

Florida's No-Fault Faux Fix?

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March 15, 2012

When the 2012 Florida legislative session began, there was hopeful optimism that tort reform, or at least PIP reform, would finally gain some traction to rein in rampant fraud in the Sunshine State.

It took until the final hours of the session, but Florida Gov. Rick Scott got the legislation he sought to reform the mandatory motor vehicle no-fault law and crack down on the abuses in personal injury protection (PIP) cases that have led to skyrocketing increases for coverage.

While this is a step in the right direction, it is somewhat akin taking the first steps of a 600 mile trek from Tallahassee to Key West. Simply put, fraudsters aren't going to pack up and move away, nor are the trial lawyers who are undoubtedly crafting lawsuits to challenge this new legislation in court.

According to the Insurance Information Institute (I.I.I.), Florida leads the nation in staged accidents driven by easy access to state mandated \$10,000 dollar PIP benefits. The costs associated with this coverage have risen by \$1.4 billion dollars since 2008.

The new legislation requires an accident victim to obtain treatment within 14 days in an ambulance or hospital, or from a physician, osteopathic physician, chiropractic physician, or dentist. The full \$10,000 PIP medical benefit is available only if a physician, osteopathic physician, dentist, or a supervised physician's assistant or advanced registered nurse practitioner determines that the insured has an "emergency medical condition." Otherwise, the PIP medical benefit is limited to \$2,500.

The reality is that obtaining this treatment while perpetrating a fraud won't be overly difficult. It may crowd the walk in clinics, but this is one hurdle that is far from insurmountable.

Follow-up services and care requires a referral from a physician, osteopath, chiropractor, or dentist. Massage therapists and acupuncture was eliminated from eligibility for PIP benefits, which only eliminates a fraction of the systemic abuse.

A Rude Awakening?

From a consumer perspective, it is unclear if there will be any benefit. According to Florida Consumer Action Network spokesman Bill Newton, “Floridians are in for a rude awakening. Instead of measures aimed at preventing true fraud, we're left with a bill that pads the pockets of big insurance companies.”

It is also unclear if insurers will be beneficiaries, as they have been asked (but not required) to reduce PIP premiums by 10 percent. If insurers that offer PIP do not provide their customers a minimum 10-percent rate reduction, then they must offer a detailed explanation as to why. A subsequent 2014 rate filing has a proposal for insurers to reduce PIP premiums by 25 percent unless they can show why they are unable to provide the cut.

Perhaps it is best to analyze this new legislation from a historical perspective. Since its inception, PIP has been a source of fraud in not only Florida but also the dozen other states that mandate this coverage.

No-fault looked good on paper. When a party is hurt in an accident, they go after their own coverage instead of fighting with an insurance company. The underlying premise was that costs would go down as the result of decreased litigation. As is so often the case with good intentions, however, it is riddled with unintended consequences.

The problem in Florida is substantial. First, the threshold for determining whether a party may sue has been watered down by the courts over the years, meaning that virtually any injury, irrespective of how minor it actually is, can be adjudicated, even if the true interpretation of the tort threshold says otherwise. Second, a person is able to sue for any percentage of damage for which they were not at

fault. Even if a person is 99.9 percent at fault, they are able to sue for damages.

This legislative session was an opportune time for the Legislature to enact meaningful tort reform, including capping attorney fees and damages. There could have also been careful deliberation to abolishing no-fault, as was done in Colorado, or making the coverage optional, as was done in Pennsylvania.

Roads Not Taken

Another option could have been to keep no-fault but strictly enforce the law so that only those who are truly killed or maimed in accidents have the right to sue for pain and suffering.

Consider having caps, such as those associated with Medicare and worker's compensation, on treatment for soft tissue injuries, which comprise the vast majority of cases clogging our courts.

Finally, the legislature could have given law enforcement the teeth necessary to take a bite out of crime and holding insurers harmless while investigating these crimes while invoking penalties that send fraudsters to jail which is a rare occurrence today.

The Florida legislature has a history of trying to fix these problems and have consistently come up short. This would have been a great time to look at steps being taken by other states where successful reform has meant a corresponding reduction in premiums, litigation and fraud.

In looking at what needs to be done compared to what the legislature did, the outlook does not look good for the new legislation. While lawmakers tout their accomplishment, the reality is that this may be déjà vu to prior attempts to "fix Florida." Now that "PIP reform" has occurred, it is unlikely to be back on the legislative agenda anytime soon, even if the problems inherent with PIP aren't resolved.

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