PIP My Ri

QUICK LOOK

- NICB and state data support insurer anecdotal evidence that PIP fraud is escalating.
- Legislators need to close loopholes that allow licensing of healthcare clinics run by and catering to fraudsters.
- Some lawyers, medical providers and other participants have a vested interest in preventing reforms.

PIP fraud in Florida is creating red-flag districts across the state, but reform efforts in the state legislature haven't seen much action.

By Wes Strickland

For many years, Florida's auto insurance market has enjoyed stability in terms of availability and affordability of coverage with any number of solid insurers competing for business, including nonstandard risks. Now, though, Florida's relatively stable market is in jeopardy due to personal injury protection (PIP) insurance fraud that has grown at an alarming rate over the past three years. PIP fraud has been a problem in the Miami area for many years, but the problem is no longer localized to that part of the state. Organized fraud rings that employ such tactics as staged auto accidents and fraud and abuse in medical billing have moved into other areas of the state, causing many carriers to tighten their underwriting standards and raise their rates to cover the increasing costs of battling PIP fraud.

Legislation that would have addressed this problem failed to gain traction in the 2010 legislative session, but there was momentum heading into the 2011 legislative session for meaningful PIP fraud reform. Reports coming from the National Insurance Crime Bureau (NICB), Florida's Office of the Insurance Consumer Advocate, and the Agency for Health Care Administration (AHCA) corroborated the anecdotal evidence that carriers had previously relied upon to support their efforts at PIP fraud reform. Unfortunately, PIP fraud reform once again was not prioritized, and the 2011 legislative session ended with the adoption of only a few discrete measures that are unlikely to resolve the problem.

The latest NICB report on vehicle collision questionable claims (VC QCs), issued April 11, 2011, shows that between 2009 and 2010 there was a 15% increase nationwide in the total number of BI/PIP claims and a 17% increase in the number of VC QCs. The most common reason

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reported for VC QCs was "Staged/Caused Accident," followed by "Suspicious Hit While Parked," "Paper/Phantom Accident," "Jump In," and "Solicitation (Chasers and Cappers)." Florida led the nation with the highest number of VC QCs in 2009 and 2010. The cities with the most VC QCs were New York, Tampa, Orlando, Los Angeles and Houston. The report notes that each of these cities already has an NICB Major Medical Fraud Task Force comprised of investigators and analysts from NICB, the insurance industry and law enforcement. These task forces were established to target the growing fraud associated with auto policies and illegitimate bodily injury claims. That means the number of questionable claims has increased in these cities despite the stepped-up anti-fraud efforts by the auto insurance industry and law enforcement.

The insurance industry is not alone in sounding the alarm. On April 11, 2011, the Florida Office of Insurance Regulation (OIR) issued a report on the results of a PIP data call to auto insurers licensed in Florida. The results of the data call revealed that, in 2010, the pure direct loss ratio for PIP was 97.4%, which means for every dollar of premium that the insurer collected, over 97 cents went to pay for losses. The OIR report also found that the frequency of PIP claims in Florida had generally decreased from the fourth quarter of 2005 to the fourth quarter of 2008. Since 2008, there has been a sharp increase in the frequency of paid claims. The OIR's report states that, if the frequency of claims continues to increase at the same rate over the next year, OIR expects a 19% increase over 2010. The OIR report further revealed that the severity of PIP claims in Florida has generally increased since the fourth quarter of 2005. If the severe claims continue to increase at the same rate that they have from the fourth quarter of 2008, OIR expects a 9% increase in the payment of severe claims in the next year. Over the next year, OIR expects to see a 29% increase in pure premium, which is the average premium per exposure needed to cover expected losses for that exposure.

Legislative and Regulatory Response

It is important to note that the latest NICB report and the results of OIR's PIP data call were not released until the 2011 session of the Florida legislature was already underway. This timing may have limited the usefulness of that information for advocates of PIP fraud reform. However, prior to the beginning of the 2011 session, on November 3, 2010, Florida's Office of the Insurance Consumer Advocate issued a report and recommendations to Florida House and Senate leadership on the results of a PIP roundtable conducted earlier that year. This report confirmed that Florida's auto insurance fraud problem is not limited to questionable accidents, but also extends to fraud and abuse in billing for medical services. The Consumer Advocate's recommendations incorporated a number of measures directed at tightening regulation of healthcare clinics and providing more tools and resources for law enforcement to combat staged accidents.

A number of the recommendations in the Consumer Advocate's report are similar to those that had been included in the Comprehensive Insurance Fraud Investigation and Prevention Act of 2010 (HB 1447), a PIP fraud reform package that failed to garner much attention during the 2010 legislative session. The core provisions of HB 1447 were directed at cracking down on healthcare clinic licensure and exemption fraud; fixing glitches and loopholes that limit the ability of the Division of Insurance Fraud and insurance investigators to investigate fraudulent acts; and providing additional economic sanctions to deter insurance fraud.

HB 1447 never made it out of the House insurance committee in 2010, but the legislature did appropriate $1.2 million for dedicated insurance fraud prosecutors in Orlando and Tampa, demonstrating some recognition that there was a growing problem with auto insurance fraud. There are a number of factors that contributed to the failure of HB 1447, the most significant of which was probably a lack of consensus among auto insurers in the state as to the severity of the problem.

Heading into Florida's 2011 legislative session, the insurance industry identified a number of issues targeted at reining in PIP fraud, including:

- Reducing attorneys fees by eliminating application of a contingency risk multiplier
- Requiring insureds to submit to a medical examination prior to receiving PIP benefits
- Requiring medical providers to submit to examinations under oath
- Expanding the use of the long-form crash reports by law enforcement and requiring the collection of the names of all parties involved in an accident
- Creating a Direct Support Organization to support the Department of Financial Services in prosecuting PIP fraud
- Creating enhanced financial penalties for PIP fraud
- Authorizing insurers to offer discounts to policyholders who choose a preferred provider network for PIP benefits.

A notable exception from this list of priorities was the healthcare clinic licensure loophole that had been part of HB 1447. This issue was probably omitted in order to minimize friction with the medical provider interests. The issues that were pursued in 2011 were split into two sets of bills—one aimed at attorneys fees and medical provider examinations (HB 967 and SB 1694), and the other that dealt more broadly with PIP fraud (HB 1411 and SB 1930). All of these measures were strongly opposed in the House and Senate by trial attorneys and medical provider interests and ultimately died in committee. Some members of the legislature attempted to append some of the anti-fraud measures onto other bills, including those directed at attorneys fees, long-form crash reports, enhanced fraud penalties, and the Direct Support Organization, but only two of them survived on bills that passed. SB 2160 includes language relating to expanded use of long-form crash reports, and HB 1087 creates civil monetary penalties for motor vehicle insurance fraud. Both of these bills have been signed by the governor and enacted into law. However, it is unlikely that either of these measures will provide insurers and law enforcement with the tools necessary to stymie the growth of PIP fraud in Florida.

The legislature had an opportunity in its 2011 session to enact meaningful measures that could alleviate the growth of auto insurance fraud in Florida. However, PIP fraud reform efforts were effectively thwarted by the unscrupulous attorneys, medical providers and other special interests who capitalize on auto insurance fraud. Auto insurance fraud will probably continue to grow unless the Florida legislature adopts comprehensive measures that will enable insurers and law enforcement to effectively combat the problem. It also seems likely that insurer underwriting standards will continue to tighten and rates will continue to rise, which will restrict the availability and affordability of auto insurance coverage in Florida. In the absence of meaningful PIP fraud reform, insurer claims professionals and law enforcement will have to continue fighting a losing battle against auto insurance fraud. Hopefully, the Florida legislature will act before there is a full-blown crisis. cA

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