

Policy Considerations in a Post-No-Fault Florida

Under the Florida Motor Vehicle No-Fault Law, every owner or registrant of a motor vehicle must purchase Personal Injury Protection (PIP) insurance from their auto insurer. The law requires all drivers to maintain coverage for themselves and certain other covered persons of \$10,000 for losses sustained by the insured or covered person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle. By law, PIP coverage pays the following benefits, up to the \$10,000 limit:

- 80 percent of reasonable and medically necessary medical expenses;
- 60 percent of disability benefits for lost gross income and earning capacity;
- 100 percent of replacement services (such as child care, housekeeping, etc.); and
- \$5,000 per individual death benefit.

The No-Fault Law provides an exemption from tort liability and damages for motor vehicle owners and registrants and certain related covered persons from tort actions for pain, suffering, mental anguish and inconvenience arising out of the auto accident unless the injured person can show:

- Significant and permanent loss of an important bodily function;
- Permanent injury, other than scarring or disfigurement;
- Significant and permanent scarring or disfigurement; or
- Death.

The Florida Motor Vehicle No-Fault Law will sunset on October 1, 2007. The Governor and Legislative leaders are considering whether to allow the law to sunset or to call a Special Legislative Session to extend or to reform it.

The following observations and questions are intended to provide insights to consumers, employers and decision makers about what the impact may be if there is no mandatory PIP insurance in Florida:

Observations and Questions to Consider

1. What medical payments coverage will be available to drivers after the sunset of PIP?

Persons injured in auto accidents will not have automatic coverage for medical treatment from their auto insurers unless the insurers offer medical payments insurance as a replacement for PIP. Auto insurers may offer an optional medical payments insurance product for Florida consumers, but specific benefits will not be legally mandated and will vary by insurer. The insurer will be able to determine the type of benefit to be offered, the kinds of exclusions and limitations on the benefit, and the cost of the coverage, subject to form and rate approval by the Office of Insurance Regulation.

The availability, cost and quality of medical payments insurance will be important for persons without health insurance. Therefore, the issue of medical payments insurance is an important one for consumers and policymakers.

Consumers should determine the extent of their health insurance coverage, if applicable, before considering a medical payments insurance product. The consumer should then carefully review the cost, benefits, limitations and exclusions of any optional medical payments coverage before making the decision to purchase such coverage.

Policymakers should consider the availability and affordability of medical payments insurance in the Florida market, particularly for persons who do not have health insurance.

2. In the absence of PIP, health insurers will play a much greater role in covering medical treatments for drivers injured in auto accidents.

Without PIP, which requires auto insurers to cover the first \$10,000 in costs (including medical costs) for insured drivers and certain other covered persons, the cost of medical treatment may be shifted to health insurers. This shift may have a number of consequences. One is that as the treatment of motor vehicle injuries is paid by health insurers as opposed to auto insurers, health insurance premiums may increase. Essentially, this would represent a transfer of cost from drivers to employers, who provide for the bulk of health insurance premiums in Florida. Some of this added health insurance cost, in turn, may be pushed down to employees. Another consequence may be that any health insurance co-payments, deductibles, limitations and exclusions will apply to health insurance claims filed by persons injured in auto accidents.

Consumers should carefully review the benefits, limitations and exclusions of their health insurance policy, especially if they choose not to purchase an optional medical payments policy from their auto insurer.

Employers will need to plan for possible increases in health insurance premiums to pay for medical costs for injuries to their employees arising out of auto accidents.

Policymakers should consider measures to minimize the impact of the repeal of the PIP law on health insurance costs.

3. What effect will the absence of the PIP law have on Floridians who do not have health insurance?

Approximately 19 percent of Floridians don't have health insurance, according to the Agency for Health Care Administration. Those Floridians who don't chose a replacement for PIP medical benefits and who lack health insurance will be entitled by law to receive emergency treatment.

However, they may not be able to receive follow-up, non-emergency treatment, as physicians won't agree to provide such services, particularly for those drivers who are at-fault and cannot compensate the physician. In addition, if the sunset of PIP leads to an increase in the medically uninsured, additional cost pressure will be placed on our hospitals and physicians.

Policymakers should consider measures to increase the affordability and availability of health insurance for the uninsured and in ways to control health care costs.

4. The resolution of auto insurance claims in the absence of the No-Fault Law may involve increased red tape for insurers, healthcare providers and consumers.

In an environment where the recovery of medical costs for the treatment of motor vehicle accidents relies on a determination of fault, including issues of comparative negligence and subrogation, there is the potential for increased red tape for consumers, medical providers, insurers and law enforcement agencies. Specifically, Florida's law enforcement agencies will have to conduct detailed investigations of even minor auto accidents to make a determination of fault, and may be required to appear and offer testimony in legal proceedings arising out of auto accidents.

In addition, the sunset of No-Fault may give rise to tort lawsuits below the \$10,000 threshold and to claims for non-economic damages, such as pain and suffering.

Policymakers should consider measures to avoid lawsuits, including alternative dispute resolution, as a means of controlling costs and ensuring efficiency in resolution of motor vehicle injury claims.

5. The repeal of the PIP law will eliminate some fraudulent schemes but may provide opportunities for new types of fraud.

The current PIP system suffers from considerable insurance fraud. The Division of Insurance Fraud under the Chief Financial Officer received over 3,000 PIP fraud complaints, opened 329 cases, and obtained 225 convictions for PIP fraud in 2005-06. Our state will still be prosecuting PIP fraud years after No-Fault sunset. It is important to note that the sunset of No-Fault will not eliminate insurance fraud, as criminals will exploit weaknesses in the post-PIP insurance market.

Policymakers should consider tools that enhance the prevention, investigation and prosecution of new forms of insurance fraud that may arise in the post-PIP environment.