

2007C INSURANCE LEGISLATION
Summary & Analysis with Comments
compiled by the
FLORIDA ASSOCIATION OF INSURANCE AGENTS
October 2007

CONTENTS

CS/HB 13C, Florida Motor Vehicle No-Fault Law	2
CS/HB 15C, Public Records Exemption for No-Fault Law	7

SUBJECT	BILL PAGES AND/ OR STATUTES	FINAL PROVISION	COMMENTS
MOTOR VEHICLE INSURANCE			
<p>CS/HB 13C Florida Motor Vehicle No-Fault Law</p>			<p><i>The prior Motor Vehicle No-Fault (PIP) Law “sunsetted,” or went out of existence, on 10/1/07, when the Legislature failed to re-enact it. FAIA has long been a proponent of fixing the fraud and abuse of the law and reenacting it as a mandatory coverage. This new 89-page law will once again mandate PIP coverage effective 1/1/08 and will allow optional coverage during the transition period between 10/1/07 and 1/1/08. During part of that transition period (10/11/07 to 12/31/07), the tort liability protection normally afforded by the No-Fault Law will apply only if the plaintiff and the defendant in the lawsuit are covered by No-Fault policies (see page 88 of the bill and this summary for a discussion of when and how the tort immunity may apply). It should also be noted that, while most insurers will probably offer PIP coverage during the transition period, there is no statutory requirement that they issue new PIP policies prior to January 1, 2008.</i></p>
	<p>p. 4–5 §316.646</p>	<p>Section 1 of the bill clarifies that the expiration on the mandatory personal injury protection (PIP) portion of the law did not affect the requirement that Floridians retain the property damage (PD) portion of the law.</p>	<p><i>Some thought that the entire PIP/PD portion of the No-Fault Law was under sunset review. This clarifies that PD coverage remains mandatory. See also subsection (8) on page 89.</i></p>
	<p>p. 8–11 §324.022</p>	<p>Amends §324.022, F.S., of the Financial Responsibility Law to require property damage coverage. However, unlike the definitions found in prior law, the definition of “motor vehicle” does not appear to include motorcycles.</p>	<p><i>Old §324.021, F.S., defined “motor vehicle” to include “...every self-propelled vehicle which is designed and required for use upon a highway,” with some exceptions. The new definition says “...any self-propelled vehicle that has four or more wheels and is of a type designed and required to be licensed for use on the highways.”</i></p>

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	p. 11-14 §324.0221	Creates a new §324.0221, F.S., to require insurers to report renewal, cancellation, or non-renewal of PIP or PD insurance to the Department of Highway Safety and Motor Vehicles (DHSMV) within 45 days. New policies must be reported within 30 days. The insurer shall also notify the insured of the report to the DHSMV.	<i>Failure to do so is a violation of the Insurance Code.</i>
	p. 17-65 §627.730-§627.7405	Sections 8 through 18 of the bill provide that, notwithstanding the repeal of the Florida Motor Vehicle No-Fault Law, which occurred on 10/1/07, those sections of Florida Law are "...revived and reenacted." That "reenactment" is effective 1/1/08.	<i>Section 19 of the bill found on page 65 provides that "... this act is intended to be remedial and curative in nature and to minimize confusion." Therefore, the Florida Motor Vehicle No-Fault Law shall continue to be codified as §627.730 – §627.7405, F.S., notwithstanding their repeal by...Chapter 2003-411, LOF. And although the old PIP benefits have been repealed and the new PIP benefits do not take effect until 1/1/08, insurers should by contract offer old PIP benefits for claims under PIP policies that are currently in force and may offer them for policies issued on or after 10/11/07 (the effective date of this bill) but before 1/1/08. In fact, Section 21 of the bill provides that insurers shall continue to use the PIP forms and rates that were in effect on 9/30/07 until new forms and rates are approved.</i>
	p. 65 §627.736	The bill sets forth the required benefits under the PIP law. They include:	
	p. 66 §627.736	<ul style="list-style-type: none"> ◆ Eighty percent of all reasonable expenses for medically necessary medical, surgical, x-ray, dental, and rehabilitative services, including prosthetic devices, and medically necessary ambulance, hospital, and nursing services. But, unlike prior PIP law, it is payable only for services and care that are lawfully provided, supervised, ordered, or prescribed by a physician, an osteopath, a dentist, a chiropractor, or are provided by a restricted list of five other entities: <ol style="list-style-type: none"> (1) A hospital or ambulatory surgical center licensed under Ch. 395; (2) A person or entity licensed to provide emergency transportation and treatment; 	

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		<p>(3) Certain entities wholly owned by doctors, osteopaths, chiropractors, or dentists;</p> <p>(4) An entity wholly owned, directly or indirectly, by a hospital or hospitals; or</p> <p>(5) Certain health care clinics.</p>	<p><i>Entities owned by doctors, etc., can also be owned by members of their immediate family.</i></p>														
	<p>p. 71 §627.736</p>	<p>Provides that, if the insurer has knowledge of a potential PIP claim, they shall hold \$5,000 in reserve for 30 days to pay doctors, osteopaths, chiropractors, etc., who provide emergency care or provide inpatient hospital care. After 30 days, any amount of the reserve for which the insurer has not received notice of a claim from the above, can be used to pay other claims. The time period for paying PIP benefits to other than the above is tolled during this time period.</p>	<p><i>Doctors often complained that by the time they submitted their bill to the insurer, all of the PIP benefits had been paid out for other purposes.</i></p>														
	<p>p. 75 §627.736</p>	<p>The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:</p>	<p><i>The fee schedule is perhaps the most important limitation in holding down PIP medical costs. In addition to limiting how much may be charged, the schedule, through its listing of those eligible to receive payment, greatly restricts who can be paid. Its goal is to eliminate payment to those "clinics" that are most often identified with fraudulent activities. Additionally, the fee schedule should help lower litigation since the most often litigated issue is the amount of a fee. While a fee schedule is an important step in combating fraud and lowering medical costs, the Legislature was unable to pass a utilization schedule or impose any restriction on the number of procedures that can be performed. In fact, page 77 of the bill contains language specifically stating that the fee schedule "...does not allow the insurer to apply any limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation." That legislative fight will have to come at a later time.</i></p>														
		<table border="1"> <thead> <tr> <th data-bbox="665 849 1001 906">SERVICE</th> <th data-bbox="1001 849 1430 906">FEE</th> </tr> </thead> <tbody> <tr> <td data-bbox="665 906 1001 979">Emergency transport and treatment by ambulances and EMTs</td> <td data-bbox="1001 906 1430 979">200% of Medicare</td> </tr> <tr> <td data-bbox="665 979 1001 1052">Emergency services and care provided by a hospital</td> <td data-bbox="1001 979 1430 1052">75% of the hospital's usual and customary charges</td> </tr> <tr> <td data-bbox="665 1052 1001 1190">Emergency services and care in a hospital rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist</td> <td data-bbox="1001 1052 1430 1190">The usual and customary charges in the community</td> </tr> <tr> <td data-bbox="665 1190 1001 1287">Hospital inpatient services, <i>other than emergency services and care</i></td> <td data-bbox="1001 1190 1430 1287">200% of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services</td> </tr> <tr> <td data-bbox="665 1287 1001 1385">Hospital outpatient services, <i>other than emergency services and care</i></td> <td data-bbox="1001 1287 1430 1385">200% of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services</td> </tr> <tr> <td data-bbox="665 1385 1001 1451">All other medical services, supplies, and care</td> <td data-bbox="1001 1385 1430 1451">200% of the applicable Medicare Part B schedule</td> </tr> </tbody> </table>	SERVICE	FEE	Emergency transport and treatment by ambulances and EMTs	200% of Medicare	Emergency services and care provided by a hospital	75% of the hospital's usual and customary charges	Emergency services and care in a hospital rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist	The usual and customary charges in the community	Hospital inpatient services, <i>other than emergency services and care</i>	200% of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services	Hospital outpatient services, <i>other than emergency services and care</i>	200% of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services	All other medical services, supplies, and care	200% of the applicable Medicare Part B schedule	
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		<ul style="list-style-type: none"> ◆ If services, supplies, or care are not reimbursable under Medicare Part B, the insurer can limit them to 80 percent of the maximum reimbursable allowance under workers' compensation; ◆ If it is not reimbursable under either Medicare or workers' compensation, then the insurer is not required to pay at all. 	
		<p>To make sure that a future reduction in Medicare reimbursement levels does not further reduce this fee schedule, the 2007 Medicare levels will be used.</p>	
	<p>p. 83 §627.73</p>	<p>The bill increases the time after receipt of a "demand letter" from an attorney in which the insurer has to investigate the claim without penalty before paying or denying the claim from 15 to 30 days.</p>	<p><i>This is a valuable tool for insurers who often feel that the current 15-day limitation forces them to pay claims that may be fraudulent.</i></p>
	<p>p. 84 §627.736</p>	<p>Provides that it is an Unfair and Deceptive Claims practice for an insurer to fail to pay valid claims <i>with such frequency as to constitute a general business practice</i>. Such action is a violation of the Insurance Code and the Office of Insurance Regulation (OIR) can take appropriate action. A new provision under the bill allows that Florida's attorney general can also investigate and initiate actions for this type of violation.</p>	<p><i>The original draft of the bill applied the penalty to any failure to pay a valid claim. FAIA worked with the sponsor to make it a more reasonable standard of "...with such frequency as to constitute a general business practice."</i></p>
	<p>p. 85 §627.736</p>	<p>The bill provides that in any civil action to recover PIP benefits brought by a claimant against the insurer all claims related to the same health care provider for the same injured person shall be brought in one action, unless good cause is shown why such claims should be brought separately. If the court determines that a civil action is filed for a claim that should have been brought in a prior civil action, the court may not award attorney's fees to the claimant.</p>	<p><i>This consolidation of claims provision is, perhaps, the only direct limitation placed on attorneys, but it is an important one. It should operate to eliminate the problem of "serial" filing of claims, where each payment dispute is a separate claim with separate fees.</i></p>
	<p>p. 85 §627.736</p>	<p>If all parties mutually and expressly agree, notice, documentation, transmission, or communications of any kind required by the No-Fault Law may be transmitted electronically if it is transmitted by secure electronic data transfer that is consistent with privacy and security laws.</p>	
	<p>p. 86</p>	<p>The bill provides that insurers shall continue to use the PIP forms and rates that were in effect on 9/30/07 (prior to the repeal of the No-Fault Law), until new forms and rates are used as authorized by law.</p>	

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	p. 87	The bill requires insurers to provide a notice to all of its motor vehicle insureds, no later than 11/15/07. The notice must inform insureds that if they already have PIP coverage, their coverage will be amended on 1/1/08 to incorporate the changes in the new law, and if they do not have PIP coverage they must obtain it and pay for it by 1/1/08.	
	p. 88	The bill provides that, for lawsuits for injuries arising out of an automobile accident that occurs between the effective date of this bill and December 31, 2007, the limitation on lawsuits and tort immunity provided under §627.737, F.S., will apply only if both the plaintiff and the defendant have PIP coverage at the time of the accident.	<i>Because the No-Fault Law was repealed on 10/1/07, there will be no tort immunity for any claims arising out of accidents, occurring between 10/1/07 and 10/11/07 (the effective date of this bill). And, despite the grant of limited tort immunity provided by this bill for claims arising on or after 10/11/07 and prior to 12/31/07, it is rumored that the trial lawyers may challenge the constitutionality of this provision. It is unclear how the Legislature can grant limited tort immunity during this interim period when the statute, which provides such immunity, does not take effect until 1/1/08.</i>
	p. 89	The bill clarifies that because PIP coverage is not mandated until January 1, 2008, insurers are not required to report the issuance, cancellation, or nonrenewal of PIP coverage occurring between 10/1/07 and 12/31/07, to the DHSMV.	<i>Any law requiring PIP coverage or providing sanctions for failure to maintain or demonstrate proof of PIP coverage does not apply during this time period. However, a motor vehicle owner still must maintain property damage liability coverage as required by law, and insurers must report the issuance, cancellation, or nonrenewal of this coverage as required by law.</i>
		Effective date: October 11, 2007, except as otherwise provided. Chapter No. 2007-324, LOF.	

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<p>CS/HB 15C Public Records Exemption for No-Fault Law</p>	<p>p. 1-2 §324.242</p>	<p>The bill creates a public records exemption for certain information held by the DHSMV, regarding personal injury protection and property damage liability insurance policies. The following information is confidential and exempt from public records requirements:</p> <ul style="list-style-type: none"> ◆ Personal identifying information of an insured or former insured, and ◆ An insurance policy number. 	
	<p>p. 2 §324.242</p>	<p>Upon written request and with a copy of the crash report, the following may obtain the name of the insurer and policy number for a policy covering a vehicle in the accident:</p> <ul style="list-style-type: none"> ◆ A person involved in the accident; ◆ The attorney representing one involved in the accident; and ◆ A representative of the insurer of any person involved in the accident. 	
	<p>p. 2 §324.242</p>	<p>This public records exemption is subject to the Open Government Sunset Review Act and shall stand repealed on 10/2/12.</p> <p>Effective date: The same date that CS/HB 13C takes effect (10/11/07). Chapter No. 2007-325, LOF.</p>	

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