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UPDATE: Court Enters Order Partially Enjoining Florida's Recent PIP Reforms

In 1971, Florida become one of 10 states in this country to adopt a no-fault statute, so that individuals injured in automobile accidents are able to obtain medical treatment promptly for their injuries without regard to fault. On May 4, 2012, Governor Rick Scott signed into a law a comprehensive bill revising many provisions of Florida's no-fault law in response to an alarming escalation in the number of questionable claims filed. In an order released this week by Circuit Judge Terry P. Lewis, who may be remembered for his controversial ballot decision in *Bush v. Gore*, the court temporarily enjoined parts of Florida's recent reform legislation, finding that the amendments make the no-fault approach "no longer the 'reasonable alternative'" to the right to redress injury in court.

The reform legislation, House Bill 119 (HB 119), substantially revises Florida's personal injury protection (PIP) laws. The amendments to the PIP laws, many of which went into effect on January 1, 2013, represent the State's laudable attempt to address the rampant fraud in the PIP system, as costs and claims continue to skyrocket in both frequency and severity, while preserving the benefits to injured parties under the no-fault statute. That attempt to address some of the problems in the PIP system now has been stalled, at least in part, by the court's decision.

Included among the more notable changes advanced in HB 119, as here relevant, are the following:

- Individuals seeking PIP medical benefits must obtain initial treatment within 14 days of an accident.
- Initial treatment is reimbursable only if lawfully provided, supervised, ordered or prescribed by a licensed provider. Follow-up treatment requires a referral from such a provider and must be consistent with the underlying medical diagnosis rendered at the time of initial treatment.
- Individuals may receive up to $10,000 in medical benefits if the claimant has an "emergency medical condition," as determined by a licensed provider.
- Individuals not diagnosed with emergency medical conditions are limited to $2,500 in PIP medical benefits.
- Only licensed providers may receive PIP reimbursements.
- Massage and acupuncture are no longer covered services.
- Insurers' rights to take an examination under oath (EUO) of an insured, which had been in some doubt under case law, are set forth in the statute, and compliance with a request for an EUO is a condition precedent to the receipt of benefits.
- Where a claimant unreasonably fails to appear for an independent medical examination (IME), the insurer is not responsible for the payment of PIP benefits. The refusal or failure to appear for an IME twice raises the rebuttable presumption that the refusal or failure was unreasonable.
- Health care practitioners found guilty of insurance fraud will lose their license for five years and may not receive PIP reimbursement for 10 years.

- An individual who accepts a claim for PIP payment knowing that it is false or misleading commits a crime.
- Insurers are provided an additional 60 days (90 days in total) to investigate suspected fraud, but are required to pay an interest penalty if the claim is ultimately paid.
- Law enforcement is required to complete a long-form crash report, to identify all passengers, including the vehicle in which each party was a driver or passenger.

In response to the legislation, several PIP providers announced that they already had devised ways to get around HB 119, and upon its enactment, several court challenges seeking to halt the law were filed on behalf of licensed massage therapists, acupuncturists and chiropractors. After two prior filed actions had been dismissed,[1] an action for declaratory and injunctive relief was brought in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, on behalf of acupuncture physicians, chiropractic physicians, massage therapists and individuals injured in motor vehicle collisions, under the caption *Robin A. Myers, A.P., et. al v. Kevin N. McCarty, in his Official Capacity as Commissioner of the Florida Office of Insurance Regulation*. The action alleges that the legislation violates multiple provisions of Florida's State Constitution, including the rights to equal protection, due process and access to the courts, as well as the single subject rule and the separation of powers doctrine. The plaintiff-providers contend that they began losing business and suffering economic and non-economic damages after the enactment of the legislation and that they are experiencing irreparable harm as a result of an unlawful taking and the elimination of or dramatic restriction on their business. On this basis, they sought immediate injunctive relief to prevent and enjoin the enforcement of the challenged provisions of HB 119, claiming that such enforcement would cause them continuing irreparable harm.

On March 15, 2013, the court issued its opinion and order staying those provisions of the law that require a finding of an emergency medical condition as a prerequisite for the payment of PIP benefits or that prohibit the payment of benefits for services provided by acupuncturists, chiropractors and massage therapists. Describing the state's no-fault law as "just one example of [the Florida Legislature's] experiment with socialism and the trend away from those libertarian principles of individual liberty and personal responsibility," Judge Lewis opined that the law as amended was no longer a "good deal" from the court's perspective and held therefore that it violates Article I, Section 21 of the Florida State Constitution by denying injured persons a right of redress to the courts for their injuries. In all other respects, the plaintiffs' motion was denied. A link to the court's opinion and order may be found at the conclusion of the *Florida Current* article available at http://www.thefloridacurrent.com/article.cfm?id=32077361#disgusthread.

The OIR has announced its intent to appeal the decision, which will stay the order until the District Court of Appeals rules on the issue. ■

1 An earlier action filed with the Circuit Court of the Second Judicial Circuit in Leon County before another judge was voluntarily dismissed on November 20, 2012. In another action filed by some of the same plaintiffs with the United States District Court, Middle District of Florida, the court denied the plaintiffs' request for preliminary injunctive relief as without merit and subsequently dismissed the case without prejudice on December 27, 2012.

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