



# Florida House of Representatives

Representative Rick Kriseman

House District 53

District Address:  
1700 66<sup>th</sup> Street N, Suite 203  
St. Petersburg, FL 33710  
Phone: 727-552-1380

Tallahassee Address:  
316 The Capitol  
Tallahassee, Florida 32399  
Phone: 850-488-9337

Monday, May 21, 2012

The Honorable Rick Scott  
Governor, State of Florida  
The Capitol  
400 S. Monroe St.  
Tallahassee, FL 32399-0001

RE: HB 119

Dear Governor Scott,

I am writing to express my concerns about the numerous errors contained within HB 119, which was passed by the Florida House and Senate on March 9, 2012 and which you signed into law on May 4, 2012. Given the significant impact these errors could have on Floridians and businesses here in Florida, I am looking to hear what your suggestions or solutions are for alleviating or correcting these errors short of a legislative solution.

First and most glaring of the errors appear in lines 202-334 of the bill, which provides that beginning July 1, 2012, for a medical provider to receive Personal Injury Protection (PIP) benefits, they must be a clinic licensed by AHCA, unless they are exempted from that requirement pursuant to newly created F.S. 627.736(5)(h).

The bill further provides that the exemptions enumerated in F.S. 627.736(5)(h) do not go into effect until January 1, 2013.

The result of this drafting error is that for the six month period between July 1, 2012 and January 1, 2013, the only medical providers who will be eligible to submit their claims to auto insurance carriers for reimbursement under PIP will be those clinics who have been continually licensed as a clinic with AHCA under Chapter 400 for the past three years.

While AHCA, in a memo dated May 8, 2012, attempted to clarify this "glitch" by opining that both the licensure requirement and the exceptions thereto become effective on January 1, 2013, the plain language of the bill is contrary to that stated opinion, and as such, under current case law in the state of Florida, the plain language of the statute is what controls in any dispute regarding interpretation.

Next, the bill states that in order to qualify for ten thousand dollars (\$10,000.00) in PIP coverage, there must be a determination by an M.D., D.O., dentist, hospital, A.R.N.P., or a P.A. that the person injured had an Emergency Medical Condition (EMC).

Lines 628 – 639 of the bill then attempt to define what constitutes an EMC. In doing so, the bill appears to mimic or follow the definition of an EMC as it appears under Federal EMTALA laws (42 U.S.C. Section 1395dd). Unfortunately, the bill fails to make any reference to EMTALA, and as such, long established EMTALA case law which clarifies exactly what constitutes “serious jeopardy” to the patient’s health is irrelevant for purposes of clarifying the definition found in this bill.

The bill also indicates that follow up care must be consistent with the underlying medical diagnosis. What the bill doesn’t state is whether this means that only the medical diagnosis rendered during the initial visit can be used to determine what follow up care is consistent and appropriate. For example, what if the initial evaluation was for a possible cervical fracture and left shoulder pain? Would follow up care for the shoulder be covered (does shoulder pain qualify as causing “serious jeopardy” to the patient’s health)? What if a month after the initial diagnosis, headaches, which originally were thought to be caused by the cervical fracture, were instead determined to be the result of a TMJ condition? Would PIP benefits pay for that treatment even though it was not included in the initial EMC diagnosis?

As noted in lines 205-334, 640-653, 717-741, and 1330-1352, it now appears that unless an MRI company is owned by a hospital, is “wholly owned “ (as defined in lines 640-653) by a physician, or is currently licensed as a clinic with AHCA under Chapter 400, it must secure a license as a clinic through AHCA before it can bill PIP. The bill then states what is required to become a licensed health care clinic, noting that the facility must either be accredited by the Joint Commission on Accreditation of Healthcare Organizations or have a medical director licensed under Chapter 458, 459 or 460, been licensed (*As what? It’s not clear.*) for three years AND provide at least four of eight medical specialties. As written, this bill makes it very difficult for an independently owned MRI facility (which often charges less for diagnostic tests than hospital or physician owned facilities) to bill PIP.

In lines 978 – 982, the bill states that an insurance company, while required to maintain a PIP log for each claim filed, does not have to provide a copy of the PIP log to its insured, counsel for its insured, or a medical provider, *unless* litigation ensues. The impact of this provision is that a diagnostic test might be ordered and performed, which, had the insured known that there were insufficient benefits available to pay for the test, might never have been performed.

Lastly, since this bill has been signed into law, I have heard from many constituents that they have received letters from their auto insurance carriers informing them that due to recent changes in Florida’s PIP law, their insurance rates were being *increased*.

Throughout the entire debate of this bill, the insurance industry very clearly stated that with passage of this bill, premiums would lower for policy holders. It was because of the assurance from the insurance industry that the mandatory 25% rate reduction language was removed from the final version of the bill. Unfortunately, it does not appear that these insurance companies are living up to their assurances.



While your intent in advocating for the passage of this bill was to combat auto fraud, the errors contained in this bill are of such significance that failure to fix them prior to implementation of the legislation will invite litigation. I am sure you recognize that the lack of clarity under which insurance carriers and medical providers will attempt to operate is bound to create needless new chaos and costs.

As the majority of this legislation becomes effective in less than two months, your timely and prompt response to this inquiry would be greatly appreciated.

Respectfully,

A handwritten signature in dark ink, appearing to read "Rick Kriseman", written in a cursive style.

Representative Rick Kriseman

CC: House Speaker Dean Cannon  
Senate President Mike Haridopolos  
CFO Jeff Atwater