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# BANKING AND INSURANCE

## Interim Projects

**INTERIM PROJECT TITLE:**

*Review Florida's Medical Malpractice Insurance Market*

**DATE DUE:** September 1, 2011

**PROJECT NUMBER:** 2012-101

**ISSUE DESCRIPTION and BACKGROUND:**

The 2003 Legislature enacted a comprehensive medical malpractice reform package that revised the procedures for litigating medical malpractice claims and limited the noneconomic damages that can be recovered in an action alleging medical malpractice. The Legislature required that premiums for medical malpractice insurance reflect the savings related to the reforms through the use of a “presumed savings factor” that takes into account the savings achieved by the legislation.

The Legislature enacted the reforms after identifying numerous deleterious effects of high premiums including that many physicians and specialists were leaving the state or refusing to perform higher risk procedures, which threatened access to high quality health care services and treatment in the state. The reforms were intended to solve the medical malpractice insurance crisis of large yearly increases in medical malpractice premiums that resulted in Florida physicians paying among the highest coverage costs in the nation. In the years following the 2003 reforms, medical malpractice insurance rates generally decreased over time. However, premium costs for medical malpractice insurance in Florida remain among the highest in the nation. The persistence of high rates for medical malpractice insurance indicates that though the 2003 reforms have been effective in preventing further premium increases, the medical malpractice market may still be in need of additional reforms.

**OBJECTIVE:**

The proposed interim project report will analyze the effectiveness of the 2003 reforms in eliminating the medical malpractice insurance crisis. The report will review the extent to which the reforms have reduced medical malpractice losses and associated costs and attempt to determine whether the full value of the reforms has been passed on to physicians in the form of lower premiums. The report will also investigate whether medical malpractice premiums and the litigation environment in Florida are continuing to create barriers to access to care and placing the state at a disadvantage when attempting to attract highly competent medical providers.

**METHODOLOGY:**

The report will thoroughly review medical malpractice insurance rates in Florida through obtaining and analyzing data obtained from the Office of Insurance Regulation, insurers, medical providers, and other interested parties. Florida's medical malpractice laws will be compared with laws enacted in other states similar in size to Florida and analyze the current litigation environment in Florida. The report will seek information to determine whether medical malpractice insurance costs are reducing the availability of high quality health care from medical providers, insurers, and regulatory agencies.

**INTERIM PROJECT TITLE:**

***Community-based Care Lead Agency Liability Insurance Coverage***

**DATE DUE:** October 1, 2011

**PROJECT NUMBER:** 2012-103

**ISSUE DESCRIPTION and BACKGROUND:**

The Legislature created the community-based care (CBC) system to strengthen community support and increase accountability for the child welfare program. Pursuant to s. 409.1671, F.S., the Department of Children and Families is required to contract with a single “eligible lead community-based provider,” for the provision of child protective services in a community. Most lead agencies use subcontractors to deliver services. There are currently 20 lead agencies responsible for providing foster care and other services through a network of approximately 670 subcontractors.

Section 409.1671, F.S., also requires CBCs and their subcontractors to provide general liability insurance coverage and automobile insurance coverage. Lead agencies and subcontractors must maintain general liability insurance of at least \$1 million per claim and \$3 million per incident. Economic damages per claimant are capped at \$1,550,000, and noneconomic damages per claimant are capped at \$310,000.

In recent years, concerns have been raised regarding the affordability and availability of this mandatory liability insurance coverage. In 2011, legislation was filed that would have reduced the general liability insurance coverage requirements for CBCs and subcontractors to \$500,000 per claim and a policy limit aggregate of \$1.5 million and would have revised other coverage requirements.

**OBJECTIVE:**

This project will address the following issues related to liability insurance coverage requirements of community-based care lead agencies:

- Access and availability of liability insurance coverage through authorized insurance companies, surplus lines companies, and self-insurance funds;
- Factors affecting the ability of CBCs to obtain and maintain liability insurance;
- Appropriateness and adequacy of the statutory insurance requirements;
- Cost of general liability insurance based on CBC insurance premium documentation;
- Impact of the cost of insurance on the financial condition of CBCs;
- Consistency of the statutory insurance requirements with the insurance market; and
- Potential fiscal impact to the state if coverage requirements are revised.

**METHODOLOGY:**

Senate professional staff of the Banking and Insurance Committee will:

- Interview key stakeholders regarding liability insurance coverage requirements and representatives of the insurance industry;
- Survey CBCs and subcontractors regarding claims data, premium expenses, operating budget information, and audited financial statements for the prior 5 years;
- Interview staff of the Division of Risk Management and other stakeholders concerning coverage requirements and the fiscal impact on the state; and
- Interview staff of the Department of Children and Families regarding contract compliance and monitoring procedures.

## Issue Briefs

**INTERIM ISSUE BRIEF TITLE:**  
*Citizens Property Insurance*

**DATE DUE:** September 1, 2011

**PROJECT NUMBER:** 2012-226

**ISSUE DESCRIPTION and BACKGROUND:**

Created in 2002, Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt, governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. Citizen's financial resources include insurance premiums, investment income, operating surpluses from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, policyholder surcharges, regular and emergency assessments and recently approved private reinsurance.

**OBJECTIVE:**

This issue brief will examine Citizens current amount of assets available to meet potential obligations. The issue brief will examine the amount of claims Citizens could currently absorb without the need to issue bonds. The brief will also address the expected effects to all policyholders should Citizens need to cover a 1-in-50 year storm and a 1-in-100 year storm.

**METHODOLOGY:**

Professional committee staff will compile a quantitative analysis of all capital sources available to Citizens necessary to meet their obligations. To further analyze the potential effects on all policyholders in Florida, professional committee staff will solicit comments from Citizens Property Insurance, the Office of Insurance Regulation, industry groups, and policyholders.

**INTERIM ISSUE BRIEF TITLE:**  
*Personal Injury Protection (PIP)*

**DATE DUE:** September 1, 2011

**PROJECT NUMBER:** 2012-203

**ISSUE DESCRIPTION and BACKGROUND:**

Under the state's no-fault law, owners or registrants of motor vehicles are required to purchase \$10,000 of personal injury protection (PIP) insurance which compensates persons injured in accidents regardless of fault. In 2007, the Legislature re-enacted and revised the Florida Motor Vehicle No-Fault Law (ss. 627.730-627.7405, F.S.) effective January 1, 2008. The re-enactment maintained personal injury protection (PIP) coverage at 80 percent of medical expenses up to \$10,000. However, insurers may limit reimbursement for benefits payable from PIP coverage to 80 percent of statutorily specified maximum charges.

Recently, Florida has experienced an increase in motor vehicle related insurance fraud and the costs associated with PIP coverage. The number of staged motor vehicle accidents received by the Division of Insurance Fraud nearly doubled from fiscal year 2008/2009 (776) to fiscal year 2009/2010 (1,461). On April 11, 2011, the Office of Insurance Regulation released the *Report on Review of the 2011 Personal Injury Protection Data Call*, containing data from companies representing approximately 80 percent of the motor vehicle insurance marketplace in Florida. The OIR report provides evidence that costs in the PIP system are rising rapidly as PIP payouts have increased from approximately \$1.5 billion in 2008 to approximately \$2.5 billion in 2010. Florida PIP claims involve approximately 100 medical treatments at an average total cost of \$12,000, well above the national average (excluding Florida) of approximately 50 treatments at an average total cost of \$8,000.

**OBJECTIVE:**

The objective of the issue brief is to outline issues related to motor vehicle insurance fraud and rising costs in the PIP system. The project will analyze the motor vehicle insurance market according to specified criteria including, but not limited to, affordability; availability; and the provision of benefits.

**METHODOLOGY:**

Committee professional staff will analyze premium and loss cost data on personal injury protection automobile insurance in Florida obtained from the Office of Insurance Regulation and data on PIP fraud from the Department of Financial Services. Committee professional staff will review automobile insurance information and interview representatives from medical and attorney associations, insurance companies, universities, government agencies, and constituent groups.

## Mandatory Reviews

**INTERIM MANDATORY REVIEW TITLE:**

***Open Government Sunset Review of Section 324.242, F.S., Personal Identifying Information in Insurance Policy Personal Injury Protection (PIP) and Property Damage Liability Insurance Policies***

**DATE DUE:** September 1, 2011

**PROJECT NUMBER:** 2012-312

**ISSUE DESCRIPTION and BACKGROUND:**

The Open Government Sunset Review Act provides for the review of exemptions to open records and meetings requirements 5 years after enactment. Section 324.242, F.S., is an exemption for personal identifying information of an insured or former insured and the insurance policy number contained in personal injury protection and property damage liability insurance policies held by the Department of Highway Safety and Motor Vehicles, and provides for release of such records under certain circumstances. The public records and meeting exemption will repeal on October 2, 2012, unless reviewed and saved from repeal.

**OBJECTIVE:**

The exemption for personal identifying information held by the Department of Highway Safety and Motor Vehicles will be reviewed using the standards provided in s. 119.15, F.S., the Open Government Sunset Review Act, to determine if they meet those standards and to determine if a recommendation

should be made to save the exemption from repeal. The review will focus on the exemption and application of the exemption by the department.

**METHODOLOGY:**

The Department of Highway Safety and Motor Vehicles will be surveyed to determine its practices regarding the exemption. Other private and public stakeholders also will be surveyed.

**INTERIM MANDATORY REVIEW TITLE:**

*Open Government Sunset Review of Section 624.23, F.S., Consumer Complaints and Inquiries Received by the Department of Financial Services*

**DATE DUE:** September 1, 2011

**PROJECT NUMBER:** 2012-313

**ISSUE DESCRIPTION and BACKGROUND:**

Consumers may file complaints or make inquiries to the Department of Financial Services (DFS) regarding an insurance company or other person or entity regulated by the DFS or the Office of Insurance Regulation (OIR). In 2002, legislation was enacted to provide that specified personal and financial information of a consumer held by the DFS or the OIR relating to a consumer's complaint or inquiry regarding a matter regulated under the Florida Insurance Code is confidential and exempt from the public records law. Subsequently, in 2007, legislation was enacted that expanded the current exemption to include the same personal financial and medical information provided by consumers to the Division of Workers' Compensation of the DFS for the purpose of resolving disputes and complaints of employees.

This public records exemption is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature. Under this act, exemptions from s. 24, Art. I of the State Constitution are subject to repeal 5 years after their enactment unless reviewed and saved from repeal by the Legislature pursuant to the standards established under the act.

**OBJECTIVE:**

To review s. 624.23, F.S., to determine if it meets the standards established in the Open Government Sunset Review Act and to recommend whether the exemption should be saved from repeal, revised, or allowed to sunset.

**METHODOLOGY:**

Senate professional staff will review the standards established in the Open Government Sunset Review Act, review relevant case law, and survey the Department of Financial Services, the Office of Insurance Regulation, and other stakeholders.

**INTERIM MANDATORY REVIEW TITLE:**

***Open Government Sunset Review of Section 717.117(8), F.S., Unclaimed or Abandoned Property***

**DATE DUE:** September 1, 2011

**PROJECT NUMBER:** 2012-314

**ISSUE DESCRIPTION and BACKGROUND:**

The Open Government Sunset Review Act provides for the review of exemptions to open records and meetings requirements 5 years after enactment. Section 717.117(8), F.S., is an exemption for property identifiers such as social security numbers and other descriptors used to identify the property holder of any unclaimed or abandoned property held by the Department of Financial Services. This public records exemption will repeal on October 2, 2012, unless reviewed and saved from repeal.

**OBJECTIVE:**

The exemption of property identifiers with relations to unclaimed or abandoned property held by the Department of Financial Services will be reviewed using the standards provided in s. 119.15, F.S., the Open Government Sunset Review Act, to determine if they meet those standards and to determine if a recommendation should be made to save the exemption from repeal. The review will focus on the exemption and application of the exemption by the department.

**METHODOLOGY:**

The Department of Financial Services will be surveyed to determine its practices regarding the exemption. Other private and public stakeholders will also be surveyed.

## Monitor Projects

**INTERIM MONITOR PROJECT TITLE:**

***Property Insurance***

**DATE DUE:** N/A

**PROJECT NUMBER:** 2012-403

**ISSUE DESCRIPTION and BACKGROUND:**

CS/CS/CS/SB 408 was a multi-faceted property insurance bill with numerous provisions that will have significant impact on the property insurance market and regulation. The bill made significant changes to a wide range of areas, most notably:

***Public Adjusters***

Public adjuster fees related to reopened or supplemental claims are limited to a maximum of 20 percent of the reopened or supplemental claim payment.

A public adjuster fee related to a policy issued by Citizens Property Insurance Corporation may not exceed 10 percent of the additional amount actually paid in excess of the amount originally offered by Citizens on the claim.

Public adjusters are prohibited from making deceptive or misleading advertisements or solicitations.

Public adjusters must ensure that the insurer has access to inspect the property, can interview the insured directly about the loss and claim, and allow the insurer to obtain information necessary to investigate and respond to the claim.

***Surplus Requirements***

For new residential property insurers that are not a wholly owned subsidiary of an insurer domiciled in another state, the surplus requirement is increased from \$5 million to \$15 million.

***Insurance Capital Build-Up Incentive Program***

The State Board of Administration and private market insurers are authorized to renegotiate the terms of a surplus note issued pursuant to the Insurance Capital Build-Up Incentive Program before January 1, 2011, possibly amending the premium-to-surplus ratios required by statute.

***Rate Standards***

Residential property insurers are authorized to make a separate rate filing limited solely to reinsurance cost increases and related financing costs. This limited rate filing must be approved or disapproved by the OIR within 45 days, and is not allowed to result in an increase of more than 15 percent for an individual policyholder.

***Citizens Property Insurance Corporation***

Citizens' agents are required to obtain from insurance applicants a signed Acknowledgment of Potential Surcharge and Assessment Liability form that details that Citizens' policyholders are subject to a Citizens policyholder surcharge of up to 45 percent.

After January 1, 2012, Citizens policies may not include sinkhole coverage for appurtenant structures, sidewalks, decks, or patios.

The Citizens Board of Governors is required to commission an independent third-party consultant with insurance company management expertise to prepare a report and make recommendations on the costs and benefits of outsourcing policy issuance and service functions to private servicing carriers.

Procedures are created for board members who have a conflict of interest regarding a particular matter to recuse themselves from voting.

***Multi-line Coverage***

Insurers are authorized to nonrenew a policy that covers both a home and a motor vehicle for any reason applicable to either the property or motor vehicle insurance. This is intended to attract into Florida insurers whose business plan is to write only multi-line coverages.

***Replacement Cost Coverage***

For a dwelling loss, insurers must initially pay the actual cash value, and subsequently must pay any amounts necessary as work is performed.

For personal property (contents coverage) that is insured on a replacement cost basis, the insured can have two claim payment options. The insurer must offer an option under which the insurer pays the

replacement cost up front, regardless of whether the insured replaces the property. The insurer may offer a second option that allows the insurer to limit the initial payment to the actual cash value of the personal property to be replaced, and pay the remaining replacement cost as the contents are replaced. This option requires the insurer to provide a premium discount.

### ***Sinkhole Insurance***

Insurers are allowed to restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building, and are allowed to require a property inspection prior to issuing sinkhole loss coverage.

A detailed definition of “structural damage” is provided for purposes of determining whether a sinkhole loss has occurred. The definition specifies five distinct types of damage that constitute structural damage, with each type of damage tied to standards contained in the Florida Building Code or used in the construction industry.

The process for an insurer’s investigation of sinkhole claims has been changed.

A policyholder may demand sinkhole testing, but if sinkhole damage is not found, the policyholder must pay the insurer 50 percent of the sinkhole testing costs up to \$2,500.

The insured must repair sinkhole damage in accordance with the insurer’s professional engineer’s recommended repairs.

The insurer must file the neutral evaluator’s report, a copy of the certification indicating that stabilization has been completed, and the amount of the claim payment with the Clerk of Court. The policyholder must file a copy of any sinkhole report prepared on behalf of the policyholder as a precondition to accepting a sinkhole loss payment.

The neutral evaluation process has been changed.

### **OBJECTIVE:**

Professional committee staff will evaluate the provisions imposed by the Legislature through the passage of CS/CS/CS/SB 408 to determine the effects on the property insurance marketplace and the regulation of property insurance.

### **METHODOLOGY:**

Professional committee staff will review and gather data where available, and interview personnel from the Department of Financial Services, the Office of Insurance Regulation, consumer representatives, property insurance representatives, and other stakeholders.

**INTERIM MONITOR PROJECT TITLE:**

***Commercial Lines Insurance Rate Setting Process***

**DATE DUE:** N/A

**PROJECT NUMBER:** 2012-404

**ISSUE DESCRIPTION and BACKGROUND:**

With the passage of CS/CS/HB 99, the Legislature expanded the number of specified types of commercial lines insurance that are exempt from certain rate filing and review requirements. An insurer or rating organization that implements a rate change under this exemption must notify the Office of Insurance Regulation (OIR) of any changes to rates for these exempted types of insurance within 30 days after the effective date of the change, and must maintain the relevant actuarial data for 2 years. Rates implemented under these provisions are still subject to the rate standards that apply to all property and casualty insurance rates, which “shall not be excessive, inadequate, or unfairly discriminatory.”

**OBJECTIVE:**

Professional committee staff will evaluate the regulatory and marketplace impact of the expansion of the types of commercial lines insurance that are subject to the filing and review exemptions specified in CS/CS/CS/HB 99.

**METHODOLOGY:**

Professional committee staff will review and gather data, and interview personnel from the Office of Insurance Regulation, commercial property insurance representatives, and other stakeholders.