



FAIFA Session Dispatch (4/20/07)

2007 LEGISLATIVE SESSION

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LEGISLATIVE ACTION – WEEK #7

Property tax reform was the major legislative theme this past week, but this week PIP and the State budget are likely to be the two biggest issues commanding attention—property tax reform will continue to be a part of the conversation as the House and Senate are resolving their differing issues in ongoing conference negotiations.

You should expect to see considerable news coverage of auto insurance over the last two weeks of the legislative Session which is scheduled to end on May 4. The House of Representatives seems to be moving in the direction of repealing PIP while the Senate bill with the most momentum would extend PIP through January 2009. See my more detailed discussion below. Following are other issues that FAIFA is monitoring and reviewing on behalf of members:

PERSONAL INJURY PROTECTION REFORM—FAIFA SUPPORTS HOUSE APPROACH

Committee Substitute for Senate Bill 1880 has been scheduled for hearing by the Senate General Government Appropriations Committee on April 24. It reenacts Florida's No-Fault Law, but provides for future repeal on January 1, 2009; allows insurers, under coverage for personal injury protection (PIP), to apply a maximum limit on charges equal to 200 percent of the reimbursement allowed under the Medicare Part A (hospital insurance) or Medicare Part B (medical insurance) participating fee schedule in effect at the time for the region where the treatment is provided; if the treatment or services are not reimbursable under the Medicare fee schedules, insurers may apply a maximum limitation that is equal to the maximum reimbursable allowance under workers compensation; if the treatment or services are not reimbursable under either Medicare or workers comp, they are not reimbursable by the insurer. However, the bill does not allow the insurer to apply any limit on the number of treatments or other utilization limits that apply under Medicare or workers comp. Additionally, the bill prohibits a provider from billing or attempting to collect from an insured any amount in excess of the fee schedule payment limit, other than amounts not covered by the insured's PIP coverage due to deductibles, coinsurance amounts, or maximum policy limits; and it removes existing fee schedules for specified medical procedures.

There has been a shake up in the House's version of PIP-related legislation. A proposed bill that has been the focal point on the House side was not heard, as had been anticipated, on April 20 by the House Jobs and Entrepreneurship Council. PIP is re-scheduled for hearing before the House Rules Committee on April 23. The proposed House bill will repeal the PIP law effective October 1, 2007, as it is already scheduled to Sunset. It would replace PIP with \$15,000 in a new mandatory coverage for post-accident care in emergency rooms. PIP clinics would not qualify for reimbursements under the new coverage. The House proposal is also reported to provide a medical fee schedule for covered treatments that the hospitals and providers are strongly opposing.

FAIFA supports the House version of PIP reform, as it eliminates PIP and the rampant fraud that comes with it. Also, it prevents a cost shift of most legitimate auto accident health care costs to voluntary market health insurers.

HOUSE BILL 411 (SB 1678) – LIMITED INSURANCE LICENSES FOR TRAVEL PROTECTION

Committee Substitute for HB 411 was placed on the House Calendar for Floor debate on April 24. It provides for changes to two types of limited licenses issued by the Department of Financial Services. It replaces the personal accident insurance license with the travel insurance license, and it replaces the baggage and motor vehicle excess liability insurance license with the motor vehicle rental insurance license.

The similar Senate bill, CS/CS for SB 1678, as of April 20, is on the Senate Calendar on second reading.

HOUSE BILL 7103 – HIGH-RISK OFFENDERS

House Bill 7103, relating to high-risk offenders was passed by the House Policy and Budget Council on April 20. The bill is important to agents due to their business activity on community school grounds. It requires a fingerprint-based background screening be performed of non-instructional contractors who: (1) are permitted access to school grounds when students are present; (2) are not anticipated to have direct contact with students in performing their contract; and (3) would have only unanticipated contact with students that is infrequent and incidental.

The bill requires state and federal criminal history checks to be performed at least every five years. The fingerprints may be taken by either an authorized law enforcement agency or an employee of a school district, school, or private company who is trained to take fingerprints. Fingerprints taken pursuant to the bill's requirements must be purged from the system after five years. The bill requires a non-instructional contractor subject to this section to inform a school district that he or she has had a criminal history check in another school district within the last five years. The school district must verify the results of the previous criminal history check using system it shares with the Florida Department of Law Enforcement (FDLE), and may not charge the contractor for doing so. A contractor who has been convicted of a disqualifying offense (any offense which would require registration as a sex offender, murder, terrorism, kidnapping, among others) is prohibited from being on school grounds when students are present unless he or she has received a full pardon or had civil rights restored. Violation of this prohibition is a third degree felony.

The bill exempts the following non-institutional contractors from the fingerprint-based background screening requirements:

- Contractors who are under the direct supervision of a school district employee or contractor who meets the screening requirements. The term direct supervision means that a school district employee or contractor is physically present with a non-instructional contractor when the contractor has access to a student and the access remains in the school district employee's or the contractor's line of sight;
- Contractors who are required to undergo a Level 2 background screening process for licensure, employment, certification, or other purposes, who submit evidence that they meet the standard, were screened within the previous 5 years, and who are in good standing in their field; Law enforcement officers who are assigned to or dispatched to school grounds by their employer;
- Employees and medical directors of ambulance providers who are on school grounds in the scope of their duties;
- Contractors who remain at a site where students are not permitted and that is separated from the rest of the school grounds by a six-foot high chain link fence; and

- Contractors who provide pick-up and delivery services involving brief visits to school grounds when students are present.

Non-instructional contractors who are exempt from fingerprint-based background checks are subject to a search of the state and national registry of sexual predators and sexual offenders without charge to the contractor. Contractors identified as a registered sexual predator or sexual offender may not be on school grounds when students are present. The school district must notify the vendor, individual, or entity under contract of an adverse determination within three business days. A contractor may not be subjected to additional criminal history checks by the school district.

HOUSE BILL 177 – HEALTH INSURANCE ID CARD

Committee Substitute for House Bill 177 was withdrawn from the Policy and Budget Council on April 19 and placed on the House Calendar. It requires health insurance companies and HMOs to provide identification cards to their policyholders and subscribers for the purpose of creating a uniform set of information relating to each policy or contract.

These entities are not currently required to provide insurance identification cards to policyholders and subscribers although many choose to do so. The bill requires that such identification cards contain specified information that can be used to identify the insured individual, identify the type of plan, obtain authorization for services, and indicate the financial responsibility of the covered person.

The Senate companion bill, CS for SB 2094, has been in the Senate Health Policy Committee since April 13, and has not been scheduled for a hearing by that committee.

HOUSE BILL 1401 – HEALTH FLEX PLAN FOR SMALL BUSINESS

The House of Representatives passed Committee Substitute for Committee Substitute for House Bill 1401 on April 19, and sent it to the Senate. The bill amends provisions of the Health Flex Plan Program to offer basic affordable health care and preventive services to low-income, uninsured state residents. It expands eligibility from 200 to 250 percent of the federal poverty level, which is \$20,650 for a family of four.

The bill creates a small business health insurance grant program to be administered by the Agency for Workforce Innovation. The comparable Senate bill, CS for SB 2094, passed out of Senate Banking and Insurance on April 9, and has been in the Senate Health Policy Committee since April 13, but has not been scheduled for hearing.

SENATE BILL 266 – REGULATION OF MEDICARE SUPPLEMENTAL POLICIES

On April 20, the Committee Substitute for Committee Substitute for Senate Bill 266 was placed on the Senate Calendar and read second time, and the House companion bill, Committee Substitute for 97, was amended on the House Floor to make it identical to the Senate bill.

You will recall that this bill excludes from the definition of “Medicare supplemental policy,” in Medigap policies, those Medicare supplement policies offered by employers, employer groups, or trustees on behalf of employers or labor organizations that have at least 50 employees in Florida. The House and Senate bills now both contain the following language: if, upon termination of eligibility, group members age 65 or older are offered continuation of coverage under the group plan or a conversion policy that has the same benefits as a Medicare supplement policy.

The Senate staff analysis explains the effect of the bill as follows: “. . . if the Medicare supplement policy is issued to an employer in Florida, it appears that the provisions of the

Insurance Code that apply to insurance policies in general and to 'health insurance' policies in particular, other than those in part VIII [Medicare Supplement Policies] of chapter 627, F.S., would continue to apply. For example, rates and policy forms for health insurance are subject to filing and approval by the OIR pursuant to ss. 627.410 and 627.411, F.S. These include a requirement that the rate structure must be based on the issue age of the insured, to protect policyholders from rate increases each year simply due to advancing age. Additionally, the 75 percent minimum loss ratio standard for group Medicare supplement policies would no longer apply, which is a higher standard than those (adopted by rule) for other classifications of group insurance for all but the largest of groups."

SENATE BILL 930 – CHILDREN'S HEALTH CARE & MEDICAL ASSISTANCE

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill 930 passed out of the Senate Health and Human Services Appropriations Committee on April 17.

This bill requires the Department of Health (DOH), in consultation with Agency for Health Care Administration, to develop a minimum set of pediatric quality assurance and access standards for children's health care and medical assistance. It designates AHCA as the single state agency and transfers and consolidates most administrative functions in the entire Florida Kidcare program under AHCA no later than July 1, 2008.

Additionally, the bill clarifies that parents and legal guardians have access to enrollment information and requires managed care plans participating in the KidCare program to be compensated in accordance with the current capitation rate methodologies used in Medicaid, effective July 1, 2008. Furthermore, the bill eliminates the current coordinating council chaired by DOH, and repeals the Florida Healthy Kids Corporation effective June 30, 2009.

It directs AHCA to provide a consolidation transition plan to the Governor, Senate President, and Speaker of the House of Representatives by January 1, 2008. A similar Senate bill, CS/SB 1740, has been in the Senate Banking and Insurance Committee since April 4, and a similar House bill, HB 1173, has not been heard by a committee. A comparable House bill, HB 7189, was filed on April 20.

SENATE BILL 264 – CHANGE IN APPOINTMENT PROCESS OF INSURANCE COMMISSIONER AND FINANCIAL REGULATION COMMISSIONER

Committee Substitute for Committee Substitute for Senate Bill 264 moved to the Senate General Government Appropriations Committee on April 16.

It modifies the method by which the Commissioner (official title "director") of the Office of Insurance Regulation and the Commissioner (official title "director") of the Office of Financial Regulation are appointed. Under the bill, the Chief Financial Officer must nominate each director. The Financial Services Commission must act on each nomination by majority vote. In the event of a tie, the side on which the Chief Financial Officer voted prevails. To remove one of these directors, the Governor or the Chief Financial Officer must petition the commission. The commission must act on the petition by majority vote. In the event of a tie, the side on which the Chief Financial Officer voted prevails. Current law requires a majority vote of the Commission, 3 of 4 Commission members, with both the Governor and the Chief Financial Officer on the prevailing side for appointment or removal of the Insurance Commissioner for the Financial Regulation Commissioner. There is no House companion bill.

SENATE BILL 1884 – INSURANCE CONSUMER ADVOCATE

Committee Substitute for Senate Bill 1884 was placed on the Senate Calendar on April 20; there is no House companion.

It expands the powers of the Consumer Advocate, appointed by the Chief Financial Officer

(CFO) of the state of Florida, by authorizing him or her to, among other authority, appear in appellate actions resulting out of proceedings or actions before the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR); intervene as a party in proceedings before the Division of Administrative Hearings or an arbitration panel; have access to and use of any public model for hurricane loss projections developed in accordance with Florida Insurance Code requirements; conduct investigations of insurance practices relating to unfair trade practices, unfair claims handling practices, deceptive or misleading sales practices, or coercion or intimidation of insurance consumers; and refer investigations to the office or department when the consumer advocate believes further regulatory action should be taken; initiate administrative review of any proposed agency action, determination finding, or order of the OIR, DFS, or Financial Services Commission (FSC) in any proceeding in which the consumer advocate has participated as a party; and research and analyze insurance issues from the perspective of consumers and prepare and disseminate such information as the consumer advocate considers appropriate to inform or assist consumers, the DFS, the OIR, and the FSC.

MANDATES UPDATE

FAIFA continues to oppose additional health mandates which force increases in the cost of health care to Floridians. Following is an update on the movement of several mandates we oppose:

- Senate Bill 16 – Congenital Craniofacial Anomalies was placed on the Senate Calendar April 18, and ready for Senate Floor debate. This bill appropriates \$25,000 for the Agency for Health Care Administration, in consultation with the Office of Insurance Regulation, to study the medical necessity, efficacy, and the cost of mandating health insurers and health maintenance organizations to cover treatments of deformities relating to the human skull, and to study whether or not gaps exist in the small and large group insurance market for such treatments. The study must include Medicaid coverage of such treatments and an actuary may be contracted to assist the Agency in evaluating the medical necessity, efficacy, and costs of such treatments. The Agency must report its findings and recommendations to Legislature by January 1, 2008. The House companion bill, HB 161, has not received a committee hearing.
- House Bill 291 – Mental Health Parity passed out of the House Healthcare Council on April 17 as a committee substitute. It amends current law to specifically define those mental health conditions that must be covered within the mandated offering, generally including all diagnostic categories of mental health conditions listed in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and as listed in the mental and behavioral disorders section of the current International Classification of Diseases. The bill deletes current law limiting mental health benefits by specific service areas, such as inpatient benefits, and inserts a general statement that the mental health benefits may not be more restrictive than the treatment limitations and cost-sharing requirements that are applicable to other diseases, illnesses, and medical conditions. The Senate companion bill, SB 1834, is scheduled for hearing by the Senate Banking and Insurance Committee on April 23.
- House Bill 345 – Health Insurance/Prostate Cancer Coverage passed out of the House Jobs and Entrepreneurship Council on April 20 as a committee substitute. It requires that individual group and out-of-state group health insurance policies as well as all HMO contracts that cover a 40 year-old man also provide coverage for prostate cancer screening. The Senate companion bill, Committee Substitute for Senate Bill 110, is scheduled for hearing before the General Government Appropriations on April 24.
- Senate Bill 366 – Infant Eye Care passed out of the Senate Banking and Insurance Committee as a committee substitute on April 9. It requires that all babies born in a hospital in Florida be examined for pediatric congenital and ocular abnormalities and requires that coverage for children under health insurance policies & HMO contracts include certain eye exams for infants and children. The House companion bill, House Bill 833, has been in the House Healthcare Council since March 28, but has not been agendaed for a hearing.
- Committee Substitute for House Bill 1001 – HMO Contract/Subscriber's Rights was passed by

the House Healthcare Council on April 4, 2007, and is now on the House Calendar awaiting Floor debate. The Senate companion bill, SB 590, was passed by the Senate on March 29, 2007, and is now in House Messages awaiting consideration by the House of Representatives.

- House Bill 1105 – Cystic Fibrosis Treatment was scheduled for hearing before the House Jobs and Entrepreneurship Council on April 20, but was temporarily postponed. It mandates that group health insurance policies and group HMO contracts sold in Florida provide all medically necessary chest physiotherapy provided by a license respiratory therapist, and certain other services and supplies if deemed medically necessary by the patient’s treating physician or an insurer authorized physician who specializes in the treatment of cystic fibrosis. The insurer may require that the policyholder or subscriber is responsible for any deductible or co-payment that generally applies under the policy or contract. The bill would not apply to any individual health insurance policy or individual HMO contract. It would also not apply to the standard policy, basic policy, or limited benefit policy sold to a small employer since a mandated benefit does not apply without a specific reference to such small group policies. Currently, some symptoms of cystic fibrosis are treated by most insurers, except where contractually excluded. There is disagreement about what types of services should be covered. The Senate companion bill, SB 274, has been in the Senate Health and Human Services Appropriations Committee since March 14; it is not scheduled for a hearing at this time.
- Senate Bill 1172 – Breast Cancer Treatment is now in the Senate Health and Human Services Appropriations Committee, as of April 18. It requires that, if an insurance policy or HMO contract provides coverage for breast cancer treatment, the inpatient hospital coverage for lymph node dissections must be for the time period determined to be medically necessary by the treating physician in accordance with prevailing medical standards. The bill also requires the policy or contract providing such breast cancer treatment to provide outpatient follow-up care for a lymph node dissection consistent with prevailing medical standards. Also, the bill specifies that these provisions do not require an insured patient to have a lymph node dissection in the hospital or stay in the hospital for any fixed period of time following a lymph node dissection. The provisions of this bill would apply to individual, small group (except for standard, basic, and limited plans), large group (50 or more employees), and out-of-state policies and HMO contracts. The House companion bill, HB 669, has not been heard by any committee.
- Committee Substitute for Committee Substitute for SB 2022 – Immunization Services was placed on the Senate Calendar and read a second time on the April 20. The bill includes immunization services in a schedule of minimum benefits for HMOs participating in the state group insurance program. A comparable House bill, CS/HB 543, was placed on the House Calendar on second reading on April 17.

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