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Florida Revives Auto No-Fault Law Days After Sunset Repeal

On October 5, 2007, the Florida Legislature enacted House Bill 13-C¹ to revive the Florida Motor Vehicle No-Fault Law.² The No-Fault Law had been repealed effective October 1 under a sunset provision adopted four years earlier. Governor Charlie Crist is expected to sign the act into law at his earliest opportunity.

Auto insurance reform legislation enacted in 2003³ included a provision repealing the No-Fault Law on October 1, 2007. The 2006 Florida Legislature passed an act to save the No-Fault Law from sunset repeal, but then-Governor Jeb Bush vetoed it, stating the 2006 legislation did not include needed anti-fraud provisions and that the legislature would have another opportunity to act during the 2007 legislative session. The House and Senate failed to agree on no-fault legislation in the 2007 regular legislative session. However, after House and Senate negotiators reached a tentative agreement, Governor Crist included the no-fault issue within the scope of an October special legislative session that had been called to address Florida's budget shortfall.

In general, Florida's No-Fault law required owners or registrants of motor vehicles (other than motorcycles, school buses, taxicabs, and limousines) to maintain personal injury protection (PIP) coverage with \$10,000 limits covering themselves, their passengers, and relatives residing within the same household. Tort actions arising out of motor vehicle accidents were prohibited unless the injured party sustained significant and permanent injuries. The No-Fault Law also included the primary enforcement mechanism for compulsory property damage liability requirements.

House Bill 13-C reenacts these provisions, effective upon the act becoming a law. Effective January 1, 2008, the act also makes several substantive changes to the medical benefits under personal injury protection policies.

The prior No-Fault Law did not include a fee schedule, except for certain diagnostic testing. Beginning January 1, 2008, an insurer may impose a medical fee schedule that caps most fees at 200 percent of the amount payable under Medicare; hospital charges for emergency care may be limited to 75 percent of the hospital's usual and customary charges, and emergency services and care provided by a physician or dentist in a hospital may be limited to the usual and customary charges in the community.

¹ Available online at <http://www.flsenate.gov/data/session/2007C/House/bills/billtext/pdf/h0013C03er.pdf>.

² Sections 627.730-627.7405, Florida Statutes.

³ Chapter 2003-411, Laws of Florida.

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Also beginning January 1, 2008, the failure of an insurer to pay valid PIP claims with such frequency as to indicate a general business practice will constitute an unfair or deceptive practice under the Insurance Code. The act also grants the state Attorney General investigative and enforcement powers under the Florida Deceptive and Unfair Trade Practices Act with respect to such acts, in addition to the enforcement powers of the Office of Insurance Regulation.

Other changes effective January 1 include a provision giving insurers 30 days after notice to pay an overdue claim without being subject to a lawsuit (prior law allowed 15 days), and a provision requiring that in a civil action against an insurer, all claims relating to the same health care provider and the same injured person must be consolidated.

The act also includes transitional provisions. Effective upon the act becoming a law:

- Insurers may continue to use the PIP forms and rates that were in effect immediately prior to the sunset repeal of the No-Fault Law.
- The enforcement system for compulsory property damage liability coverage is restored; this system will include a duty of insurers to report all property damage liability cancellations, nonrenewals, and policy issuances to the Department of Highway Safety and Motor Vehicles.
- The tort threshold of the old No-Fault Law will apply to injuries sustained in a motor vehicle crash occurring between the date the act becomes law and December 31, 2007, only if both the plaintiff and the defendant had PIP coverage in effect at the time of the crash. If either party or both parties did not have PIP in effect at the time of the crash, the tort threshold will not apply.
- Each insurer must provide a statutorily-specified notice to all of its motor vehicle insureds no later than November 15, 2007. The notice will inform insureds that if they already have PIP coverage, their coverage will be amended on January 1, 2008, and that if they do not have PIP coverage, they must obtain and pay for PIP coverage by January 1, 2008.

Effective January 1, 2008:

- Every motor vehicle owner or registrant who is subject to the No-Fault Law must maintain PIP coverage.
- The tort threshold will apply to all motor vehicle crashes.
- All PIP policies in effect on January 1 will be deemed to incorporate the medical fee schedule and other benefit changes described above.
- Insurers must report all PIP cancellations, nonrenewals, and policy issuances to the Department of Highway Safety and Motor Vehicles.

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