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Legislative Issue

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AOB Reform Ranks Among Top Issues of Session

By: Travis Miller

The 2019 Florida legislative session has come to a close. After several years of "wait 'til next year" results on the Assignment of Benefits (AOB) issue, this year's legislature finally passed much-needed reform (HB 7065). Media outlets around the state are calling this one of the biggest results of the 2019 session.

The legislature's paramount duty, of course, is to pass a state budget. This year's state budget is $91.1 billion. Among its priorities, the legislature provided $220 million in Hurricane Michael recovery funds. In addition, the legislature eliminated the "certificate of need" process for healthcare facilities and eliminated a ban on smokable medical marijuana. These are among the several issues that consumed considerable time during the session and sometimes crowded out other issues.

With AOB reform, the legislature has created a mechanism to protect consumers against ever-rising availability and affordability concerns related to current abuses. A provision directed at the one-way attorneys' fee statute will level the playing field. Insurers also will be able to offer policies that restrict assignments for an appropriate discount or rate reduction.

Legislature Develops Solution for Long-Term Care Insolvencies

By: Travis Miller

The House and Senate based a bill designed to more equitably handle insolvencies associated with long-term care insurers. After passing both chambers without opposition, HB 673 goes to Governor Ron DeSantis for action.

The bill largely follows the NAIC Model Act related to funding long-term care insolvencies. In general, these insolvencies will be divided evenly between life and health insurers. However, the Florida approach contains an exemption to long-term care insolvency funding that is not found in the NAIC model– certain nonprofit HMOs would be exempt from assessments related to long-term care insolvencies.

Major points of the bill include: (1) equally splitting deficits between life and annuity insurers and accident and health insurers for long-term care insolvencies; (2) limiting the long-term care assessment to 0.5% of the sum of the member insurer's premiums; (3) including HMOs in the assessment; (4) exempting Medicare and Medicaid policies; (5) exempting nonprofit HMOs operating only in Florida with surplus and capital less than $200M from assessments; and (6) exempting insurers or HMOs that are insolvent or impaired prior to the date the bill is signed.

Late Easter Egg Hunt

By: David Yon

While HB 337 will not have the same kind of impact on the property market that HB 7065 (the AOB Reform Bill) will have, it nevertheless makes some significant changes. "Nestled" way down in section 23 of HB 337 on page 55 starting with line 1368 lies some curious language. It says: "Notwithstanding subsection (13) of section 627.7152, as created by HB 7065, 2019 Regular Session, subsection (10) of that section is effective upon becoming a law." Ok, that is perfectly clear.

The vast majority of HB 337 deals with cost issues and jurisdiction requirements for state county and circuit courts. Circuit courts often serve as a court of appeal for county courts, although both have original jurisdiction in most cases. Before the bill, there had to be more than $15,000 in dispute before jurisdiction vested in the circuit courts; for matters with less than $15,000 jurisdiction was in the county courts.

HB 337 gradually raises this maximum jurisdictional amount for civil cases in county courts. The amount increases to $30,000 on January 1, 2020 and $50,000 on January 1 2023.

Correspondingly, the minimum dispute to establish jurisdiction in circuit court will be raised to cases in excess of $30,000 effective January 1, 2020, and then $50,000 effective January 1, 2023.

There are no changes in the circuit courts' current appellate jurisdiction over county court cases demanding no more than $15,000 until January 1, 2023.

The bill also retains the current court filing fees by pinning the amount of the fee to the amount of monetary damages being claimed, regardless of whether the case is filed in county or circuit court. Additionally, the bill clarifies the specific monetary portion of various other court fines and fees that must be remitted to the General Revenue Fund after being collected by the Clerks of the Circuit Courts.

Finally, the bill addresses funding and budgeting by the Clerks of the Circuit Courts, permitting the Clerks to carry forward unspent funds from the prior fiscal year and any remaining funds in the Clerks of the Court Trust Fund for budgetary purposes. The bill also clarifies when excess funds in the Clerks of the Court Trust Fund must be transferred to the General Revenue Fund.

And just when you are about to fall (or maybe just after you have fallen) asleep, section 23 of the HB 337 creates an effective date for a provision created in HB 7065. More specifically, the new guidelines in HB 7065 for determining when a party in litigation where an assignment of benefits under an insurance party has been made, is entitled to reimbursement for attorney's fees are effective "upon becoming law." Assuming the Governor signs the bill, the new attorney's fee provision will be effective that same day, instead of July 1.

If approved by the Governor, these provisions (like the ones in HB 337) will take effect July 1, 2019, except as otherwise specified.

SB 322 Gives Insurers, HMOs, and Associations Greater Flexibility

By: David Yon

CS/CS/SB 322 entitled "Health Plans" allows insurers and HMOs more flexibility in the plan designs and product offerings than what is currently available in an effort to encourage new products that are affordable and designed to meet the needs of the public.

A summary prepared by the Banking and Insurance Committee states that this bill:

> allows insurers and health maintenance organizations (HMOs) greater flexibility in their plan design and product offerings providing options of affordable health coverage for employers, employees, and individuals. The bill also requires insurers and HMOs offering comprehensive major medical coverage to offer at least one policy or contract that does not exclude preexisting medical conditions if certain conditions are met.

SB 822 seeks to encourage the use of alternative coverage arrangements, including short-term limited duration insurance policies, multiple employer welfare arrangements and association health plans. Among many things, the bill codifies 2018 federal regulations which purportedly were enacted to provide consumers and employers with more affordable coverage options and choices for health insurance coverage. The MEWA statute (624.438) is being amended to include a bona fide group as defined in 29 C.F.R. part 2510.3-5 which has a constitution and bylaws specifically stating its purpose and which has been organize for purposes in addition to obtaining or providing insurance. An existing requirement that just groups had to have been maintained for at least a year is removed.

A new statute, section 627.443, is created to define "Essential health benefits." It does so by incorporating federal definitions:

(1) As used in this section, the term: (a) "EHB-benchmark plan" has the same meaning as provided in 45 C.F.R. s. 156.20.

(2) A health insurer or health maintenance organization issuing or delivering an individual or a group health insurance policy or health maintenance contract in this state may create a new health insurance policy or health maintenance contract that: (a) Must include at least one service or coverage under each of the 10 essential health benefits categories under 42 U.S.C. s. 18022(b) which are required under PPACA; (b) May fulfill the requirement in paragraph (a) by selecting one or more services or coverages for each of the required categories from the list of essential health benefits required by any single state or multiple states; and (c) May comply with paragraphs (a) and (b) by selecting one or more services or coverages from any one or more of the required categories of essential health benefits from one state or multiple states.

The bill requires the Office of Insurance Regulation to conduct a study to evaluate Florida's essential health benefits benchmark plan and submit a report by October 30, 2019 to the Governor, the President of the Senate, and the Speaker of the House. The study must include recommendations for changing the current EHB-benchmark plan to provide comprehensive care at a lower cost.

The bill requires each insurer or HMO issuing comprehensive major medical policies or contracts in Florida to offer at least one comprehensive major medical policy or contract that does not exclude, limit, deny, or delay coverage due to one or more preexisting medical conditions. The operative date for such mandated offer is the enactment of a federal law that expressly repeals PPACA or the invalidation of the PPACA by the United States Supreme Court.

Annual "Thumbs Down" Legislative Issues

By: Karen Asher-Cohen

Every year our legislative edition of the *Florida Insurance Report* contains a list of issues that received the "thumbs down". This year's list includes some of the following:

Auto Glass/AOB and Rebates - Would include auto glass in new AOB reforms.

PIP Repeal - Would replace PIP with mandatory 25/50 BI and 10 PD. Different bills either included or did not include bad faith reform and/or mandatory Med Pay.

Genetic Testing – Would have prohibited insurers from cancelling or charging different premiums on the basis of genetic information.

Interstate Compact – Would have opted Florida out of the Compact relating to annuity and disability products, so the Compact would only apply to life insurance products.

Citizens – Would have capped rate increases in Monroe County to 5% per policy per year.

Sinkholes – Would have expanded definition of "catastrophic ground cover collapse" by making settling or cracking a loss if the structure was ordered vacated or deemed dangerous by an engineer or code enforcement personnel.

Property Coverage for Explosion – Would have required property insurers to cover damages from explosions, but would also allow the insured the option to exclude coverage from their base policy if they requested it.

Workers' Comp Reform – Topics included in reform were attorney's fees, petitions for benefits, medical reimbursement, indemnity benefits, medical authorization, carrier performance measures and rate deviation.

Surplus lines – Would extend the diligent effort exemption for flood insurance placed in the surplus lines market.

Cap on Med Mal Noneconomic Damages – Reenactment

Cap on Med Mal Noneconomic Damages – Repeal

Dental Therapists – Would allow the Board of Dentistry to require medical malpractice insurance for people applying to take the dental therapy exam; and would create a scope of practice and licensure process for dental therapists.

Medical Records – Would allow a prospective defendant to secure the release of a claimant's relevant medical records for a treating health care provider.

Trade Secret Information – Would have repealed all trade secret protection including the protection afforded to information at OIR and DFS.

Insurance for Film Production – Would have required film production companies filming in Florida that receive financing from the Florida Motion Picture Capital Corporation to secure hurricane insurance coverage if at least 75% of the filming would occur during hurricane season.

Building Commission – Would have reduced the membership of the Florida Building Commission.

The Insurance "Omnibus" Bill

By: Karen Asher-Cohen

The Insurance Omnibus bill passed by the 2019 Legislature has a little something for everyone – it affects property, worker's compensation, auto, surplus lines property, health, life, and liability insurance issues. The following are some of the new changes:

- Creates a right of contribution among liability insurers for defense costs. Section 5 provides that a liability insurer who owes a duty to defend an insured and who defends the insured now will have the right against any other insurer who also owes a duty to defend the insured against the same claim, suit, or other action, to compel contribution for defense costs. This applies to surplus lines insurers as well, but does not apply to motor vehicle liability insurance or medical professional liability insurance. Also, it provides that the courts will allocate the defense costs among the liability insurers.
- Section 6 removes DFS' ability to return a civil remedy notice under section 624.155, F.S., for lack of specificity; and prohibits a civil remedy notice from being filed within 60 days after appraisal is invoked in a residential property insurance claim.
- Section 2 increases the amount of loss adjustment expense covered by the Florida Hurricane Catastrophe Fund from 5 to 10 percent, for contracts and rates effective on or after June 1, 2019.
- A life insurance company must now provide a lapse notice to the agent of record on the policy, at least 21 days prior to the effective date of the lapse. (Section 14). The exceptions to this requirement are:
    - If the insurer maintains an online system where the agent can independently see if a policy has lapsed or if a lapse notice has been sent;
    - If the insurer has no record of the current agent;
    - Or if the agent is an employee of the insurer or its affiliate.
- Sworn statements by the agent and employer, required with worker's compensation policy applications, no longer need to be notarized. Also, it is now a third-degree felony (rather than a second-degree felony) to submit false information on a worker's compensation application. (Section 3).
- OIR now has the authority to waive the seasoning requirement under section 624.404, F.S., for foreign and alien insurers seeking a COA in Florida, if the insurer has sufficient capital and surplus to support its plan of operation. (Section 7).
- The Unfair Trade Practices Act, section 626.9541, F.S., is amended to provide that an insurer or agent is not prohibited from giving or offering to an insured services or merchandise, for free or at a discounted price, that related to loss control or loss mitigation. (Section 11).
- A multi-line discount can now be offered to the consumer if:

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  - The same agent is servicing the policies from different insurers;
  - Another policy is purchased from a different insurer under a joint marketing agreement; or
  - Another policy is issued under Citizens' clearinghouse program. (Section 12).

- For surplus lines insurers (Sections 9 and 10):
  - To export a homeowner's residential property policy with one declination, rather than three, the coverage threshold was lowered to $700,000 from $1 million;
  - The $35 cap no longer applies to the "reasonable per policy fee" that can be charged by the surplus lines agent; and
  - A retail insurance agent can charge the reasonable per policy fee, but it must be itemized separately for the insured prior to purchase.

- Insurers must notify insureds of their right to mediate their claim under section 627.7015, F.S., at the time of issuance and renewal of their policy, or when the first-party claim is filed by the insured. (Section 15).
- Auto insurance companies or agents can now collect one month's premium, rather than two, to bind a policy. (Section 16).
- Multi-state HMO's and prepaid limited health service organizations will be classified as property and casualty insurers for purposes of risk-based capital determinations. (Section 8).
- Amends certain provisions relating to salvage title certificates. (Section 2).
- Liability insurers can now provide written notice of defense and written notice of its refusal to defend to named insureds by U.S. postal proof of mailing, or mailing using the Intelligent Mail barcode, or any other similar method approved by the U.S. postal service. (Section 13).

The bill is now before the Governor.

Homeowners Insurance Policy Disclosures

By: Karen Asher-Cohen

The Legislature has amended section 627.7011, F.S., effective July 1, 2019 (HB 617). Any homeowner's insurance policy that does not include flood coverage must now include the following disclosure at issuance and upon every renewal, in bold 18-point type:

FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT.

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