



Florida Insurance Council

## FLORIDA PIP REFORM – HB 119

Prepared by the Insurance Information Institute and the Florida Insurance Council

Contact: Lynne McChristian, [lynnem@iii.org](mailto:lynnem@iii.org), 813-480-6446  
Sam Miller, [smiller@flains.org](mailto:smiller@flains.org), 850-386-6668, ext. 223

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**On May 4, 2012, Florida Gov. Rick Scott signed into law HB 119, a bill that makes changes to the state's No-Fault Law. The changes are intended to combat fraud associated with staged accidents and address the abuse of Personal Injury Protection (PIP) coverage, which has led to illegal or improper medical billing practices and increased frequency of lawsuits.**

*Background:* Between 2006 and 2010, the Florida [Department of Highway Safety and Motor Vehicles](#) recorded a decline in the number of auto crashes—from 1.65 per 100 licensed drivers in 2006 to 1.52 in 2010. Yet over that five-year timeframe, the Florida Office of Insurance Regulation's [PIP data call](#) discovered that the number of auto insurance claims rose by 66 percent. An analysis by the Insurance Information Institute (I.I.I.) also showed a dramatic rise in the cost of each claim from an average of \$5,812 in 2008 to a peak of \$8,796 by the end of 2010. A [report on Florida No-Fault Insurance](#) by the state's insurance consumer advocate found that costs exceeded premiums, with insurers paying out \$1.15 in losses for every premium dollar they took in. Because insurers were paying more than they should for PIP claims, policyholders were paying more than they should for auto insurance, equating to a "fraud tax" of nearly \$658 million in 2011, according to the I.I.I. HB 119 is intended to address the root causes of auto insurance fraud in order to reverse the trend of escalating auto insurance rates.

This white paper provides an overview of PIP reform provisions. It details what parts of the no-fault system remain the same and what changes, and it provides details on specific reform initiatives affecting policyholders.

### PIP Foundations Remain the Same

- PIP coverage is still required and still provides \$10,000 in medical benefits. There is no change for treatment procedures for injured persons.
  - Beginning January 1, 2013, HB 119 makes the entire \$10,000 PIP benefit available only for an emergency medical condition, including initial treatment and follow-up care. The seriously injured will continue to be transported by ambulance to a hospital emergency room (ER). The less seriously injured may seek treatment from an ER, walk-in medical center or in the office of a doctor, osteopath or chiropractor. If an injury is not apparent for several days, the injured person can go to a hospital, walk-in clinic or doctor's office for care.
- Major changes in PIP law take effect for insurance policies issued or renewed after January 1, 2013. This means PIP benefits will remain as they are now for auto insurance policies issued or renewed through December 31, 2012, so many Floridians will not experience any changes until midyear in 2013. Most auto policies are for six months; some are 12-month policies, and those would not be converted to the new benefits until the end of 2013. Throughout 2013, insurance agents and companies will be informing policyholders of the changes in PIP and when they will be impacted by these changes.
- PIP continues to pay for injuries for the driver, the driver's children, members of the household and certain passengers who lack PIP because they do not own a vehicle. It pays 80 percent of medically necessary expenses, 60 percent of lost wages, and 100 percent of services that cannot be performed as a result of an injury related to an automobile accident, such as childcare or household duties.

- Claims will continue to be paid within 30 days; however, if fraud is suspected, the new law extends the timeframe for paying claims to 90 days to provide time for a more thorough investigation. If an investigation determines no fraud exists, insurers pay the original claim amount plus interest.

## **Additional Coverage Provided**

- There is now an additional \$5,000 PIP death benefit. Under current law, the death benefit is part of the \$10,000 PIP limit, an amount often depleted by medical expenses before the policyholder has a chance to submit documentation on wages lost. Beginning in January 2013, the death benefit is separate from the medical payments benefit.

## **July Changes Have Limited Direct Impact on Policyholders**

- There are two major effective dates in HB 119: July 1, 2012, for many provisions; and January 1, 2013, for the new medical benefits. Beginning July 1, the PIP reforms center on strengthening licensing for medical clinics that receive PIP reimbursement. Clinics can be exempt from licensing if those who perform medical services also own the clinic.
- There will be stiffer penalties for medical providers who defraud the PIP system. A licensed health care practitioner found guilty of PIP insurance fraud would be barred from practicing for five years and prohibited from receiving PIP reimbursement for 10 years. The new law also makes it a crime for someone to accept a claim for PIP payment if they know it is false or misleading.
- Law enforcement officials investigating crashes will start listing all passengers on the crash report. (The shorter accident form did not have this requirement, which made it possible for insurance scammers to add “phantom passenger” names after a crash to inflate claim payouts.)

## **Changes Effective January 1, 2013**

- Beginning January 1, 2013, injured drivers and their passengers have 14 days to seek initial treatment. Depending on the severity of the injury, there are two ways to get medical care:
  - **For medical emergencies**, you have the full medical benefit of \$10,000 and can seek treatment for injuries by ambulance or at a hospital, or from a physician, dentist, supervised physician’s assistant or advanced registered nurse practitioner. This means you may also visit your own personal medical provider if he or she is one of these types of professionals.
    - The bill defines Emergency Medical Conditions as experiencing symptoms severe enough that the absence of immediate medical treatment could result in serious jeopardy or impairment to your health.
    - Follow-up care may only be provided by the approved medical professionals.
  - **For non-emergency treatment**, the medical benefit is limited to \$2,500. These injuries can be treated by any medical care provider, except a massage therapist or acupuncturist. If you need follow-up care, a referral is necessary from a physician, osteopath, chiropractor or dentist.
  - Treatment by massage therapists and acupuncturists will no longer be a PIP benefit for emergency or non-emergency conditions.

- Insurers can ask policyholders to take an examination under oath (EUO) and have an independent medical examination (IME). If the policyholder fails to show up for two IMEs or to reasonably cooperate with the EUO, it will lead to a denial of the claim. These provisions are not new, but have been reaffirmed in the PIP reform.
- If a lawsuit is filed, attorney fees must comply with prevailing professional standards, without overstating or inflating the number of hours reasonably necessary. The law also prohibits the use of a contingency risk multiplier, which allowed attorneys on PIP claims to multiply their fees, further adding to the overall cost of claims payments.
- Insurers will maintain a benefit log for each policyholder when they file a PIP claim. If there is a claim dispute, insurers will provide a copy of the log to the policyholder, and the insurer will also notify claimants within 15 days if policy limits have been reached.

### **Problems the Reforms Are Intended to Address**

- Florida ranks first in the nation for the number of staged accidents involving questionable insurance claims, according to the National Insurance Crime Bureau. PIP fraud involves deceptive drivers, unscrupulous medical clinics and unnecessary lawsuits contributing to higher insurance premiums. Florida drivers pay the highest average annual auto liability premiums in the U.S., \$736 vs. \$471 according to the Property Casualty Insurers Association.
  - Claims fraud also extends to exaggerated injuries and excessive or unnecessary medical treatment.
- Past legislative fixes to combat PIP fraud were short-lived; in fact, judicial interpretation of the law weakened some of the past fraud-fighting measures.
- Appropriate reimbursement levels for PIP payments will now be in line with Medicare fees. Insurers will include a notice in the policy, and an annual update will be made according to the Medicare fee schedule in effect on March 1 of each year.
- Only licensed clinics will be allowed to receive PIP reimbursements when the law becomes effective. Many of the so-called “pain clinics” taking on PIP claims were unlicensed, and law enforcement officials have demonstrated the link between unlicensed providers and staged accidents.
- To keep fraud in check, the reform also calls for the formation of a statewide, nonprofit fraud monitoring group that can accept private donations to prevent, investigate and prosecute motor vehicle insurance fraud.

## About Auto Insurance Rates

- The Florida Office of Insurance Regulation (OIR) will lead the implementation of the law. By October 1, 2012, PIP insurers must submit a rate filing to the OIR with at least a 10 percent rate reduction, or document why a reduction is not possible. Because many of the significant reforms expected from HB 119 do not take effect until January 1, 2013, some insurers may not experience a decline in losses over the three-month period of July 1 and October 1. In fact, it is possible that for some insurers, losses may temporarily increase as those who made a living from auto insurance fraud make a last effort to cash in before the reforms kick in.
- By law, insurers already file rates annually with regulators, and rate increases and decreases are first approved before they are implemented. When regulators approve a rate decrease, policyholders will see the savings the next time their policy renews as rates are forecasted based on actual claims data.
- By October 1, 2014, PIP insurers are expected to submit another rate reduction of at least 25 percent from 2011 premium levels. This would equate to an additional 15 percent after the 10 percent reduction level anticipated in October 2012.