



The following alert was prepared by Greenberg Traurig's Florida Government Law & Policy Team. Their contact information is at the end of this document.

2015 Post-Season Florida Insurance Report

Political Overview

Republicans fared well in the election cycle that preceded the 2015 Florida Legislative Session. Despite a tight race, Republican Governor Rick Scott won re-election as did the other three GOP Cabinet members. Additionally, Republicans took six House seats from the Democrats, regaining the two-thirds, veto-proof majority (81 to 39); and, in the Senate, they maintained their 12-member majority (26 to 14).

Florida's fiscal future looked bright with nearly \$1 billion in surplus revenues estimated for Fiscal Year 2015-16 which meant there would be plenty of opportunities for tax cuts and increased funding on legislative priorities. Further, House Speaker Steve Crisafulli (R-Merritt Island) and Senate President Andy Gardiner (R-Orlando) crafted a joint legislative agenda that included increasing independence for the developmentally disabled, sustaining Florida's natural resources, enhancing education funding levels and cutting taxes.

Yet, ultimately, a disagreement on health care funding drove a wedge between the two Republican presiding officers. The result was a historic act of the House adjourning "sine die" on Tuesday, April 28th, three days before the scheduled end of the regular session on Friday, May 1st.

The disagreement originated from opposing opinions on how to address the expected \$2.2 billion shortfall that would occur when the federal government ended the Low Income Pool (LIP) payments to hospitals providing indigent care. The Senate budget assumed the \$2.2 billion LIP funding would continue due to the ongoing negotiations between Florida and the federal government on a new funding model. The House proposal did not contain any LIP funding.

The Senate proposal also counted on drawing down an additional \$2.8 billion in federal dollars by establishing subsidized health care coverage for approximately 800,000 low-income and uninsured Floridians. Over the preceding two sessions, the House had maintained strong opposition to any coverage expansion through the state's Medicaid program. As a result, their total budget proposal was just over \$4 billion less than the Senate proposal.

Early afternoon on April 28th, Speaker Crisafulli announced that the House and Senate were at a budget impasse and sent members home saying they would return for a special session after there was time for a "reset". Caught off guard, the Senate continued their work on bills in their possession, some of which were sent to the Governor. Other issues, including President Gardiner's priority of educational opportunities for the developmentally disabled and prison reform, were amended and sent back to the House. Speaker Crisafulli's priority, a large water policy package, was amended with the Senate version and returned to the House.

The following day, the Senate sent a letter to the Speaker questioning the constitutionality of the House's early adjournment and calling upon them to return to work. President Gardiner announced that the Senate would remain ready to work with the House until midnight on Friday, May 1st, the scheduled end of session. The House responded that they would return to work when a special session was called.

The question remains on how the budget impasse will be resolved. The LIP funding is scheduled to end on June 30th which coincides with the July 1st fiscal year when the 2015-16 Budget would take effect. Adding his voice to the disagreement about health care funding, Governor Scott announced, the day before session was scheduled to end, the creation of the Commission on Healthcare and Hospital Funding (Commission) to examine how taxpayer dollars support hospitals, healthcare and insurance plans in Florida. The Commission would evaluate the healthcare outcomes provided by the healthcare entities and also the Certificate of Need laws to determine if eliminating them would increase competition and decrease costs thereby lowering hospitals' dependence on federal funding. The Commission, of which the members have yet to be named, will begin work immediately with the goal of gathering information that would assist Florida lawmakers in building a budget for Fiscal Year 2015-16.

The Governor has said he will call legislators back to Tallahassee for a special session, or the House and Senate could make the call. On Thursday, April 30th, President Gardiner sent a draft proclamation to Speaker Crisafulli suggesting they return June 1st through June 20th for a special session. At this writing, the Speaker has not responded.

Lawmakers will need to hasten their budget work not only for the July 1st start of the coming state fiscal year, but to begin the standard committee work prior to next year's legislative session which will have an earlier-than-normal start date of January 12, 2016.

Issues That Passed the Legislature

When a bill approved by the Legislature is delivered to the Governor, he has 15 days to sign, veto, or allow the bill to become law without his signature. As of Friday, May 1, 2015, none of the bills below had been presented to the Governor. The final text of the passed bills included herein can be accessed through the

live link associated with the bill summary. If you should need more information, please contact the GT Tallahassee Office at (850) 222-6891.

General Insurance

Countersignature Requirement – SB 252 by Sen. Chris Smith (D-Fort Lauderdale)

The bill provides that the absence of a countersignature does not affect the validity of a property, casualty, or surety insurance policy or contract. Current law provides that no property, casualty, or surety insurer shall assume direct liability unless the insurance policy or contract is countersigned by a licensed agent.

Further, the bill amends the definition of financial guaranty insurance to provide that financial guaranty insurance does not include guarantees of higher education loans unless they are written by a financial guaranty insurance corporation. Lastly, the bill allows a foreign or alien insurer applying for a certificate of authority (COA) to submit a copy of the report of the most recent examination that is up to five years old as of the date of the insurer's application.

If approved by the Governor, the bill would take effect on July 1, 2015. [SB 252](#)

Division of Insurance Agent and Agency Services – HB 1133 by Rep. Jay Fant (R-Jacksonville)

The bill, advanced by the Department of Financial Services (DFS) amends various provisions of the insurance agent and agency licensure laws. The bill:

- > Removes the general lines agent's limitation to only sell health insurance when that health insurance is from an insurer that the agent represents for property and casualty insurance. An agent can now transact health insurance with any health insurer under the agent's general lines license.
- > Reduces the number of lines the agent in charge must be licensed to transact. The agent in charge is required to be licensed in at least two of the location's lines, rather than all the location's lines. In the event the location only handles one line, the agent in charge must be licensed in that line of insurance.
- > Eliminates the examination for customer representative licensing. Applicants for licensure will qualify if they have achieved specified professional designations or a qualifying academic degree within four years prior to application.
- > Allows the general lines agent, personal lines agent, and all-lines adjuster license applicants an exemption from the required examination, upon certain conditions, including obtaining certain professional designations or a qualifying academic degree.
- > Removes any examination exemption limitations applicable to license transferees from other states.
- > Allows non-resident agent applicants to receive an examination exemption, if they hold a comparable license in another state with similar examination requirements.
- > Requires attendees to complete 75 percent of course hours in prelicensure courses for applicants to receive credit. This replaces a rule requirement that was repealed for lack of rulemaking authority.

- > Revises various knowledge, experience, or instruction requirements governing applicants for licensure as a general lines agent, personal lines agent, life agent, or health agent.
- > Establishes a mandatory five-year records retention requirement for insurance agents following the expiration of a policy.
- > Defines the term “surrender” for purposes of agent recommended surrenders of an annuity or life insurance policy and eliminates a required form concerning the information notice required prior to agent recommended annuity surrender.

If approved by the Governor, the bill would take effect on July 1, 2015. [HB 1133](#)

Electronic Commerce – SB 222 by Sen. Dorothy Hukill (R-Port Orange)

The bill creates the “Computer Abuse and Data Recovery Act” (CADRA). It also creates a civil action against an individual who knowingly and with intent to cause harm or loss:

- > Obtains information from a protected computer without authorization, and as a result, causes harm or loss;
- > Causes the transmission of a program, code, or command from a protected computer without authorization, and as a result, causes harm or loss; or,
- > Traffics in any technological access barrier (e.g., password) through which access to a protected computer may be obtained without authorization.

In the civil action, the injured party has the following civil remedies available:

- > Recovery of actual damages;
- > Recovery of the violator’s profits that are not included in the plaintiff’s damages;
- > Injunctive or other equitable relief to prevent a future violation; and,
- > Return of the misappropriated information, program, or code, and all copies.

The bill also directs courts to award attorney’s fees to the prevailing party. Relief provided under this bill is available as a supplement to other remedies under state and federal law. If a criminal proceeding brought under the Florida Computer Crimes Act (CCA) results in a final judgment or decree in favor of the state, the defendant is estopped from denying or disputing the same matters in any subsequent civil action brought under CADRA. The bill excludes from its provisions:

- > Any lawfully authorized investigative, protective, or intelligence activity of any law enforcement agency, regulatory agency, or political subdivision of Florida, any other state, the United States, or any foreign country; and,
- > Any provider of an interactive computer service, of an information service, or of a communications service, if the provider provides the transmission, storage, or caching of electronic communications or messages of a person other than the provider, related telecommunications or commercial mobile radio services, or content provided by a person other than the provider.

If approved by the Governor, the bill would take effect on October 1, 2015. [SB 222](#)

Florida Insurance Guaranty Association (FIGA) – SB 836 by Sen. Jack Latvala (R-Clearwater)

The bill creates a uniform assessment percentage to be collected from policyholders to cover the cost of claims when a property and casualty insurer becomes insolvent. It authorizes FIGA to use a monthly installment method for the collection of emergency or regular assessments from insurers in addition to the current pay and recoup method or a combination of both. An insurer that did not write insurance in the prior year is required to pay an assessment based on an estimate of premiums it will write in the assessment year.

The bill also streamlines the reconciliation of collections and eliminates a regulatory filing with the Office of Insurance Regulation (OIR). Further, it codifies the OIR's interpretation of an admissible asset for purposes of statutory accounting treatment of FIGA assessments. Lastly, the bill exempts regular assessments from the insurance premium tax. Currently, emergency assessments are exempt from the insurance premium tax.

If approved by the Governor, the bill would take effect on July 1, 2015. [SB 836](#)

Fraud – HB 157 by Rep. Kathleen Passidomo (R-Naples)

The bill makes it unlawful for a person to falsely impersonate or represent another person if, while doing so, he or she receives any property intended to be delivered to the party so personated, with intent to convert the property to his or her own use. It also:

- > Requires a business entity to release documents related to an identity theft incident to a victim after specified requirements are satisfied and provides protections to such business entities who release such information in good faith;
- > Expands the application of criminal use of personal identification to include those who unlawfully use the personal identification information of a business entity (rather than an individual) or a dissolved business entity;
- > Defines "business entity" and replaces the terms "corporation" and "firm," with the term "business entity," to ensure that all businesses operating in Florida receive the protections of chapter 817, F.S.;
- > Adds electronically published advertisements to the definition of misleading advertisements;
- > Prohibits a person from manufacturing articles that have the name of a city, county, or political subdivision, that is not the same name as the one in which said items are manufactured;
- > Prohibits specified persons from fraudulently issuing, transferring, or fraudulently signing an indicia of membership interest with a limited liability company with the intent that the interest be issued or transferred by himself, herself, or another person;
- > Prohibits a person from knowingly providing false information that becomes part of a public record; and
- > Increases the criminal penalty of fraudulently obtaining goods or services from a health care provider from a second degree misdemeanor to a third degree felony.

If approved by the Governor, the bill will take effect on October 1, 2015. [HB 157](#)

Insurance Guaranty Associations – *HB 189 by Rep. Travis Cummings (R-Orange Park)*

The bill makes changes to two guaranty funds – FIGA, which is the guaranty association for property and casualty insurance, and the Florida Life and Health Insurance Guaranty Fund (FLAHIGA), which is the guaranty association for most life and health insurers.

The bill clarifies the accounting treatment of assessments levied by FIGA and mitigates the negative impact to insurers' net worth due to a 2011 change to statutory accounting principles relating to the treatment of assessments. It also clarifies FLAHIGA's statutory duty to review policies, contracts, and claims of insolvent life and health insurers following either domestic or foreign liquidations or rehabilitations.

If approved by the Governor, the bill would take effect on July 1, 2015. [HB 189](#)

Insurer Notification – *HB 273 by Rep. Keith Perry (R-Gainesville)*

The bill allows personal lines insurers to deliver policy documents, including policies, endorsements, notices, or other documents, by electronic means in lieu of delivery by mail if the policyholder affirmatively elects electronic delivery.

Regarding the "Notice of Change of Policy Terms", the bill allows an insurer to send the notice of change separate from the renewal notice as long as the notice is sent within the policy nonrenewal time limits. Further, it requires the insurer to provide the policyholder's insurance agent with a sample copy of the Notice of Change of Policy Terms before or at the same time the Notice is provided to the policyholder. And lastly, if an insurer seeks to offer optional coverage (that increases the premium) as a part of a renewal policy, the bill prohibits the insurer from using the Notice of Change in Policy Terms to add the optional coverage to the policy unless the policyholder affirmatively approves.

If approved by the Governor, the bill would take effect on July 1, 2015. [HB 273](#)

Intrastate Crowdfunding – *HB 275 by Rep. David Santiago (R-Deltona)*

The bill authorizes intrastate crowdfunding as a mechanism for small businesses to raise up to \$1 million annually in crowdfunding securities. Issuers and intermediaries engaging in intrastate crowdfunding will be subject to specified requirements under the Florida Securities and Investor Protection Act, which is administered by the Office of Financial Regulation (OFR).

An intrastate exemption is also created for securities meeting certain state and federal requirements. The issuer, intermediary, investor, and transaction must be located in Florida in accordance with the federal intrastate exemption. Similar to the federal Jumpstart Our Business Startups Act (JOBS Act), the bill exempts an issuer and the offering for a 12-month period for an offering of up to \$1 million of securities, requires registration for the intermediary, and mirrors the federal law's investment limitations for investors.

Further, the bill requires:

- > Issuer notice-filings and intermediary registration with the OFR;
- > Initial and periodic disclosures to investors;
- > An escrow agreement for investor funds;
- > A right of rescission; and,
- > Financial reporting to investors and to the OFR.

If approved by the Governor, the bill would take effect on October 1, 2015. [HB 275](#)

Automobile Insurance

Auto Insurance Fraud – *HB 1127 by Rep. Jennifer Sullivan (R-Eustis)*

The bill requires Personal Injury Protection (PIP) clinics that are currently self-exempt from licensure to obtain a Certificate of Exemption, which would allow the state to track clinic ownership and PIP reimbursements. The bill also clarifies vague statutory language and clearly defines reimbursement claims filed by clinics in violation of licensing requirements as criminal violations to enable state prosecutors to successfully prosecute these cases.

The original version of the bill contained several onerous provisions regarding Special Investigative Units (SIUs). Specifically, it would have required all admitted insurers to establish and maintain a SIU unit separate from the insurers' underwriting and claims adjusting units. It also would have required all insurers to file on an annual basis a written description of the insurer's procedures for detecting, investigating and reporting suspected insurance fraud. The collective efforts by the insurance industry in opposition of these provisions resulted in the removal of the problematic language.

If approved by the Governor, the bill would take effect on October 1, 2015. [HB 1127](#)

Motor Vehicle Insurance – *HB 4011 by Rep. Tom Goodson (R-Titusville)*

The bill removes the four vehicles limitation from the definition of "motor vehicle insurance" in section 627.041(8), F.S., and the definition of "policy" in section 627.728(1)(a), F.S. The limitation of four vehicles had resulted in persons purchasing, and insurers underwriting, multiple policies whenever the person sought to insure more than four private passenger automobiles.

If approved by the Governor, the bill would take effect on July 1, 2015. [HB 4011](#)

Public Records Exemption for PIP Policies – *HB 7055 by Rep. Greg Steube (R-Sarasota)*

The comprehensive Department of Highway Safety and Motor Vehicles (DHSMV) bill included a provision expanding the existing public records exemption for PIP and property damage liability insurance policies allowing the DHSMV to provide those numbers to department-approved third-parties that provide data collection services to an insurer of any person involved in such accident.

If approved by the Governor, the bill would take effect on October 1, 2015. [HB 7055](#)

Property & Casualty Insurance

Citizens Property Insurance Corporation (Citizens) Eligibility – *HB 715 by Rep. Holly Raschien (R-Key West)*

The bill removes the prohibition on coverage for any major structure that is substantially improved pursuant to a building permit applied for on or after July 1, 2015. However, it retains the prohibition on new construction of a major structure. A major structure that is rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent pursuant to a permit applied for after July 1, 2015, is also ineligible for coverage from Citizens.

If approved by the Governor, the bill would take effect on July 1, 2015. [HB 0715](#)

Citizens Property Insurance Corporation Operations – *HB 1087 by Rep. Michael Bileca (R-Miami)*

The bill revises the Citizens depopulation program in an effort to maximize policyholder options and encourage greater participation by policyholders and agents. After January 1, 2016, a policyholder must be told when one or more take-out companies have expressed interest in assuming their policy.

Further, the bill prohibits take-out companies from removing any policy from Citizens after January 1, 2016 unless the policyholder received information in a uniform format so they can compare take-out offers to each other, as well as to their coverage with Citizens. The policyholder must receive the estimated renewal premium, the renewal coverage, including an explanation of differences, and a comparison of both the premium and coverage to the premium and coverage of the Citizens renewal policy.

Effective July 1, 2015, the bill allows a consumer to elect not to be solicited for take-out more than once in a six-month period. In addition, it allows a consumer to retain eligibility for Citizens insurance through the Clearinghouse if the insurer increases its initial premium more than 10 percent above its original estimate or increases the rate on the policy more than 10 percent per year during the 36 months following take-out.

The bill provides the consumer representative on the Citizens' Board of Governors (board) is subject to the same conflict of interest exemption provisions in current law as other board members with insurance expertise. Finally, it authorizes additional entities to receive underwriting data for the purpose of analyzing risks for underwriting in the private insurance market and prohibits the use of this confidential information for soliciting policyholders.

If approved by the Governor, the bill would take effect on July 1, 2015. [HB 1087](#)

Construction Defect Claims – *HB 87 by Rep. Kathleen Passidomo (R-Naples)*

The bill updates the current procedure for filing a notice of construction defect claim in the following manner:

- > Adds a “temporary” certificate of occupancy in the definition of “completion of a building or improvement” in chapter 558, F.S., relating to construction defects, in chapter 718, F.S., relating to condominium warranties, and in chapter 719, F.S., relating to cooperative warranties.
- > Requires the notice of claim identify the location of each construction defect, based upon at least a visual inspection. A claimant is not required to perform destructive or other testing before providing a notice of claim.
- > Requires that the contractor's response to a notice of claim indicate whether he or she is willing to make repairs, settle the claim with a monetary offer, or both, whether the contractor disputes the claim and whether the contractor’s insurer will cover the claim.
- > Clarifies that providing a copy of the notice of claim to an insurance company does not constitute a claim for insurance purposes unless provided for under the terms of the contractor's insurance policy.
- > Includes “maintenance records” and other documents to those records to be exchanged by the claimant with the contractor related to the defect claim. However, a party does not have to disclose privileged documents or records.

If approved by the Governor, the bill would take effect on October 1, 2015. [HB 87](#)

Flood Insurance – *SB 1094 by Sen. Jeff Brandes (R-St. Petersburg)*

The bill is designed to increase the number of insurers offering private flood coverage to Floridians. Specifically, the bill:

- > Requires components for inclusion in the costal management element of local government plans;
- > Allows licensed surveyors and mappers to complete elevation certificates in accordance with procedures developed by the Division of Emergency Management (DEM);
- > Allows insurers to offer flexible coverage policies for flood that only covers the amount remaining on the mortgage;
- > Allows dwelling loss to be adjusted only on the basis of the actual cash value of the property;
- > Authorizes the OIR to require insurers to provide appropriate return of premium to affected insureds, if they determine a rate is excessive or unfairly discriminatory; and,
- > Allows an insurer to request a certification from OIR acknowledging that a private flood policy equals or exceeds the coverage offered by the National Flood Insurance Program (NFIP).

If approved by the Governor, the bill would take effect on July 1, 2015. [SB 1094](#)

Property and Casualty Omnibus – *HB 165 by Rep. David Santiago (R-Deltona)*

This comprehensive insurance package contains the following provisions:

- > Enacts a uniform 120-day notification period for all property insurance nonrenewals, cancellations, or terminations;
- > Revises pre-insurance inspection requirements for new, unused leased motor vehicles leased from a licensed motor vehicle dealer or leasing company;
- > Restricts insurer notification to policyholders of the right to participate in neutral evaluation of sinkhole claims to only those policies with sinkhole coverage with claims received within the two-year statute of limitations;
- > Clarifies the Medicare fee schedule used in PIP runs from March 1st through the end of February of the following year;
- > Extends the time insurers can use a hurricane model from 60 to 120 days;
- > Contains commercial insurance provisions relating to rate certification and annual rate filings; and,
- > Exempts federally-licensed physical therapy and speech pathology clinics from PIP clinic licensure.

If approved by the Governor, the bill would take effect on July 1, 2015. [HB 165](#)

Sinkhole Repair – *SB 1216 by Sen. Wilton Simpson (R-New Port Richey)*

The bill authorizes local governments to enter into financing agreements with property owners to finance qualified improvements to property damaged by sinkhole activity. It also expands the definition of “blighted area,” to account for land that has a substantial number of properties damaged by sinkhole activity that have not been adequately repaired or stabilized. Further, the bill enables Community Redevelopment Areas (CRA) focused on redeveloping these lands to establish community redevelopment trust funds that are funded through tax increment financing.

If approved by the Governor, the bill would take effect upon becoming law. [SB 1216](#)

Title Insurance – *HB 927 by Rep. Bill Hager (R-Boca Raton)*

The bill makes changes to the assessment recovery surcharge administration process in the following manner:

- > Removes language limiting the surcharge to one per insolvent company which permits the receiver to adjust the surcharge amount related to a particular company;
- > Requires transaction settlement statements to specify that the surcharge amount is a “surcharge” and not premium;
- > Requires any insurer that was not subject to a given assessment, regardless of their activity in the previous calendar year, to collect and remit the surcharge to the receiver as an excess surcharge;
- > Establishes an excess surcharge account for use;
- > Allows the OIR to end surcharges after all actively writing title insurers have recovered the assessment and rolls unused excess surcharges held by the receiver into the Insurance

Regulatory Trust Fund (IRTF) after certain conditions are met, rather than immediately upon receipt; and,

- > Grants specific rulemaking authority.

If approved by the Governor, the bill would take effect on July 1, 2015. [HB 927](#)

Life & Health Insurance

Blanket Health Insurance – *HB 893 by Rep. Blaise Ingoglia (R-Spring Hill)*

The bill expands the list of existing groups and individuals that are eligible policyholders of blanket health insurance coverage or eligible to be covered under a blanket health insurance policy. Specifically, the bill changes the existing policyholder groups as follows:

- > A Common Carrier – Adds any operator, owner or lessee of a means of transportation as an eligible policyholder.
- > An Employer – Expands coverage to dependents or guests of an employee; removes the reference to coverage for “exceptional hazards incident to such employment” and replaces it with “activity or activities or operations of the policyholder,” which expands the types of activities for which blanket health coverage may be purchased by an employer.
- > A School, School District, College, University, or Other Institution of Learning – Expands coverage to employees, and dependents and spouses of teachers or employees of a school, college, and university.
- > A Volunteer Fire Department, First Aid Group, or Other Such Volunteer Group – Adds local emergency management groups and groups of first responders as eligible policyholders and expands coverage to any grouping of participants defined by reference to activities or operations sponsored or supervised by the policyholder. The bill removes other “volunteer groups.”
- > An Organization or Branch of the Boys Scouts of America, Future Farmers of America, Religious or Educational Organizations, or Similar Organizations – Adds instructive, charitable, recreational, and civic groups as eligible policyholders and expands coverage to any or all persons participating in the activities or operations sponsored or supervised by the policyholder.
- > A Newspaper – Adds other publishers as eligible policyholders and expands coverage to delivery persons employed by such publications. It also clarifies what types of coverage may be provided, such as coverage only for accident or coverage only for a specified disease or illness.
- > A Health Care Provider – Adds an arranger of fertility medicine relationships as eligible policyholders and expands coverage to donors, recipients, and surrogates.
- > The bill also adds the following new eligible policyholder groups to statute:
- > A sports team, camp, or sponsor of a team or camp – covering members, campers, participants, employees, officials or supervisors;
- > A travel agency or other organization that provides travel related services – covering any and all persons receiving travel-related services;
- > An association that has a constitution and bylaws, comprised of at least 25 members and having been organized and maintained in good faith for at least one year for purposes other than obtaining insurance – covering all members of the association; and,
- > A financial institution or parent holding company, or the trustees or agents designated by such entities – covering accountholders, cardholders, debtors, or guarantors. It also clarifies what

types of coverage may be provided, such as coverage only for accident or coverage only for a specified disease or illness.

If approved by the Governor, the bill would take effect on July 1, 2015. [HB 893](#)

Experimental Drugs Access – *HB 269 by Rep. Ray Pilon (R-Sarasota)*

The bill establishes a framework in which manufacturers may provide investigational drugs, biological products, or devices to eligible patients without using the Federal Drug Administration (FDA) emergency use expanded access program. Also, it allows manufacturers to contract with and dispense investigational drugs directly to patients, without licensure or regulation by the Board of Pharmacy.

To be eligible, patients must have a terminal condition with a projected life span of one-year if the condition runs its normal course. The patient's treating physician must attest to the terminal condition; a second-evaluation must be conducted by a board-certified specialist confirming the diagnosis; and, the patient must have considered all other approved treatments.

If approved by the Governor, the bill would take effect on July 1, 2015. [HB 269](#)

Health Regulation Modernization Act – *HB 731 by Rep. Scott Plakon (R-Longwood)*

The bill amends the Florida Employee Health Care Access Act (EHCAA) removing provisions that conflict with the federal Patient Protection and Affordable Care Act (PPACA). Those provisions include:

- > The requirement that a carrier offer standard, basic, and high deductible plans to a small employer. Federal law requires all small group health plans to include essential health benefits, which are not included in these plans.
- > The requirement for an annual August open enrollment period for sole proprietors. Federal law now requires small employer carriers to have continuous open enrollment.
- > The requirement for small employer carriers to submit a semi-annual report to the OIR concerning the use of rating factors to adjust premiums in the small group market.
- > A provision that indexes reinsurance premium rates to approximate gross premium rates of standard and basic health plans.
- > A provision that requires the development of standards for agent compensation for the sale of basic and standard health plans.
- > The requirement for the Chief Financial Officer (CFO) to appoint the health benefit plan committee, as well as the duties of that committee to make recommendations concerning basic and standard health plans.

Further, the bill requires a small employer stop-loss insurance policy to cover 100 percent of all claims equal to or above the attachment point. Under the bill, a small employer stop-loss insurance policy is considered health insurance and is subject to the EHCAA if the policy has an aggregate attachment point that is lower than the greatest of: (1) \$2,000 multiplied by the number of employees; (2) 120 percent of expected claims, to be determined in accordance with actuarial standards of practice; or (3) \$20,000.

It also requires that a self-insured health benefit plan, established by an employer with 51 or more covered employees be considered health insurance if the plan's stop-loss coverage has an aggregate attachment point that is lower than the greater of: (1) 110 percent of expected claims, to be determined in accordance with actuarial standards of practice; or (2) \$20,000.

If approved by the Governor, the bill would take effect on July 1, 2015. [HB 731](#)

Long-Term Care Insurance – SB 520 by Sen. Denise Grimsley (R-Sebring)

The bill creates an additional nonforfeiture protection provision that long-term care insurers can offer. Current law requires long-term care insurers to offer a nonforfeiture protection provision on policies that provides for reduced paid-up insurance, an extended term, a shortened benefit period, or other approved benefits. The bill allows an insurer to offer a nonforfeiture provision in a long-term care insurance policy in the form of a return of premium in the event of the insured's death or upon complete surrender or cancellation of the policy.

If approved by the Governor, the bill would take effect on July 1, 2015. [SB 520](#)

Pharmacy Benefit Managers – HB 1049 by Rep. Kathleen Peters (R-St. Petersburg)

A bill clarifying that a veterinarian may administer a compounded drug to an animal patient was amended late in session with language addressing pharmacy benefit managers. The added language requires pharmacy benefit managers to update maximum allowable cost pricing information at least every seven calendar days. It also requires them to maintain a process that will eliminate drugs from maximum allowable cost lists or modify drug prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

If approved by the Governor, the bill would take effect July 1, 2015. [HB 1049](#)

Issues That Did Not Pass the Legislature

General Insurance

Bad Faith Actions – SB 1088 by Sen. Jeff Brandes (R-St. Petersburg)/HB 1197 by Rep. Mike Hill (R-Pensacola)

These bills provided that before bringing an action alleging bad faith, the insured, the claimant, or anyone acting on their behalf, must provide a written notice of loss to the insurer. Further, providing that if the insurer timely provides a disclosure statement and offers to pay the claimant the lesser of the amount the claimant is willing to accept or the insurance policy's liability limit within 45 days, in exchange for a full release from liability, then the insurer cannot be found to have acted in bad faith. The House bill was approved by one committee but then failed to advance further. On the Senate side, the bill was never heard.

Tax Cut Package – *HB 7141 by House Finance & Tax Committee*

A tax relief package containing several of Governor Scott's priorities failed this session when the Senate refused to advance it until the \$2 billion budget hole expected as a result of losing the federal LIP funding was resolved. The bill called for extending the expiration date of title insurance premiums retained by agents or agencies from December 31, 2017 to December 31, 2018. Other provisions in the bill would have lowered the state communications services tax (CST) rate by 3.6 percentage points and the state sales tax rate on commercial real estate rentals by 0.2 percentage points.

The bill would have also created or expanded sales tax exemptions for the following:

- > Agricultural items, including feed for aquatic organisms;
- > Irrigation equipment;
- > Costs of maintenance and repairs of irrigation and power farm equipment, stakes, and certain trailers;
- > Sales at school book fairs and K-12 school food and beverage concessions in support of extra-curricular activities;
- > College textbooks and instructional materials;
- > Machinery and equipment used for metal recycling;
- > Gun club memberships or admissions; and,
- > Motor vehicles brought to Florida by military service members deployed outside of the U.S.
- > Further, the bill would have provided for the following sales tax holidays:
 - > A three-day "back-to-school" holiday for clothing, footwear, school supplies, and computers;
 - > A one-day tax free period on November 28, 2015, for sales of items priced at \$1,000 or less by certain small businesses; and,
 - > A one-day tax free period on July 4, 2015, for certain firearms, ammunition, camping tents, and fishing supplies.

Lastly, the bill would have:

- > Increased from \$500 to \$5,000 of value the longstanding property tax exemption for widows, widowers, blind, or totally and permanently disabled persons;
- > Updated and expanded the current partial homestead exemption available to military service members deployed overseas;
- > Temporarily increased the corporate income tax credit voluntary brownfields clean-up;
- > Created a corporate income tax credit for federal defense contractors that hire Florida subcontractors;
- > Revised the distribution for the current research and development tax credit and temporarily increase the annual credits that can be awarded; and,
- > Extended the Community Contribution Tax Credit program with \$13.3 million in tax credits for one-year (also taken against sales tax).

The package died as a result of the budget impasse between the House and Senate.

Automobile Insurance

Motor Vehicle Insurance – HB 1053 by Rep. Jay Fant (R-Jacksonville)/SB 1250 by Sen. Bill Montford (D-Quincy)

The bills attempted to make four changes to motor vehicle insurance provisions in Florida Statutes. Specifically, they:

- > Authorized the Automobile Joint Underwriting Association (AJUA) to cancel motor vehicle policies within the first 60 days for non-payment; and, prohibited an insured from cancelling coverage in the first 90 days of the policy, except in the event the vehicle was destroyed, ownership of the insured vehicle was transferred, or a new policy was purchased elsewhere.
- > Allowed policy waiver forms approved by the OIR for persons waiving Uninsured Motorist (UM) coverage, selecting a lower limit, or non-stacking UM coverage to be signed electronically if certain security requirements are applied to the notice.
- > Defined “service year” for rendered services, supplies, or care under PIP to match the Medicare fee schedule, which is from March 1st through the end February of the following year.
- > Added an exemption from preinsurance motor vehicle inspections for new, unused leased vehicles if certain documents are provided, allowed insurers to elect to receive the documents, rather than requiring their delivery, and revised the types of documents insurers may require.

While the Senate bill died in committee, the House bill made it to the House floor but ultimately died waiting for the Senate.

Motor Vehicle Liability Insurance – SB 976 by Sen. Anitere Flores (R-Miami)/HB 819 by Rep. Frank Artiles (R-Miami)

These bills would have established a motor vehicle financial responsibility requirement that applies when a lessor rents or leases a motor vehicle for less than one year to a nonresident. The lessor would have required the nonresident lessee to have bodily injury (BI) liability coverage with limits of at least \$100,000 per person and \$300,000 per accident, and property damage coverage (PD) of at least \$50,000. The lessor would be allowed to provide the required coverage to the nonresident lessee and could charge the lessee for the coverage if the amount of the charge is separately detailed in the rental agreement. If use of the motor vehicle gives rise to liability and the motor vehicle is uninsured or fails to meet the requirements for nonresident lessees, the lessor is liable for up to \$100,000 per person and \$300,000 per incident for BI damages, up to \$50,000 for PD and up to an additional \$500,000 in economic damages arising out of the use of the motor vehicle. Neither bill was heard in committee.

Motor Vehicle Liability Insurance – HB 803 by Rep. Carlos Trujillo (R-Doral)/SB 1266 by Sen. Darren Soto (D-Kissimmee)

These bills were the Legislature’s annual attempt to repeal Florida’s Motor Vehicle No-Fault Law, terminate PIP, and replace it with mandatory BI coverage. Specifically, the bills would have increased the limits for BI or death and liability, as well as the amount required for surety bonds. Also included in the bills was the requirement that insurers submit information on coverage to the DHSMV.

Minimum security requirements would have still been required by insurers allowing persons to respond to PD and BI by a certain date. Failure to maintain security was grounds for suspension. Finally, the bills required insurers to notify consumers of these changes. As in years past, the bills never received traction and were never heard in a single committee of reference.

Personal Injury Protection – *HB 679 Rep. Carlos Trujillo (R-Doral)*

The bill would have provided an exemption from the requirement to secure PIP benefits for persons covered by a specified health insurance policy. There was not a Senate companion, and the bill was never heard in committee.

Transportation Network Companies (TNCs) – *HB 817 by Rep. Matt Gaetz (R-Shalimar)/SB 1298 by Sen. David Simmons (R-Altamonte Springs)*

For the second year in a row, legislation addressing the regulation of TNCs did not pass. While the House and Senate advanced drastically different versions on this issue, the early shut down of the House ultimately ended the opportunity to compromise.

The Senate bill focused mainly on the insurance issues emerging as a result of this new industry. Specifically, the bill would have required TNC drivers or the TNCs on the drivers' behalf to maintain the following:

- > Primary insurance coverage of at least \$125,000 for death and BI per person, \$250,000 for death and BI per incident, \$50,000 in PD liability, at least the same limits in coverage for uninsured and underinsured motorists, and PIP during the period when the driver is logged on to the digital network but not engaged in prearranged ride.
- > Primary liability coverage of at least \$1 million for death and BI per person, \$2 million for death and BI per incident, \$50,000 in PD liability, at least the same limits in coverage for uninsured and underinsured motorists, and PIP during the period when a driver is engaged in a prearranged ride.
- > Primary insurance coverage of at least \$100,000 for death and BI per person, \$200,000 for death and BI per incident, \$50,000 in property damage liability coverage, at least the same limits in coverage for uninsured and underinsured motorists, and PIP during all other times. Coverage must be maintained for six months after the driver has had an arrangement to provide transportation services to riders.

Further, the Senate bill would have also permitted only authorized insurers to provide this coverage, specifically prohibiting coverage by a surplus lines insurer. This prohibition was not included in the House bill.

Insurance coverage requirements were also contained in the House bill, but somewhat differed from those laid out in the Senate bill. The House bill would have established a TNC regulatory structure that would have preempted TNC regulation to the state. TNCs would have been required to obtain a permit from the DHSMV and pay an annual registration fee. Further, TNCs would have been required to disclose the fare calculation and if requested, provide passengers with the rates being charged and an estimated

fare. Level Two background screenings would have been required of all TNC drivers. This provision was strongly opposed by Uber.

Both bills made it through the committee process and to the Chamber floors. However, a compromise was not reached before adjournment and bills died in the House.

Property & Casualty Insurance

Assignment of Benefits – *HB 669 by Rep. John Tobia (R-Melbourne)/SB 1064 by Sen. Dorothy Hukill (R-Port Orange)*

Two bills that sought to restrict post-loss assignment of benefits in homeowners insurance ultimately were not approved this session. Proponents of the bills faced strong opposition from the trial bar, public adjusters and water remediation companies. These bills would have allowed for post-loss assignment of benefits for property insurance for the below three benefits:

- > Payment not to exceed \$3,000 to a vendor providing services or materials to mitigate or repair damage directly arising from a covered loss. However, the assignment would be limited solely to the ability to be named as a copayee for the benefit of payment for the reasonable value of services rendered and materials provided to mitigate or repair the damage. The insured would not be able to assign the right to enforce payment of the post-loss benefits contained in the policy.
- > Compensation of a public adjuster for services.
- > Payment of an attorney representing the insured with the attorney dispersing the funds paid only to repair the property as directed by the insured.

Changes were also sought to the insurable interest statute to prevent an assignee from bringing suit to enforce payment on an assignment of a post-loss benefit. Neither bill would have reduced the timeframes insurers must follow to take action on claims.

Language was added to the Senate bill midway through session which was opposed by the insurance industry. The language would have allowed a public adjuster apprentice to solicit contracts under the "general supervision" of a supervising public adjuster, rather than under direct supervision. The apprentice would have been prohibited from soliciting contracts for natural disaster claims within 30 days after the natural disaster, except under the direct supervision of the supervising public adjuster.

Although the House bill was approved by two committees and the Senate bill by one committee, none of them completed the committee process and died when the session ended on May 1st.

Commercial Insurer Rate Filing Procedures – *HB 639 by Rep Scott Plakon (R-Longwood)/SB 916 by Sen. Bill Montford (D-Quincy)*

The bills would have amended certification requirements for certain types of commercial insurance by limiting the certification requirement to residential property insurance rate filings. The result would have been that most commercial nonresidential property insurers, which are not statutorily required to make rate filings, would no longer have to complete certifications. The bills would have also revised the kinds

of commercial property and casualty insurance for which annual base rate filings are not required by exempting commercial nonresidential multiperil insurance and commercial motor vehicle insurance from the annual base rate filing requirement.

The Senate bill was passed unanimously and sent to the House. However, the House bill died in committee.

Limitation of Actions – *HB 501 by Rep. Jay Fant (R-Jacksonville)/SB 1158 by Sen. Kelli Stargel (R-Lakeland)*

The bills would have reduced the statute of repose for actions founded on the design, planning, or construction of an improvement to real property from 10 to seven years with the time running from the latest occurrence of the specified events. The seven-year statute of repose would have applied to any action commenced on or after July 1, 2015 except that any action that would otherwise be barred by reducing the statute of repose from 10 years to seven years may have been commenced within one year of the effective date of the bill.

The House bill was approved in one committee and the Senate bill was never heard.

Not-for-Profit Self-Insurance Funds – *HB 405 by Rep. Mike La Rosa (R-St. Cloud)/SB 830 by Sen. David Simmons (R-Altamonte Springs)*

These bills sought to allow more not-for-profit corporations to qualify for these self-insurance funds. Corporations that received 75 percent of their revenue from the general public would have been allowed to participate. To qualify, publicly supported not-for-profit corporations would have been required to:

- > Maintain surplus at a 70 percent confidence level;
- > Submit remedial plans for review and approval to the OIR to determine actuarial soundness and solvency risk in the event a 70 percent confidence level could not be maintained; and,
- > Keep excess insurance with an authorized insurer, surplus lines insurer, or reinsurer with “a rating of A- or higher from a statistical rating organization deemed acceptable” by the Florida Insurance Commissioner.

Finally, the bills would have provided that funds in operation before the effective date would have until July 1, 2020 to comply with actuarial confidence requirements.

Neither bill completed the committee process.

Property Insurance – *HB 947 by Rep. Scott Plakon (R-Longwood)/SB 1292 by Sen. Aaron Bean (R-Jacksonville)*

The bills would have provided that insurers’ projected payouts be treated as insurers’ coverage amounts. Application provisions relating to claims based on state of emergency would have been revised, as well as the factors considered by the OIR on rate filing reviews providing that an insurer was not prohibited from using specified averages. They would have deleted certain provisions relating to residential property insurance filing requirements and revised private market reinsurance criteria. Finally, the bills also would

have exempted certain personal lines residential structures and single condominium units from annual rate increases and limited eligibility for coverage by the corporation for personal lines risk.

Neither bill was heard in committee.

Property Insurance Appraisal Umpires and Property Insurance Appraisers – HB 491 by Rep. Frank Artiles (R-Miami)/SB 744 by Sen. Garrett Richter (R-Naples)

The bills would have established a licensing program for “property insurance appraisal umpires” and “property insurance appraisers” within the Department of Business and Professional Regulation (DBPR). Requirements for licensure would have also been created that included an application, fees, background screening, examination, and education. Additionally, the bills would have provided continuing education requirements, as well as mandatory and discretionary grounds for refusal, suspension, or revocation and a code of conduct. Unlicensed practice as a property insurance appraisal umpire or property insurance appraiser, including the use of those titles would have also been prohibited by the bills, after October 1, 2016.

The House bill passed the House, but died in Senate Messages. The Senate bill died in committee.

Public-Private Partnerships (P3s) – HB 63 by Rep. Greg Steube (R-Sarasota)/SB 824 by Rep. Greg Evers (R-Pensacola)/HB 7067 by Rep. Mike La Rosa (R-St. Cloud)

The bills would have clarified that the P3 process must be construed as cumulative and supplemental to any other authority or power vested in the governing body of a county, municipality, district, or municipal hospital or health care system. They also would have:

- > Expanded the list of entities authorized to conduct P3s, to include state universities;
- > Clarified that the list included special districts, school districts rather than school boards, and Florida College System institutions;
- > Provided increased flexibility to the responsible public entity by permitting a responsible public entity to deviate from the provided procurement timeframes if approved by majority vote of the entity’s governing body;
- > Required that an unsolicited proposal be submitted concurrently with an initial application fee;
- > Authorized a responsible public entity to request additional funds if the initial fee did not cover the costs to evaluate the unsolicited proposal;
- > Required the responsible public entity to return the initial application fee if it did not review the unsolicited proposal; and,
- > Authorized the Department of Management Services (DMS) to accept and maintain copies of comprehensive agreements received from responsible public entities.

SB 824 was amended in committee to lower the threshold that surety bond insurers must have in order to write insurance for P3s, but died on Senate Special Order Calendar. The language was also added to an economic development bill – HB 7067 – which ultimately died in Senate Messages.

Reciprocal Insurers – *HB 677 by Rep. David Santiago (R-Deltona)/SB 678 by Sen. Miguel Diaz de la Portilla (R-Miami)*

The bills would have created an additional process for domestic reciprocal insurers to distribute unassigned funds, such as unused premiums, savings, and credits, to policyholders. Reciprocal insurers would have no longer been required to create subscriber accounts to make these distributions to policyholders. Distributions using this method would not have been able to exceed 50 percent of the insurer's net income from the previous calendar-year, and could have been up to 10 percent of the insurer's surplus.

All committees of reference reported the bills favorably and the Senate bill passed unanimously on the Senate floor. It died while retained on the House Calendar.

Residential Properties – *HB 611 by Rep. John Wood (R-Winter Haven)/SB 736 by Sen. Kelli Stargel (R-Lakeland)*

The bills would have amended the law governing homeowners', cooperative, and condominium associations based on recommendations made to the Legislature by the Community Association Living Study Council. The changes would have:

- > Authorized electronic submission of estoppel certificate requests;
- > Provided standards for the issuance, form, and delivery of an estoppel certificate;
- > Reduced the time that an association has to respond to a request for an estoppel certificate from 15 days to 10 business days;
- > Provided that an estoppel certificate is effective for 30 or 35 days depending upon the method of delivery;
- > Provided that an association waives the right to collect moneys owed in excess of those stated in the estoppel certificate;
- > Established the maximum fee an association may charge for the issuance of an estoppel certificate, authorizing additional fees in limited circumstances;
- > Revised the time for payment of the estoppel certificate fee charged by an association for the preparation of an estoppel certificate; and,
- > Provided that a person may use a statutory summary procedure to compel compliance with provisions governing the issuance of estoppel certificates from a cooperative association.

The Senate bill was approved by the Senate and sent to the House where the House bill waited on the Special Order Calendar. Early adjournment resulted in the death of both bills.

Residential Tenant Insurance Policies – *HB 651 by Rep. Bobby Dubose (D-Ft. Lauderdale)/SB 666 by Sen. Audrey Gibson (D-Jacksonville)*

These bills would have required written residential rental agreements to include a statement specifying whether insurance coverage is required and would have provided a format for that statement. The bills also would have prohibited a cause of action related to the landlord's failure to enforce the insurance requirement.

Neither bill was heard in committee.

Surety Bond Insurers – SB 824 by Rep. Greg Evers (R-Pensacola)/HB 7067 by Rep. Mike La Rosa (R-St. Cloud)

Language added to a P3 bill, SB 824, late in session would have prohibited a governmental entity from refusing a surety bond insurer that has an A.M. Best rating of A- or better. The intent was to ensure smaller surety insurers were not eliminated from underwriting smaller public projects if they had an appropriate credit rating. The language was also added to HB 7067 relating to economic development but the bill died after passing the House and was never taken up in the Senate. An amendment containing the language was also filed to SB 1214, dealing with economic development, but this bill was never heard on the Senate Floor.

Windstorm Premium Discounts – HB 507 by Rep. Kathleen Passidomo (R-Naples)/SB 1130 by Sen. David Simmons (R-Altamonte Springs)

The bills would have allowed an insurer issuing a policy to a new policyholder to accept only the current uniform mitigation verification inspection form or an earlier form if completed within five years preceding the effective date of the policy.

Neither bill completed the committee process.

Life & Health Insurance

Compensation for Personal Injury or Wrongful Death – HB 1109 by Rep. Cary Pigman (R-Sebring)/SB 1200 by Sen. Jeff Brandes (R-St. Petersburg)

The bills would have provided an administrative process to address when a patient is harmed by a physician rather than through the court system. The bills would have provided for a claim to be filed for review by independent panel of medical experts. If the panel had deemed the injury was "avoidable," the claim would have then been sent to a Compensation Department to award compensation.

Neither bill was heard in committee.

Direct Primary Care – HB 7047 by House Health Innovation Subcommittee/SB 7084 by Senate Health Policy

The medical practice model, called direct primary care, eliminates third-party payers from the primary care provider-patient relationship. Through a contractual agreement, a patient pays a monthly fee to the primary care provider for defined services. After paying the fee, a patient can use all services under the agreement at no extra charge.

The bills sought to clarify that a primary care agreement between a health care provider and a patient is not insurance and not subject to regulation under the Florida Insurance Code or the OIR. A primary care provider would also have been exempted from any certification or licensure requirements in the Insurance Code for marketing or selling such an agreement.

The language was added to a number of bills but ultimately, the language died when session ended.

Health Care Professionals Scope of Practice – *HB 281 & HB 547 by Rep. Cary Pigman (R-Sebring)/SB 532 & SB 614 by Sen. Denise Grimsley (R-Sebring)*

The bills would have changed the term “advanced registered nurse practitioner” (ARNP) to “advanced practice registered nurse” (APRN) throughout Florida Statutes and aligned Florida’s terminology with the majority of states. They also would have:

- > Authorized APRNs to prescribe controlled substances if allowed under written protocol signed by a supervising physician;
- > Required APRNs to comply with certain standards for prescribing controlled substances;
- > Authorized APRNs to certify a person for involuntary examination under the Baker Act; and,
- > Authorized APRNs, who are nationally certified as psychiatric-mental health advanced practice nurses, to examine a person in a receiving facility and approve that person’s release from such facility under the Baker Act.

The bills would have allowed APRNs, who meet certain criteria, to register with the Board of Nursing to practice advanced or specialized nursing without physician supervision or a protocol. These “independent advanced practice registered nurses” (IAPRNs) would have been authorized to:

- > Provide a signature, certification, stamp, verification, affidavit, or other endorsement that is otherwise required by law to be signed by a physician;
- > Act as a patient’s primary care provider;
- > Certify a cause of death and sign, correct, and file death certificates;
- > Perform certain physical examinations currently reserved to physicians and physician assistants (PAs) by Florida law, such as examinations of pilots, law enforcement officers, and suspected child abuse victims; and,
- > Be reimbursed under PIP for initial and follow-up medical services.

Further, the bills would have expanded the scope of practice for PAs by authorizing them to prescribe controlled substances under certain circumstances. PAs would have been subject to disciplinary actions for prescribing or dispensing controlled substances outside their scope of practice or in excessive amounts and would have required PAs who prescribe controlled substances for the treatment of chronic nonmalignant pain to meet certain registration requirements. Lastly, PAs would have been authorized to:

- > Perform certain physical examinations;
- > File death certificates;
- > Certify causes of death; and,
- > Participate in the Public School Volunteer Health Care Practitioner Program.

Ultimately, none of the bills were approved.

Health Insurance Coverage for Opioids – SB 728 by Sen. Lizbeth Benacquisto (R-Ft. Myers)/HB 1021 Rep. Jeanette Nuñez (R-Miami)

The bill would have provided that a health insurance policy covering opioid analgesic drug products may impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the insurer imposes the same requirement for each opioid analgesic drug product without an abuse-deterrent labelling claim.

Both bills completed the committee approval process, but the House temporarily postponed the Senate bill on Third Reading. It will likely be back next year.

Health Insurance Exchange/Medicaid – SB 7044 by Senate Health Policy

The bill would have created the “Florida Health Insurance Affordability Exchange Program” (FHIX) to draw down federal dollars and give health care access to almost 800,000 low-income and uninsured Floridians. The bill would have applied to Floridians earning less than 138 percent of the federal poverty level (FPL) who are not currently eligible for Florida’s Medicaid Program.

The bill would have authorized the Agency for Health Care Administration (AHCA) to seek a federal waiver to implement the FHIX program which would have been implemented in three phases, from July 1, 2015, through January 1, 2016.

To participate in the program, an individual would have been required to be a U.S. citizen and a Florida resident. Participants who applied for coverage would have been required to show proof of employment, on-the-job training or job placement activities, or that they were in school. Parents with children under the age of 18 would have been required to have a minimum of 20 hours per week. Childless adults (disabled adults or caregivers of disabled children or adults may submit exceptions) would have had a minimum requirement of 30 hours per week.

Enrollees in FHIX would have received a premium credit, based on a risk-adjusted rate amount to shop for plans, services, and products on the FHIX marketplace. Enrollees would have also been able to access all Florida Health Choices products and services, Medicaid managed care plans, products offered by the Florida Healthy Kids Corporation, and employer-sponsored health plans. Further, enrollees would have been provided a health reimbursement or health savings account. Premiums would have ranged from \$3 to \$25 and after a 30 day grace period, individuals who had not paid their premium would have moved to inactive status and would not have been reinstated to an active status for six months.

The Senate moved SB 7044 through several committees. However, the House’s adamant opposition to the plan resulted in it not being brought to the full Senate for a vote. The issue of whether or not to accept federal funding and expand coverage to more low-income and uninsured Floridians will be part of the expected special session that will be called to craft a budget.

Insurer Solvency – *HB 1085 by Rep. David Santiago (R-Deltona)/SB 1190 by Sen. Lee (R-Tampa)*

These bills attempted to address health maintenance organization (HMO) solvency requirements to bring them more in line with those of other life and health insurers in Florida. The bills would have addressed the following issues:

- > **Minimum Surplus Requirements** – Required a \$10 million minimum surplus dollar threshold for HMOs, as well as life and health insurers to obtain a COA instead of the current \$1.5 million for HMOs and \$2.5 million for life and health insurers. Also required that the \$10 million in surplus be maintained after licensure. Provided a 10-year phase in for currently licensed companies.
- > **Risk-Based Capital Requirements** – Applied the requirements used for life and health insurers to newly licensed single-state HMOs and prepaid limited health service organizations (PLHSOs). Also applied the same (gross) premium-to-surplus writing ratio required of life and health insurers to HMOs and provided a phase in for existing HMOs.
- > **Management Services Organization (MSO)** – Defined MSO as “an entity providing one or more medical practice management services to health care providers, including, but not limited to, administrative, financial, operational, personnel, records management, educational, compliance, and managed care services.” Classified receivables of MSOs under contract with HMOs as non-admitted assets.
- > **Financial Reporting Requirements** – Changed the due date for PHSLO and HMO annual financial reports from “within three months after the end of its fiscal year” to March 1st. Also changed the annual audited financial statements due date from “three months after the end of its fiscal year” to June 1st. And, eliminated the PLHSO fourth quarter report.
- > **Governance and Financial Management** – Applied provisions used for stock insurer’s board of directors, restrictions for former officers and directors of insolvent insurers, and payment of dividend provisions to HMOs.
- > **Examination Costs** – Increased the examination cost for examinations conducted by the OIR from \$50,000 to \$100,000.

The Senate bill was approved by one committee, but the House bill was never heard.

Medical Tourism – *SB 86 by Sen. Aaron Bean (R-Jacksonville)/HB 945 by Rep. Fred Costello (R-Port Orange)/HB 7047 House Health Innovation*

These bills would have would have required Enterprise Florida and the Division of Tourism and Marketing (Division) to market Florida as a healthcare destination and promote bundled health care services. The Division would have been required to promote medically related conferences, training and other opportunities to draw health care providers into the state and showcase providers offering bundled packages of healthcare and support services. Late in session, the language was added to a bill that would have allowed a PA to order medication under the direction of a supervisory physician. However, the House did not approve the legislation.

Out-of-Network Emergency Care – SB 516 by Sen. Aaron Bean (R-Jacksonville)/HB 681 by Rep. Carlos Trujillo (R-Doral)

The bills would have established a payment methodology for emergency services and care provided by noncontracted providers to members of preferred provider organizations (PPO) or exclusive provider organizations (EPO). They would have also prohibited those providers from collecting any additional amount from the patient. Language in the bills also provided similar changes to the statutes governing HMOs. The House bill died on the House Calendar, while the Senate bill was never heard in committee.

Step Therapy – SB 784 by Sen. Don Gaetz (R-Destin)/HB 863 by Rep. Shawn Harrison (R-Tampa)

These bills were the priority of the Florida Medical Association (FMA). They would have established the Clinical Practices Review Commission (Commission) within the Department of Health (DOH) to review prior authorization, step therapy and other protocols used by HMOs, insurers, and Medicaid managed care plans. The Commission would have determined if the limitations were supported by sufficient clinical evidence and would not inhibit timely diagnosis or effective treatment of the specific illness or condition.

If the Commission found sufficient clinical evidence existed supporting a coverage limitation, the OIR or the AHCA would approve the limitation. If an insurer imposed a coverage limitation with the OIR approval, the insurer and its chief medical officer would be liable for any injuries or damages plus economic damages.

Further, Medicaid managed care plans would have been required to establish a prescribed drug formulary or preferred drug list to provide a broad range of therapeutic options for the treatment of diseases and, if feasible, would include at least two products in each therapeutic class.

The bills also would have required insurers to post a link to the list of preferred providers on the insurer's website and update the list within 10 days after any change in the list. Individual and group health insurance policies and HMO contracts would have been required to provide a summary statement identifying any diagnostic or therapeutic procedure subject to prior authorization or other limitations, as well as the prescription drugs subject to prior authorization, step therapy or limitation. Finally, the bills would have prohibited an HMO from retroactively denying a claim due to subscriber ineligibility if the HMO had verified the eligibility of a subscriber at the time of treatment.

The language was added to a number of health care bills in the Senate and sent to the House. Ultimately, the House would not approve the proposal.

Telehealth Services – SB 478 by Sen. Aaron Bean (R-Jacksonville)/HB 545 by Rep. Travis Cummings (R-Orange Park)

For the second year in a row, legislation that would have encouraged the use of Telehealth services did not pass the Legislature. The bills would have established that the standard of care for a Telehealth service is the same as the standard of care for a health professional providing in-person services. Further, the legislation would have clarified that a Telehealth provider was not required to research the

patient's medical history or conduct a physical examination if the Telehealth provider conducted an evaluation sufficient to diagnose and treat the patient. The bills also:

- > Prohibited a Telehealth provider from prescribing lenses, spectacles, eyeglasses, contact lenses, or other optical lenses based solely on the use of computer controlled devices through Telehealth.
- > Prohibited controlled substances from being prescribed through Telehealth for chronic non-malignant pain. However, the provision would not have precluded specified practitioners from using Telehealth to order a controlled substance for a hospital in-patient or for a hospice patient.
- > Provided that Telehealth products regulated under section 456.47, F.S., are not included in the definition of "discount medical plan" under section 636.202, F.S.

Both bills were approved in committee, but did not make it to the floor.

Vision Insurance – HB 769 by Rep. Kathleen Peters (R-St. Petersburg)/SB 856 by Sen. Jack Latvala (R-Clearwater)

The bills would have restricted health insurers, PLHSOs, HMOs, and third-party administrators from requiring an ophthalmologist or optometrist to provide vision care services as a condition of participating as a provider for any other kind of service to an insured. The bills also would have prohibited a plan or insurer from requiring an ophthalmologist, optometrist, or optician to purchase materials or services from an entity in which the insurer, PLHSO, or HMO, or third-party administrator has an ownership or financial interest. The provisions would have applied to contracts or renewals entered into on or after July 1, 2015. The Senate bill was passed by the Senate, but died in House Messages. The House bill died in committee.

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