a means to qualify for coverage of long-term care needs under Medicaid without first having to use up all of their assets, such as long-term care insurance; and,
- 3) reduce demands on the Medicaid and other medical assistance programs by encouraging the private insurance market to provide long-term care insurance products to sell to consumers. The law allows an individual to protect whatever amount of long-term care insurance coverage he or she has from consideration when applying for Medicaid.

The controversial provisions included making Florida the first state to include an incontestability provision on long term care policies, and certain rating requirements that may have the effect of discouraging insurers from writing in Florida. To implement those provisions, Insurance Commissioner Kevin McCarty issued Informational Memorandum OIR-06-16M relating to implementation of the controversial provisions of the bill as it applies to “all long-term care insurance policies issued on or renewed on or after July 1, 2006.” Here are the provisions over which many of our members have expressed concern:

- All policies must have a two-year contestable period. Any challenges the insurer has to the policy must be raised during the first two years. After two years, the only reason the policy can be cancelled by the insurer is for non-payment of premium.

- The insurer cannot charge existing policyholders more than it charges new policyholders for the same benefits.
- The pooling provisions of Section 627.410, Florida Statutes, are to be determined by pooling the experience of all affiliated insurers.
- The insurer must make available to the policyholder the option of the contingent benefit upon lapse that is defined in the National Association of Insurance Commissioners (NAIC) Model Act of 2000.
- Policies no longer need to provide coverage for a minimum of 24 consecutive months of nursing home care.

FAIFA is closely monitoring comments on this new law from its member agents to determine if it will have a negative effect on the availability and affordability of long-term care insurance products in Florida. Please be sure to give your input if you see insurers withdrawing from Florida, or significantly increasing rates.

### IF YOU THINK YOU AREN'T REQUIRED TO LICENSE YOUR AGENCY, YOU ARE PROBABLY WRONG!

This is a friendly reminder for you to not let the October 1, 2006, deadline for licensure or registration with the Department of Financial Services of your agent-owned insurance agency pass without your compliance. Unless you, the agent, are a full-time employee of an insurance company, you most likely must either be working at a licensed or registered agency or must become licensed or registered before October 1, 2006.

As I have reported several times in this column, insurance agencies owned solely by insurance agents are now required to get registered with the Department by October 1 of this year. Failure to do so can result in substantial fines. There is no fee to register and you can complete the process online at <http://www.fldfs.com/Agents/> under the "Agents and Adjusters" button at the top of the page. There is a "Frequently Asked Questions" link with additional information about the licensure and registration requirements as well as links with other information at the link provided.

To recap, any location that an individual uses to perform a function that requires an agent license must be licensed or registered as an insurance agency. This means that an agent that is based in his or her home must also comply. To qualify for no license, but merely a registration, an agency must have been in business prior to January 1, 2003, and be solely owned by licensed and appointed agents. All other agencies must apply for the agency license.

One registration or license does not cover multiple locations of affiliated agencies, each location must comply. Every location must have a licensed and appointed agent in full-time charge of that agency, and one person may not accomplish that feat for two locations. This requirement is essentially an extension of the current law requiring appointment of a lead agent for each location. If you need reciprocity for your agency with another state, you should apply for a license, not a registration. Agency licenses are renewed every three years, but registrations need not be renewed. Agencies are not appointed by insurance companies, and in turn need not appoint the sub-agents working at each agency location. Customer service reps still need to be appointed, however. Any agency owner that is not a licensed and appointed agent will need to submit fingerprints as part of the licensure process; obviously this doesn't apply if you qualify for registration.

### HEALTH PLAN COMPARISON WEBSITE AVAILABLE FOR SMALL EMPLOYERS AND OTHER HEALTH CARE CONSUMERS

The Office of Insurance Regulation (OIR) has launched the Small Employer Sample Rate Search website, <https://apps.fldfs.com/sercs//>, that provides the ability to compare and search the benefits and premiums for small employer health plans offered in Florida. The website provides the ability to view small group major medical health insurance rates for standard, basic and high deductible health plans currently available in the state.

Small businesses can enter the employees that they employ in various categories and calculate an estimated monthly cost for their company. Small business can use the site to obtain a sample monthly cost to provide health insurance for their employees.

Insurance Commissioner Kevin McCarty said, "There is widespread agreement that if we are going to make healthcare more accessible and affordable we have to make our health care system more transparent. This new tool provides a giant step in that direction and will make it much easier for our consumers and businesses to shop for coverage." The Office of Insurance Regulation does not endorse or recommend any of the plans and encourages consumers to contact carriers directly if they are interested in any of the plans.

## CFO RACE IS HEATING UP

The Republican and Democratic candidates leading in campaign fundraising have each received over \$1 million dollars in campaign contributions. Senate President Tom Lee is a Republican candidate and has raised more than the other two candidates having raised \$2,322,307; he currently has more than \$1.4 million in cash. Senator Lee just last month was endorsed by Governor Bush, Lt. Governor Toni Jennings, and other GOP leaders. Senator Lee was the force behind the State's lobbyist reform adopted in 2005. Senator Lee's Republican party challenger, State Representative Randy Johnson, has raised \$1,023,028.

Democratic candidate, Adelaide "Alex" Sink, is the sole Democratic candidate in the CFO race. She has raised \$1,436,632 and has more than \$1,123,854 in cash. Ms. Sink is from Hillsborough County and was the President of Florida's largest bank, NationsBank (now Bank of America) for seven years, was appointed to the Commission on Government Accountability by the late Governor Lawton Chiles, and has served as Vice Chair of Florida Tax Watch, a non-partisan, non-profit tax think tank.

The insurance industry is closely watching this race because of the direct impact the CFO has on industry participants. The CFO is a member of the State Cabinet and regulates insurance companies (as a member of the Financial Services Commission), insurance agents, banking, and securities, and oversees the Insurance Commissioner, State Treasury, Comptroller, and Fire Marshal.

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## U.S. Senate Adopts Pension Bill But Not Estate Tax

The US Senate passed by an overwhelming margin the Pension bill (H.R. 4). Since the House passed an identical bill last week, the bill will proceed straight to President Bush for his signature. The President is expected to sign it at the earliest possible moment.

In addition to the pure pension provisions that are important to businesses and workers alike, the bill contained several provisions that insurance agents and financial advisors will find helpful in their practices. They are:

--- Investment Advice- The bill allows advisors representing 401 (k) plan administrators to provide specific advice to workers pondering their investment options under 401 (k) plans.

--- Life insurance/Annuity/LTC insurance combinations-The bill removes tax law impediments for insurance companies to make combination policies available and for life insurance and annuity owners to use policy cash values to pay for long-term care needs.

--- COLI-Clarifies the tax rules governing the business use of life insurance. Adopts industry "best practice" standards.

--- Investor Owned Life Insurance-dropped a provision to place an excise tax on insurance policies, but instructs the Treasury to conduct a study and return within two years with recommendations to address the issue.

Prior to enactment of the pension bill, the Senate failed to muster enough votes to take up the estate tax "reform" bill also passed by the House last week. The Senate will now join the House in recess until after Labor Day.

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### **FAIFA's Glen Malcolm Set to Run for Re-election as NAIFA Trustee in San Francisco**

Past FAIFA President and current NAIFA Trustee Glen Malcolm, Sr., CLU, ChFC, LUTCF, RHU is set to run for re-election for another two-year term as NAIFA Trustee. The election is to be held at the 2006 NAIFA Convention, August 26-30 in San Francisco. There are five Trustee candidates running for five positions, so the race is uncontested.

Malcolm, a 25-year MDRT member, is Past President of Miami-Dade AIFA and FAIFA. In 2001-02 while FAIFA Sr. Vice President and serving as FAIFA Membership Co-Chair, he personally recruited over 150 new members. The following year, as FAIFA President Elect, Malcolm personally recruited over 100 new members.

In September 2004, Malcolm was first elected NAIFA Trustee at the national convention in Las Vegas. FAIFA National Committeeman and Past President, Steve Estler, CLU, ChFC, is coordinating Malcolm's re-election campaign.

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