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FAIFA Advisor Newsletter

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LEGISLATIVE AND REGULATORY REPORT

by FAIFA Lobbyist Timothy J. Meenan

FLORIDA'S THIRD SPECIAL SESSION IN 2007 ANNOUNCED—PIP UNLIKELY TO BE ADDRESSED

With Florida taking in a projected $1.5 billion less in revenue than expected, the Legislature will return to Tallahassee for Interim committee meetings August 27 and 28 and September 10 and 11 to study how best to reduce state expenditures for the current year.

Legislative leaders have called Special Session C to further explore what cuts are needed to the state's 2007-2008 budget, and enact the necessary budget revisions. Special Session C begins September 18 and possibly continuing through the first week of October. The next special session will be this year's third -- Special Session A in January focused on property insurance issues and Special Session B, in June, addressed property taxes.

Advocates for retaining personal injury protection (PIP/no-fault) insurance have been pushing for the Legislature to consider stop its scheduled October 1, 2007, repeal. FAIFA supports the sunset of PIP, and replacing it with mandatory bodily injury or medical payments coverage, to prevent the cross subsidization of auto accidents by health insurers, thereby increasing health insurance rates.

I believe that PIP is unlikely to be heard in special session, unless some compromise develops prior to September. We will keep pushing. Others have pushed for consideration of children's health insurance, known as Kidcare in Florida, during the special session, but with budget shortfalls and budget cuts being the special session focus, these prospects seem particularly deem.

FAIFA GETS HEARING ON AGENT SALES PRACTICE RULE

On August 2, 2007, OIR held a hearing on Rule 69O-142.200, relating to military sales practices in direct response to FAIFA's request for the hearing. The purpose of the rule is to eliminate the abusive sale of life insurance with war exclusion clauses to young enlisted troops and to not allow duplication of government benefits. It provides standards to protect active duty service members of the military services from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair.

FAIFA addressed three issues at the hearing: (1) Absence of language found in the NAIC model rule that the rule does not create a private cause of action; omission of such language may allow for civil lawsuits against agents for violation of the rule. (2) The broader scope of the Florida rule, relative to the NAIC model rule; the NAIC model rule more narrowly defines active duty to include only reservists on duty for more than 31 days. The Florida rule applies to National Guard Reservists on drill weekends, and since Reservists drill near their homes, an agent could sell a Reservist a policy on a drill weekend during off-duty hours at their home and could be in violation of the rule though unaware of the person's status. OIR was very interested in this FAIFA concern, and indicated that may track the NAIC language. (3) The Florid rule would apply to military personnel classified below and above E-4 while the NAIC model rule applies to E-4 and below only to focus protection on sales to young, immature, junior enlisted troops. OIR said that are aware of this difference, and they intentionally did not to put in that restriction. FAIFA is continuing to work with OIR to more satisfactorily address items 1 and 3 above.

MANDATES LEGISLATION FILED FOR THE 2008 REGULAR SESSION

Representative Ed Homan from Tampa filed House Bill 19 on June 11, 2007. House Bill 19 mandates insurance coverage for mental, nervous, and substance-related disorders. The bill reportedly has 91 co-sponsors. Representative Homan sponsored similar legislation, HB 291, during the 2007 Regular Session. It died in the Policy and Budget Council.

The issue of insurance coverage for mental health has been introduced in Congress by Congressman Patrick Kennedy from Rhode Island and Senator Ted Kennedy from Massachusetts. FAIFA is sensitive to the importance of treatment for mental illness and substance-related disorders. Another bill, HB 53, by Representative Frank Peterman from the Tampa area, requires insurers cover annual screening for prostate cancer for men 40 years old and older. This bill is similar HB 345 also considered during the 2007 Regular Session.

It is FAIFA's position that mandates increase the cost of insurance for all consumers and this, in turn, causes loss of insurance coverage for those already covered due to the cost increase. FAIFA will join any serious discussion that addresses appropriate means of paying for effective treatment of mental illness and substance-related disorders, but mandating benefits cannot be a part of any such serious discussion, as it will significantly increase health insurance costs, and force more people to be uninsured.

BUSINESS COMMUNITY RE-STARTS CAMPAIGN FOR TRANSPARENCY IN HEALTH CARE PROVIDER CHARGES

A coalition of business interests that has been dormant for several years is re-activating to pursue its objective that "persons seeking health care services who pay for care with their own resources have ready access to prices charged by providers of health care services and equipment." The group calling itself the HealthCheck Coalition met recently and released draft legislation that it says would provide such transparency.

The Coalition supported legislation in the past that was adopted to require the Agency for Health Care Administration to maintain a website of about 100 common hospital charges. As a result of that legislation, hospitals are required to report data, but sanctions for non-reporting are weak at best. The draft legislation the Coalition unveiled for consideration during the 2008 Regular Session would expand the reporting requirement to include: clinical laboratories reporting the 50 most commonly performed tests, ambulatory surgical centers reporting prices for the 500 most commonly performed procedures, hospitals reporting the 1,000 most commonly charged Current Procedural Terminology (CPT) codes, diagnostic imaging centers reporting the 100 most commonly performed procedures, and similar requirements for freestanding radiation therapy centers, lithotripsy centers, home medical equipment providers, cardiac catheterization laboratories, physical rehabilitation centers, physicians, and dentists.

The draft legislation encourages health care facilities and professionals to publish prices for more than the minimum number of tests, procedures, codes, items, or equipment it calls for. A summary document accompanying the draft legislation indicates intent that health insurers should also be required to report cost data. FAIFA will monitor the Coalitions activities and keep members informed of developments.

GOVERNOR VETOS BILL RELATING TO MEDICARE SUPPLEMENT POLICIES

Council Substitute for House Bill 97, revised the definition of the term "Medicare supplement policy" to exempt policies offered by employers that have at least 50 employees from Florida's Medicare supplement policy regulations. Governor Crist vetoed the legislation, saying that he believes Florida consumers "have ample choice in a competitive and flourishing market," the Governor noted there are "currently 90 insurers carrying these policies in Florida, with 40 insurers writing new policies."

Consequently, the Governor stated, "I do not see a need to reduce the protections provided through this regulation and possibly increase the vulnerability of Florida's senior citizens." FAIFA expressed its concerns, during the Regular Session, that the bill could potentially disrupt the Medicare supplement market in Florida.

CHANGES TO THE JESSICA LUNSFORD ACT SIGNED INTO LAW

Insurance agents and others designated as "noninstructional contractors" under the Jessica Lunsford Act will get relief

from some of the unintended and burdensome consequences that emerged during implementation of the Act. Governor Crist signed Committee Substitute for Senate Bill 988, relating to high-risk sexual offenders, into law to remedy many of the problems under the Act that requires school districts to screen persons entering school grounds for past offenses involving "moral turpitude."

The Jessica Lunsford Act was first passed in 2005 following the assault and murder of 9-year-old Jessica Lunsford in Homosassa Springs, Florida. The crimes were committed by a person who worked as a subcontracted brick mason at Jessica's elementary school. The Act impacts insurance agents and the insurance industry in Florida because it applies to contractors on school grounds when students are present—even when they will not be in close proximity to students. Implementation of the Act has been problematic. Many contractors and agents needing access to school grounds on a frequent basis complained about having to undergo multiple background screenings and the variation, between school districts, in standards for determination of whether a past offense involved "moral turpitude." Effective July 1, 2007, the revised Act:

- Requires background checks for contractors on school grounds, and specifies offenses that disqualify a noninstructional contractor from being on school grounds when students are present.
- Clarifies that contractors who contract directly with schools must be screened.
- Specifies that exempt contractors are subject to a search of the state and national registry of sexual predators and sexual offenders at no charge to the contractor.
- Requires that the fingerprint-based background check must be performed at least every five years and may be paid for by the school board, the school, or the contractor.
- Allows that any fee charged by a school board may not exceed 30 percent of the total costs charged by FDLE and the FBI for the check.
- Requires FDLE to implement an Internet-based system for school districts to share the results of the background checks.
- Specifies that a contractor who has submitted to a fingerprint-based background check in another district must report that fact to the district where he or she intends to work.
- Requires that school districts must use the shared system to verify the information at no charge to the contractor.
- Requires a contractor who is arrested for a qualifying offense to report the arrest to the employer or primary contractor and the school district within 48 hours.
- Specifies that if a contractor has been arrested for a qualifying offense, it is a third-degree felony for the contractor to willfully fail to report the arrest or for an employer or primary contractor to knowingly authorize the contractor to be on school grounds when students are present.
- Specifies that if a school district determines that a contractor is to be denied access to school grounds, the contractor be notified of the basis for denial.
- Provides that the only basis for contesting the denial is mistaken identity and misinterpretation of an offense from another jurisdiction.
- Provides immunity from civil and criminal liability for employees of school districts and schools who share background check information in good faith.
- Requires sexual predators and sexual offenders to obtain a

driver's license or identification card that has a designated marking on the front.

FINANCIAL SERVICES COMMISSION ADOPTS LONG-TERM CARE PARTNERSHIP PROGRAM RULES & RISK RATE RULES

The Financial Services Commission, at its June12, 2007 meeting approved, for final adoption, new rules which establish the Long-Term Care Insurance Partnership Program in Florida. Rule 69O-157.1100, Requirements for Exchange of Coverage; 69O-157.1155, Producer Training; 69O-157.201, Standards for Approved Long-Term Care Partnership Program Policies. Under Section 627.94075, Florida Statutes, the Commission may adopt rules to implement a qualified state Long-Term Care Insurance Partnership Program.

The long-term care insurance (LTCI) partnership program was developed by the Federal government to encourage people who might otherwise turn to Medicaid to finance their long-term care to purchase LTCI. If people who purchase qualifying policies deplete their insurance benefits, they may then retain a specified amount of assets and still qualify for Medicaid, provided they meet all other Medicaid eligibility criteria.

FAIFA is working with OIR and DFS to clarify the agent training requirements under the rule. The newly-adopted rules require insurance companies to assure all agents receive eight (8) hours of training prior to selling qualified LTC partnership policies. No such requirement has been promulgated by the DFS in its role as regulator of agents. We will send further alerts on this, and urge all FAIFA members desiring to sell qualified LTC partnership policies to immediately enroll in an approved eight-hour course.

Contact FAIFA Sr. Vice President Tom Ashley at FAIFA for more information on qualified eight-hour LTC training courses.

OIR PROPOSES NEW RULES FOR LONG-TERM CARE INSURANCE RATE SETTING

The Office of Insurance Regulation (OIR) has proposed rules to establish a framework for evaluating rate increases for long-term care insurance, and to ensure that such rate increases are not excessive. These proposed rules define terms used in the statute implemented, s. 627.9407, Florida Statutes (F.S.), and explain how calculations are to be done to provide insurers with guidance on compliance with the statute.
Section 627.9407(7)(c), F.S., provides that rates charged to an insured for renewal of an existing long-term care insurance policy may not exceed the price the insurer charges for newly issued polices.

This statute also addresses "closed blocks" of business. A closed block of business occurs when a particular approved policy is no longer being sold to new customers. There will be a group of insureds that maintain the closed-block insurance policy, and they will continue to be renewed, but no new customers will be sold that policy.

This statute purports to protect insureds in that closed block by precluding an insurer from charging higher renewal rates

in such a closed block than its rates for new business in a separate "open block" of business. For insurers that are not currently issuing new policies, the statute requires OIR to establish and publish a "new business rate," above which the renewals cannot be priced. The new business rate is published annually by OIR, and is determined by reviewing the past year's premium of those carriers which represent 80% of the market share of carriers currently selling long-term care products. For example, this means that a carrier may not raise its rates on a policy first purchased in 1990 to a premium level that exceeds the cost of a similar policy which is purchased as a new product in 2007.

The designations for the proposed new rules are: 69O-157.301, "Rate Increase Standards;" 69O-157.302, "Facility Only Rates;" 69O-157.303, "Home Health Care Only Rates;" 69O-157.304, "Comprehensive Only Rates." Insurers fought these controversial statutes, relating to "closed blocks," unsuccessfully, during the 2006 legislative Session

INDEMNITY, PPO, & HMO STANDARD RISK RATES APPROVED

The Financial Services Commission adopted proposed amendments to Rules 69O-149.205, "Indemnity Standard Risk Rate;" 69O-149.206, "Preferred Provider/Exclusive Provider Standard Risk Rate;" and 69O-149.207, "Health Maintenance Organization Standard Risk Rates," Florida Administrative Code. These rates help determine the rate an insurer may charge an insured converting coverage from a group policy to an individual policy. The adopted rules take effect July 17, 2007.

MEDICARE MARKETING SUSPENDED BY SEVEN INSURERS AFTER FEDS RECEIVE COMPLAINTS

In response to complaints received over many months from Medicare consumers around the nation that insurance agents were using deceptive marketing practices in enrolling them in Private Fee-For-Service (PFFS) plans, the Centers for Medicare and Medicaid Services (CMS) announced on June 15, 2007, the voluntary suspension of PFFS marketing for seven health care sponsors—United Healthcare, Humana, Wellcare, Universal American Financial Corporation (Pyramid), Coventry, Sterling, and Blue Cross/Blue Shield of Tennessee.

Abby Block, a CMS representative, says "rogue agents" are the problem, not insurers. Company representatives have signed an agreement to suspend the marketing of these plans in all states until CMS authorizes them to resume marketing activities. The suspensions began on June 20, 2007.

Federal and state regulators and other entities that monitor the Medicare market have received a high volume of complaints from Medicare beneficiaries that aggressive insurance agents were enrolling them in private 'fee-for-service' Medicare plans they didn't understand and didn't want. Medicare also uses a variety of methods, including a 'secret shopper' program that uses trained individuals to attend marketing events and report back on insurance agents' activities.Some problem encountered were: (1) patients on Medicare found that their long-standing doctors suddenly will not treat them, (2) bills arrived from insurance companies they never heard of, and (3) sometimes

unwanted plans refused to cover much-needed medication.

The suspension for a plan will be lifted only when CMS certifies that the plan has the systems and management controls in place to meet all of the conditions specified in the 2008 Call Letter and the May 25, 2007 guidance issued by CMS.

Primary provisions that the plans signing the agreement must meet to have the suspension lifted (and that all PFFS plans must meet beginning on October 1, 2007) are summarized below:

- All materials, including but not limited to advertisements, enrollment materials, and materials used at sales presentations by employees or contracted representatives of a health insurance company will include the model disclaimer language provided by CMS in its May 25, 2007 guidance.
- All representatives selling the product to beneficiaries on behalf of the plan sponsor will pass a written test that demonstrates their thorough familiarity with both the Medicare program and the product they are selling.
- A provider outreach and education program will be in place to ensure that providers have reasonable access to the plan terms and conditions of payment, and that provider relations staff are readily accessible to assist providers with questions concerning the plan.
- Outbound education and verification calls will be made to all beneficiaries requesting enrollment to ensure that they understand the plan rules.
- Lists of planned marketing and sales events provided to CMS will include events sponsored by delegated brokers and agents as well as those sponsored by the plan.
- When asked by CMS, plan sponsors will provide a complete list of all representatives marketing a PFFS product and authorize CMS to make that list available to State Insurance Departments on request.

OPEN ENROLLMENT REMINDER FOR THE SELF-EMPLOYED

August is open enrollment month for single-group employers to get health insurance or switch plans on a guaranteed-issue basis. The open enrollment period began August 1 and continues through August 31. Coverage options for employers also include health savings accounts (HSAs) or health reimbursement arrangements (HRAs).

BROKER MUST REIMBURSE GOVERNMENT AGENCIES

On July 17, 2007, CFO Alex Sink, Attorney General Bill McCollum, and Insurance Commissioner Kevin McCarty announced that multiple Florida cities and counties will receive approximately $2.6 million in reimbursements from Willis Group Holdings Ltd., a national insurance broker.

Under the settlement, the broker denied wrongdoing but agreed to reimburse its clients without any formal action taken by the state agencies. The broker also agreed to disclose commissions. A joint investigation by the Attorney General's Antitrust Division and the Department of Financial Services led to allegations that Willis improperly collected undisclosed fees or commissions when it placed various coverages with insurance companies. Willis brokered multiple insurance contracts in Florida from 1999 through

2004, and clients included more than a dozen public entities in the State of Florida, including economic development councils, city and county governments and school boards.

COMMITTEE FORMED TO IMPROVE AND INCREASE NUMBER OF CHILDREN INSURED THROUGH THE HEALTHY KIDS CORPORATION

CFO Sink has formed an Ad Hoc Committee to improve the Florida Healthy Kids Corporation that will examine ways to make it easier for families to enroll in the low-cost health insurance program and increase the number of children the program retains. CFO Sink, who serves as the Chair of the Healthy Kids Board, created the committee in an effort to identify how the Board can streamline the Healthy Kids program without the need for legislative action.

The Florida Healthy Kids program is one of four components of the larger Florida KidCare program, the state's health insurance program for uninsured children. Florida Healthy Kids allows working families the opportunity to purchase low-cost health insurance for their children ages 5 through 19 years of age. To be eligible for discounted premiums, families must earn less than 200 percent of the federal poverty level, or $40,000 for a family of four. The federal government provides a two-to-one match for Florida's Healthy Kids program. Reduced state funding and low enrollment in the program have resulted in the State of Florida losing $139.7 million in federal funding since 1998. Florida's unused federal match is then dispersed to other states that exceed their projected enrollment.

Increasing enrollment and retention in the Healthy Kids program will not only help more children receive preventative health care, but will also reduce the amount of federal funding Florida sends to other states.

During the 2007 Legislative Session, the Legislature was unable to pass legislation to improve the program and make it easier for families to purchase affordable health insurance for their children. Some of the changes sought included increasing accountability, eliminating unnecessary bureaucratic barriers and simplifying the application process for Florida's families.

OIR ISSUES CEASE AND DESIST ORDER TO UNLICENSED VIATICAL COMPNAY

Great West Growth, LLC of Minneapolis, Minnesota ordering Great West Growth to cease operating as a viatical settlement provider in Florida. The Office of Insurance Regulation charged that Great West Growth has been transacting business without a license as required by Florida's Viatical Settlement Act. Evidence shows Great West Growth solicited, negotiated and processed numerous viatical settlement contracts involving life insurance policies owned by Florida residents. If any FAIFA members have information relating to this unlicensed entity, it should be forwarded to OIR.

FAIFA's Glen Malcolm Set to Run for Secretary at NAIFA Convention

Past FAIFA President and current NAIFA Trustee Glen Malcolm, Sr., CLU, ChFC, LUTCF, RHU is set to run for NAIFA Secretary at September's NAIFA Convention in Washington, DC. If elected, Malcolm would move up the NAIFA leadership chairs to President in 2009. He would then be the first NAIFA President from Florida since 1965 when Phil Hoche, CLU (now deceased) from Orlando was elected.

Malcolm faces opposition, however, from Tom Currey, CLU, ChFC, LUTCF of Texas, and Linda Ray, RHU, LUTCF, CLTC from Louisiana – both sitting NAIFA Trustees, as is Malcolm.

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, and was subsequently re-elected in 2006 in San Francisco.

FAIFA National Committeeman and "Glen Malcolm for NAIFA Secretary" Campaign Chairman Jim Bouterse, CLU, ChFC, LUTCF is asking for contributions to the Glen Malcolm NAIFA Secretarial Campaign. Contributions in the form of checks should be made out to "Glen Malcolm Expense Fund" and mailed to the campaign treasurer: Mark Tiralosi, PO Box 916459, Longwood, FL, 32791-6459.

The campaign will need additional assistance --- lots of FAIFA members at the NAIFA Convention campaigning with signs and brochures asking delegates to vote for our own Glen Malcolm for Secretary! Those attending the Convention are asked to make plans to attend the organizational FAIFA Caucus meeting on Saturday, Sept. 8th at 5:30 p.m. in the FAIFA Hospitality Suite (check the Washington Hilton Hotel marquee onsite for exact room number).

For more information, contact Campaign Chair Jim Bouterse at (954) 925-9063 or jabouter@bellsouth.net.

SALES IDEA OF THE MONTH

Take A Second Policy With You

Take a $1 million joint life, second-death policy quotation to every presentation meeting and, right at the end of the meeting, ask the prospect/client whether they would be interested in establishing a $1 million trust fund for their children. Premiums for this type of coverage are often small. It's a great add-on.

(From "Great Sales Ideas" by MDRT.)

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