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New Florida PIP law!

Florida legislators have passed a new PIP No-Fault law, House Bill 119. The majority of the substantive changes to the PIP law are effective January 1, 2013. As part of the law, Florida PIP insurers are required to reduce their rates for PIP insurance 10% by October 1, 2012, and 25% by January 1, 2014. Outlined below are the most significant changes to in the new PIP law.

I. INJURED PARTY MUST TREAT WITHIN 14 DAYS OF AUTO ACCIDENT

An injured party must treat at an emergency room, receive treatment in an ambulance, or from a physician, osteopathic physician, chiropractic physician or dentist within 14 days of the auto accident. To receive follow-up care, the insured may continue treating with the same provider or be referred to another licensed physician or facility.

II. MASSAGE THERAPISTS AND ACCUPUNCTURE ARE NO LONGER ELIGIBLE FOR PIP BENEFITS

Massage therapists and acupuncture are now completely eliminated from eligibility for PIP benefits.

III. INJURED PARTY MUST SEEK INITIAL SERVICES SUPERVISED OR ORDERED BY A LICENSED PHYSICIAN OR CHIROPRACTOR

An injured party must seek initial services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, or a chiropractic physician licensed under chapter 460 or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital.

Initial services and care may also be provided by a person or entity licensed under part III of chapter 401 which provides emergency transportation and treatment.

IV. PIP BENEFITS LIMITED TO \$2,500 IF IT IS DETERMINED THAT THE INJURED PATIENT DOES NOT HAVE AN "EMERGENCY MEDICAL CONDITION"

The full amount of PIP benefits, \$10,000, is available if the initial treating licensed physician determines that the injured has an "emergency medical condition." If it is

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determined that the injured does not have an emergency medical condition, the benefits are limited to \$2,500. 'Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following: serious jeopardy to patient health; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part.

V. ATTORNEY'S FEES ARE NOT CAPPED, BUT CONTINGENCY RISK MULTIPLIERS MAY NOT BE CONSIDERED IN CALCULATING ATTORNEY'S FEES

Attorney's fees are not capped under this legislation. The law outlines the standards applicable in obtaining awards of attorney's fees. Attorney fees recovered must comply with prevailing professional standards, must not overstate or inflate the number of hours reasonably *necessary* for a case of comparable skill or complexity, and must represent legal services that are reasonable and necessary to achieve the result obtained.

Upon request by either party, a judge must make written findings, substantiated by evidence presented at any trials or hearings that any award of attorney's fees complies with this subsection.

Most significantly, the law states that contingency risk multipliers may not be considered in calculating attorney's fees in PIP matters.

VI. INSURER'S TIME TO INVESTIGATE THE CLAIM IS LIMITED TO 90 DAYS AFTER THE SUBMISSION OF THE CLAIM

Under this new statutory scheme, an insurer has the right to investigate an insured's claim, and within 30 days after the submission of the claim notify the insured that the claim is being investigated. The insurer then has an additional 60 days to continue the investigation, and at the close of 90 days, the insurer must either deny or pay the claim. Interest shall be assessed from the date the claim is submitted.

VII. THE INSURED IS REQUIRED TO SUBMIT TO AN EVALUATION BY A PHYSICIAN AND TO SUBMIT TO AN EXAMINATION UNDER OATH

The new legislation also explicitly requires the insured to submit to an evaluation by a physician to evaluate the insured's mental of physical injuries and to submit to an evaluation under oath. The insurer bears the costs of a medical examination, the

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physician must be actively practicing, and the physician must be licensed under the same chapter as the treating physician.

The statute explicitly states that insured, benefits, including an omnibus insured, must comply with the terms of the policy, which include, submitting examination to an under An insured's refusal to submit to or failure to appear at two examinations raises a rebuttable presumption that the insured's refusal or failure was unreasonable. The questioning during an examination under oath is limited to relevant information or information that could reasonably be expected to lead to relevant information. Compliance with this section is a condition precedent to receiving benefits.

An insurer that, as a general business practice, requests an examination under oath of an insured, or an omnibus insured, is subject to civil liability for unfair trade practices.

It is unclear the effect the new law will have on <u>Amador</u>, which requires that the insurer schedule an EUO within the 30-day investigatory period. As the As the new PIP law extends the insurer's investigatory period to 90 days, the Courts may choose to extend the 30-day period in Amador to 90 days.

VIII. SEVERE SANCTIONS FOR FRAUDULENT MEDICAL PROVIDERS

This new bill also provides penalties for health care facilities or practitioners engaging in fraudulent activities. A licensed health care practitioner who is found guilty of insurance fraud under this section for an act relating to a personal injury protection insurance policy loses his or her license to practice for 5 years and may not receive reimbursement for personal injury protection benefits for 10 years.

IX. INSURER HAS DUTY TO PROVIDE AN ITEMIZED EXPLANATION OF BENEFITS

Under the new law, if an insurer pays only a portion of a claim or rejects a claim due to an alleged error in the claim, the insurer, at the time of the partial payment or rejection, shall provide an itemized specification or explanation of benefits due to the specified error. Upon receiving the specification or explanation, the person making the claim, at the person's option and without waiving any other legal remedy for payment has 15 days to submit a revised claim, which shall be considered a timely submission of a claim.

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X. INSURER

DUTY

HAS

TO MAINTAIN

A PIP

LOG

Previously an insurer was not required to maintain a PIP log. Under the new law, an insurer must create and maintain a log of PIP benefits paid by the insurer. If litigation is commenced, the insurer shall provide to the insured a copy of the log within 30 days after receiving a request for the log from the insured.

XI. FEE SCHEDULE

An insurer may limit payment pursuant to a fee schedule only if the insurance policy includes a notice at the time of issuance or renewal that the insurer may limit the payment pursuant to the schedule of charges.

The applicable fee schedule is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies throughout the remainder of that year, notwithstanding any subsequent change made to the fee schedule or payment limitation, except that it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.

XII. A PIP INSURER IS REQUIRED TO REDUCE ITS RATES

A. By October 1, 2012, an insurer writing PIP insurance in the State of Florida shall make a rate filing with the Office of Insurance Regulation. A rate certification is not sufficient to satisfy this requirement. If the insurer requests a rate in excess of a 10 percent reduction as applied to the current rate in its overall base rate for PIP insurance, the insurer must include in its rate filing a detailed explanation of the reasons for the insurance company's failure to achieve a 10 percent reduction.

B. By January 1,2014, an insurer writing PIP insurance in the State of Florida shall make a rate filing with the Office of Insurance Regulation. A rate certification is not sufficient to satisfy this requirement. If the insurer requests a rate in excess of a 25 percent reduction as applied to the current rate in its overall base rate for PIP insurance, the insurer must include in its rate filing a detailed explanation of the reasons for the insurance company's failure to achieve a 25 percent reduction.

If an insurer fails to provide such detailed explanation, the Office of Insurance Regulation shall order the insurer to stop writing new PIP policies within the State of Florida until such detailed explanation is provided.

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